



European  
Commission

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

# Country report

## Non-discrimination

Turkey

2020

including summary



*Justice  
and Consumers*

**EUROPEAN COMMISSION**

Directorate-General for Justice and Consumers  
Directorate D — Equality and Union citizenship  
Unit D.1 Non-discrimination and Roma coordination

*European Commission  
B-1049 Brussels*

# **Country report**

## **Non-discrimination**

Transposition and implementation at national level of  
Council Directives 2000/43 and 2000/78

### **Turkey**

Ulaş Karan\*

Reporting period 1 January 2019 – 31 December 2019

---

\* The author has gratefully built on the reports written until 2019 by the previous expert Dilek Kurban.

***Europe Direct is a service to help you find answers  
to your questions about the European Union.***

**Freephone number (\*):**

**00 800 6 7 8 9 10 11**

(\*) The information given is free, as are most calls (though some operators, phone boxes or hotels may charge you).

#### **LEGAL NOTICE**

This document has been prepared for the European Commission however it reflects the views only of the authors, and the Commission cannot be held responsible for any use which may be made of the information contained therein.

More information on the European Union is available on the Internet (<http://www.europa.eu>).

Luxembourg: Publications Office of the European Union, 2020

© European Union, 2020

PDF ISBN 978-92-76-19814-7

ISSN 2599-9176

doi:10.2838/050104

DS-BB-20-035-EN-N

**CONTENTS**

<b>EXECUTIVE SUMMARY .....</b>	<b>5</b>
<b>INTRODUCTION .....</b>	<b>12</b>
<b>1 GENERAL LEGAL FRAMEWORK .....</b>	<b>15</b>
<b>2 THE DEFINITION OF DISCRIMINATION .....</b>	<b>17</b>
2.1 Grounds of unlawful discrimination explicitly covered .....	17
2.1.1 Definition of the grounds of unlawful discrimination within the directives .....	19
2.1.2 Multiple discrimination .....	22
2.1.3 Assumed and associated discrimination .....	23
2.2 Direct discrimination (Article 2(2)(a)) .....	23
2.3 Indirect discrimination (Article 2(2)(b)) .....	24
2.3.1 Statistical evidence .....	26
2.4 Harassment (Article 2(3)) .....	29
2.5 Instructions to discriminate (Article 2(4)) .....	31
2.6 Reasonable accommodation duties (Article 2(2)(b)(ii) and Article 5 Directive 2000/78) .....	32
<b>3 PERSONAL AND MATERIAL SCOPE .....</b>	<b>37</b>
3.1 Personal scope .....	37
3.1.1 EU and non-EU nationals (Recital 13 and Article 3(2), Directive 2000/43 and Recital 12 and Article 3(2), Directive 2000/78) .....	37
3.1.2 Natural and legal persons (Recital 16, Directive 2000/43) .....	37
3.1.3 Private and public sector including public bodies (Article 3(1)) .....	38
3.2 Material scope .....	39
3.2.1 Employment, self-employment and occupation .....	39
3.2.2 Conditions for access to employment, to self-employment or to occupation, including selection criteria, recruitment conditions and promotion, whatever the branch of activity and at all levels of the professional hierarchy (Article 3(1)(a)) .....	40
3.2.3 Employment and working conditions, including pay and dismissals (Article 3(1)(c)) .....	43
3.2.4 Access to all types and to all levels of vocational guidance, vocational training, advanced vocational training and retraining, including practical work experience (Article 3(1)(b)) .....	46
3.2.5 Membership of, and involvement in, an organisation of workers or employers, or any organisation whose members carry on a particular profession, including the benefits provided for by such organisations (Article 3(1)(d)) .....	48
3.2.6 Social protection, including social security and healthcare (Article 3(1)(e) Directive 2000/43) .....	48
3.2.7 Social advantages (Article 3(1)(f) Directive 2000/43) .....	49
3.2.8 Education (Article 3(1)(g) Directive 2000/43) .....	51
3.2.9 Access to and supply of goods and services that are available to the public (Article 3(1)(h) Directive 2000/43) .....	65
3.2.10 Housing (Article 3(1)(h) Directive 2000/43) .....	66
<b>4 EXCEPTIONS .....</b>	<b>74</b>
4.1 Genuine and determining occupational requirements (Article 4) .....	74
4.2 Employers with an ethos based on religion or belief (Article 4(2) Directive 2000/78) .....	74
4.3 Armed forces and other specific occupations (Article 3(4) and Recital 18 Directive 2000/78) .....	75
4.4 Nationality discrimination (Article 3(2)) .....	76
4.5 Health and safety (Article 7(2) Directive 2000/78) .....	77
4.6 Exceptions related to discrimination on the ground of age (Article 6 Directive 2000/78) .....	77
4.6.1 Direct discrimination .....	77

4.6.2	Special conditions for young people and older workers .....	79
4.6.3	Minimum and maximum age requirements.....	79
4.6.4	Retirement.....	79
4.6.5	Redundancy .....	81
4.7	Public security, public order, criminal offences, protection of health, protection of the rights and freedoms of others (Article 2(5), Directive 2000/78) .....	81
4.8	Any other exceptions.....	81
<b>5</b>	<b>POSITIVE ACTION (Article 5 Directive 2000/43, Article 7 Directive 2000/78).....</b>	<b>83</b>
<b>6</b>	<b>REMEDIES AND ENFORCEMENT.....</b>	<b>85</b>
6.1	Judicial and/or administrative procedures (Article 7 Directive 2000/43, Article 9 Directive 2000/78) .....	85
6.2	Legal standing and associations (Article 7(2) Directive 2000/43, Article 9(2) Directive 2000/78).....	91
6.3	Burden of proof (Article 8 Directive 2000/43, Article 10 Directive 2000/78) ..	93
6.4	Victimisation (Article 9 Directive 2000/43, Article 11 Directive 2000/78).....	94
6.5	Sanctions and remedies (Article 15 Directive 2000/43, Article 17 Directive 2000/78).....	94
<b>7</b>	<b>BODIES FOR THE PROMOTION OF EQUAL TREATMENT (Article 13 Directive 2000/43).....</b>	<b>97</b>
<b>8</b>	<b>IMPLEMENTATION ISSUES .....</b>	<b>105</b>
8.1	Dissemination of information, dialogue with NGOs and between social partners .....	105
8.2	Measures to ensure compliance with the principle of equal treatment (Article 14 Directive 2000/43, Article 16 Directive 2000/78) .....	107
<b>9</b>	<b>COORDINATION AT NATIONAL LEVEL.....</b>	<b>108</b>
<b>10</b>	<b>CURRENT BEST PRACTICES.....</b>	<b>110</b>
<b>11</b>	<b>SENSITIVE OR CONTROVERSIAL ISSUES .....</b>	<b>111</b>
11.1	Potential breaches of the directives at the national level .....	111
11.2	Other issues of concern .....	111
<b>12</b>	<b>LATEST DEVELOPMENTS IN 2019.....</b>	<b>113</b>
12.1	Legislative amendments .....	113
12.2	Case law .....	113
12.3	Cases brought by Roma and Travellers .....	113
<b>ANNEX 1: MAIN TRANSPOSITION AND ANTI-DISCRIMINATION LEGISLATION</b>		
	.....	<b>114</b>
<b>ANNEX 2: INTERNATIONAL INSTRUMENTS.....</b>		<b>116</b>

## EXECUTIVE SUMMARY

### 1. Introduction

After snap presidential elections on 24 June 2018, Turkey changed from a parliamentary to a presidential system, which the Venice Commission has found to constitute 'an excessive concentration of executive powers in the hands of the President and the weakening of parliamentary control of that power'.<sup>1</sup> The President now has unsupervised and exclusive powers to appoint and dismiss ministers and high-ranking state officials, dissolve the Parliament on any grounds and declare a state of emergency. He also appoints four of the 13 members of the Council of Judges and Prosecutors, which oversees the appointment, promotion and dismissal of judges and prosecutors. The President also has wide de facto legislative powers by virtue of his authority to issue presidential decrees on 'matters relating to executive powers'.

Since July 2018, Turkey has been ruled by a so-called presidential system against the principles of the separation of powers, constitutional review and the supremacy of the Parliament in law-making. During the emergency regime, declared on 21 July 2016 and lifted on 19 July 2018, 32 executive decrees having the force of law were adopted. All of those decrees were approved by the Turkish Parliament. Three of the decrees were subject to review by the Constitutional Court in 2019.<sup>2</sup> Although the period of emergency rule expired on 19 July 2018, its effects still prevail.

### 2. Main legislation

As Turkey is not a member of the European Union, Directives 2000/43/EC and 2000/78/EC have not been transposed or implemented. The Law on the Human Rights and Equality Institution of Turkey (No. 6701), the anti-discrimination law adopted in 2016, prohibits direct, indirect and multiple discrimination as well as instruction to discriminate, discrimination by assumption, segregation, harassment and mobbing in the workplace. Discrimination by association is not included.

Furthermore, there are anti-discrimination provisions in the Constitution and in several laws. The equality protection clause of the Turkish Constitution, Article 10, provides a non-exhaustive list of the following enumerated grounds: language, race, colour, gender, political opinion, philosophical belief, religion and denomination. Most notable among the laws with anti-discrimination clauses is the Law on Persons with Disabilities, which could be considered an anti-discrimination law. However, the law prohibits discrimination solely on the ground of disability and has limited material scope. In addition, various laws, including the Labour Law, the Penal Code and the Law on National Education, have anti-discrimination clauses, but again with limited material scope. Sexual orientation is not enumerated in any of the laws, including the Law on the Human Rights and Equality Institution of Turkey, or in the Constitution, despite the consistent efforts of human rights and LGBTI associations. On the other hand, the Constitutional Court explicitly recognised sexual orientation as a ground of discrimination (Section 1).<sup>3</sup> Age is explicitly listed as a protected ground only in the Law on the Human Rights and Equality Institution of Turkey. However, as with sexual orientation, age was also recognised as a ground by the Constitutional Court.<sup>4</sup>

---

<sup>1</sup> Venice Commission (2017), *Opinion on the amendments to the Constitution adopted by the Grand National Assembly on 21 January 2017 and to be submitted to a national referendum on 16 April 2017*, CDL-AD(2017)005, 13 March 2017, para. 47, available at: [http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=cdl-ad\(2017\)005-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=cdl-ad(2017)005-e).

<sup>2</sup> Constitutional Court, E. 2016/205, K. 2019/63, 24 July 2019; E. 2018/73, K. 2019/65, 24 July 2019; E. 2017/18, K. 2019/66, 25 July 2019.

<sup>3</sup> Constitutional Court, *Sadika Şeker*, Application No. 2013/1948, 23 January 2014.

<sup>4</sup> Constitutional Court, *Tuğba Arslan*, Application No. 2014/256, 25 June 2014, para. 114.

While hatred and incitement to hatred are prohibited under the Penal Code, as noted by the European Commission against Racism and Intolerance (ECRI), the 'definition of hate crime is excessively narrow and the Criminal Code does not explicitly provide that racist and homo/transphobic motivation constitutes an aggravating circumstance'.<sup>5</sup> Moreover, hate speech grounds are exhaustive and do not include ethnicity, age and sexual orientation. The anti-discrimination law does not prohibit hate speech or hate crime.

According to Article 90 of the Constitution, duly ratified international treaties have the force of law. If a treaty is self-executing, it is directly applicable. In cases of conflict between domestic laws and international human rights treaties, the latter shall prevail. Appeals cannot be made to the Constitutional Court on the unconstitutionality of international treaties. Turkey is a party to a considerable number of international treaties that contain provisions on anti-discrimination and equal treatment, and has accepted the right to individual complaints under many of these treaties, except for the International Convention on the Elimination of All Forms of Racial Discrimination. Turkey has not accepted the collective complaints procedure under the revised European Social Charter.

### **3. Main principles and definitions**

The only ground defined under Turkish law is disability. The Law on the Human Rights and Equality Institution of Turkey and the Law on Persons with Disabilities contain identical definitions, which are in line with the definition under the UN Convention on the Rights of Persons with Disabilities (UNCRPD) and in the Court of Justice of the European Union (CJEU) judgment in *Ring and Skouboe Werge*, as well as with the human rights approach of the Committee on the Rights of Persons with Disabilities (CRPD).<sup>6</sup>

While Turkey's constitutional and legislative framework explicitly avoids providing any definition or categorisation based on ethnicity, race or religion, there are a number of laws and policies in which equivalent definitions and categorisations are made that cause direct or indirect discrimination on grounds of religion. There is also case law concerning the definition of religion in general and of Islam/Muslims in particular. The Council of State has decided that some belief systems are ineligible for consideration as a religion, and has defined others in ways contrary to the definitions subscribed to by the holders of such beliefs. In both cases, the Court based its judgments on the advisory opinion of the Directorate of Religious Affairs (Diyanet İşleri Başkanlığı), a constitutionally endorsed public body which regulates affairs between the state and Islam.

The national legal framework is completely blind to sexual orientation, as is evident from the absence of any provision criminalising homosexual, bisexual or transsexual conduct. At the same time, there is widespread and systematic discrimination against LGBTI people, stemming from the blatantly discriminatory texts of the laws and regulations and/or their discriminatory interpretation and application by the judiciary (Section 2.1.1). The principal way in which laws are applied in a discriminatory way against LGBTI individuals is through the judicial interpretation of terms such as 'morality', 'indecent behaviour' and 'dishonourable behaviour'.

The Law on the Human Rights and Equality Institution of Turkey prohibits direct and indirect discrimination; multiple discrimination; harassment; mobbing; segregation; discrimination by assumption; instruction to discriminate and compliance with such instruction; and failure to provide reasonable accommodation. The Labour Law, the Law on Persons with Disabilities, the Penal Code, the Law on National Education and the Law on Civil Servants also prohibit one or more of these types of discrimination, each on limited

---

<sup>5</sup> European Commission against Racism and Intolerance (ECRI) (2016), *Report on Turkey (fifth monitoring cycle)*, CRI(2016)37, Strasbourg, pp. 9, 15 and 39, available at: <https://rm.coe.int/fifth-report-on-turkey/16808b5c81>.

<sup>6</sup> Judgment of 11 April 2013, *Ring and Skouboe Werge v. Denmark*, C-335/11 and C-337/11.



grounds. The Turkish legal framework is silent on discrimination by association and situation testing. Victimisation is prohibited only in a limited fashion.

Among the five grounds covered by Directives 2000/43/EC and 2000/78/EC, Turkish national law allows for positive action on grounds of race/ethnicity, religion/belief, age and disability. Positive action in respect of sexual orientation is not explicitly permitted. While not explicitly stating it as such, Article 10 of the Constitution entails the principle of positive action, but only on grounds of age and disability. The Law on the Human Rights and Equality Institution of Turkey provides an exception to the prohibition on discrimination for 'treatment which is necessary, appropriate and proportional towards eliminating inequalities' on grounds of race/ethnicity, religion/belief, disability and age. The only regulation that can be considered as positive action is the quota for persons with disabilities in the Labour Law.

There are several laws and regulations which, although they are not designated as positive action by the legislation, stipulate positive measures in the areas of education and employment and in a number of services (social insurance, transportation etc.). No positive action exists for the Roma in Turkey, even after the Government launched its Roma initiative with the promise to enhance employment, education and housing conditions for the Roma. The special situation of non-Muslim groups under the Treaty of Lausanne does not confer on them a right to positive discrimination based on religion. On the contrary, the state in Turkey continues to limit state funding for religious services to the Sunni Muslim majority by paying the salaries of Sunni preachers (*imams*) and providing free electricity and water to mosques.

#### **4. Material scope**

The Law on the Human Rights and Equality Institution of Turkey prohibits discrimination in employment, self-employment, access to employment and access to self-employment, including selection criteria, recruitment conditions and promotion and working conditions, including dismissals, on the grounds of race/ethnicity, religion/belief, age and disability only (excluding sexual orientation), in both the private and public sectors. It does not prohibit discrimination in pay. It also prohibits discrimination in: vocational guidance, vocational training and retraining, including practical work experience and on-the-job training; membership of and involvement in 'vocational organisations'; the provision of social security, healthcare and social advantages; education; access to and the supply of goods and services; and housing.

The law applies to both natural and legal persons in both the public and private sectors.

#### **5. Enforcing the law**

In Turkey, discrimination claims are filed through civil, administrative and criminal courts as well as administrative mechanisms. Victims of discrimination can claim compensation for pecuniary damages, loss of earnings and/or damages for pain and suffering. Parallel proceedings are possible with regard to criminal, civil or administrative courts.

Persons may simultaneously pursue a civil claim for compensation in civil or labour courts, an administrative application or a criminal complaint. If the discriminatory act or action is administrative in nature, the victim of discrimination must, before going to court, request compensation from the administrative body responsible for the action. The decisions of the courts are binding by definition. While a court proceeding is the only procedure by which victims can receive compensation, it is costly; legal aid is provided under very strict criteria, and cases are not decided until one or two years have passed.

If a victim seeks an amicable settlement instead of a court action, the alternative dispute settlement methods offered in the Turkish legal system are very limited.

Except in cases in criminal courts, litigants themselves have to collect evidence to establish the facts and prove their case, making the pursuit of a case without the support of a lawyer extremely difficult. Filing a lawsuit is costly and legal aid is provided under very strict criteria. Collective actions are not available. Victims of discrimination in most cases resort to human rights organisations and individual lawyers for legal assistance.

The scope of individual application to the Constitutional Court is limited to rights and liberties protected under the Constitution that fall within the scope of the European Convention on Human Rights (ECHR) and the additional protocols to which Turkey is a party. Applicants whose complaint is found to be inadmissible reserve the right to petition the European Court of Human Rights (ECtHR). There are deterrents to filing an individual application to the Constitutional Court, such as the 30-day time limit and the petition fee.

Another option for victims is to apply to non-judicial bodies, such as provincial and district-level human rights boards and the Human Rights Inquiry Commission of the Turkish Grand National Assembly, which have the competence to inquire into complaints of discrimination in employment. Human rights boards are not independent from the executive, are extremely underused and have been inactive for years. The Human Rights and Equality Institution of Turkey has the competence to impose administrative sanctions (in the form of monetary fines) against legal and natural persons who engage in discrimination. The decisions of all these bodies are non-binding and their powers of enforcement are weak. There are also labour inspectors, insurance inspectors and school inspectors who are tasked with inspecting compliance with the respective laws. Labour and school inspectors have the competence to receive and review individual complaints, including those alleging violation of the anti-discrimination provisions of the Labour Law and the Law on National Education.

In Turkey, only consumer protection associations and trade unions are granted entitlement to act on behalf of victims of discrimination. They also have legal standing to act on behalf of their members in limited circumstances. The defunct Human Rights Institution of Turkey had granted human rights organisations and trade unions standing to file complaints with the Institution on behalf of victims of human rights violations. The newly established Human Rights and Equality Institution of Turkey does not grant third parties such standing.

Associations/organisations/trade unions are not entitled to act in support of victims of discrimination. However, they can call on prosecutors to act to prosecute perpetrators and they can intervene in criminal cases initiated by the public prosecutors where they can demonstrate 'harm by the crime'. In recent years, LGBTI organisations have persistently asked to be involved in ongoing criminal cases to act on behalf of victims of hate crime and honour killings. Although courts tend to reject such requests in many cases relating to LGBTI victims, there have been a few instances in which a court has given an affirmative response.<sup>7</sup> However, these decisions have subsequently been revoked in further court decisions.<sup>8</sup> In a landmark decision issued in early 2015, the Constitutional Court granted several NGOs leave to submit *amicus curiae* briefs in an ongoing enforced disappearance case.<sup>9</sup> While this is not a discrimination case, nor has the applicant made a discrimination claim, the Court's decision to accept *amicus curiae* submissions from civil society has set a significant precedent. On 30 March 2017, one of the NGOs that had submitted the *amicus*

---

<sup>7</sup> Tahaoğlu, Çiçek, 'Nefret Cinayetine SPoD Müdahil Oldu' ('SPoD Intervened in Hate Murder'), *Bianet*, 18 January 2013, available at: <http://bianet.org/english/lgbti/143664-nefret-cinayetinde-spod-mudahil-oldu>.

<sup>8</sup> 'Eşcinsel R.Ç. Davasında Mahkeme Bir Derneğin Müdahillik Kararını Kaldırdı' ('The Court Revoked its Decision on Intervention of an Association in the case of Gay R.Ç.'), *Diyarbakır Söz*, 6 December 2013, available at: <https://www.diyarbakirsoz.com/turkiye/escinsel-rc-davasinda-mahkeme-bir-dernegin-mudahillik-kararini-kaldirdi-95806>.

<sup>9</sup> Constitutional Court, *Birsen Gülünay*, Application No. 2013/2640, 8 April 2013.

*curiae* brief in 2015 submitted to the Constitutional Court another *amicus curiae* for consideration in pending cases concerning enforced disappearances.<sup>10</sup>

National law permits a shift in the burden of proof from the complainant to the respondent. Under Article 21 of the Law on the Human Rights and Equality Institution of Turkey, once an applicant puts forward a *prima facie* case of discrimination, the burden of proof shifts back to the respondent to prove that discrimination has not occurred. However, this provision 'seems to be restricted to applications to the [Human Rights and Equality Authority] and does not apply to court proceedings'.<sup>11</sup> Labour law contains the only provisions that include rules on the burden of proof in discrimination cases. While the burden of proof rests with employees, if an employee puts forward a situation that strongly suggests the probability of such a violation, the employer is obliged to prove that no such violation exists.

Sanctions in cases of discrimination vary. Under the anti-discrimination law, the Human Rights and Equality Institution of Turkey, where it finds breaches of non-discrimination law, has the power to issue administrative sanctions by way of monetary fines ranging between TRY 1 000 and TRY 15 000 (EUR 132 and EUR 1 974), depending on the gravity of the impact and consequences of the breach, the financial status of the perpetrator and the aggravating effect, if any, of multiple discrimination. Where the Council – the Institution's decision-making body – deems it necessary, the fine may be converted into a warning on one occasion only. In cases of repetition, the fine will be increased by 50 %.

In cases of employment discrimination, employers are subject to a fine and employees may demand compensation of up to four months' wages plus claims for other benefits of which they have been deprived. According to Article 21 of the Labour Law, in cases of invalid termination of an employment contract (due to discrimination, among other reasons), the employer must reinstate the employee in work within one month. If that does not happen, the employee is entitled to compensation of between four and eight months' wages. Although the amount of compensation provided for in Article 21 is higher than the amount of compensation (up to four months' wages) provided for in Article 5 of the Labour Law, which prohibits discrimination and enables a shift in the burden of proof, if the claimant alleges that the reason for termination has a discriminatory basis, in contrast to the terms of Article 5, he or she shall bear the burden of proof and must substantiate a claim of discriminatory intent on the part of the employer. Thus, the applicability of Article 21 in cases of invalid termination of an employment contract on discriminatory basis seems to be rare.

Where discrimination in violation of the Penal Code is committed, the sanction is up to three years' imprisonment, with the possibility of conversion to a fine. Where civil servants engage in discrimination, the sanction is one to three years' suspension of promotion. In addition, labour inspectors, insurance inspectors and school inspectors, as well as executive officials (in the area of consumer protection), can issue administrative and monetary sanctions.

The Government develops policies, designs laws and adopts executive measures on human rights and anti-discrimination without consulting NGOs or, in the rare cases where it does, without taking into account their suggestions or criticisms. A recent example of this was the adoption of the National Strategy for the Roma in 2016. Representatives of civil society organisations that had taken part in the deliberative process during 2009-2016 criticised

---

<sup>10</sup> Truth Justice Memory Centre (Hakikat Adalet Hafiza Merkezi) (2017), *Amicus Curiae*, 30 March 2017, available at: [https://hakikatadalethafiza.org/wp-content/uploads/2017/11/AYM-Amicus\\_Hu%CC%88lya-Dinc%CC%A7er-Osman-Dog%CC%86ru-SON-TR.pdf](https://hakikatadalethafiza.org/wp-content/uploads/2017/11/AYM-Amicus_Hu%CC%88lya-Dinc%CC%A7er-Osman-Dog%CC%86ru-SON-TR.pdf).

<sup>11</sup> ECRI (2016), *Report on Turkey (fifth monitoring cycle)*, CRI(2016)37, Strasbourg, p. 16, available at: <https://rm.coe.int/fifth-report-on-turkey/16808b5c81>.

the Government for significantly shortening and watering down the draft strategy that was shared with them in February 2016, on which they had provided feedback.<sup>12</sup>

## 6. Equality bodies

Pursuant to the Law on the Human Rights and Equality Institution of Turkey, Turkey has a 'specialised body' for the promotion of equal treatment irrespective of racial or ethnic origin, which, however, is not in accordance with Article 13 of the Racial Equality Directive. National and international NGOs as well as UN bodies have criticised the Institution's lack of independence and non-compliance with the Paris Principles.

The Institution has a mandate to receive discrimination claims on grounds of race/ethnicity, religion/belief, age and disability. Sexual orientation has not been included in the mandate. The Institution has the duty and power to receive discrimination claims from natural and legal persons and to initiate investigations into violations of non-discrimination on its own initiative. With regard to general human rights violations, it has only *ex officio* investigative powers. Where it finds discrimination or human rights violations which constitute crimes, the Institution has legal standing to file a criminal complaint on behalf of the identified victim(s).

Filing a complaint with the Institution is free of charge. Acts relating to the exercise of legislative and judicial competences; the Council of Prosecutors and Judges' decisions; and acts that are exempt from judicial review under the Constitution cannot be the subject of complaints. The Institution, which became operational in March 2017, issued its first decision on 30 October 2018, 20 months after it had been set up. In 2019, a total of 30 complaints filed were examined on their merits, and 18 of them were concluded. A violation of non-discrimination provisions was found in only three cases.<sup>13</sup>

The Ombudsman Institution, which was established in June 2012 with the mandate of receiving complaints concerning general human rights issues and disability, partially fulfils the requirements of the Racial Equality Directive. While it might also take on the function of an independent body on racial discrimination, it lacks the power to carry out investigations on its own initiative and there are concerns regarding its impartiality and neutrality. The reports and recommendations of the Ombudsman Institution are not binding, and it is not possible to appeal its recommendations. The law is silent on follow-up actions to track and secure the implementation of the Ombudsman Institution's recommendations. It lacks powers to impose sanctions.

The Ombudsman Institution began receiving complaints in 2013. In the past three years, there has been a significant increase in the number of applications received and recommendations issued by the Ombudsman Institution. By 2019, the rate of compliance with its recommendations had increased to 75 %.<sup>14</sup> However, the European Commission has stated: 'the Institution still lacks *ex officio* powers to initiate investigations and to intervene in cases with legal remedies, and such limitations curtail effectiveness (...) therefore, the efficiency and capacity of the Ombudsman to deal with such applications also need to be stepped up'<sup>15</sup>

---

<sup>12</sup> Foggo, H., 'Ulusal Roma Strateji Planı "İzleme Kurulu"na Öneriler-1' ('Proposals for the National Roma Strategy Plan "Monitoring Council"'), P24, 24 February 2017, available at:

<http://www.platform24.org/p24blog/yazi/2838/roman-strateji-izleme-kurulu-na-oneriler>.

<sup>13</sup> Human Rights and Equality Institution of Turkey (2020), *2019 Activity Report (2019 Faaliyet Raporu)*, p. 59, available at: [https://www.tihk.gov.tr/upload/file\\_editor/2020/02/1582925332.pdf](https://www.tihk.gov.tr/upload/file_editor/2020/02/1582925332.pdf).

<sup>14</sup> Ombudsman Institution of Turkey (2020), *2019 Annual Report (2019 Yıllık Raporu)*, p. 117, available at: [https://www.ombudsman.gov.tr/kdk-pdf/2019\\_yili\\_yillik\\_rapor/mobile/index.html](https://www.ombudsman.gov.tr/kdk-pdf/2019_yili_yillik_rapor/mobile/index.html).

<sup>15</sup> European Commission (2019), *Turkey 2019 Report*, Brussels, 29 May 2019, pp. 15 and 29, available at: <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20190529-turkey-report.pdf>.

## 7. Key issues

Although the directives have not (yet) been transposed into national law, the following issues raise concerns.

- The overarching issue of concern is the rapid eradication of democracy and the rule of law, and the consolidation of authoritarian rule in Turkey.
- The Government's preoccupation with 'counter-terrorism' and the effective halt of the EU accession process has led human rights reforms, including in the area of anti-discrimination, to be entirely dropped from the agenda of public institutions.
- The equality body also fulfils the function of the National Prevention Mechanism on Torture and national human rights institution, which may dilute its strength and effectiveness.
- The equality body's independence has not been ensured in line with the UN Paris Principles and the EU *acquis*.
- The grounds of anti-discrimination in the laws do not include sexual orientation.
- The scope of the duty to provide reasonable accommodation is more limited than in the Employment Equality Directive (Directive 2000/78/EC). The test regarding reasonable accommodation is non-existent: consequently, there is no guidance for labour inspectors, judges, employers and persons with disabilities.
- There is no specific prohibition regarding discrimination by association and hate speech.
- The Law on the Human Rights and Equality Institution of Turkey and the Law on Disabilities do not elaborate on what can be considered a legitimate aim for the purpose of objective justification of indirect discrimination.
- Sanctions are not explicitly mentioned in laws with anti-discrimination provisions. Where they are mentioned, they are not dissuasive, proportional and effective. Violations that are criminal offences are punishable with short prison sentences often convertible to small fines.
- Turkish law does not explicitly recognise the standing of NGOs to bring claims in support of victims of discrimination, with the exception of trade unions and consumer protection associations.
- The mandates of the national and local human rights bodies and the Ombudsman Institution do not explicitly refer to protection from discrimination and offer limited possibilities for intervention and influence.
- Discriminatory and hate speech and conduct against minorities, particularly the Roma, LGBTI persons, Kurds and non-Muslims (in particular Jews) is rampant in daily life, political discourse and the media.
- The judicial authorities are reluctant to enforce legislation prohibiting hate speech and discrimination.
- The ECtHR's rulings against mandatory religion courses; the non-recognition of Alevi places of worship and the exclusion of these places of worship from social advantages granted to mosques; and the mandatory indication of religion in official identity cards remain unimplemented. The ECtHR's ruling concerning the inability of Jehovah's Witnesses to open places of worship also remains unimplemented.
- Turkey is the only member of the Council of Europe which does not recognise the right to conscientious objection to military service. The ECtHR's rulings on this issue remain unimplemented.

## INTRODUCTION

### The national legal system

Following snap presidential elections on 24 June 2018, Turkey formally transitioned from a long-standing parliamentary system to a so-called presidential system which, according to the Venice Commission, constitutes 'an excessive concentration of executive powers in the hands of the President and the weakening of parliamentary control of that power'.<sup>16</sup> The President now has unsupervised and exclusive powers to (*inter alia*) appoint and dismiss ministers and high-ranking state officials, dissolve the Parliament on any grounds and declare a state of emergency and issue decrees on 'matters necessitated' by any such emergency. The President also has the power to appoint 4 of the 13 members of the Council of Judges and Prosecutors, which oversees the appointment, promotion and dismissal of judges and public prosecutors. These changes are, the Venice Commission said, a decisive move 'towards an authoritarian and personal regime',<sup>17</sup> wiping out any remnants of democracy and the rule of law in Turkey. While the Parliament's power to make laws is non-derogable, the President now has wide de facto legislative powers by virtue of his authority to issue presidential decrees on 'matters relating to executive powers'. The further weakening of the Parliament, where Opposition deputies could at the very least introduce progressive legal amendments and submit queries to the executive, has eradicated the already limited oversight of the Government on human rights issues in general and anti-discrimination in particular. Combating discrimination was not on the Government's agenda in 2019. In respect of discrimination, the only policy determined has been to strengthen the Turkish Human Rights and Equality Institution in terms of staff, financial, technical and physical infrastructure in order to make it more effective and functional, but that was not put into practice in 2019.<sup>18</sup> The Annual Presidential Programme for 2019 did not specifically take into account the problems and needs of disadvantage groups. The only group to which it explicitly referred was persons with disabilities, and in the absence of concrete aims and targets, it was far from being effective in that regard.

Since July 2018, Turkey has been ruled by a so-called presidential system that disregards the constitutional principles of the separation of powers, constitutional review and the supremacy of the Parliament in law-making. During the emergency regime, which was declared on 21 July 2016 in response to the coup attempt and lifted on 19 July 2018, the Constitutional Court refrained from exercising the power it had granted itself in 1991<sup>19</sup> to review the temporal, geographical and substantive compatibility of emergency decrees with the boundaries of emergency rule.<sup>20</sup> A total of 32 executive decrees having the force of law were adopted during the emergency rule.<sup>21</sup> All of those decrees were approved by the Turkish Parliament. Three of the decrees has been subject to review by the

---

<sup>16</sup> Venice Commission, *Opinion on the amendments to the Constitution adopted by the Grand National Assembly on 21 January 2017 and to be submitted to a national referendum on 16 April 2017*, CDL-AD(2017)005, 13 March 2017, para. 47, available at: [http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=cdl-ad\(2017\)005-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=cdl-ad(2017)005-e).

<sup>17</sup> Venice Commission, *Opinion on the amendments to the Constitution adopted by the Grand National Assembly on 21 January 2017 and to be submitted to a national referendum on 16 April 2017*, CDL-AD(2017)005, 13 March 2017, para. 133, available at: [http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=cdl-ad\(2017\)005-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=cdl-ad(2017)005-e).

<sup>18</sup> Presidency of the Republic of Turkey (2018), *Annual Presidential Programme 2019* (2019 Yılı Cumhurbaşkanlığı Yıllık Programı) p. 98, available at: [http://www.sbb.gov.tr/wp-content/uploads/2018/11/2019\\_Yili\\_Cumhurbaşkanligi\\_Yillik\\_Programi.pdf](http://www.sbb.gov.tr/wp-content/uploads/2018/11/2019_Yili_Cumhurbaşkanligi_Yillik_Programi.pdf). Also available in *Official Gazette*, 27 October 2018.

<sup>19</sup> Constitutional Court, E. 1990/25, K. 1991/1, 10 January 1991; E. 1991/6, K. 1991/20, 3 July 1991.

<sup>20</sup> Constitutional Court, E. 2016/166, K. 2016/159, 12 October 2016; E. 2016/167, K. 2016/160, 12 October 2016; E. 2016/171, K. 2016/164, 2 November 2016; E. 2016/172, K. 2016/165, 2 November 2016.

<sup>21</sup> Erem, O., 'OHAL sona erdi: İki yıllık sürecin bilançosu' ('The emergency rule has ended: The balance of the two years' process'), *BBC Türkçe*, 19 July 2018, available at: <https://www.bbc.com/turkce/haberler-turkiye-44799489>.

Constitutional Court in 2019.<sup>22</sup> Although the period of emergency rule expired on 19 July 2018, its effects still prevail.

Pursuant to Article 90 of the Constitution, in cases of conflict between domestic laws and duly ratified international human rights treaties, the latter shall prevail. Turkey is a party to a considerable number of treaties containing provisions on anti-discrimination and equal treatment, though with significant reservations and declarations aimed at precluding the extension of minority protection under the national legal framework.

On 25 June 2014, the Constitutional Court issued its first finding of discrimination under the constitutional complaint mechanism that entered into force in September 2012, ruling that a lower court's decision to bar a female lawyer from attending a hearing on the ground that she wore a headscarf constituted discrimination on grounds of religious belief. The Constitutional Court has not found discrimination on any of the other relevant grounds under the directives. For example, it did not find the dismissal of a public-school teacher on the basis of his sexual orientation to be discriminatory, simply disregarding the claims.<sup>23</sup>

The Law on the Human Rights and Equality Institution of Turkey constitutes Turkey's anti-discrimination legislation.<sup>24</sup> In addition, there are anti-discrimination provisions in the Constitution and in several laws. Article 10 of the Constitution provides a non-exhaustive list of protected grounds; allows positive measures for elderly persons and for persons with disabilities; and entrusts the state with ensuring equality between men and women. The Law on Persons with Disabilities prohibits discrimination on the ground of disability and its material scope is limited to employment. The Labour Law also has several anti-discrimination clauses, but again with a material scope limited to employment relations.

### **List of main legislation transposing and implementing the directives**

Law on the Human Rights and Equality Institution of Turkey (No. 6701)<sup>25</sup>

Date of adoption: 6 April 2016

Latest amendments: 2 July 2018

Grounds covered: sex, race, colour, language, religion, belief, denomination, philosophical and political opinion, ethnic origin, wealth, birth, marital status, health, disability and age

Material scope: Employment, social protection, social advantages, access to goods and services, education, housing

Labour Law (No. 4857)<sup>26</sup>

Date of adoption: 22 May 2003

Latest amendments: 2 July 2018

Grounds covered: language, race, colour, gender, disability, political opinion, philosophical belief, religion and sect, or any such considerations

Material scope: employment (public and private)

Principal content: direct discrimination, indirect discrimination (gender- and pregnancy-based), (sexual) harassment, victimisation (very limited)

Turkish Penal Code (No. 5237)<sup>27</sup>

Date of adoption: 26 September 2004

Grounds covered: language, race, colour, gender, disability, political opinion, philosophical belief, religion and sect, or any such considerations

---

<sup>22</sup> Constitutional Court, E. 2016/205, K. 2019/63, 24 July 2019; E. 2018/73, K. 2019/65, 24 July 2019; E. 2017/18, K. 2019/66, 25 July 2019.

<sup>23</sup> Constitutional Court, Z.A., Application No. 2013/2928, 18 October 2017.

<sup>24</sup> Law on the Human Rights and Equality Institution of Turkey (*Türkiye İnsan Hakları ve Eşitlik Kurumu Kanunu*), No. 6701, 6 April 2016.

<sup>25</sup> Law on the Human Rights and Equality Institution of Turkey, No. 6701, 6 April 2016.

<sup>26</sup> Labour Law (*İş Kanunu*), No. 4857, 22 May 2003.

<sup>27</sup> Turkish Penal Code (*Türk Ceza Kanunu*), No. 5237, 26 September 2004.

Material scope: access to services (could be interpreted to include education, social protection and social advantages); access to goods (limited to foodstuffs); public and private employment

Law on Persons with Disabilities (No. 5378)<sup>28</sup>

Date of adoption: 1 July 2005

Latest amendments: 18 November 2014

Grounds covered: disability

Material scope: public and private employment

Basic Law on National Education (No. 1739)<sup>29</sup>

Date of adoption: 14 June 1973

Latest amendments: 2 December 2016

Grounds covered: language, race, gender, religion, disability

Material scope: education

Law on Civil Servants (No. 657)<sup>30</sup>

Date of adoption: 14 July 1965

Latest amendments: 27 March 2015

Grounds covered: language, race, gender, political thought, philosophical belief, religion and sect

Material scope: all acts of civil servants – unlimited material scope (public employment, access to goods or services (including housing) provided by the public sector, social protection, social advantages, public education)

---

<sup>28</sup> Law on Persons with Disabilities (*Engelliler Hakkında Kanun*), No. 5378, 1 July 2005.

<sup>29</sup> Basic Law on National Education (*Millî Eğitim Temel Kanunu*), No. 1739, 14 June 1973.

<sup>30</sup> Law on Civil Servants (*Devlet Memurları Kanunu*), No. 657, 14 July 1965.



## 1 GENERAL LEGAL FRAMEWORK

### Constitutional provisions on protection against discrimination and the promotion of equality

The Constitution of Turkey includes the following articles that deal with non-discrimination. Article 10, on equality before the law, is a general equality clause. It reads as follows:

'Everyone is equal before the law without distinction as to language, race, colour, sex, political opinion, philosophical belief, religion and sect, or any such grounds. Men and women have equal rights. The State has the obligation to ensure that this equality exists in practice. Measures taken for this purpose shall not be interpreted as contrary to the principle of equality. 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. No privilege shall be granted to any individual, family, group or class. State organs and administrative authorities are obliged to act in compliance with the principle of equality before the law in all their proceedings.'

As can be seen from the text, Article 10 explicitly covers the grounds of language, race, colour, gender, political opinion, philosophical belief, religion and sect, and, given its open-ended structure, it implicitly covers the remaining grounds with reference to 'any such grounds'. Since it is situated in the 'General Principles' part of the Constitution, and the rights and freedoms set forth in the Constitution are wide ranging, this provision applies to all areas covered by the directives, and its material scope is broader than those of the directives. However, the personal scope of the provision, as it does not explicitly refer to sexual orientation and ethnic origin among the grounds of equality, is more limited than that of the directives. Article 10 was adopted in 1982, and the list that it provides has not been extended since then. In several individual applications, the excluded grounds were unsuccessfully invoked in Article 10 claims.<sup>31</sup> While the Constitutional Court found these cases to be inadmissible, it did, in entertaining the applicants' claims of discrimination, effectively accept that ethnic origin and sexual orientation are among the prohibited grounds.<sup>32</sup> In an inadmissibility decision in 2017, the Constitutional Court explicitly ruled, with reference to ECtHR case law, that discrimination on the ground of sexual orientation is prohibited.<sup>33</sup> This was the first ruling in which the Constitutional Court explicitly recognised sexual orientation as a ground on which discrimination is prohibited. Age and disability were also overtly acknowledged as prohibited grounds under Article 10 by the Constitutional Court in 2014.<sup>34</sup>

Article 10 is directly applicable, and by virtue of Article 11, it can be enforced against private actors as well as against the state. While not explicitly stating it as such, Article 10 introduces the principle of positive action to the Constitution. It stipulates that measures to be adopted to ensure equality between men and women, as well as measures to be

<sup>31</sup> Constitutional Court, *Sadika Şeker*, Application No. 2013/1948, 23 January 2014 (invoking sexual orientation to argue that the homosexuality of her murdered brother was used as a mitigating factor in the sentencing of the perpetrator, who was treated more favourably than other individuals convicted of homicide); *Mehmet Çetinkaya and Maide Çetinkaya*, Application No. 2013/1280, 28 May 2015 (invoking ethnic origin to claim that in assessing their compensation claim for the murder of their daughter in a terrorist attack which specifically targeted people of Kurdish origin, the lower court awarded them damages lower than those awarded in similar cases of death caused by the negligence of the Administration).

<sup>32</sup> Karan, U. (2015), 'Bireysel Başvuru Kararlarında Ayrımcılık Yasağı ve Eşitlik İlkesi' ('The non-discrimination and equality principle in individual application rulings'), *Anayasa Yargısı*, vol. 32, p. 249.

<sup>33</sup> Constitutional Court, *Cemal Duğan*, Application No. 2014/19308, 15 February 2017. The Court has used both the concepts of 'sexual preference' and 'sexual orientation' in its ruling, which indicates a confusion in terms of the concepts referred to. As the Court has offered no insight into what it means by 'sexual preference', it seems, considering the ECtHR case law to which the Court has referred, that both terms are used interchangeably.

<sup>34</sup> Constitutional Court, *Tuğba Arslan*, Application No. 2014/256, 25 June 2014, para. 114.

adopted for children, elderly persons, persons with disabilities, widows and orphans of martyrs,<sup>35</sup> ex-soldiers disabled in war and veterans, shall not be considered as violations of the principle of equality.

Article 50 is a specific clause stating that 'no one shall be required to perform work unsuited to his/her age, gender, and capacity' and entitling persons with physical or mental disabilities to 'special protection with regard to working conditions'. The Constitutional Court interpreted this provision to cover all persons with disabilities.<sup>36</sup> Thus, it can be inferred that reference to 'mental disabilities' covers both intellectual disabilities and psychosocial disabilities. The material scope of these Articles is not broader than that of the directives. The Articles are directly applicable and can be enforced against private actors.

Article 70 is a specific clause implicitly prohibiting discrimination in entry to public service without explicitly specifying any grounds: 'Every Turk has the right to enter public service. No criteria other than the qualifications for the office concerned shall be taken into consideration for recruitment into public service.' It is directly applicable and cannot be enforced against private actors (although it can be enforced against the state).

---

<sup>35</sup> Although the term 'martyr' is widely used in Turkey's legal framework and political discourse, a legal definition of it does not exist. With its roots in a religious notion, it originally referred to individuals killed while defending the nation. In more recent years, it has been used by Government officials, political leaders and the media to refer also to civilians killed in terrorism or counter-terrorism activities and in the attempted coup on 15 July 2016.

<sup>36</sup> Constitutional Court, E. 2006/101, K. 2008/126, 19 June 2008.

## 2 THE DEFINITION OF DISCRIMINATION

The Constitutional Court defined equality under Article 10 of the Constitution as follows:

'The principle of equality, which is among the fundamental principles of law, is enshrined in Article 10 of the Constitution. Equality before the law applies to persons whose legal status is the same. This principle aims for de jure equality, not de facto equality. The aim of the principle of equality is to ensure that persons having the same status are treated by the law in the same way, as well as to avoid any differentiation or privileges. This principle requires that the same rules apply to persons or groups having similar status, thus the principle prohibits violations of equality before the law. Equality before the law does not require the same rules to apply to everyone in all situations. Particularities of the status of certain persons or groups might require different rules or practices to apply. If the same rules apply to similar situations and different rules apply to different situations, then the principle of equality enshrined in the Constitution shall not be prejudiced.

If the rule which is claimed to be in contradiction to equality has a legitimate aim or has been adopted for the purpose of public interest, then it cannot be said that this rule prejudices the principle of equality.

However, 'public interest' or 'legitimate aim' should be a) clear b) relevant to the aim c) reasonable and just. If the rule adopted does not comply with one of these requirements which complement, support and strengthen each other, then it can be concluded that it is in contradiction to the principle of equality.<sup>37</sup>

The Constitutional Court elaborated on the anti-discrimination principle in June 2014: the first time that it found the violation of this principle in an individual application. Noting that the principle of equal treatment and the prohibition of discrimination are 'concepts used to refer to the same thing' and that the former also entails the latter, the Court said that the principle of non-discrimination

'entails the provision or rejection of opportunities on the basis of grounds such as religion, political opinion, sexual and sex identity which are the elements of the individual's personality and are based on personal choices or personal traits such as gender, race, disability and age which cannot be questions of choice under any circumstance.'<sup>38</sup>

### 2.1 Grounds of unlawful discrimination explicitly covered

The following grounds of discrimination are explicitly prohibited in the main legislation (listed in the Introduction) transposing and implementing the two EU anti-discrimination

---

<sup>37</sup> Constitutional Court, E. 2008/95, K. 2010/18, 28 January 2010.

<sup>38</sup> Constitutional Court, *Tuğba Arslan*, Application No. 2014/256, 25 June 2014, para. 114.

directives: race,<sup>39</sup> language,<sup>40</sup> colour,<sup>41</sup> gender,<sup>42</sup> disability,<sup>43</sup> political opinion/thought,<sup>44</sup> philosophical belief/opinion,<sup>45</sup> religion,<sup>46</sup> sect (denomination),<sup>47</sup> nationality,<sup>48</sup> national

- <sup>39</sup> Constitution of the Republic of Turkey (hereafter 'Constitution') (*Türkiye Cumhuriyeti Anayasası*), 7 November 1982, Article 10; Law on the Human Rights and Equality Institution of Turkey, 6 April 2016, Article 3(2); Penal Code, 26 September 2004, Article 3(2); Labour Law, 22 May 2003, Article 5(1); Basic Law on National Education, 14 June 1973, Article 4; Law on Civil Servants, 14 July 1965, Article 7; Civil Code (*Medeni Kanun*), 22 November 2001, Article 68; Law on Political Parties (*Siyasi Partiler Kanunu*), 22 April 1983, Article 12; Law on Social Services (*Sosyal Hizmetler Kanunu*), 24 May 1983, Article 4(d); Law on the Execution of Penalties and Security Measures (*Ceza ve Güvenlik Tedbirlerinin İnfazı Hakkında Kanun*), 13 December 2004, Article 2(1); Law on the Ombudsman Institution (*Kamu Denetçiliği Kurumu Kanunu*), 29 June 2012, Article 30; Turkish Armed Forces Discipline Law (*Türk Silahlı Kuvvetleri Disiplin Kanunu*), 31 January 2013, Article 18; Law on Prevention of Violence and Disorder in Sports (*Sporda Şiddet ve Düzensizliğin Önlenmesine Dair Kanun*), 14 April 2011, Article 14; Regulation on Minimum Wage (*Asgari Ücret Yönetmeliği*), 1 August 2004, Article 5; Law on the Foundation and Broadcasting of Radio and Television Channels (*Radyo ve Televizyonların Kuruluş ve Yayın Hizmetleri Hakkında Kanun*), 15 February 2011, Article 8(e).
- <sup>40</sup> Constitution, 7 November 1982, Article 10; Law on the Human Rights and Equality Institution of Turkey, 6 April 2016, Article 3(2); Penal Code, 26 September 2004, Article 3(2); Labour Law, 22 May 2003, Article 5(1); Basic Law on National Education, 14 June 1973, Article 4; Law on Civil Servants, 14 July 1965, Article 7; Civil Code, 22 November 2001, Article 68; Law on Political Parties, 22 April 1983, Article 12; Law on Social Services, 24 May 1983, Article 4(d); Law on the Execution of Penalties and Security Measures, 13 December 2004, Article 2(1); Law on the Establishment of the Ombudsman Institution, 29 June 2012, Article 30; Turkish Armed Forces Discipline Law, 31 January 2013, Article 18; Law on Prevention of Violence and Disorder in Sports, 14 April 2011, Article 14; Regulation on Minimum Wage, 1 August 2004, Article 5; Law on the Foundation and Broadcasting of Radio and Television Channels, 15 February 2011, Article 8(e).
- <sup>41</sup> Constitution, 7 November 1982, Article 10; Law on the Human Rights and Equality Institution of Turkey, 6 April 2016, Article 3(2); Penal Code, 26 September 2004, Article 3(2); Labour Law, 22 May 2003, Article 5(1); Civil Code, 22 November 2001, Article 68; Law on the Execution of Penalties and Security Measures, 13 December 2004, Article 2(1); Law on the Establishment of the Ombudsman Institution, 29 June 2012, Article 18; Law on the Foundation and Broadcasting of Radio and Television Channels, 15 February 2011, Article 8(e).
- <sup>42</sup> Constitution, 7 November 1982, Article 10; Law on the Human Rights and Equality Institution of Turkey, 6 April 2016, Article 3(2); Penal Code, 26 September 2004, Article 3(2); Labour Law, 22 May 2003, Article 5(1); Basic Law on National Education, 14 June 1973, Article 4; Law on Civil Servants, 14 July 1965, Article 7; Civil Code, 22 November 2001, Article 68; Law on Political Parties, 22 April 1983, Article 12; Law on the Execution of Penalties and Security Measures, 13 December 2004, Article 2(1); Law on the Establishment of the Ombudsman Institution, 29 June 2012, Article 30; Turkish Armed Forces Discipline Law, 31 January 2013, Article 18; Law on Prevention of Violence and Disorder in Sports, 14 April 2011, Article 14; Regulation on Minimum Wage, 1 August 2004, Article 5.
- <sup>43</sup> Labour Law, 22 May 2003, Article 5(1); Law on the Human Rights and Equality Institution of Turkey, 6 April 2016, Article 3(2); Law on Persons with Disability, 1 July 2005; Basic Law on National Education, 14 June 1973, Article 4; Law on the Foundation and Broadcasting of Radio and Television Channels, 15 February 2011, Article 8(e).
- <sup>44</sup> Constitution, 7 November 1982, Article 10; Law on the Human Rights and Equality Institution of Turkey, 6 April 2016, Article 3(2); Penal Code, 26 September 2004, Article 3(2); Labour Law, 22 May 2003, Article 5(1); Law on Civil Servants, 14 July 1965, Article 7; Law on the Execution of Penalties and Security Measures, 13 December 2004, Article 2(1); Law on the Establishment of the Ombudsman Institution, 29 June 2012, Article 30; Turkish Armed Forces Discipline Law, 31 January 2013, Article 18; Regulation on Minimum Wage, 1 August 2004, Article 5; Law on the Foundation and Broadcasting of Radio and Television Channels, 15 February 2011, Article 8(e).
- <sup>45</sup> Constitution, 7 November 1982, Article 10; Law on the Human Rights and Equality Institution of Turkey, 6 April 2016, Article 3(2); Penal Code, 26 September 2004, Article 3(2); Labour Law, 22 May 2003, Article 5(1); Law on Civil Servants, 14 July 1965, Article 7; Law on the Execution of Penalties and Security Measures, 13 December 2004, Article 2(1); Law on the Establishment of the Ombudsman Institution, 29 June 2012, Article 30; Turkish Armed Forces Discipline Law, 31 January 2013, Article 18; Regulation on Minimum Wage, 1 August 2004, Article 5; Law on the Foundation and Broadcasting of Radio and Television Channels, 15 February 2011, Article 8(e).
- <sup>46</sup> Constitution, 7 November 1982, Article 10; Law on the Human Rights and Equality Institution of Turkey, 6 April 2016, Article 3(2); Penal Code, 26 September 2004, Article 3(2); Labour Law, 22 May 2003, Article 5(1); Basic Law on National Education, 14 June 1973, Article 4; Law on Civil Servants, 14 July 1965, Article 7; Civil Code, 22 November 2001, Article 68; Law on Political Parties, 22 April 1983, Article 12; Law on Social Services, 24 May 1983, Article 4(d); Law on the Execution of Penalties and Security Measures, 13 December 2004, Article 2(1); Law on the Establishment of the Ombudsman Institution, 29 June 2012, Article 18; Turkish Armed Forces Discipline Law, 31 January 2013, Article 18; Law on Prevention of Violence and Disorder in Sports, 14 April 2011, Article 14; Regulation on Minimum Wage, 1 August 2004, Article 5; Law on the Foundation and Broadcasting of Radio and Television Channels, 15 February 2011, Article 8(e).
- <sup>47</sup> Constitution, 7 November 1982, Article 10; Law on the Human Rights and Equality Institution of Turkey, 6 April 2016, Article 3(2); Penal Code, 26 September 2004, Article 3(2); Labour Law, 22 May 2003, Article 5(1); Law on Civil Servants, 14 July 1965, Article 7; Civil Code, 22 November 2001, Article 68; Law on

origin,<sup>49</sup> ethnic origin,<sup>50</sup> social origin,<sup>51</sup> birth,<sup>52</sup> economic or other social status,<sup>53</sup> family,<sup>54</sup> marital status,<sup>55</sup> class,<sup>56</sup> profession,<sup>57</sup> regional differences,<sup>58</sup> health<sup>59</sup> and age.<sup>60</sup> Discrimination is occasionally prohibited more generally, without enumerating any grounds.<sup>61</sup> Thus, the only ground of discrimination that is not prohibited under Turkish law is sexual orientation.<sup>62</sup>

### 2.1.1 Definition of the grounds of unlawful discrimination within the directives

Disability is the only ground of unlawful discrimination defined under Turkish law.

#### a) Racial or ethnic origin

Racial origin is not defined in any current law.

Ethnic origin is not defined in any current law.

In recent years, a series of legislative and constitutional reforms has granted ethnic minorities limited linguistic and cultural rights without extending minority status to them. While neither the Turkish constitution nor laws define race or ethnicity, the country's founding treaty, the international Treaty of Lausanne (1923), makes a distinction between non-Muslim citizens and the rest by conferring minority status on the former (without providing a definition for minority). While this distinction de jure refers to categorisation on the basis of religion, since 1925 the Turkish Government has in practice limited the protection of the Treaty of Lausanne to Jews, and Armenian and Greek Orthodox Christians, whose identities refer to both a specific religion and a specific ethnic origin. The notion of 'minority rights' has a negative meaning in the Turkish state and in Turkish society, by which it is associated with separatism in internal policy and unjustified interference in internal affairs and foreign policy. Minorities are disregarded in the Constitution, which

---

Political Parties, 22 April 1983, Article 12; Law on Social Services, 24 May 1983, Article 4(d); Regulation on Minimum Wage, 1 August 2004, Article 5; Law on the Foundation and Broadcasting of Radio and Television Channels, 15 February 2011, Article 8(e); Law on the Execution of Penalties and Security Measures, 13 December 2004, Article 2(1); Turkish Armed Forces Discipline Law, 31 January 2013, Article 18; Law on Prevention of Violence and Disorder in Sports, 14 April 2011, Article 14.

<sup>48</sup> Penal Code, 26 September 2004, Article 3(2); Law on the Execution of Penalties and Security Measures, 13 December 2004, Article 2(1); Law on the Foundation and Broadcasting of Radio and Television Channels, 15 February 2011, Article 8(e).

<sup>49</sup> Penal Code, 26 September 2004, Article 3(2).

<sup>50</sup> Law on the Human Rights and Equality Institution of Turkey, 6 April 2016, Article 3(2); Law on Prevention of Violence and Disorder in Sports, 14 April 2011, Article 14.

<sup>51</sup> Penal Code, 26 September 2004, Article 3(2); Law on the Execution of Penalties and Security Measures, 13 December 2004, Article 2(1).

<sup>52</sup> Law on the Human Rights and Equality Institution of Turkey, 6 April 2016, Article 3(2); Penal Code, 26 September 2004, Article 3(2); Law on the Execution of Penalties and Security Measures, 13 December 2004, Article 2(1).

<sup>53</sup> Law on the Human Rights and Equality Institution of Turkey, 6 April 2016, Article 3(2) (wealth); Penal Code, 26 September 2004, Article 3(2); Law on the Execution of Penalties and Security Measures, 13 December 2004, Article 2(1).

<sup>54</sup> Civil Code, 22 November 2001, Article 68; Law on Political Parties, 22 April 1983, Article 12.

<sup>55</sup> Law on the Human Rights and Equality Institution of Turkey, 6 April 2016, Article 3(2).

<sup>56</sup> Civil Code, 22 November 2001, Article 68; Law on Political Parties, 22 April 1983, Article 12; Law on Social Services, 24 May 1983, Article 4(d).

<sup>57</sup> Law on Political Parties, 22 April 1983, Article 12.

<sup>58</sup> Law on Social Services, 24 May 1983, Article 4(d).

<sup>59</sup> Law on the Human Rights and Equality Institution of Turkey, 6 April 2016, Article 3(2).

<sup>60</sup> Law on the Human Rights and Equality Institution of Turkey, 6 April 2016, Article 3(2).

<sup>61</sup> Law on the Establishment and Duties of the Turkish Football Federation (*Türkiye Futbol Federasyonu Kuruluş ve Görevleri Hakkında Kanun*), 5 May 2009, Article 3, (prohibiting the Federation from engaging in racism and any kind of discrimination); Child Protection Law (*Çocuk Koruma Kanunu*), 15 July 2005, Article 4(c).

<sup>62</sup> The grounds of 'sexual identity' and 'social status' were included in the 2009 draft law, which was at that time entitled 'Law on Combating Discrimination and Equality' (*Ayrımcılıkla Mücadele ve Eşitlik Kanunu*), but they were taken out of the final text. According to the draft law, the term 'sexual identity' was intended to include 'heterosexuals, homosexuals, bisexuals, transsexuals, transvestites and sexual identities as such.'

does not make any reference at all to the word 'minority', including the Lausanne minorities.

In August 2013, a lower court challenged this policy by holding that the Treaty of Lausanne granted minority status and rights to all non-Muslim citizens, without enumerating any specific group.<sup>63</sup> The decision was given in a case brought by the Syriac community (a group which also has a distinct religious and ethnic identity), whose request to open a kindergarten where children would also be taught their mother tongue was rejected by the Ministry of National Education.<sup>64</sup> However, due to the broad reasoning of the court, which concluded that all non-Muslim communities are entitled to minority rights under the Treaty, and the fact that the Ministry decided not to appeal the decision, it is likely that the decision will be used by other non-Muslim groups in challenging state policies. Following the court decision, the Syriac community set up a kindergarten, its first educational institution, which started to operate in the 2014-2015 academic year.

#### b) Religion and belief

Religion is not defined under Turkish legislation. However, there are a number of relevant laws and policies in which equivalent definitions and categorisations are made which cause direct or indirect discrimination on grounds of religion.

In Turkey, civil registries and electronic chips embedded in identity cards indicate the religion or belief of their holders. Until recently (2016), there were boxes for religion on identity cards, and one of only three religions – Christianity, Islam and Judaism – could be indicated. The European Commission reported 'discriminatory practices or harassment by local officials of persons who converted from Islam to another religion and thereafter sought to amend their ID cards'.<sup>65</sup> Therefore, few people dared to leave the religion section blank for fear of discrimination. As far as Armenian, Greek Orthodox and Jewish people are concerned, as only Christians and Jews are entitled to be exempted from mandatory religious classes, a choice not to identify their religion on their identity cards may mean that their children are not exempt from such courses (see Section 3.2.8).

In rare cases in which such people have applied for the identification of their true faith, their requests have been denied. In a case concerning a request of this kind by a Bahá'í, whose religion was indicated by the state as Islam, the Court of Cassation, on the basis of the opinion of the Directorate of Religious Affairs, decided that the Bahá'í faith is not a religion, without defining religion or elaborating any criteria by which it determines a faith as a religion.<sup>66</sup> A recent study depicting the situation in 2016 indicates that requests to register beliefs such as Alevism, Jehovah's Witnesses, Protestantism, Bahá'ism, atheism and agnosticism were rejected; however, religions such as Islam, Christianity, Judaism, Hinduism, Confucianism, Taoism, Zoroastrianism and Buddhism were accepted to be registered on the old identity cards.<sup>67</sup> Beginning in 2016, new identity cards were put into practice without a separate box for religion, so they do not reveal the religion or belief of the card holder.<sup>68</sup> Presumably, other believers mentioned above are still not allowed to indicate their faiths, religions or denominations on the chips of their identity cards. In 2019,

<sup>63</sup> European Commission (2013), *Turkey 2013 Progress Report*, Brussels, p. 61, available at: [https://www.ab.gov.tr/files/2013%20ilerleme%20raporu/tr\\_rapport\\_2013\\_en.pdf](https://www.ab.gov.tr/files/2013%20ilerleme%20raporu/tr_rapport_2013_en.pdf).

<sup>64</sup> Ankara, 13th Administrative Court, E. 2012/1746, K. 2013/952, 18 June 2013.

<sup>65</sup> European Commission (2012), *Turkey 2012 Progress Report*, Brussels, p. 25, available at: [http://ec.europa.eu/enlargement/pdf/key\\_documents/2012/package/tr\\_rapport\\_2012\\_en.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2012/package/tr_rapport_2012_en.pdf).

<sup>66</sup> See, for example, Court of Cassation, 10th Civil Chamber, E. 1992/3226, K. 1995/4872, 25 October 1995; 3rd Civil Chamber, E. 1988/8776, K. 1988/9515, 11 November 1988; 6th Civil Chamber, E. 1974/2007, K. 1974/2242, 7 May 1974.

<sup>67</sup> See Şirin, T., Duyumaz, E. and Yıldız, D. (2016), *Freedom of Religion and Conscience in Turkey: Problems, and Suggestions for Solutions (Türkiye'de Din ve Vicdan Özgürlüğü: Sorunlar, Tespitler ve Çözüm Önerileri)*, Union of Turkish Bar Associations (Türkiye Barolar Birliği), pp. 30-31.

<sup>68</sup> See <https://www.nvi.gov.tr/tc-kimlik-karti>. This change was motivated by the ECtHR judgment in *Sinan Işık v. Turkey* (No. 21924/05, 2 February 2010), in which the indication of religion on the identity card, even where it is no longer obligatory, was found to violate article 9 of the ECHR.

the European Commission reported that in one court case, the mention of Zoroastrianism in the religion section of the defendant's identity card was seen as evidence of membership of an illegal organisation.<sup>69</sup>

Another important issue in this regard is the definition of a Muslim. The registries and chips in official identity cards of persons who belong or are assumed to belong to the Muslim faith indicate their religion to be 'Islam', without specifying a denomination. In a country that is extremely divided along religious/denominational lines, the difference matters, since people belonging to non-Sunni denominations of Islam<sup>70</sup> feel discriminated against by state policies that protect the rights and interests of people believing in the Sunni version of Islam. While the vast majority of Muslims in Turkey belong to the Sunni-Hanefi denomination, there is a significant Alevi community and small Caferi and Nusayri communities, which follow different interpretations and practices of the Muslim faith from those of the Sunni majority. Requests by Alevis to change the indication on their identity card from 'Islam' to 'Alevi' are declined by the courts and all Alevis are registered as Muslims.

### c) Disability

Article 2(1)(f) of the Law on the Human Rights and Equality Institution of Turkey and Article 3(c) of the Law on Persons with Disabilities define a person with disability as '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'.<sup>71</sup> The law defines discrimination based on disability as 'every kind of difference, exclusion or restriction based on disability which hinders the full exercise of human rights and liberties on equal footing with others in political, economic, social, cultural, civil or any other area'. These definitions are in line with the UN Convention on the Rights of Persons with Disabilities and the CJEU's judgment in the joined cases of *Ring and Skouboe Werge*.<sup>72</sup> In fact, the Turkish law goes beyond the CJEU definition and, on paper, provides broader protection for persons with disabilities in that its application is not limited to professional life.

Various laws and regulations that provide disability-related benefits and positive measures have their own definitions of and/or criteria for disability that do not reflect those contained in the Law on Persons with Disabilities, which was adopted in 2005 and comprehensively amended in 2014. In the light of the Turkish courts' unwillingness to expand legal protection through judicial interpretation and lack of a tradition of judicial activism, it is highly unlikely that judges will interpret other laws in accordance with the Law on Persons with Disabilities and the anti-discrimination law.

Under Article 3(c) of the Law on Social Services, a person with disability is defined as someone who 'does not adapt to the needs of normal life and is in need of protection, care, rehabilitation, consulting and support services'. Under Article 3(d), in order to be eligible for disability benefits, the person with disability must receive a disability report from disability health boards established under the newly issued Regulation on Assessment of Disability for Adults, which superseded the Regulation on the Criteria and Classification of Disability and Health Board Reports to be given to the Disabled in 2019.<sup>73</sup> As indicated by its name, the Regulation sets out the criteria for the classification of persons with disabilities in various categories based on the percentage degree of their disability, which

<sup>69</sup> European Commission (2019), *Turkey 2019 Report*, Brussels, 29 May 2019, p. 32, available at: <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20190529-turkey-report.pdf>.

<sup>70</sup> The majority of Muslims in Turkey belong to the Sunni denomination of Islam.

<sup>71</sup> Law on Persons with Disabilities, No. 5378, 1 July 2005, Article 3(c).

<sup>72</sup> Judgment of 11 April 2013, *Ring and Skouboe Werge v. Denmark*, C-335/11 and C-337/11.

<sup>73</sup> Regulation on Assessment of Disability for Adults (*Erişkinler için Engellilik Değerlendirilmesi Hakkında Yönetmelik*), *Official Gazette*, 20 February 2019; Regulation on the Criteria and Classification of Disability and Health Board Reports to be given to the Disabled (*Özürlülük Ölçütü, Sınıflandırması ve Özürlülere Verilecek Sağlık Kurulu Raporları Hakkında Yönetmelik*), *Official Gazette*, 30 March 2013.

determine his/her eligibility to receive special social services provided by the state. Making special social services to be provided by the state conditional on the degree of disability, which is calculated through a technical process and on the basis of mathematical formulations, not only 'ignores the special circumstances of the individual'<sup>74</sup> but also shows that the Turkish state is far from adopting a rights-based perspective on disability.

Disability can also be defined in a negative aspect in disqualifying individuals from certain professions. According to Article 8(g) of the Law on Judges and Prosecutors (No. 2802), in order to be appointed as a candidate judge or prosecutor, a person 'should not have any physical or mental illness or disability that would prevent the person from carrying out his/her responsibilities as a judge or a prosecutor continuously in every part of the country; or any disabilities which cause limitations in controlling the movements of the organs; speech different from that which is customary and would be found odd by people'. Similarly, Article 74(e) of the Law on the Union of Chambers and Commodity Exchanges of Turkey and Chambers and Commodity Exchanges (No. 5174) states that in order to be eligible to hold the position of general secretary of the Union of Chambers and Commodity Exchanges, a person 'shall not have a physical or mental illness, or physical disability that shall prevent him performing his duties continuously'.<sup>75</sup>

A law adopted on 25 April 2013 replaced the terms 'özürlü' (handicapped, defective, deficient), 'sakat' (crippled, defective) and 'çürük' (rotten, unfit) with that of 'engelli' (disabled) in a total of 96 laws and decrees having the force of law, including the Civil Code, Anti-Terror Law, Law on Civil Servants, Law on Social Services, Law on Persons with Disabilities, the Penal Code, Law on Social Insurance and General Health Insurance and various laws concerning the families of martyrs, war veterans and retired members of the military.<sup>76</sup> However, the Constitution continues to use the rather pejorative term *özürlü*.

d) Age

Age is not defined in any law in Turkey. There is a lack of case law on the issue.

e) Sexual orientation

Sexual orientation is neither defined nor listed as a prohibited ground in any law in Turkey. The only slight elaboration was made by the Constitutional Court in its 2017 inadmissibility decision in which it found sexual orientation to be a prohibited ground of discrimination: 'the right to determine one's sexual preference' entails 'sexual orientation, sexual acts and attitudes'.<sup>77</sup> While the initial text of the draft anti-discrimination law referred to and defined 'sexual identity', all such references were removed by the Government in 2011. The initial draft shared with civil society provided the definition of 'sexual identity' as covering 'heterosexual, homosexual, bisexual, transsexual, transvestite and similar sexual identities'. However, the anti-discrimination law eventually adopted in 2016 does not contain a definition.

### 2.1.2 Multiple discrimination

In Turkey, multiple discrimination is prohibited by law.

<sup>74</sup> Şenyurt Akdağ, A., Tanay, G., Özgül, H., Kelleci Birir, L. and Kara, Ö. (2011), *Türkiye'de Engellilik Temelinde Ayrımcılığın İzlenmesi Raporu: 1 Ocak-30 Haziran 2010 (Monitoring Report on Discrimination on Grounds of Disability in Turkey: 1 January-30 June 2010)*, İstanbul Bilgi University, p. 14.

<sup>75</sup> See as another example, Notary Law (*Noterlik Kanunu*), No. 1512, 5 February 1972, Article 7(11).

<sup>76</sup> Law on Making Amendments in Various Laws and Decrees having the Force of Law with the Purpose of Changing References to Persons with Disabilities in Laws and Decrees having the Force of Law (*Kanun ve Kanun Hükmünde Kararnamelerde Yer Alan Engelli Bireylere Yönelik İbarelerin Değiştirilmesi Amacıyla Bazı Kanun ve Kanun Hükmünde Kararnamelerde Değişiklik Yapılmasına Dair Kanun*), 25 April 2013.

<sup>77</sup> Constitutional Court, *Cemal Duğan*, Application No. 2014/19308, 15 February 2017, para. 39.



Before the adoption of Article 4(1)(c) of the Law on the Human Rights and Equality Institution of Turkey, which prohibits multiple discrimination, the only regulation in this regard was Article 4(h) of the Law on Persons with Disabilities, which reads as follows: 'It is essential to ensure that women and girls with disabilities benefit from rights and freedoms by preventing them from being subjected to multi-faceted discrimination.' As can be seen, the term 'multi-faceted' was preferred instead of 'multiple discrimination', and the Article covers only the grounds of disability and gender.

Article 2(1)(c) of the Law on the Human Rights and Equality Institution of Turkey provides for the first time a definition of multiple discrimination, which is defined as 'discriminatory treatment related to more than one discrimination ground'.<sup>78</sup> Under Article 25(1), multiple discrimination is an aggravating factor to be taken into account in determining the amount of administrative fines – ranging between TRY 1 000 and TRY 15 000 (EUR 132 and EUR 1 974) – imposed on natural or legal persons found to have engaged in discrimination.

In Turkey, there is no case law dealing with multiple discrimination.

No further legal amendment has been made to facilitate the litigation of multiple discrimination claims in the courts.

### **2.1.3 Assumed and associated discrimination**

#### **a) Discrimination by assumption**

In Turkey, discrimination based on a perception or assumption of a person's characteristics is prohibited in national law.

Article 4(1)(g) of the Law on the Human Rights and Equality Institution of Turkey regards discrimination by assumption as a form of discrimination. Article 2(1)(m) of the Law defines the concept as 'the discriminatory treatment of a natural or legal person in the exercise of legal rights and freedoms because it is assumed that s/he/it shares one of the discrimination grounds prohibited under this law, although that is in reality not the case'.<sup>79</sup>

There is no case law dealing with discrimination by assumption.

#### **b) Discrimination by association**

In Turkey, discrimination based on association with persons with particular characteristics is not prohibited in national law. This has also faced criticism by ECRI in its *Report on Turkey* published in 2016.<sup>80</sup>

## **2.2 Direct discrimination (Article 2(2)(a))**

#### **a) Prohibition and definition of direct discrimination**

In Turkey, direct discrimination is prohibited in national law. It is defined in law.

Even if Article 10 of the Constitution does not include the concept or definition of direct discrimination, it can be regarded as covering the said concept. It is not limited to specific aspects of discrimination, and there is no obstacle to adopting an open-ended approach in this respect to cover current forms of discrimination.

---

<sup>78</sup> Law on the Human Rights and Equality Institution of Turkey, No. 6701, 6 April 2016, Article 2(1)(c).

<sup>79</sup> Law on the Human Rights and Equality Institution of Turkey, No. 6701, 6 April 2016, Article 2(1)(m).

<sup>80</sup> ECRI (2016), *Report on Turkey (fifth monitoring cycle)*, CRI(2016)37, Strasbourg, para. 14, available at: <https://rm.coe.int/fifth-report-on-turkey/16808b5c81>.

The first regulation in Turkish law that included the concept of direct discrimination, without providing any definition, was Article 5 of the Labour Law, which entered into force in 2003 with the motivation of harmonising labour law with the EU *acquis*. The first definition of direct discrimination was introduced to the Turkish legal framework on 6 February 2014. The revised Article 3(a) of the Law on Persons with Disabilities defines direct discrimination as 'any differential treatment, based on disability, which limits or obstructs a person with disability from the enjoyment of rights and freedoms on equal footing with others in comparable situations'. Article 4(A) of the Law on Persons with Disabilities prohibits direct discrimination based on disability. Discrimination on the basis of disability is prohibited not only in job applications, recruitment processes, working hours and terms but in all issues relating to employment, including continuity of employment, career development and healthy and safe working conditions.

Article 2(1)(d) of the Law on the Human Rights and Equality Institution of Turkey follows the definition of the Law on Persons with Disabilities and defines direct discrimination as 'any differential treatment, based on the grounds enumerated in this law, which prevents or obstructs any natural or legal entity from the enjoyment of legally recognised rights and freedoms on an equal footing with others in comparable situations'. Both definitions are to a large extent compatible with the directives; however, sexual orientation is excluded from the grounds on the basis of which direct discrimination is prohibited under Article 4(1)(c). In addition, while the definition contained in the directives includes the existence of possibility with the phrase 'would be' in the definition of direct discrimination, the definitions provided above do not include such a statement and do not consider the existence of hypothetical direct discrimination.

Along with Article 10 of the Constitution as stated above, Articles 3(2) and 122 of the Penal Code; Article 5(1) of the Labour Law; Article 4 of the Basic Law on National Education; Article 68 of the Civil Code; Article 12 of the Law on Political Parties; Article 8 of the Law on the Foundation and Broadcasting of Radio and Television; Article 4(d) of the Law on Social Services; Article 2(1) of the Law on the Execution of Penalties and Security Measures; and Article 7 of the Law on Civil Servants prohibit direct discrimination within their limited material scopes, but do not define direct discrimination. In elaborating on the concept of equality and anti-discrimination under Article 10 of the Constitution, as discussed in the introduction to Section 2, the Constitutional Court, although it provided a definition of direct discrimination, did not explicitly refer to the concept and did not even make a distinction between direct and indirect discrimination or say whether the definition concerned only direct discrimination.

Although the concept of direct discrimination is not defined in the Labour Law, the Court of Cassation has stated that the definitions of direct discrimination contained in directives 2000/43/EC, 2000/78/EC, 2002/73/EC and 2006/54/EC can be used as criteria.<sup>81</sup> Adoption of the Law on the Human Rights and Equality Institution of Turkey has largely eliminated the need for reference to EU directives.

#### b) Justification for direct discrimination

The law does not permit the justification of direct discrimination. On the other hand, based on the Constitutional Court's 2010 judgment cited above in the Introduction to Section 2, it seems that Turkey's highest court permits the justification of direct discrimination.

### **2.3 Indirect discrimination (Article 2(2)(b))**

#### a) Prohibition and definition of indirect discrimination

In Turkey, indirect discrimination is prohibited in national law. It is defined in law.

---

<sup>81</sup> As an example, see Court of Cassation 9th Civil Chamber, E. 2010/48111 K. 2011/1847, 1 February 2011.

As stated above with regard to direct discrimination, the scope of Article 10 of the Constitution is not limited to specific aspects of discrimination, and there is no obstacle to adopting an open-ended approach in this respect to cover current forms of discrimination, including indirect discrimination.

As with direct discrimination, the first regulation in Turkish law that included the concept of indirect discrimination, without providing any definition, was Article 5 of the Labour Law. Article 4(A) of the Law on Persons with Disabilities prohibits indirect discrimination on the basis of disability not only in job applications, hiring processes, working hours and terms (in the original law) but in all issues relating to employment, including continuity of employment, career development and healthy and safe working conditions (in the amendments made to Article 14). The definition of indirect discrimination under Article 3(b) of the Law on Persons with Disabilities is as follows: '[a] person with disability being put in a disadvantageous situation in exercising his/her rights and liberties due to discrimination based on disability in such a way that cannot be objectively justified as a result of any action, procedure or practice which does not appear discriminatory.' This definition is based on the individual person with a disability and does not seem to require persons with disabilities as a general group to be disadvantaged, and therefore it arguably goes beyond the EU law which bases the definition of indirect discrimination on group disadvantage.

Article 2(1)(e) of the Law on the Human Rights and Equality Institution of Turkey defines indirect discrimination as: '[a] natural or legal person being put in a disadvantageous situation, as a result of any action, procedure or practice which does not appear discriminatory, in exercising his/her legally recognised rights and liberties on the grounds prohibited under this law in such a way that cannot be objectively justified.' 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 4(1)(d) of the Law on the Human Rights and Equality Institution of Turkey prohibits indirect discrimination on grounds of sex, race, colour, language, religion, belief, denomination, philosophical and political opinion, ethnic origin, wealth, birth, marital status, health, disability and age.

Although the definition of indirect discrimination in Law on the Human Rights and Equality Institution of Turkey is literally different from the definition adopted in the EU directives, it seems possible to apply it in the same direction in terms of its content, and there is no incompatibility in that sense. However, sexual orientation is excluded from the grounds on the basis of which indirect discrimination is prohibited under the Law.

In 2014, the Constitutional Court for the first time provided a definition of indirect discrimination, without referring directly to the concept, stating: '[indirect] discrimination can be mentioned if persons in different situations are treated in the same way but this treatment disproportionately and adversely affects a particular person or members of the group'.<sup>82</sup>

Although the concept of indirect discrimination is not defined in the Labour Law, the Court of Cassation has stated that the definitions of indirect discrimination contained in directives 2000/43/EC, 2000/78/EC, 2002/73/EC and 2006/54/EC can be used as criteria.<sup>83</sup> Adoption of the Law on the Human Rights and Equality Institution of Turkey largely eliminated the need for reference to EU directives. Having said that, the case law of the Court of Cassation indicates that the Court occasionally refers to the concept erroneously.<sup>84</sup> Thus, considering the lack of awareness and expertise regarding a relatively new concept, the definition provided by the Law on the Human Rights and Equality Institution of Turkey is of great

---

<sup>82</sup> Constitutional Court, *Tuğba Arslan*, Application No. 2014/256, 25 June 2014, para. 115.

<sup>83</sup> As an example, see Court of Cassation, 9th Civil Chamber, E. 2010/48111, K. 2011/1847, 1 February 2011.

<sup>84</sup> As an example, see Court of Cassation, 9th Civil Chamber, E. 2014/12642, K. 2015/25859, 16 September 2015; E. 2010/48111, K. 2011/1847, 1 February 2011.

importance and needs to be fully implemented by the judiciary. As of 2019, despite a few examples of direct reference to the Law on the Human Rights and Equality Institution of Turkey, there exists no reference to the definitions set forth therein.

b) Justification test for indirect discrimination

An objective test must be satisfied to justify indirect discrimination under Article 2(1)(e) of the Law on the Human Rights and Equality Institution of Turkey and Article 3(b) of the Law on Persons with Disabilities. Neither law elaborates on what can be considered a legitimate aim for the purpose of objective justification. There is no case law on this recently introduced concept in Turkish law.

### **2.3.1 Statistical evidence**

a) Legal framework

In Turkey, there is legislation regulating the collection of personal data.

There are (conditional) national rules permitting data collection for the purpose of proving discrimination. The Law on the Human Rights and Equality Institution of Turkey provides that the Institution has the competence, together with the Turkish Statistical Institute and other public bodies, to decide on areas where official statistics are needed for the purpose of combatting discrimination. However, the Turkish Statistical Institute is responsible for gathering such statistics, and so far, no data have been collected in that area.

The number of individuals belonging to various minority groups varies according to different sources, since the state does not ask citizens about their ethnic, religious or other origin in censuses, so the current numbers in Turkey are unknown. However, as the data on religious affiliation are collected by the civil registries, it is known that data with regard to religion is accessible by the state.

While there are several institutions conducting public opinion, surveys entailing questions about ethnic origin and religious background, their data has not yet been used as statistical evidence for the purpose of proving discrimination in courts of law. The use of statistical evidence in court proceedings is neither prohibited nor allowed. There is no case law on how to use such evidence in practice in court proceedings, and there have been no attempts to use such data in court proceedings by victims or NGOs.

Article 135(1) of the Turkish Penal Code criminalises the unlawful recording of personal data and Article 135(2) considers unlawful recording of personal data concerning a person's political, philosophical or religious opinions, racial origins, moral tendencies, sexual life, health conditions and connections to trade unions as an aggravating factor in sentencing. Any person who violates this provision is liable to imprisonment of between six months and three years.

### **Ethnicity and race**

While periodic censuses conducted by the Government previously contained questions regarding ethnic origin, the 1965 census was the last one in which people were asked about their mother tongue and ethnicity. Consequently, there is no longer any publicly available official data on the ethnic background of people collected on the basis of their informed consent and the principle of confidentiality. On the contrary, the collection of such data is de jure prohibited by the Government. A circular issued by the Ministry of Interior is cited regularly as an administrative act prohibiting the production of statistical data on race and ethnicity by public institutions. However, this circular is not publicly accessible. Otherwise, there are no specific rules on collection of data and no 'coherent, comprehensive system

of data collection ... to assess the situation of the various minority groups or the scale of racism and racial discrimination in Turkey'.<sup>85</sup>

Turkey has time and again reiterated to CERD that it does not collect, keep or use qualitative or quantitative data on the ethnic backgrounds of its citizens,<sup>86</sup> noting that this is 'a sensitive issue, especially for those nations living in diverse multicultural societies for a long period of time'.<sup>87</sup> In its report *Concluding observations on the combined 4th to 6th periodic reports of Turkey*, CERD regretted the fact that Turkey has still not provided recent, reliable and comprehensive data on economic and social indicators, the use of mother tongues and languages or other indicators of ethnic origin that would enable the Committee to better evaluate the enjoyment of economic, social and cultural rights by various groups, including minorities.<sup>88</sup>

At the same time, public authorities in Turkey collect data on the ethnic and racial origin of citizens, not for use in research and litigation but for the purpose of profiling and policing ethnic minorities, particularly Kurds and the Roma. A few examples of such practices have been inadvertently made available to the public by Government institutions – for example, a provincial police department website contained information about the ethnic background of residents. The information note stated that 'families of kurdish<sup>89</sup> dissent [sic] who migrated from eastern provinces' resided in neighbourhoods located near the highways while 'gypsies [sic]<sup>90</sup> resided in the neighbourhoods of yeni mahalle and mezbaha.' While 'it was observed that the public residing in areas that fell within [the] responsibility [of the police department] do not have a specific political-ideological aim and thought', the police department had ascertained that residents of certain other neighbourhoods were 'people who came from the east and the southeast', who 'committed crimes such as battery and theft'.<sup>91</sup>

In ECRI's *Report on Turkey (fourth monitoring cycle)*, published in 2011, it issued a set of recommendations concerning the collection of data for the purposes of developing policies in favour of minorities. ECRI recommended that the Turkish Government identify 'ways of measuring the situation of minority groups in different fields of life ... in compliance with relevant requirements on data protection and the protection of privacy' and to implement these 'with due regard for the principles of confidentiality, informed consent and voluntary self-identification'.

A news report published in 2013 revealed not only that racial profiling of minorities is continuing but how deeply rooted this discriminatory state practice is. The Armenian-Turkish weekly newspaper *Agos* published official correspondence within the provincial representation of the Ministry of National Education in Istanbul, which revealed that the

---

<sup>85</sup> ECRI (2011), *Report on Turkey (fourth monitoring cycle)*, CRI(2011)5, Strasbourg, p. 9, available at: <https://rm.coe.int/fourth-report-on-turkey/16808b5c7e>.

<sup>86</sup> UN Committee on the Elimination of Racial Discrimination (CERD) (2008), *Written replies by the Government of Turkey to the list of issues to be taken up by the Committee on the Elimination of Racial Discrimination in its consideration of the third periodic report of Turkey*, CERD/C/TUR/3, p. 1, available at: <http://www2.ohchr.org/english/bodies/cerd/docs/AdvanceVersions/WrittenRepliesTurkey74.pdf>.

<sup>87</sup> CERD (2014), *Consideration of reports submitted by States parties under article 9 of the Convention, Combined fourth to sixth periodic reports of States parties due in 2013: Turkey*, CERD/C/TUR/4-6, 17 April 2014, p. 3, available at: [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CERD%2fC%2fTUR%2f4-6&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CERD%2fC%2fTUR%2f4-6&Lang=en).

<sup>88</sup> CERD (2016), *Concluding Observations on the Combined Fourth to Sixth Periodic Reports of Turkey*, CERD/C/TUR/CO/4-6, pp. 2-3, available at: <https://digitallibrary.un.org/record/821788>.

<sup>89</sup> Spelling mistake in original text, not by author.

<sup>90</sup> Spelling mistake in original text, not by author.

<sup>91</sup> Alp, S. and Taştan, N. (2011), *Monitoring Report on Discrimination on Grounds of Race or Ethnic Origin in Turkey: 1 January-31 July 2010 (Türkiye'de Irk veya Etnik Köken Temelinde Ayrımcılığın İzlenmesi Raporu: 1 Ocak-31 Temmuz 2010)*, Istanbul Bilgi University, p. 77 (citing information available on 11 May 2010 on the website of the Köprübaşı Police Station of the Konya Police Department, which was no longer accessible at the time of the writing of this report).

population registry records contain a confidential 'racial code'.<sup>92</sup> The news concerned the attempts of a parent who had converted from Islam to the Armenian Orthodox religion to register her child at an Armenian kindergarten, for which she needed to receive authorisation from the Ministry of National Education. Upon the parent's application, the provincial representation of the Ministry in Istanbul sent an official letter to its district branch, stating that the parent in question could be given authorisation only if her 'confidential racial code' in her population registry record is 2, which is the racial code given to Armenian citizens.<sup>93</sup> According to the news report, not only Armenian citizens but all citizens in Turkey are racially profiled, and not only for the purpose of identifying the eligibility of students for enrolment in non-Muslim schools. According to an undisclosed source in the population registry services, there are racial codes for Greek Orthodox, for Jews, for Syrians and for 'others.' In his May 2014 response to queries on this issue submitted by a member of the Parliament in August 2013,<sup>94</sup> the Minister of the Interior simply stated that 'procedures concerning registry incidents are being conducted in accordance with the law'.<sup>95</sup> However, in February 2016, in response to another query from an Opposition MP belonging to the Armenian ethnic minority, the Minister of the Interior implicitly confirmed the policy, noting that all citizens in Turkey, irrespective of their religion or ethnicity, were coded.<sup>96</sup> In March, the same MP stated in a speech in Parliament that he had been verbally informed by a population registry official that the practice had been brought to an end.<sup>97</sup>

## Disability

The total number of persons with disabilities in Turkey is still unknown. General censuses conducted in 1985 and 2000 contained insufficient information on the quantitative dimension of disability in Turkey.<sup>98</sup> In 2002, the Presidency on Disabled People, under the auspices of the Prime Ministry, commissioned the Turkish Statistical Institute to conduct a survey.<sup>99</sup> This study – the first statistical research on disability in Turkey – identified the number of persons with disabilities in Turkey as 8 431 937, which is 12.29 % of the total population. However, another study conducted in 2011 showed the figure to be 4.9 million, which amounts to 6.9 % of the general population.<sup>100</sup> Those were the first and last official surveys on disability in Turkey, and nine years later Government policies are still developed on the basis of the data generated by those studies. In addition, in 2010, the Ministry of Family and Social Policies and the Turkish Statistical Institute conducted a needs

<sup>92</sup> Balancar, F., '90 Yıldır "Soy Kodu" ile Fişlemişler' ('They have been branding with the "Race Code" for 90 Years'), *Agos*, 1 August 2013, available at: <http://www.agos.com.tr/tr/yazi/5384/90-yildir-soy-kodu-ile-fislemisler>.

<sup>93</sup> For the official letter from the Istanbul branch of the Ministry of National Education to its district representation in Şişli, see: <http://www.agos.com.tr/tr/yazi/5384/90-yildir-soy-kodu-ile-fislemisler>.

<sup>94</sup> For the text of the MP's written queries to the Prime Minister, see: <http://www2.tbmm.gov.tr/d24/7/7-29686s.pdf>. For the text of the MP's second written query to the Prime Minister, see: <http://www2.tbmm.gov.tr/d24/7/7-29694s.pdf>.

<sup>95</sup> For the text of the Minister's written response, see: <https://www2.tbmm.gov.tr/d24/7/7-29686sgc.pdf>.

<sup>96</sup> 'İçişleri Bakanı Efkan Ala 'Soy Kodu'nun Tüm Vatandaşlar için Uygulandığını Söyledi' ('Minister of Interior Efkan Ala said the "Race Code" is applicable to all citizens'), *T24*, 15 February 2016, available at: <http://t24.com.tr/haber/icisleri-bakani-efkan-ala-soy-kodunun-tum-vatandaslar-icin-uygulandigini-soyledi,328285>.

<sup>97</sup> 'Soy Kodu Uygulaması Kaldırılmış, Teşekkür Ediyorum' ('I have been told that the Race Code Policy had been brought to an end, I thank you'), *Cumhuriyet*, 2 March 2016, available at: <http://www.cumhuriyet.com.tr/haber/soy-kodu-uygulamasi-kaldirilmis-tesekkur-ediyorum-490841>.

<sup>98</sup> Şenyurt Akdağ A., Tanay, G., Özgül, H., Kelleci Birer L. and Kara, Ö. (2011), *Monitoring Report on Discrimination on Grounds of Disability in Turkey: 1 January-30 June 2010 (Türkiye'de Engellilik Temelinde Ayırmacılığın İzlenmesi Raporu: 1 Ocak-30 Haziran 2010)*, İstanbul Bilgi University, p. 13.

<sup>99</sup> For the results of the 2002 Disability Survey of Turkey, see Tufan, İ. and Arun, Ö. (2006), *Secondary Data Analysis of Disability Survey of Turkey (Türkiye Özürlüler Araştırması 2002 İkincil Analizi)*, available at: [http://ozgururun.com.tr/wp-content/uploads/2015/08/TufanveArun\\_TOA.pdf](http://ozgururun.com.tr/wp-content/uploads/2015/08/TufanveArun_TOA.pdf).

<sup>100</sup> Ministry of Family, Labour and Social Services General Directorate of Disabled and Elderly Services, *Statistical Bulletin of Disabled and Elderly*, December 2019, p. 6, available at: <https://ailevecalisma.gov.tr/media/34054/istatistik-bulteni-aralik2019.pdf>.

assessment survey.<sup>101</sup> However, the research done by the state, which has presented different figures, leads to a complicated depiction of the situation.<sup>102</sup> It was submitted to the Committee on the Rights of Persons with Disabilities (CRPD) that there are no official statistics and no analyses that focus on the education, health, employment, access to rights and participation of women and girls with disabilities, or any disaggregated data in the overall statistics system.<sup>103</sup>

The 2002 survey on disability in Turkey found that only 20 % of persons with disabilities were employed, while the rate of women with disabilities who were employed was as low as 6.7 % (in comparison with 32.2 % for men). Only 14.8 % of persons with disabilities with a disability level of 20 % or more were employed, putting the unemployment rate in this group at 85.7 %; 6.3 % of the individuals surveyed were actively looking for a job.

The State Personnel Presidency regularly publishes up-to-date statistics on persons with disabilities employed in the public sector. The data are segregated according to the provinces, sectors, public institutions where persons with disabilities are employed, as well as on the basis of the 'disability levels', education levels and types of disabilities of these persons. The data include information about vacancies available at each public institution, which is legally obliged to fulfil an employment quota of 3 %. In addition, until 2013, the Turkish Statistical Institute released annual data on the number of persons with disabilities employed in both the public and the private sectors and the number of vacancies in both sectors, where there are legal obligations to fulfil employment quotas.<sup>104</sup>

In Turkey, statistical evidence may be admitted under national law in order to establish indirect discrimination. Although, the law is silent on the use of statistical evidence, and the Law on Civil Procedure (No. 1086), the Law on Administrative Procedure (No. 2577) and the Law on Criminal Procedure (No. 5271) contain no specific provisions regarding such evidence, there is no direct prohibition on its use. As a general rule, every claim can be proved by all types of evidence (although there are exceptions). Consequently, the courts can consider statistical evidence alongside other evidence. Nonetheless, there is no case law regarding the use of statistical evidence.

Statistical data are not used for the design of positive actions.

#### b) Practice

In Turkey, statistical evidence is not used in practice in order to establish indirect discrimination.

As stated above, although the use of statistical evidence is not prohibited by national law, due to a lack of awareness with regard to the concept of indirect discrimination among judges, public prosecutors and lawyers, such evidence is not used by the courts and there is no case law in this area.

## 2.4 Harassment (Article 2(3))

#### a) Prohibition and definition of harassment

In Turkey, harassment is prohibited in national law. It is defined in law.

---

<sup>101</sup> Ministry of Family and Social Policies and Turkish Statistical Institute (2011), *Survey on Problems and Expectations of Disabled People 2010*, available at: [http://www.tuik.gov.tr/Kitap.do?metod=KitapDetay&KT\\_ID=1&KITAP\\_ID=244](http://www.tuik.gov.tr/Kitap.do?metod=KitapDetay&KT_ID=1&KITAP_ID=244).

<sup>102</sup> UN Committee on the Rights of Persons with Disabilities (CRPD) (2017), *Initial Report on the Convention on the Rights of Persons with Disabilities, Turkey*, CRPD/C/TUR/1, p. 4; European Committee on Social Rights (ECSR), *Conclusions 2016: Turkey*, 2016/def/TUR/15/1/EN, 9 December 2016, Article 15-1.

<sup>103</sup> CRPD (2018), *Shadow Report Turkey prepared by the coordination of the Confederation of the Disabled of Turkey*, 20 August 2018, para. 19.

<sup>104</sup> This information is no longer publicly available on the website of the Turkish Statistical Institute.

Until 2016, there was no regulation in Turkish law that defined the concept of harassment, and harassment in the form of discriminatory treatment was not explicitly prohibited in the legal system. Article 4(1)(g) of the Law on the Human Rights and Equality Institution of Turkey prohibits harassment on grounds of sex, race, colour, language, religion, belief, denomination, philosophical and political opinion, ethnic origin, wealth, birth, marital status, health, disability and age.

In addition, sexual harassment is prohibited under the Labour Law and the Penal Code.

Article 2(1)(j) of the Law on the Human Rights and Equality Institution of Turkey defines harassment as 'intimidating, degrading, humiliating or embarrassing conduct, including psychological and sexual, related to any of the grounds referred to in this Law, which aims or has the effect of violating the dignity of a person'.

Sexual harassment is not defined under the Labour Law and the Penal Code. On the other hand, one can argue that harassment in general is a type of tort and is prohibited on all grounds under Article 49 of the Law of Obligations. There is no regulation on harassment in criminal law unless it is considered to be an insult. Article 125 of the Turkish Penal Code may be applicable, but only if harassment occurs in the form of an 'insult/defamation'.

The acts that constitute harassment seem to be compatible with the definition provided in the directives.

In Turkey, harassment explicitly constitutes a form of discrimination under Article 4(1)(g) of the Law on the Human Rights and Equality Institution of Turkey.

Another concept that can be evaluated under the heading of harassment is mobbing. Mobbing was first regulated in Article 417 of the Turkish Code of Obligations in 2011. Subsequently, it has also been considered a form of discrimination in Article 2(1)(g) of the Law on the Human Rights and Equality Institution of Turkey, which defines it as 'actions which intend to alienate, exclude or weary a person from his/her job, on the basis of grounds of discrimination cited in this Law.' However, in practice, embodying such a concept along with harassment in the Law has the potential to lead to confusion.

#### b) Scope of liability for harassment

Where harassment is perpetrated by an employee, the employee is criminally and civilly liable. Article 25 of the Labour Law enables employers to terminate the work contract of an employee who commits sexual harassment against another employee. The employee may be criminally liable under Article 105 and (if they are a Government employee) Article 94 of the Penal Code.

In order for civil servants to face prosecution, Law No. 4483 on the Prosecution of Civil Servants and Other Public Employees and Article 129 of the Constitution require their superior's permission. In other words, despite Article 94 of the Turkish Penal Code, civil servants cannot be prosecuted for crimes unless their superior consents to prosecution.

Public as well as private employers are also liable for harassment by their employees/civil servants. While employers are not criminally liable, they are subject to civil liability for the wrongful acts of their employees. According to Article 66 of the Turkish Law of Obligations, employers are responsible for the wrongdoings of their employees and have the right to seek recourse against employees engaged in wrongdoing. In this case, the employer is held accountable for the conduct of the employee and can be relieved of that responsibility only if he or she proves that they have done due diligence or that damage has not been done by not showing due diligence. In case of a harassment by a civil servant, public employers can be subjected to an administrative proceeding for material and moral damages.



Trade unions and professional organisations cannot be held responsible for the actions of their members, unless the actions of the members are attributable to these unions or organisations.

With regard to mobbing, one regulation that clearly applies is Article 417 of the Turkish Code of Obligations. According to this Article, there is an obligation on the employer to protect workers against psychological abuse as part of the employer's obligation to care for the worker. When psychological abuse occurs in the workplace, the victim may apply to terminate their employment contract by agreement; demand compensation for discrimination; immediately terminate their employment contract for a justified reason; demand the invalidity of unilateral termination by the employer; or claim compensation.

## **2.5 Instructions to discriminate (Article 2(4))**

### **a) Prohibition of instructions to discriminate**

In Turkey, instructions to discriminate are prohibited in national law. Instructions are defined in law.

In Turkey, such instructions explicitly constitute a form of discrimination.

Article 4(1)(b) of the Law on the Human Rights and Equality Institution of Turkey prohibits instructions to discriminate on grounds of sex, race, colour, language, religion, belief, denomination, philosophical and political opinion, ethnic origin, wealth, birth, marital status, health, disability and age. Article 2(1)(b) defines instruction to discriminate as 'the instruction to discriminate given by an individual to others s/he has authorised to engage in actions or procedures in his/her name or behalf or by a public official to other individuals'. The current definition does not include a distinction between the private sector and the public sector, and appears to be applicable to both. Instructions to discriminate on the ground of sexual orientation are not prohibited.

With regard to civil servants, Article 137 of the Constitution sets forth that '[i]f a person employed in any position or status in public services finds an order given by his/her superior to be contrary to the provisions of by-laws, presidential decree, laws, or the Constitution, s/he shall not carry it out, and shall inform the person giving the order of this inconsistency. However, if his/her superior insists on the order and renews it in writing, his/her order shall be executed; in this case the person executing the order shall not be held responsible. If there is an order to commit discrimination which amounts to a criminal offence under criminal law, such an order shall under no circumstances be executed and the person who executes it shall not evade responsibility.' In addition, Article 10 of the Law on Civil Servants prohibits superiors of civil servants from giving orders to civil servants in violation of the law. When considered together with the prohibition of discrimination under Turkish law, these Articles can be construed as prohibiting instructions to discriminate. However, there is no case law on the issue.

### **b) Scope of liability for instructions to discriminate**

In Turkey, the discriminator is liable.

Unless explicitly stipulated in the law, persons cannot be held liable for the actions of third parties. Thus, in principle, only the individual discriminator can be held liable under criminal and civil law. However, according to Article 66 of the Turkish Law of Obligations, employers are responsible for the wrongdoings of their employees. The employer is held accountable for the conduct of the employee and can be relieved of that responsibility only if he or she proves that they have done due diligence or that damage has not been done by not showing due diligence.

Under civil law, regardless of whether the case involves a tort or non-compliance of a contract, there is shared liability between the person carrying out the instruction and the instructor.

According to Article 4(1)(b) of the Law on the Human Rights and Equality Institution of Turkey, giving instructions to discriminate and applying those instructions is considered to be discriminatory treatment. The law is likely to be implemented both for the person who gives the instruction to discriminate and the person who applies it. It is far from fair that people who are in a hierarchical relationship, such as an employee-employer or officer-supervisor relationship, should be held responsible for discriminatory treatment without any exceptions. Since it may not be possible for anyone to determine whether the treatment they are asked to apply constitutes discrimination, it is not appropriate to attribute responsibility without exception in the instruction specifically for discrimination.

Apart from these regulations, it is possible that a number of provisions of the Turkish Penal Code are also applicable within the scope of instruction to discriminate. The first article that applies in that sense is Article 37, which relates to the concept of 'perpetrator'. It is stated in law that a person who uses another person as a means of committing a crime will also be held responsible as the perpetrator. In this case, the indirect perpetrator is the person who carries out the execution of the actions of the crime and the person in a dominant role who stands in the background in respect of the behaviour. The indirect perpetrator will also be liable as if he had committed the crime himself. Another provision in the Turkish Penal Code is Article 38, on instigation, which envisages that a person who incites someone else to commit a crime will also be sentenced to the same punishment given for the crime committed. Under the first of these two provisions, a person who is directed by the perpetrator to commit a crime does not act of his own free will and is in the position of an instrument. In the case of instigation, a person directs another who acts of his own free will to commit a crime. The person who is used as an instrument does not know that he has committed a crime, whereas in the second provision the person is aware that he has also committed a crime on behalf of the person who has committed it. Accordingly, it is possible that a person who uses someone, or incites them to act, as an instrument of committing a crime of discrimination or sexual harassment, which is regulated in the Turkish Penal Code in relation to discrimination, will be held accountable for that crime.

## **2.6 Reasonable accommodation duties (Article 2(2)(b)(ii) and Article 5 Directive 2000/78)**

- a) Implementation of the duty to provide reasonable accommodation for people with disabilities in the area of employment

In Turkey, the duty on employers to provide reasonable accommodation for people with disabilities is included in the law, and it is defined in law.

Article 5(2) of the Law on the Human Rights and Equality Institution of Turkey entails the duty to provide reasonable accommodation, but only in respect of persons with disabilities. Article 4(1)(f) considers the denial of reasonable accommodation to be a form of discrimination.

Article 2(1)(i) of the Law on the Human Rights and Equality Institution defines reasonable accommodation, in the context of the access of persons with disabilities to employment, education, goods and services, housing, social protection and social advantages, 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'. As the provision contains the phrase 'in a certain situation', the duty envisaged within it is an individualised duty – in other words, it is applicable when a specific individual requires

a specific accommodation for his or her specific situation. In comparison with the Law on Persons with Disabilities, which requires reasonable accommodation unless it imposes 'a disproportionate and excessive burden', the Law on the Human Rights and Equality Institution imposes less stringent obligations on employers.

The duty to provide reasonable accommodation is also included in the Law on Persons with Disabilities as an individualised duty. The denial of reasonable accommodation is not considered to be a form of discrimination under this Law. Article 4(A) stipulates that 'requisite measures for providing the reasonable accommodation of persons with disabilities in order to ensure equality and remove discrimination' be taken and Article 14(4) requires employers as well as relevant Government institutions to undertake reasonable accommodation measures in workplaces employing persons with disabilities. However, this appears to be regulated as an open-ended obligation – in other words, without any sanctions. Hence, the European Committee of Social Rights has found that the situation in Turkey does not conform with the European Social Charter, on the ground that the legal obligation to provide reasonable accommodation has not been respected.<sup>105</sup> The only sanction in this regard is the termination of the worker's employment contract, which in this case would result in completely the opposite result from the requirements of the concept of reasonable accommodation.

Article 3(j) of the Law on Persons with Disabilities defines reasonable accommodation as 'necessary and appropriate changes and precautions which do not impose a disproportionate and excessive burden and which are needed in a certain situation in order to ensure that the disabled exercise or benefit from their human rights and fundamental freedoms fully and on equal footing with others'. As with the duty envisaged in the Law on the Human Rights and Equality Institution, the duty envisaged in the provision is applicable when a specific individual requires a specific accommodation for his or her specific situation. The law does not define what would constitute a 'disproportionate burden' on employers. The legal commitment to reasonable accommodation under Article 4(A) seems not to be limited to employment. However, the only reference to the concept appears in Article 14, under the heading 'Employment', which gives the impression that the application of the concept is limited to the field of employment. Article 14(4) provides that the duty to provide reasonable accommodation also covers the recruitment procedure, thus disabled job applicants are entitled to reasonable accommodation in that respect too.

A very limited duty of reasonable accommodation for employees with disability is found in the Law on Civil Servants, limited to individuals working in the public sector. Article 53 prescribes a duty limited to the provision of tools which would enable those civil servants to carry out their duties. Notably, the limited duty of reasonable accommodation on employers does not rest on a rights-based or anti-discrimination perspective. This is evident, for example, in the fact that disability is not a protected ground under the Law on Civil Servants. Consequently, breaches of the duty of reasonable accommodation are not considered to constitute discrimination under the Law. Article 100 of the Law authorises public sector employers to adapt the start and end of working hours and the duration of lunch breaks according to the needs of persons with disabilities, the requirements of the job and climate and transportation conditions. However, this Article does not impose a *duty* to accommodate, only a power to do so, which is left to the employer's discretion. Thus, a failure by an employer to take such measures is not necessarily discrimination. Article 101 entails a negative duty, whereby persons with disabilities working in the public sector cannot be forced to work on night shifts or night duty unless they want to do so.<sup>106</sup>

---

<sup>105</sup> ESCR, *Conclusions 2016: Turkey*, 2016/def/TUR/15/2/EN, 9 December 2016, Article 15-2, available at: <http://hudoc.esc.coe.int/eng?i=2016/def/TUR/15/2/EN>.

<sup>106</sup> Law on the Restructuring of Certain Debts and on the Amendment of Social Securities and General Health Insurance Law and of Various Other Laws and Decrees having the Force of Law (*Bazı Alacakların Yeniden Yapılandırılması ile Sosyal Sigortalar ve Genel Sağlık Sigortası Kanunu ve Diğer Bazı Kanun ve Kanun Hükmünde Kararnamelerde Değişiklik Yapılması Hakkında Kanun*), No. 6111, 13 February 2011.

There are various constitutional and legal provisions which, while they are silent on reasonable accommodation, can be interpreted as imposing an implicit duty of reasonable accommodation. Article 10 of the Constitution provides for positive measures on behalf of persons with disabilities, without specifically enumerating the sectors or spheres of life where such measures shall be introduced.

b) Practice and case law

Neither the Law on the Human Rights and Equality Institution of Turkey nor the Law on Persons with Disabilities introduces any criteria for assessing the extent of the duty of reasonable accommodation or defines the term 'reasonable'. There is no financial assistance from the state to cover the cost of making accommodations. The laws do not define what constitutes a 'disproportionate burden' on employers and are silent on the assessment of such burdens. There is no financial assistance available from the state to be taken into account in assessing a disproportionate burden. The lack of emphasis on Government support for employers in the above-mentioned law, as in the directive, and the fact that the obligation is placed in full on employers, has led to the risk that the obligation will have a diminished impact.

There is no relevant case law at all.

c) Definition of disability and non-discrimination protection

The constitutional provision on anti-discrimination and the anti-discrimination clauses in various laws do not define disability. The Law on the Human Rights and Equality Institution of Turkey and the Law on Persons with Disabilities are the only laws which define disability. Thus, the question whether there is a discrepancy between the definition of disability for the purposes of claiming a reasonable accommodation and the definition for claiming protection from non-discrimination in general is not applicable in the Turkish context, because the only two laws that require reasonable accommodation contain the same definition of disability, which applies across all fields covered by these two laws. As far as the Law on the Human Rights and Equality Institution of Turkey and the Law on Persons with Disabilities are concerned, the two definitions are the same.

d) Failure to meet the duty of reasonable accommodation for people with disabilities

In Turkey, a failure to meet the duty of reasonable accommodation in employment for people with disabilities counts as discrimination.

However, there is a discrepancy in the law. A failure to meet the duty of reasonable accommodation in employment for people with disabilities counts as discrimination under Article 4(1)(f) of the Law on the Human Rights and Equality Institution of Turkey, whereas under the Law on Persons with Disabilities, the denial of reasonable accommodation is not considered to be a form of discrimination.

The Law on the Human Rights and Equality Institution of Turkey does not specify whether such a failure amounts to a particular form of discrimination. The Law remains silent on whether a failure to meet the duty of reasonable accommodation amounts to direct or indirect discrimination. It simply lists the failure to meet the duty of reasonable accommodation as a type of discrimination, and it appears from the text that it is regarded as a stand-alone form of discrimination.

The Law does not envisage a specific sanction for the failure to meet this duty. Therefore, the general sanctions provided under the Law, and discussed below in Section 6.5, apply.

Despite the general provision set forth in Article 21 of the Law on the Human Rights and Equality Institution of Turkey, there is no particular provision on shifting the burden of proof when claiming the right to reasonable accommodation.

- e) Duties to provide reasonable accommodation in areas other than employment for people with disabilities

In Turkey, there is a legal duty to provide reasonable accommodation for people with disabilities outside the area of employment.

Article 5(2) of the Law on the Human Rights and Equality Institution of Turkey provides a duty of reasonable accommodation for persons with disabilities in the areas of 'education, judicial, law enforcement, health, transportation, communication, social security, social services, social assistance, sports, accommodation, culture, tourism and the like'.

Article 4(A) of the Law on Persons with Disabilities states that 'necessary measures will be taken for the reasonable accommodation of the disabled to ensure equality and bring an end to discrimination'. While the law contains a specific provision concerning reasonable accommodation in employment (Article 14(4)), no corresponding provisions exist for fields outside employment. Consequently, it is not clear whether non-employment areas are covered by the law.

In the ECtHR's 2016 ruling<sup>107</sup> on a petition filed by a young woman with visual disability who had not been admitted to a music academy in Turkey because she did not submit a report showing that she could follow the classes without help, the Court found that there had been a violation of the prohibition on discrimination guaranteed under Article 14 together with the right to education protected under Article 2 of Protocol 1. Referring to both Article 14 and the UNCRPD in its discussion of reasonable accommodation, the Court concluded that the Turkish authorities made no effort whatsoever to identify the needs of the applicant. This was the first time that the Court began to explain the concept of reasonable accommodation in its jurisprudence. The ruling has neither stimulated public discussion in Turkey nor led the Government to revise its anti-discrimination policies.

In 2018, in its judgment on an application filed by a university student with disability whose request for the adaption of university premises so that he could resume his studies was rejected on grounds of budgetary reasons and time constraints, the ECtHR held that the national judicial and university authorities failed to show the required diligence to ensure that the applicant could continue to enjoy his right to education on equal terms with other students.<sup>108</sup> The Court noted that the courts did not engage in any effort to ascertain whether there were possible solutions that would have enabled the applicant to resume his studies with provisions as close as possible to those provided to students with no disability, without imposing an undue burden on the university administration. Instead of examining whether a fair balance had been struck between the applicant's interest and the administration's financial and logistic capacities, the national judicial authorities deemed it sufficient for someone to assist the applicant on the premises, without showing how such a solution would be satisfactory. Therefore, the Court found a violation of Article 14 (on the prohibition of discrimination) read in conjunction with Article 2 of Protocol 1 (on the right to education). The ECtHR did not deem it necessary to examine separately the applicant's complaints under Article 14 in conjunction with Article 8 (on the right to privacy).

---

<sup>107</sup> *Çam v. Turkey*, No. 51500/08, 23 February 2016.

<sup>108</sup> *Enver Şahin v. Turkey*, No. 23065/12, 30 January 2018.

f) Duties to provide reasonable accommodation in respect of other grounds

In Turkey, there is no duty to provide reasonable accommodation in respect of other grounds in the public sector and/or the private sector.

In past years, the Parliament adopted a temporary practice of accommodating members of the Parliament belonging to the Alevi religious faith during their fasting period in the month of Muharrem. Following a petition from an Alevi parliamentarian, the Speaker of the Turkish Parliament authorised the serving of special food in accordance with the dietary restrictions of Alevi deputies in restaurants on the premises of the Parliament during the month of Muharrem in 2012.<sup>109</sup> This was the first time ever that a public office accommodated Alevis during their fasting period. The practice was repeated during the Muharrem fast in 2013, but not in subsequent years.

---

<sup>109</sup> 'TBMM Lokantasında Muharrem Orucu Menüsü' ('Muharrem fast menu at the restaurant of the Turkish Parliament'), *Hürriyet*, 14 November 2012, available at: <http://www.hurriyet.com.tr/tbmm-lokantasında-muharrem-orucu-menu-21924575>.

### **3 PERSONAL AND MATERIAL SCOPE**

#### **3.1 Personal scope**

##### **3.1.1 EU and non-EU nationals (Recital 13 and Article 3(2), Directive 2000/43 and Recital 12 and Article 3(2), Directive 2000/78)**

In Turkey, the following residence/citizenship/nationality requirements are applied for protection under the relevant national laws transposing the directives.

Difference in treatment of non-citizens resulting from their specific conditions and legal status regarding their entry and residence in the country is set forth as an exception for discrimination claims in Article 7(1)(g) of the Law on the Human Rights and Equality Institution. Hence, undocumented/irregular immigrants are not protected under Turkish law.

##### **3.1.2 Natural and legal persons (Recital 16, Directive 2000/43)**

###### **a) Protection against discrimination**

In Turkey, the personal scope of anti-discrimination law covers natural and legal persons for the purpose of protection against discrimination. The definitions of direct and indirect discrimination and discrimination by assumption in Article 2(d), (e) and (m) of the Law on the Human Rights and Equality Institution of Turkey explicitly refer to both natural and legal persons as objects of such discrimination. The national provisions partly comply with the directives; as sexual orientation is excluded among the grounds on the basis of which direct discrimination is prohibited under Article 4(1)(c).

The Law on Persons with Disabilities provides protection against discrimination on the exclusive ground of disability. Article 4 of this Law, *inter alia*, bans discrimination against persons with disabilities and endorses the principles of equal opportunity and accessibility in ensuring their access to all rights and services and their full and effective participation in public life. Articles 13, 14 and 15 of this Law express the state's commitment to undertake all necessary measures for the occupational rehabilitation, employment and education of persons with disabilities. The protection provided in the Law on Persons with Disabilities is applicable only to natural persons.

In addition, Article 3 of the Penal Code, Article 5 of the Labour Law, Article 4 of the Basic Law on National Education, Article 7 of the Law on Civil Servants, Article 68 of the Civil Code, Article 12 of the Law on Political Parties, Article 8(e) of the Law on the Foundation and Broadcasting of Radio and Television, Article 4(d) of the Law on Social Services and Article 2(1) of the Law on the Execution of Penalties and Security Measures also provide protection against discrimination for natural persons only.

###### **b) Liability for discrimination**

In Turkey, the personal scope of anti-discrimination law covers natural and legal persons for the purpose of liability for discrimination.

Article 3(4) of the Law on the Human Rights and Equality Institution of Turkey states that natural and legal persons are under an obligation to 'identify and remove discrimination and ensure equality in areas falling under their scope of authority'. Article 5(1) prohibits natural and legal persons to discriminate in the provision of services in the fields of 'education, justice, law enforcement, health, transportation, communication, social security, social services, social assistance, sports, accommodation, culture, tourism and the like'. Article 5(3) prohibits natural and legal persons from discriminating in provision of goods for sale, purchase or rent.

Various laws have provisions on anti-discrimination, the scope of which is limited to the areas/sectors they govern – for example, Article 5(1) of the Labour Law and Article 8(e) of the Law on the Foundation and Broadcasting of Radio and Television. In most cases, these provisions do not explicitly distinguish between natural persons and legal persons, which gives rise to the assumption that both natural and legal persons can be held liable for discrimination where the related provision is applicable. There is limited case law confirming the protection of natural persons<sup>110</sup> and legal persons<sup>111</sup> against discrimination.

Civil law explicitly refers to the distinction between natural and legal persons. Article 48 of the Civil Code, Article 68 of which prohibits associations from discriminating among its members based on the grounds enumerated, stipulates that legal persons have all the rights and obligations other than those which are tied to qualities that are specific to natural persons (such as birth and age).

Criminal law contains an explicit reference to legal persons, exempting them from criminal liability. According to Article 20(2) of the Turkish Penal Code, 'no punitive sanctions may be imposed on legal persons'. However, sanctions in the form of 'security precautions' stipulated in the law are reserved.<sup>112</sup> On the other hand, the provisions that relate to discrimination, such as Article 105 or Article 122, are not applicable.

In certain situations, natural persons can be held liable for discrimination along with a legal person. For example, criminal charges can be brought against a person working in the human resources department of a company, while a civil case for compensation against the company can be brought to the courts.

With regard to protection against discrimination, the various laws containing anti-discrimination provisions again do not make an explicit distinction between natural and legal persons. However, the object of protection against discrimination is the individual person.

### **3.1.3 Private and public sector including public bodies (Article 3(1))**

#### **a) Protection against discrimination**

In Turkey, the personal scope of national anti-discrimination law covers the private and public sectors, including public bodies, for the purpose of protection against discrimination.

The personal scope of national law covers private and public sectors, including public bodies, for the purpose of protection against discrimination.

The legislative framework that prohibits public bodies from engaging in discrimination is as follows:

Article 10(5) of the Constitution obliges public bodies to act in compliance with the principle of equality before the law in all their proceedings and, as a directly applicable provision, it provides constitutional protection for all. Article 5(1) and (3) of the Law on the Human Rights and Equality Institution, which prohibits public bodies from discriminating in the provision of 'education, judicial, law enforcement, health, transportation, communication,

---

<sup>110</sup> Constitutional Court, *Tuğba Arslan*, Application No. 2014/256, 25 June 2014 (finding that the barring of a lawyer wearing a headscarf in courtroom constitutes discrimination). For more, see Introduction.

<sup>111</sup> Constitutional Court, *Reis Otomotiv Ticaret ve Sanayi A.Ş.*, Application No. 2015/6728, 1 February 2018.

<sup>112</sup> 'Security precautions' are sometimes alternatives to typical criminal sanctions (imprisonment, fine etc.), and sometimes complementary to sanctions. 'Security precautions' can be anything from rehab to community service. According to the new Turkish Penal Code, legal persons can also be held responsible for crimes. As imprisonment is not an option for legal persons, the law says that security precautions can be imposed by the courts. If the organs or representatives of a legal person are involved in a crime, the court might decide, for example, that the licence of the legal person is to be suspended, or that certain properties which are fruits of the crime can be confiscated etc.



social security, social services, social assistance, sports, accommodation, culture, tourism and the like', and in the sale, purchase and rent of goods, respectively; Article 7 of the Law on Civil Servants, which prohibits civil servants from discriminating in the course of their duties on the basis of language, gender, race, political view, philosophical belief, religion or sect, and Article 125, which provides disciplinary sanctions to civil servants who engage in discrimination; Article 18 of the Turkish Armed Forces Discipline Law and Article 8(6)(a) of the Law on Adoption of the Decree Law on General Law Enforcement Discipline Provisions, which provides for disciplinary sanctions against army members and law enforcement officers who engage in discrimination; and Article 4(d) of the Law on Social Services, which prohibits discrimination in the execution and provision of social services on grounds of class, race, language, religion, sect or religious differences are relevant laws that cover the public sector, including public bodies, for the purpose of protection against discrimination.

In regard to discrimination in the private sector, the following laws apply:

The above-mentioned Article 5(1) and (3) of the Law on the Human Rights and Equality Institution of Turkey; Article 5 of the Labour Law, which prohibits discrimination on the grounds of language, race, gender, political thought, philosophical belief, religion, sect and similar grounds in employment relations; Articles 12, 82 and 83 of the Law on Political Parties, which prohibit discrimination against applicants for membership of political parties on grounds of language, race, gender, religion, sect, family, group, class or profession, and prevent political parties from pursuing the aims of racism and from engaging in discrimination on grounds of language, race, colour, gender, political opinion, philosophical belief, religion and sect, or other similar considerations; Article 30 of the Law on Associations, which prohibits the establishment of associations for objectives prohibited under the Constitution and laws, which includes discrimination; Article 68 of the Civil Code, which prohibits discrimination among members of associations on the basis of language, race, gender, religion, sect, family, group or class; and Article 122 of the Penal Code, which prohibits hate acts based on language, race, nationality, colour, gender, disability, political opinion, philosophical belief, religion or sect in the sale or transfer of goods, the execution of a service, employment, the provision of food services and the undertaking of economic activity, are relevant laws that cover the private sector for the purpose of protection against discrimination.

#### b) Liability for discrimination

In Turkey, the personal scope of anti-discrimination law covers the private and public sectors, including public bodies, for the purpose of liability for discrimination.

Article 3(3) of the Law on the Human Rights and Equality Institution of Turkey makes public bodies liable for discrimination, while Article 3(4) imposes such liability on the private sector as well. The above-mentioned laws that prohibit discrimination in the private and public sectors, including public bodies, also provide for various sanctions – civil, criminal or disciplinary – on those who are held to be liable for discriminatory treatment.

### **3.2 Material scope**

#### **3.2.1 Employment, self-employment and occupation**

In Turkey, national legislation does not apply to all sectors of private and public employment, self-employment and occupation, including contract work, military service and holding statutory office, for the five grounds.

Article 6 of the Law on the Human Rights and Equality Institution of Turkey prohibits discrimination in the private and public employment sectors and self-employment,

including access to occupation, for the grounds of race/ethnicity, religion/belief, age and disability only. Sexual orientation is not included.

Article 122 of the Penal Code prohibits hate crimes in recruitment for employment on the grounds of language, race, nationality, colour, gender, disability, political opinion, philosophical belief, religion and sect, without mentioning ethnic origin. With the amendment in 2014, the phrase 'and similar reasons' was removed from the text of the Article, making the crime a crime that can be committed only with direct intent and with a motive of hatred. Thus, the crime of 'hatred and discrimination' must be committed only 'because of hate arising from diversity.' Although an offence in the form of discrimination has been regulated for the first time with the adoption of Article 122 of the Turkish Penal Code in 2005, it is very difficult to apply the Article in practice and it is far from providing the expected efficacy. From the date of the adoption of the clause in 2005 to the end of 2014, in 106 cases, only four cases led to a conviction. Taking into account the difficulties in its implementation, following the amendment in 2014, the figures will presumably be further reduced. In limiting protection to the selection and recruitment process, Article 122 is applicable only to the process before an employment relationship is established, and not after (in both the public and private sectors). Although there is no case law on this issue, it can be argued that Article 122 of the Code is applicable in all sectors where the selection criteria or recruitment conditions are discriminatory. Article 5 of the Labour Law prohibits discrimination in employment relations by private actors on grounds of language, race, sex, political thought, philosophical belief, religion, sect and similar grounds. Therefore, criminal sanctions are provided for discrimination in recruitment, and civil law sanctions are provided for discrimination after recruitment.

According to Article 13 of the Law on Persons with Disabilities, the Government has the responsibility to take the requisite measures to enable persons with disabilities to choose their profession and to receive education towards that end. The Article requires the relevant ministries to develop professional training, retraining and education programmes for persons with disabilities. The most specific provision in the legislation is Article 14 of this Law, which prohibits discrimination in any matter concerning employment, including 'job application, hiring, suggested working hours and conditions and the continuity of employment, career development, healthy and safe working conditions'. Although promotion is not explicitly mentioned, the provision might, given that it refers to 'any matter' and expressly refers to career development, be interpreted to cover promotion.

It can be claimed that all persons outside the protection of the specific anti-discrimination provisions outlined above can benefit from the general protection from anti-discrimination clause prescribed in Article 10 of the Constitution. However, Article 10 is too vague to provide adequate protection.

### **3.2.2 Conditions for access to employment, to self-employment or to occupation, including selection criteria, recruitment conditions and promotion, whatever the branch of activity and at all levels of the professional hierarchy (Article 3(1)(a))**

In Turkey, national legislation prohibits discrimination in relation to conditions for access to employment, self-employment or occupation, including selection criteria, recruitment conditions and promotion, whatever the branch of activity and at all levels of the professional hierarchy, for four of the five grounds (excluding sexual orientation) and in both the private and public sectors, as described in the directives (Article 6 of the Law on the Human Rights and Equality Institution of Turkey).

The Law on Persons with Disabilities prohibits discrimination against persons with disabilities in access to employment, recruitment, professional development and working conditions (Article 14). In addition, Article 122 of the Penal Code prohibits discrimination in access to employment. There is no umbrella legislation regulating self-employment and

statutory office, but there are various laws governing recruitment to specific professions, which do not have provisions on discrimination. In such cases, the general constitutional provisions on the prohibition of discrimination apply.

With regard to the recruitment of public servants, according to Article 70 of the Constitution, 'Turkish citizens have the right to enter public service and no criteria other than the qualifications for the office concerned shall be taken into consideration for recruitment into public service'. Article 48 of the Law on Civil Servants sets forth that recruitment as a civil servant is subject to general and special conditions. There is no provision in the Law on Civil Servants which prohibits discrimination in the selection, recruitment or promotion of civil servants. In the legislation regarding the selection, recruitment and promotion of public employees, whether they are civil servants or working under various types of contracts, there are limited specific provisions prohibiting discrimination based on grounds covered by the directives.

There was widespread employment discrimination against women who wear the headscarf on the basis of a de facto ban precluding their employment in the public sector, which had a 'spill-over effect' and spread over time to the private sector. However, the ban has been lifted in recent years and is no longer being applied. The headscarf ban in the judiciary, for lawyers, police and military, has also come to an end.

There are special rules in force for the recruitment of civil servants to certain professions such as judges and prosecutors. The qualifications required to be appointed as a candidate for judge or prosecutor are listed in Article 8 of the Law on Judges and Prosecutors (Law No. 2802). Two of these requirements are relevant to the directives. According to paragraph (g), candidates should 'not have any physical and mental illness or disability that would prevent from the conduct of his/her duties as a judge or a prosecutor and in a continuous manner and in every part of the country; not have disabilities such as having difficulties in controlling the movements of the organs, speech different from that which is customary and which would be found odd by people'. The Committee on the Rights of Persons with Disabilities, in its *Concluding Observations* report, expressed its concern regarding Article 8 of Law No. 2802, which prevents the employment of persons with disabilities as judges and prosecutors, and recommended that the Law on Judges and Prosecutors be amended and that legal measures be adopted to allow and facilitate the effective participation of all persons with disabilities in the justice system.<sup>113</sup>

In most, if not all, cases, if a separate examination is organised for selection purposes, written examinations are followed by interviews. Most state institutions have been conducting interviews following the written exams which has been highly criticised and has resulted in allegations of nepotism. There are no provisions which guarantee the objectivity of these interviews, nor is there any reference to the duty to provide reasonable accommodation in that respect.

According to Article 71 of the Labour Law, the minimum age for employment is 15 years. However, children who have reached the age of 14 years and have also completed their primary education may be employed in light work that will not hinder their physical, mental and moral development and, for those who continue their education, in jobs that will not prevent their school attendance. There is no general upper age limit for employment.

The prohibition of discrimination in Article 5(1) of the Labour Law applies only after an employment relationship between employee and employer is established, and is not

---

<sup>113</sup> CRPD (2019), *Concluding Observations on the Initial Report of Turkey*, CRPD/C/TUR/CO/1, 1 October 2019, paras. 27-28, available at: <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsvOO0RvDbzSfy057%2f1fh1RyuPPMs4u7aeyVVDXGO7kQaXeKOi4HMWskQKenk8jrFoo0FZVcmmCHHcLleRFN8xZdyiEIifNKlx7v5pDbMNVm2>.

applicable to the pre-employment stages such as job announcements and recruitment processes.

There are special laws regarding the employment and promotion of military personnel and civil personnel employed in the Turkish Armed Forces. A long list of laws and regulations within the separate realm of the military legal system explicitly discriminate on the basis of sexual orientation. Article 153(2) of the Military Penal Code allows the dismissal of military personnel who engage in homosexual conduct (which is understood to refer to same-sex sexual intercourse), a practice upheld by the High Military Administrative Court.<sup>114</sup> This is only valid for same-sex sexual intercourse and does not cover individuals who attend LGBT venues or events or have a same-sex partner where there is no evidence of sexual conduct.

Gay military personnel who are found to have engaged in homosexual conduct can be dismissed from graduate education, excluded from promotion to assistant professorship in the Military Medical Academy and debarred from professional examinations required for entry to various professions. Article 20 of the Turkish Armed Forces Discipline Law, which was adopted in 2013, enumerates homosexuality among the violations of disciplinary rules that require immediate dismissal from the Turkish Armed Forces. According to clause (g), 'engaging in unnatural intercourse or voluntarily submitting oneself to such an act' is a ground for dismissal from the army. In the Turkish context, the term 'unnatural intercourse' refers to anal intercourse and hence to homosexual relationships. There are several cases of dismissal of homosexual men from public service or the military upon oral evidence of their engagement in anal sex with other men (see Section 3.2.3).

A motion for unconstitutionality of the said provision was rejected by the Constitutional Court in a judgment given on 29 November 2017 and published on 20 February 2018. The court defined 'unnatural intercourse' as 'sexual acts which cannot be accepted as normal by all social orders and which adversely affect the moral standards of society'.<sup>115</sup> In a strongly worded opinion, which made extensive references to international human rights law as well as empirical data on the discrimination of LGBTI individuals in Turkey, Judge Engin Yıldırım dissented from the majority.

Military regulations governing exemption from mandatory military service result in multiple forms of discrimination against homosexual conscientious objectors who refuse to serve in the military due to their political beliefs and/or conscience.<sup>116</sup> In assessing eligibility for exemption, the regulations of the Turkish Armed Forces consider homosexuality as a psychosexual disorder and individuals having such a 'condition' to be 'unfit for military service'. In order to be exempt from military service, gay men were routinely required to 'prove' their homosexuality by either going through a forced anal examination or providing photographic evidence of being engaged in passive anal sex.<sup>117</sup> In recent years, due to wide media coverage and international pressure, this practice seems to have been abandoned. Instead, authorities now subject individuals to psychological tests to test their homosexuality and, where they find the test results unconvincing, request a 'family meeting', forcing individuals to make a choice between coming out to their families or military service. In cases in which a family meeting takes place, authorities may still not be convinced, in which case they require the individual to be admitted to the psychiatric wards of military hospitals, known as 'the pink wards'.<sup>118</sup> The process of psychological tests

---

<sup>114</sup> High Military Administrative Court, E. 1998/888, K. 1999/482, 11 May 1999.

<sup>115</sup> Constitutional Court, E. 2015/68, K. 2017/166, 29 November 2017, para. 14.

<sup>116</sup> *Savda v. Turkey*, No. 42730/05, 12 June 2012; *Tarhan v. Turkey*, No. 9078/06, 17 July 2012.

<sup>117</sup> For examples, see Amnesty International (2011), 'Not an Illness nor a Crime': Lesbian, Gay, Bisexual and Transgender People in Turkey Demand Equality, London, p. 23, available at: <http://www.amnestyusa.org/sites/default/files/notillnessnorcrime.pdf>.

<sup>118</sup> "'Pembe Tezkere"ye Koşuş İşkencesi' ('Ward Torture for "Pink Certificate"'), *Radikal*, 15 April 2012, available at: <http://www.radikal.com.tr/Radikal.aspx?aType=RadikalDetayV3&ArticleID=1084969&CategoryID=77>.

and family meetings typically lasts for several days and requires multiple visits to more than one military hospital.<sup>119</sup>

Many jobs in the public and private sectors require men to have fulfilled their military service duties and to provide documentary evidence of either having served in the military or having been lawfully exempted on health grounds. Homosexual men who can 'prove' their homosexuality are exempted for being 'unfit' to serve in the military. This exemption can cause serious impediments to their ability to find employment. A case in point is an experienced referee who was dismissed from his profession by the Turkish Football Federation after 14 years of service after the unlawful disclosure of a health report issued by a military hospital certifying his 'unfitness for military service' on the basis of his sexual orientation (see Section 3.2.3).

According to Article 48(1) of the Turkish Constitution, 'Everyone has the freedom to work and conclude contracts in the field of his/her choice. Establishment of private enterprises is free.' There is no umbrella legislation regulating self-employment and statutory office.

There are various laws on certain professions, such as the Law on Attorneys (No. 1136), the Law on Pharmacists and Pharmacies (No. 6197) and the Law on Notaries (No. 1512), none of which contain specific provisions on the prohibition of discrimination. These constitutional and legal provisions do not have aspects which constitute direct discrimination in the selection, recruitment and promotion of both public and private sector employees.

The Roma in Turkey face an 'extremely high' degree of structural unemployment and 'face specific disadvantages and prejudices in employment related to their ethnicity'.<sup>120</sup> According to the European Commission's *Turkey 2019 Report*, the overall employment rate for the Roma is 31 %.<sup>121</sup> Field research conducted by Roma associations has produced empirical evidence of employment discrimination against the Roma.<sup>122</sup>

### **3.2.3 Employment and working conditions, including pay and dismissals (Article 3(1)(c))**

In Turkey, national legislation prohibits discrimination in working conditions, including dismissals, on four of the five grounds (excluding sexual orientation) and for both private and public employment. It does not prohibit discrimination in the following area: pay.

According to Article 55 of the Constitution, wages are paid in return for work, and the state shall take the necessary measures to ensure that workers earn a fair wage commensurate with the work they perform and that they enjoy other social benefits.

Article 6 of the Law on the Human Rights and Equality Institution of Turkey prohibits discrimination in employment and working conditions, including dismissal, but does not explicitly refer to pay. Moreover, the grounds are limited to race/ethnicity, religion/belief, disability and age, excluding sexual orientation.

The prohibition on discrimination prescribed in Article 122 of the Turkish Penal Code is limited to recruitment and does not cover employment and working conditions. Article 5 of

---

<sup>119</sup> For a detailed first-hand account by a transgender person of a six-day process involving multiple visits to four different military hospitals, see: <https://www.kaosgl.org/haber/top-var-tufek-var-trans-yok>.

<sup>120</sup> ECSR, *Conclusions 2016: Turkey*, 2016/def/TUR/1/2/EN, 9 December 2016, Article 1-2, available at: <http://hudoc.esc.coe.int/eng?i=2016/def/TUR/1/2/EN>.

<sup>121</sup> European Commission (2019), *Turkey 2019 Report*, Brussels, 29 May 2019, p. 40, available at: <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20190529-turkey-report.pdf>.

<sup>122</sup> European Roma Rights Centre and Edirne Roma Association (2008), *Written Comments of the European Roma Rights Centre and the Edirne Roma Association Concerning Turkey for Consideration by the United Nations Committee on the Elimination of Racial Discrimination at its 74th Session*, pp. 18-20, available at: [http://www2.ohchr.org/english/bodies/cerd/docs/ngos/ERRC\\_Turkey\\_CERD74.pdf](http://www2.ohchr.org/english/bodies/cerd/docs/ngos/ERRC_Turkey_CERD74.pdf).

the Labour Law prohibits discrimination in the employment relationship based on an open-ended list of enumerated grounds that includes language, race, colour, gender, political opinion, philosophical belief, religion and sect, and which, since February 2014, explicitly mentions disability but not ethnic origin, sexual orientation or age. While Article 5 could and should be interpreted to cover all grounds, so far there has been no case law on the issue.

According to Article 18 of the Labour Law, business owners who employ at least 30 employees must have a valid reason arising from the adequacy or behaviour of the employee or the necessities of the business, workplace or job if they wish to terminate the contracts of employees with a minimum of six months' tenure in that business. According to paragraph (d), 'race, colour, gender, marital status, family responsibilities, pregnancy, birth, religion, political opinion and similar reasons' are not valid reasons. However, as mentioned earlier, the material scope of the Labour Law is limited, and the ban is valid only for medium and large sized businesses and for employees with a minimum contract of six months. Article 29 of the Labour Law defines collective dismissal as the dismissal of at least 10 workers in a business employing 20-100 employees; at least 10 % of the workers in a business employing 101-300 employees; and at least 30 workers in a business employing 301 or more employees. While the provision does not entail a blanket ban on collective dismissals, it states that collective dismissal cannot be used to circumvent Article 18.

Civil servants are employed on a permanent basis; unless a concrete reason for termination occurs, their position as a civil servant is secure. According to Article 125 of the Law on Civil Servants, there are enumerated grounds for irreversible dismissal from civil service. The relevant ground for the purposes of this report is clause (E)(g), according to which disgraceful and dishonourable acts that are irreconcilable with the title of civil servant are cause for dismissal from the service. This clause is being used to dismiss homosexual civil servants. For example, a police officer was dismissed from the Turkish Police Force for having engaged in anal intercourse with another man. The decision of the High Disciplinary Board of the Ministry of Interior was upheld by the courts, including the Council of State, and the case was closed.<sup>123</sup> On the other hand, in 2014 the Council of State changed its jurisprudence on the issue, finding that the dismissal of a teacher from the profession due to his/her sexual orientation<sup>124</sup> violated the Turkish Constitution and the ECHR (see section 2.1.1.). Having said that, a 2017 ruling by the Constitutional Court, which did not find that there was discrimination in the dismissal of a teacher based on allegations of homosexuality, has left the state of affairs uncertain with regard to the protection of civil servants against discrimination on the basis of sexual orientation (see Introduction).

Homosexual individuals are also routinely discriminated against in the private sector. A high-profile case concerning the Turkish Football Federation's dismissal of a referee with 14 years' experience from the profession on the basis of his sexual orientation resulted in a precedent-setting, though not entirely satisfactory, judgment by a lower court. On 29 December 2015, the 20th Civil Court of First Instance in Istanbul ordered the TFF to pay the applicant TRY 3 000 (EUR 395) in pecuniary damages and TRY 20 000 (EUR 2 632) in non-pecuniary damages.<sup>125</sup> In early February 2016, the Court published the judgment

---

<sup>123</sup> Social Policies, Sexual Identity and Sexual Orientation Studies Association (Sosyal Politikalar, Cinsiyet Kimliği ve Cinsel Yönelim Çalışmaları Derneği – SPoD) (2012), *LGBT Cases: The Jurisprudence of the ECtHR, Court of Cassation and the Council of State (LGBT Davaları: AİHM, Yargıtay ve Danıştay İçtihatları)*, p. 68, available at: [http://www.fes-tuerkei.org/media/pdf/Publikationen%20Archiv/Ortak%20Yay%C4%B1mlar/2012/lgbt\\_ictihat\\_kitap\\_web\\_dusuk.pdf](http://www.fes-tuerkei.org/media/pdf/Publikationen%20Archiv/Ortak%20Yay%C4%B1mlar/2012/lgbt_ictihat_kitap_web_dusuk.pdf).

<sup>124</sup> The dismissal was based on Law No. 4357, which governs the recruitment, promotion, punishment and dismissal of elementary school teachers employed in private schools. Article 7(e) of this Law requires the dismissal of individuals engaged in behaviours 'lacking chastity and dignity'.

<sup>125</sup> The legal basis of the judgment became clear when the Court published the judgment containing its reasoning in early February 2016, in which it found the dismissal to be in violation of the equality clause of the Constitution and the by-laws of the Turkish Football Federation.



containing its reasoning.<sup>126</sup> The Court found that the TFF's dismissal of the applicant in accordance with its by-laws, which disqualify individuals who are exempted from military service on health grounds from being a referee, constituted a subjective decision that did not rest on objective criteria and was therefore deemed to be legally invalid. The Court noted that the health report that exempted the applicant from military service diagnosed the applicant with 'psychosocial disorder' and did not refer to a health problem that would ban the applicant from working as a referee. Thus, the Court held, the TFF's conclusion that the applicant was unfit to be a referee was exclusively based on his sexual orientation, which should not constitute a barrier to a person's performance of sports activities. Furthermore, the Court stated that this attitude contrasts with the reality of the industry, where one frequently encounters homosexual referees and athletes. The Court concluded that the TFF's decision violated the Constitution's anti-discrimination clause as well as the TFF's own by-laws. In assessing the amount of damages to be paid to the applicant, the Court relied on Article 42 of the former text of the Law of Obligations, which was in effect at the time when the applicant had filed the case. The Law tasks the judge with determining the amount of compensation in cases in which the applicant has difficulty in proving the actual pecuniary costs that he incurred or in which he cannot be reasonably expected to prove such costs. Accordingly, based on the number of games in which the applicant was precluded from working during the 2009-2010 football season, the judge awarded him TRY 3 000 (EUR 395) in pecuniary damages. Concluding that the applicant had been subject to discrimination on the basis of his sexual orientation in violation of the equality clause of the Turkish Constitution and the provisions of the ECHR, the Court awarded the applicant an additional TRY 20 000 (EUR 2 632) in non-pecuniary damages.

While this was the first time that a Turkish court had awarded compensation to a claimant who made a claim under private law for discrimination based on sexual orientation, defining discrimination as a tort, the Court nonetheless awarded the claimant an extremely low amount of compensation considering the pecuniary and non-pecuniary losses he had suffered during the previous five years. The Court based its calculation of pecuniary damages solely on the one season during which the applicant was not allowed to work as a referee, not taking sufficiently into account the fact that he had been unemployed ever since his dismissal from the profession and had been unable to find new employment due to the media publicity around his sexual orientation. The applicant, who had demanded a total of TRY 110 000 (EUR 14 474) in compensation, appealed against the decision to the Court of Cassation on the ground of the inadequacy of the amount of the compensation awarded. In September 2018, the Court of Cassation overruled the lower court's ruling in favour of the TFF on the ground that the applicant had not suffered non-pecuniary damages. Following the retrial of the case, the lower court also ruled in favour of the TFF and dismissed the case.<sup>127</sup>

The applicant was represented by a lawyer who is known for his legal representation of LGBTI people and his affiliation with Turkey's leading LGBTI NGOs, and the case was followed closely by the human rights and LGBTI communities. However, it failed to generate public debate or political discussion on discrimination against LGBTI persons. No Government official has commented publicly on the case.

Article 14 of the Law on Persons with Disabilities prescribes that 'no discriminative practices can be performed against persons with disabilities in any of the stages of employment', including 'job application, hiring, suggested working hours and conditions and the continuity of employment, career development, healthy and safe working conditions'. This provision is clearer than most other legislation. Again, pay and dismissal are not explicitly mentioned, but as the provision prohibits all unfavourable differential treatment, it is conducive to wider interpretation to also cover pay. The reality, however, is far from the

---

<sup>126</sup> Istanbul, 20th Civil Court of First Instance, E. 2010/399, K. 2015/554, 29 December 2015.

<sup>127</sup> 'Eğinsel hakeme verilen tazminat kararı geri alındı' ('Decision on compensation awarded to homosexual referee was withdrawn'), *Cumhuriyet*, 6 February 2020, available at: <http://www.cumhuriyet.com.tr/haber/escinsel-hakeme-verilen-tazminat-karari-geri-alindi-1718924>.

ideal situation that this provision aims to bring about. Hence, the Committee on the Rights of Persons with Disabilities indicated that productive and decent employment for persons with disabilities, in line with the principle of equal pay for work of equal value, should be ensured.<sup>128</sup>

According to Article 39 of the Labour Law, minimum limits for wages are determined at intervals of no longer than two years by the Ministry of Labour and Social Security through the Minimum Wage Determination Committee for regulating the economic and social conditions of all workers working on labour contracts, whether or not they are covered by this Law. Surprisingly, the Regulation on Minimum Wages contains an explicit provision prohibiting discrimination. Article 5 of the Regulation states that 'no discrimination can be made on grounds of language, race, colour, gender, disability, political opinion, philosophical belief, religion and denomination and similar reasons in the determination of a minimum wage'. In 2019, the gross minimum wage was around TRY 2 020 (EUR 266) per month.

The Law on Social Insurance and General Health Insurance (No. 5510) regulates social security coverage for public employees, the self-employed and workers. There is no provision in this Law for any of the grounds on which discrimination is prohibited, except for disability. The Law's provisions on disability concern positive measures – for example, on early retirement (Article 25).

Statistical data in the field of employment are collected by the Turkish Statistical Institute.<sup>129</sup> Employment, unemployment and wage data are collected, but they are disaggregated only on the basis of gender. Thus, it is not possible to make an evaluation based on facts. However, as a general observation, it can be stated that most vulnerable groups, such as the Roma, work in the informal sector and as a rule their earnings are less than the earnings of persons employed in the formal sector. According to the European Commission, the Roma are 'employed in mostly unregistered, temporary, low-paid jobs requiring low or unskilled manual labour'.<sup>130</sup> The European Network against Racism (ENAR) *Shadow Report 2012-2013: Racism and related discriminatory practices in employment in Turkey* states that the unemployment rate among the Roma is estimated at 85 %. In its 2016 report, ECRI did not give figures, but stated that unemployment is 'high' and that the Roma 'mostly work in unqualified, unstable and insecure jobs'.<sup>131</sup>

Even though the quota system should in principle guarantee a minimum wage for persons with disabilities, employment conditions and pay on paper differ from the actual situation.

### **3.2.4 Access to all types and to all levels of vocational guidance, vocational training, advanced vocational training and retraining, including practical work experience (Article 3(1)(b))**

In Turkey, national legislation prohibits discrimination in vocational training outside the employment relationship, such as adult lifelong learning courses or vocational training provided by technical schools or universities.

---

<sup>128</sup> CRPD (2019), *Concluding Observations on Initial Report of Turkey*, CRPD/C/TUR/CO/1, 1 October 2019, para. 53, available at: <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsvOOORvDbzSfy057%2ffih1RyuPPMs4u7aeyVVDXGO7kOaXeKOi4HmWskQKenk8jrFoo0FZVcmmCHHclLeRFN8xZdyiEIIfNklx7v5pDbMNVm2>.

<sup>129</sup> See: [www.turkstat.gov.tr](http://www.turkstat.gov.tr).

<sup>130</sup> European Commission (2014), *Progress Report on Turkey*, Brussels, p. 62, available at: [https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key\\_documents/2014/20141008-turkey-progress-report\\_en.pdf](https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key_documents/2014/20141008-turkey-progress-report_en.pdf).

<sup>131</sup> ECRI (2016), *Report on Turkey (fifth monitoring cycle)*, CRI(2016)37, Strasbourg, p. 30, available at: <https://rm.coe.int/fifth-report-on-turkey/16808b5c81>.



Article 6(2) of the Law on the Human Rights and Equality Institution of Turkey prohibits discrimination in vocational guidance, vocational training and retraining, including practical work experience and on-the-job training, on the grounds of race/ethnicity, religion/belief, age and disability. Sexual orientation is excluded.

İŞKUR organises special training courses exclusively for persons with disabilities. However, these courses suffer from a lack of mainstreaming; do not offer a real choice, as they are provided in a very limited number of sectors; and are not designed to take into consideration market needs, resulting in persons with disabilities being trained to work in sectors where there is no shortage of employees. The Turkish Government reported that 'due to lack of education materials and physical shortcomings of education environments, the number of students with disabilities that benefit from vocational education in inclusive classes has not reached to the desired level.'<sup>132</sup> Since 1991, İŞKUR has also provided vocational and occupational counselling services to persons with disabilities to help them find an occupation fitting their personal abilities and interests. According to the Turkish Government, 44 627 people had received consultancy services of this kind as of September 2013.<sup>133</sup>

In formal education institutions, students can attend vocational education after the completion of their primary school education. 9th-grade and 10th-grade students are given vocational education at school, and 11th-grade students are given theoretical education at school for two days per week and practical training at workplaces for three days per week. In order to graduate, students who do not continue their vocational training in the workplace must complete 160 hours as interns in the workplace over three-year programmes or 300 hours over four-year programmes.

In higher (university) education, there are high schools (polytechnics) at pre-graduate level for technical and vocational education, along with faculties for technical and vocational education at graduate level.

The general principles of vocational education are prescribed in the Law on Vocational Education (No. 3308). There are no specific provisions prohibiting discrimination. According to Article 10, in order to be an apprentice (*çırak*) a person has to be between 14 and 19 years of age. However, there are exceptions to the upper age limit. According to Article 13, workplaces falling within the scope of this Law can employ only apprentices who are younger than 18 under an apprenticeship contract. This rule does not apply to persons who are graduates of vocational and technical education schools and to those who have a certificate of assistant mastership (*kalfa*). As stipulated in Article 4 of the Labour Law and Article 13 of the Law on Vocational Education, labour law does not apply to those who work under apprenticeship contracts.<sup>134</sup>

Age limits apply to apprenticeships. Otherwise, there are no other limitations based on prohibited grounds. However, there are also no specific provisions for protection against discrimination. Although municipalities, along with İŞKUR, provide vocational training courses, opportunities for vocational training for older persons are still very limited.

---

<sup>132</sup> CRPD (2015), *Initial Report on the Convention on the Rights of Persons with Disabilities based on Article 35 of the Convention*, Turkey, p. 50, p. 46 (grammatical error in the original), available at: [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD%2fC%2fTUR%2f1&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD%2fC%2fTUR%2f1&Lang=en).

<sup>133</sup> CRPD (2015), *Initial Report on the Convention on the Rights of Persons with Disabilities based on Article 35 of the Convention*, Turkey, p. 50, available at: [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD%2fC%2fTUR%2f1&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD%2fC%2fTUR%2f1&Lang=en).

<sup>134</sup> The phrase 'without prejudice to the provisions on occupational health and safety' in this clause was deleted on 20 June 2012 by Law No. 6331.

### **3.2.5 Membership of, and involvement in, an organisation of workers or employers, or any organisation whose members carry on a particular profession, including the benefits provided for by such organisations (Article 3(1)(d))**

In Turkey, national legislation prohibits discrimination in relation to membership of and involvement in workers' or employers' organisations, as formulated in the directives on four of the five grounds (excluding sexual orientation) and for both private and public employment.

This prohibition is stipulated in Article 5(4) of the Law on the Human Rights and Equality Institution of Turkey, which covers 'associations, foundations, trade unions, political parties and occupational organisations'. Although the formulation in the directives is not strictly followed, as the workers' or employers' organisations or any organisation whose members carry on a particular profession can be established in the form of association, foundation or trade union in Turkish law, there seems to be no contradiction with the directives in that regard.

### **3.2.6 Social protection, including social security and healthcare (Article 3(1)(e) Directive 2000/43)**

In Turkey, national legislation prohibits discrimination in social protection, including social security and healthcare as formulated in the Racial Equality Directive.

Article 5(1) of the Law on the Human Rights and Equality Institution of Turkey prohibits discrimination in the provision of social security and healthcare. Under Article 3(2), non-discrimination grounds are limited to race/ethnicity, religion/belief, disability and age. Sexual orientation is excluded.

The constitutional and legal provisions that regulate social protection do not contain a prohibition on discrimination. According to Article 60 of the Constitution, 'everyone has the right to social security'. The Law on Social Insurance and General Health Insurance and the Law on Individual Pension Savings and Investment System (No. 4632) do not have provisions that relate to any of the prohibited grounds, except for disability. However, Article 10, which encompasses a general prohibition on discrimination, is applicable to all rights and freedoms set forth in the Constitution. Along with Article 11, on the supremacy and binding force of the Constitution, this enables the direct applicability of the Constitution's non-discrimination clause, so the lack of specific provision in respect of discrimination in these laws can be eliminated.

The provisions on disability are for positive measures such as early retirement (Article 25 of the Law on Social Insurance and General Health Insurance). Persons with disabilities who have never been employed or who cannot work due to disability and children with disabilities whose families are economically deprived receive a disability pension (under Law No. 2022). The amount of monthly disability pension varies in accordance with the degree of disability and ranges between one fourth and two fifths of the minimum wage.<sup>135</sup> The medical treatment costs of persons who receive a disability pension are covered by general health insurance. As of October 2018, the number of persons receiving a disability pension was around 600 000.<sup>136</sup>

---

<sup>135</sup> CRPD (2019), *List of issues in relation to the initial report of Turkey – Addendum: Replies of Turkey to the list of issues*, 21 January 2019, p. 22, available at: [https://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD%2fC%2fTUR%2fO%2f1%2fAdd.1&Lang=en](https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD%2fC%2fTUR%2fO%2f1%2fAdd.1&Lang=en).

<sup>136</sup> CRPD (2019), *List of issues in relation to the initial report of Turkey – Addendum: Replies of Turkey to the list of issues*, 21 January 2019, p. 22, available at: [https://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD%2fC%2fTUR%2fO%2f1%2fAdd.1&Lang=en](https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD%2fC%2fTUR%2fO%2f1%2fAdd.1&Lang=en).

The Law on Social Insurance and General Health Insurance requires that, aside from the premiums paid, out-of-pocket contributions should also be paid in order to receive health services. These contributions have become a barrier for people in poorer sectors of society. Although in certain cases these contributions are reimbursed, such reimbursements are made only after payment of the contributions, subject to submission of the requisite documents. Persons with low income and education levels often may not know about the possibility of reimbursement and are not equipped with the resources to deal with bureaucracy.

Amendments made to Article 68 of the Law on Social Insurance and General Health Insurance in 2009 extended the list of health services that require contributions to cover in-patient treatments and orthoses and prostheses. Although there is an upper limit for the contributions to be paid, the amendments made it harder for persons with disabilities to afford some health services.

Since they first entered Turkey in April 2011, Syrian refugees have been provided with free health services. While Syrian refugees who are under temporary protection have the right to receive primary, secondary, emergency and tertiary care, those who are not can only access emergency health services.<sup>137</sup>

Again, Article 7 of the Law on Civil Servants prohibits discrimination on enumerated grounds by civil servants while carrying out their duties. While the provision does not explicitly mention the provision of social services, as these services are provided by the civil services the prohibition also covers discrimination in the provision of social services.

a) Article 3(3) exception (Directive 2000/78)

As there is no specific law transposing either of the directives, there are no exceptions.

### **3.2.7 Social advantages (Article 3(1)(f) Directive 2000/43)**

In Turkey, national legislation prohibits discrimination in social advantages, as formulated in the Racial Equality Directive.

Article 5(1) of the Law on the Human Rights and Equality Institution of Turkey prohibits discrimination in the provision of 'social assistance'. Under Article 3(2), non-discrimination grounds are limited to race/ethnicity, religion/belief, disability and age. Sexual orientation is excluded. Under Article 4(d) of the Law on Social Services, no distinction on the basis of class, race, language, religion, sect or regional differences can be observed in the conduct and provision of social services.

Social advantages are provided generally on the basis of income, old age and disability. Irrespective of income, everyone above the age of 65 years can use public transportation free of charge.<sup>138</sup> Persons with disabilities can benefit from free or discounted public transportation provided by various municipalities. Both the national Government and local governments give welfare benefits to poor persons and families. Persons with disabilities and their families can, under certain conditions, benefit from cash benefits.

A Government policy initiated in 2002, with the support of the World Bank, provides conditional child grants to lower-income families which do not have any social security coverage. Known as 'conditional cash transfer', it provides monthly stipends per child for children of both pre-school and school age. Payment is conditional on school enrolment for children of school age and on regular health checks for children of pre-school age. The

<sup>137</sup> Ombudsman Institution of the Republic of Turkey (hereafter 'Ombudsman Institution') (2018), *Syrians in Turkey: Special Report*, pp. 87-88, available at: <https://www.ombudsman.gov.tr/syrians/report.html#p=1>.

<sup>138</sup> Regulation on Free of Charge or Discounted Travel Cards (*Ücretsiz veya İndirimli Seyahat Kartları Yönetmeliği*), *Official Gazette*, 4 March 2014.

amounts vary based on the gender of the child (more for girls than boys) and the level of schooling (more for children at secondary level than for those at elementary school).<sup>139</sup> Initially introduced as a pilot programme in six provinces, the policy began to be implemented across the country in 2005. A similar social subsidy to increase schooling is the free distribution by the Ministry of Family and Social Policies of school materials and lunch assistance to families in need.

In June 2017, the conditional cash transfer was extended to refugee children, reaching 72 000 beneficiaries as of the end of 2018. The Government aims to reach 230 000 refugee children.<sup>140</sup> Moreover, Syrian refugees living under temporary protection (those living both inside and outside the camps) are provided with cash and in-kind social assistance distributed by the Social Assistance and Solidarity Foundations, including special assistance given to orphans, widows, the elderly and individuals with disabilities. Refugees staying inside and outside the camps are given special cards worth TRY 50 (EUR 6.60) and TRY 100 (EUR 13.20) per person per month respectively for needs such as food shopping. Elderly refugees and refugees with disability are given TRY 120 (EUR 15.80) per person per month. In addition, municipalities hosting large refugee populations living outside the camps also distribute in-kind and cash assistance.<sup>141</sup>

Although the category of social advantages is not addressed by the national legislation from a discrimination point of view, the provision of social advantages can be interpreted as a category of services, and Article 122 of the Turkish Penal Code prohibits discrimination in the provision of services available to the public. Article 7 of the Law on Civil Servants prohibits discrimination by civil servants while carrying out their duties. This prohibition should also cover the provision of social advantages. Nevertheless, judicial interpretation is still required.

In Turkey, the lack of definition of social advantages, combined with the discriminatory definition of minorities adopted by the state, raises problems.

Until 2013, the Turkish Government provided an exclusive social advantage to mosques, covering their electricity bills from the budget allocated to the Directorate of Religious Affairs, a subsidy denied to other places of worship belonging to the Christian, Jewish and Alevi faiths. Pursuant to an amendment in the Electricity Market Law (No. 6446) on 30 March 2013, electricity bills for all places of worship are now covered by the state. In its report to the UN Human Rights Council's Working Group on the Universal Periodic Review, the Turkish Government reported that 387 churches and synagogues were benefiting from 'this right' at the beginning of 2014.<sup>142</sup>

However, since the definition of what constitutes a 'place of worship' continues to be in the exclusive domain of the Government, only those faiths recognised by the Government are entitled to this social advantage. The Alevis, whose religion/denomination is not officially recognised, continue to be excluded from this social advantage, a practice the ECtHR judged to be discriminatory in a unanimous ruling issued in 2014 in the case of *Cumhuriyetçi Eğitim ve Kültür Merkezi Vakfı v. Turkey*.<sup>143</sup> The ECtHR concluded that *cemevis* were places of worship for the Alevis and that the Turkish Government's exclusion of *cemevis* from a social advantage granted to places of worship under Turkish law amounted to discrimination. The ECtHR held that the exclusion of *cemevis* from the

<sup>139</sup> The payments are TRY 35 to TRY 60 (approximately EUR 5 to EUR 8.50) per child.

<sup>140</sup> Ombudsman Institution (2018), *Syrians in Turkey: Special Report*, pp. 79-80, available at: <https://www.ombudsman.gov.tr/syrians/report.html#p=1>.

<sup>141</sup> Ombudsman Institution (2018), *Syrians in Turkey: Special Report*, pp. 103-106, available at: <https://www.ombudsman.gov.tr/syrians/report.html#p=1>.

<sup>142</sup> UN Human Rights Council (2014), *National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21*, Turkey, submitted to the UN Human Rights Council Working Group on the Universal Periodic Review twenty-first session: 19-30 January 2015, p. 7, available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G14/194/36/PDF/G1419436.pdf?OpenElement>.

<sup>143</sup> *Cumhuriyetçi Eğitim ve Kültür Merkezi Vakfı v. Turkey*, No. 32093/10, 2 December 2014.

exemption from paying electricity bills granted to other places of worship violated Article 14, in conjunction with Article 9, of the ECHR. Similarly, in a judgment issued in May 2016, the ECtHR found the inability of Jehovah's Witnesses to obtain from local authorities an appropriate place to engage in worship to be an infringement of their freedom of religion as protected under Article 9.<sup>144</sup>

On 26 April 2016, the Grand Chamber of the ECtHR issued a precedent-setting judgment finding Turkey to have violated the rights of the Alevi minority under Article 9 (on freedom of religion) and Article 14 (on non-discrimination).<sup>145</sup> Building on earlier Chamber judgments which had addressed various individual human rights issues raised by the Alevi minority – such as mandatory religion courses,<sup>146</sup> the mandatory indication of religion in official identity documents<sup>147</sup> and the Government's refusal to grant an Alevi foundation an exemption from paying electricity bills that was granted to Sunni places of worship<sup>148</sup> – the Grand Chamber addressed Turkey's policies on the Alevis in their entirety. Noting that Alevis face numerous problems with regard to the organisation of their religious life; the right of parents not to have their children attending primary and secondary schools to take mandatory religion classes teaching the Sunni faith and interpretation of Islam; and the lack of legal status of their religious leaders (*dedes*) and absence of any institution to train personnel to deliver their religious services, the Grand Chamber concluded that the Alevi faith was excluded from all benefits enjoyed by the recipients of Sunni religious public services. The non-recognition of the Alevi faith and the absence of a clear legal framework governing such unrecognised religious minorities caused numerous legal, organisational and financial problems for the Alevi community – such as an inability to access the courts and to receive donations – and subjugated the Alevis to the good will of the authorities, in violation of Article 9. In respect of Article 14, the Grand Chamber concluded that the Alevis received less favourable treatment than the beneficiaries of the religious public services provided by the Diyanet, despite being in a situation comparable with that of the Sunni majority. Pointing out that the religious services provided by the Diyanet to the holders of the Sunni faith were regarded as a public service and received substantial funds from the state budget, and indeed were almost entirely subsidised by the state, the Grand Chamber found that depriving the Alevis of comparable status on the ground that their faith was classified as a 'Sufi order' by the authorities constituted differential treatment that lacked an objective and reasonable justification. While the judgment was widely covered in the national media, it did not generate any reaction from the Government. The execution processes for these judgments are still pending before the Committee of Ministers. On 18 October, the Turkish Government issued a new Action Plan, but it is far from providing an effective resolution of the violation and its consequences.<sup>149</sup>

### 3.2.8 Education (Article 3(1)(g) Directive 2000/43)

In Turkey, national legislation prohibits discrimination in education, as formulated in the Racial Equality Directive.

Article 5(1) of the Law on the Human Rights and Equality Institution of Turkey prohibits discrimination in the provision of education. Under Article 3(2), non-discrimination grounds are limited to race/ethnicity, religion/belief, disability and age. Sexual orientation is excluded. While migrants are not explicitly specified as right-bearers, the law's exceptions

<sup>144</sup> *Association for Solidarity with Jehovah Witnesses and Others v. Turkey*, Nos. 36915/10 and 8606/13, 24 May 2016.

<sup>145</sup> *İzzettin Doğan and Others v. Turkey [GC]*, No. 62649/10, 26 April 2016.

<sup>146</sup> *Hasan and Eylem Zengin v. Turkey*, No. 1448/04, 9 January 2007; *Mansur Yalçın and Others v. Turkey*, No. 21163/11, 16 September 2014.

<sup>147</sup> *Sinan Işık v. Turkey*, No. 21924/05, 2 February 2010.

<sup>148</sup> *Cumhuriyetçi Eğitim ve Kültür Merkezi Vakfı v. Turkey*, No. 32093/10, 2 December 2014.

<sup>149</sup> Communication from Turkey concerning the cases *Zengin Group v. Turkey* (Application No. 448/04), *İzzettin Doğan and Others Group v. Turkey* (Application No. 62649/10), and *Cumhuriyetçi Eğitim ve Kültür Merkezi Vakfı v. Turkey* (Application No. 32093/10), DH-DD(2019)1214, 18 October 2019, available at: [https://hudoc.exec.coe.int/eng?i=DH-DD\(2019\)1294E](https://hudoc.exec.coe.int/eng?i=DH-DD(2019)1294E).



clause refers to the conditions imposed on and the treatment of non-nationals for the purpose of their entry into and residence in Turkey but not their access to public services, including education (Article 7(g)). By implication, migrants arguably have the right to be free from discrimination in the field of education. On the other hand, the absence of discriminatory provisions against migrants in the anti-discrimination law does not mean that other laws may not contain such provisions or that discriminatory practice does not exist.

According to Article 42 of the Constitution, primary education is compulsory and free of charge in public schools, and Turkish is the sole language of instruction in education. Education at various levels is covered by the following legislation: Law on Primary Education (No. 222); Basic Law on National Education (No. 1739); Law on Vocational Training (No. 3308); Higher Education Law (No. 2547); Law on Unification of Education (No. 430); Law on Eight-year Compulsory and Uninterrupted Education (No. 4306); Law on Foreign Language Education and Teaching of Different Languages and Dialects of Turkish Citizens (No. 2923) and the Law on Private Education Institutions (No. 5580). A prohibition on discrimination in education, however, is found only in Article 4 of the Basic Law on National Education, in which the only prohibited grounds are language, race, disability, gender and religion, and in Article 15 of the Law on Persons with Disabilities. The mandatory school age is 69 months and the mandatory minimum period of schooling is 12 years.

At the end of the 2000s, the Government started to take minimal steps to educate pupils on anti-discrimination. As reported by ECRI, 'an obligatory anti-discrimination class was taught to all pupils as their first class of the school year' at the start of the 2009-2010 school year.<sup>150</sup> The Ministry of National Education also carried out a study to review all textbooks to eliminate discriminatory content, although 'a subsequent study has highlighted the need for further progress in this field'.<sup>151</sup> On the other hand, despite some improvements in recent years, the textbooks used in secondary education contain content that is discriminatory against non-Muslim minorities. This applies in particular to the sections in history textbooks on the National Liberation War and the establishment of the Republic of Turkey. While the 10th-grade history textbook was amended in 2013 in response to complaints from the Syriac community,<sup>152</sup> discriminatory content about missionaries and minorities remains.<sup>153</sup>

Article 89 of the Law on Foreigners and International Protection gives all applicants and beneficiaries of international protected access to primary and secondary education.<sup>154</sup> In addition, there are 'temporary education centres', accredited by the Ministry of National Education and staffed with Syrian teachers, using a modified Syrian Arabic curriculum. As of 31 December 2019, over 1.6 million children are under temporary protection, and more than 680 000 Syrian and other refugee students were enrolled in public schools and temporary education centres across the country; over 11 800 out-of-school children were enrolled in the Accelerated Learning Programme; and more than 7 500 children benefited from Turkish language classes.<sup>155</sup> In the 2017-2018 academic year, the number of school-age Syrian children was reported to be 976 000, of whom 619 000 (63 %) were receiving

---

<sup>150</sup> ECRI (2011), *Report on Turkey (fourth monitoring cycle)*, CRI(2011)5, Strasbourg, p. 7, available at: <https://rm.coe.int/fourth-report-on-turkey/16808b5c7e>.

<sup>151</sup> ECRI (2011), *Report on Turkey (fourth monitoring cycle)*, CRI(2011)5, Strasbourg, p. 7, available at: <https://rm.coe.int/fourth-report-on-turkey/16808b5c7e>.

<sup>152</sup> European Commission (2013), *Turkey 2013 Progress Report*, Brussels, p. 61, available at: [https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key\\_documents/2013/package/tr\\_rapport\\_2013\\_en.pdf](https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key_documents/2013/package/tr_rapport_2013_en.pdf).

<sup>153</sup> European Commission (2019), *Turkey 2019 Report*, Brussels, 29 May 2019, pp. 32 and 39, available at: <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20190529-turkey-report.pdf>.

<sup>154</sup> Law on Foreigners and International Protection (*Yabancılar ve Uluslararası Koruma Kanunu*), No. 6458, 4 April 2013.

<sup>155</sup> UNICEF (2019), *UNICEF Turkey, Humanitarian Situation Report No. 36*, available at: <https://www.unicefturk.org/public/uploads/files/UNICEF%20Turkey%20Humanitarian%20Situation%20Report%20No.%2036%20-%20End-Year%202019.pdf>.

education. Of the latter category, 267 000 were schooled in temporary classrooms, while around 350 000 received education in public schools.<sup>156</sup>

In their applications to the Ombudsman Institution, refugee children raised several issues that were impeding their access to quality education. Among other issues, they complained of being subjected to exclusion and discrimination in schools; the inadequacy of Turkish-language courses; the overcrowding of classrooms; and the failure of schools and administrators to resolve these problems.<sup>157</sup> In its special report on Syrian refugees, the Ombudsman Institution noted the 'significant increase' in the number of Syrian students who have access to education and in the number of those students in public schools. However, it still concluded that the education level of Syrian refugees in Turkey is 'far below the national average', noting that 33 % are illiterate<sup>158</sup> and that the number of such children not attending school is still quite high.<sup>159</sup> Among the problems that Syrian students encounter, the Ombudsman Institution highlighted issues arising from language differences; the marked decrease in the schooling of Syrian children at upper grades; families' resistance to enrol their children due to fears of assimilation; financial difficulties; and an unwillingness to send girls to school beyond primary education.<sup>160</sup>

### *Students belonging to religious minorities*

According to the state party report submitted by Turkey to the UN committee, 'the word "minorities" encompasses only groups of persons defined and recognized as such on the basis of multilateral or bilateral instruments to which Turkey is party', and the only international treaty that covers minority rights is the Lausanne Treaty.<sup>161</sup>

In practice, however, protection afforded by the existing legal framework is restricted to Greek Orthodox Christians, Armenian Orthodox Christians and Jews only, leaving out other ethnic and 'non-Muslim' minorities as well as religious groups such as Alevis. None of the ethnic groups in Turkey have minority status on grounds of ethnicity as defined in cultural and/or linguistic terms. Because of the state's restrictive definition of minorities based on 'religion', minorities within Islam are also excluded from its protection. As CERD pointed out in 2016, the Lausanne Treaty does not explicitly prohibit the recognition of other groups as minorities and recommended recognising other groups that may qualify as being ethnic, national or ethno-religious minorities, such as Kurds, Roma, Ezidis and Caferis.<sup>162</sup> The same recommendation was also reflected in reports by the Committee on the Economic, Social and Cultural Rights (CESCR) in 2011<sup>163</sup> and by ECRI in 2016.<sup>164</sup>

---

<sup>156</sup> Ombudsman Institution (2018), *Syrians in Turkey: Special Report*, p. 74, available at: <https://www.ombudsman.gov.tr/syrians/report.html#p=1>.

<sup>157</sup> Ombudsman Institution (2019), *2018 Activities Report (2018 Faaliyet Raporu)*, p. 272, available at: <https://www.ombudsman.gov.tr/idare-faaliyet-raporlari/kdk-faaliyet-raporu-2018/mobile/index.html>.

<sup>158</sup> Ombudsman Institution (2018), *Syrians in Turkey: Special Report*, p. 35, available at: <https://www.ombudsman.gov.tr/syrians/report.html#p=1>.

<sup>159</sup> Ombudsman Institution (2018), *Syrians in Turkey: Special Report*, p. 78, available at: <https://www.ombudsman.gov.tr/syrians/report.html#p=1>.

<sup>160</sup> Ombudsman Institution (2018), *Syrians in Turkey: Special Report*, pp. 78-79, available at: <https://www.ombudsman.gov.tr/syrians/report.html#p=1>.

<sup>161</sup> CERD (2007), *Third periodic reports of States parties due in 2007, Turkey*, CERD/C/TUR/, 13 February 2008, para. 27; HRC (2011), *Initial reports of States parties, Turkey*, CCPR/C/TUR/1, 13 April 2011, para. 408. Section III of the Treaty on the protection of minorities guarantees non-Muslim minorities of Turkey equality before the law and the right to establish, control and manage their own institutions, including schools, with the right to use their own language therein, and it obliges Turkey to provide instruction in primary schools in minority languages in towns and districts where a considerable proportion of non-Muslim nationals are resident.

<sup>162</sup> CERD (2016), *Concluding observations on the combined fourth to sixth periodic reports of Turkey*, CERD/C/TUR/CO/4-6, para. 14, available at: <https://digitallibrary.un.org/record/821788>.

<sup>163</sup> CESCR (2011), *Concluding observations of the Committee on Economic, Social and Cultural Rights, Turkey*, E/C.12/TUR/CO/1, para. 10.

<sup>164</sup> ECRI (2016), *Report on Turkey (fifth monitoring cycle)*, CRI(2016)37, Strasbourg, para. 73, available at: <https://rm.coe.int/fifth-report-on-turkey/16808b5c81>.

Although the term 'non-Muslim minorities' is not limited to Armenian Orthodox Christians, Jews or Greek Orthodox Christians, the Law on Private Education Institutions (Law No. 5580), in Article 2(e), defines 'minority schools' as 'private schools of pre-school education, primary education and secondary education, established by Greek Orthodox Christians, Armenian and Jewish minorities which is guaranteed by the Lausanne Treaty that students belonging to these minorities and having Turkish citizenship are eligible to enrol'. This definition leaves out other religious minorities such as Arameans (Syriacs) and all other ethnic or religious minorities. The only exception is a pre-primary school established by the Arameans (Syriacs) in Istanbul, following a judgment by the administrative court in 2013.<sup>165</sup>

In addition, Law No. 5580 limits attendance at these schools to members of minorities with Turkish citizenship, leaving the children of regular or irregular migrant families with no access to these schools. The Basic Law on National Education (No. 1739) sets out the provisions that are binding on all education institutions, either public or private, in the Turkish education system without any distinction; their application includes, but is not limited to, curricula and weekly schedules. Therefore, non-Muslim minority schools do not display any difference in terms of general objectives and principles in comparison with other public schools. Official figures provided by the state in 2018 show that in 1999 the number of schools belonging to non-Muslim minorities was 84, and by 2018 it had decreased to 77.<sup>166</sup> The statistics revealed that, as a result of the current situation, the number of schools and pupils have been decreasing over the past decades. The numbers of minority schools and students who are enrolled in these schools in the school year 2018-2019 are as follows:<sup>167</sup>

	<b>Number of Schools</b>	<b>Number of Students</b>
<b>Pre-primary education</b>	25	768
<b>Primary education</b>	19	1070
<b>Secondary education</b>	19	1061
<b>Upper secondary education</b>	11	871
<b>Total</b>	74	3770

In Turkey, the general approach to education for pupils belonging to religious minorities raises problems, some of which are common to all minorities while others are specific to certain groups. An example of the former concerns the mandatory religion courses that are taught in primary and secondary schools pursuant to Article 24 of the Constitution. Although a 1990 decision by the Ministry of National Education exempted Christian and Jewish students from these classes,<sup>168</sup> in practice the exemption is limited to the officially recognised non-Muslim minorities (Jews, Armenian and Greek Orthodox Christians), excluding other Christian groups.

In order to be exempted, Armenian, Greek Orthodox and Jewish students are required to submit a request signed by their parents and to 'prove' and disclose their faith by producing

<sup>165</sup> Kaya, N. (2015), 'Discrimination in the Turkish Education System Based on Colour, Ethnic Origin, Language, Religion and Beliefs', ('Türkiye Eğitim Sisteminde Renk, Etnik Köken, Dil, Din ve İnanç Temelli Ayrımcılık'), Minority Rights Group International, History Foundation (*Tarih Vakfı*), Istanbul, p. 32, available at: <https://minorityrights.org/wp-content/uploads/2015/10/EN-turkiye-egitim-sisteminde-ayirimcilik-24-10-2015.pdf>.

<sup>166</sup> CRC (2000), *Initial reports of States parties due in 1997, Addendum, Turkey*, CRC/C/51/Add.4, 8 August 2000, para. 399.

<sup>167</sup> Ministry of National Education, 'National Education Statistics: Formal Education' ('Milli Eğitim İstatistikleri: Örgün Eğitim') (2018-19), pp. 55, 70, 71, 129, available at: [https://sgb.meb.gov.tr/meb\\_iys\\_dosyalar/2019\\_09/30102730\\_meb\\_istatistikleri\\_orgun\\_egitim\\_2018\\_2019.pdf](https://sgb.meb.gov.tr/meb_iys_dosyalar/2019_09/30102730_meb_istatistikleri_orgun_egitim_2018_2019.pdf).

<sup>168</sup> Ministry of National Education, Religious Education General Directorate for Higher Education and Training Committee decision, 9 July 1990.



official identity documents on which their religion is indicated. This requirement contradicts a 2006 law which allows citizens to leave the 'religion' section on their identity document blank.<sup>169</sup> For non-Muslim parents who want their children to be exempt from religion courses, exercising the right not to identify their religion on their identity documents is not an option in practice. In fact, requests submitted by parents who had opted to leave the 'religion' section on their identity documents blank have been rejected.<sup>170</sup> Following the adoption in 2016 of new identity cards that do not include a box for religion, it has become more problematic for parents to 'prove' their religion or belief.

The minority group that has been most vocal against mandatory religion classes has been the Alevis, who took the issue to the ECtHR. In 2007, the Court found that the content of these classes violated Article 2 of the First Additional Protocol of the ECHR,<sup>171</sup> on the ground that the textbooks gave disproportionate weight to teaching Sunni Islam in relation to other religious and philosophical beliefs. The ECtHR also found that the obligation of non-Muslim parents to disclose their identity and religion in order to get an exemption for their children violated the right to education in conformity with their own religious and philosophical convictions, noting that the absence of a legal basis leaves exemption decisions to the discretion of school administrators, leading to arbitrary rejections.

The judgment made clear that the authorities were obliged to grant unconditional exemptions to all students, irrespective of their religion, denomination or belief. Turkey could have chosen any one of the following general measures: making the courses optional, completely revising the content of the courses or taking measures to ensure that parents and students are provided with an exemption without having to disclose their faith.<sup>172</sup> The course continues to teach a particular religion and fails to fulfil the criteria of inclusiveness, impartiality and lack of indoctrination.<sup>173</sup>

In 2014, the ECtHR revisited the issue in the case of *Mansur Yalçın and Others v. Turkey*. According to research conducted five years after the judgment, provided in a Rule 9.2 Communication to the Committee of Ministers made in 2019 with regard to the execution of the above-mentioned judgments of the ECtHR, 'among 1 782 pages of six "Religious Culture and Ethics" books of 7-12th years, Alevism is mentioned only in 20 pages'.<sup>174</sup> Both the content of the classes and the exemption process have not been amended since 2007, and therefore both judgments of the ECtHR are still awaiting execution.<sup>175</sup> In addition, in 2019, administrative courts have still been denying attempts to be exempted from mandatory religious classes.<sup>176</sup> One individual application in respect of mandatory religious

---

<sup>169</sup> The ECtHR had, however, found this 'reform' to be inadequate to ensure the protection of freedom of religion. *Sinan Işık v. Turkey*, No. 21924/05, 2 February 2010. This ECtHR judgment remains unimplemented.

<sup>170</sup> Altıparmak, K. (2013), *Hasan ve Eylem Zengin/Türkiye Kararının Uygulanması: İzleme Raporu* (Implementation of Hasan and Eylem Zengin Judgment: Monitoring Report), Ankara, p. 10, available at: [http://aihmiz.org.tr/files/01\\_Hasan\\_ve\\_Eylem\\_Zengin\\_Rapor\\_TR.pdf](http://aihmiz.org.tr/files/01_Hasan_ve_Eylem_Zengin_Rapor_TR.pdf) (citing decision: Ankara First Administrative Court, judgment E.2012/1133, K. 2012/2367, 11 October 2012).

<sup>171</sup> *Hasan and Eylem Zengin v. Turkey*, No. 1448/04, 9 January 2007.

<sup>172</sup> Altıparmak, K. (2013), *Hasan ve Eylem Zengin/Türkiye Kararının Uygulanması: İzleme Raporu* (Implementation of Hasan and Eylem Zengin Judgment: Monitoring Report), Ankara, pp. 3-4, available at: [http://aihmiz.org.tr/files/01\\_Hasan\\_ve\\_Eylem\\_Zengin\\_Rapor\\_TR.pdf](http://aihmiz.org.tr/files/01_Hasan_ve_Eylem_Zengin_Rapor_TR.pdf).

<sup>173</sup> Yıldırım, M. (2012), *An Evaluation of the Curriculum of the Religious Culture and Ethics Course Instructed during the 2011-2012 Academic Year (2011-2012 Öğretim Yılında Uygulanan Din Kültürü ve Ahlak Bilgisi Dersi Programına İlişkin bir Değerlendirme)*, pp. 7-8, available at: <http://www.aihmiz.org.tr/aktarimlar/dosyalar/1349647350.pdf>.

<sup>174</sup> Communication from a NGO (ADO Alevi Philosophy Center) (30 October 2019) in the cases of *Zengin, Cumhuriyetçi Eğitim ve Kültür Merkezi Vakfı and İzzettin Doğan and Others v. Turkey* (Zengin group), 20 October 2019. (Applications No. 1448/04, 32093/10, 62649/10), DH-DD(2019)1302, 8 November 2019, available at: [http://hudoc.exec.coe.int/eng?i=DH-DD\(2019\)1302E](http://hudoc.exec.coe.int/eng?i=DH-DD(2019)1302E).

<sup>175</sup> European Commission (2019), *Turkey 2019 Report*, Brussels, p. 32, available at: <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20190529-turkey-report.pdf>.

<sup>176</sup> İzmir Regional Administrative Court, 5th Administrative Chamber, E. 2019/299, K. 2019/409 5 March 2019. Gaziantep Regional Administrative Court, Fourth Administrative Chamber, E. 2018/2391, K. 2019/101, 15 January 2019.

classes has been awaiting a hearing before the Constitutional Court, and the judgment is expected to be delivered in 2020.

A law adopted in 2012 introduced new elective courses on religion in secondary schools.<sup>177</sup> The two elective courses explicitly identified in the law are on the Kor'an and the life of the Prophet Mohammed, both concerning the Muslim faith.<sup>178</sup> A circular subsequently adopted by the Ministry of National Education<sup>179</sup> identified a number of further elective courses to be offered in secondary education, including 'Fundamental Religious Knowledge'. Thus, the law increased from two to eight per week the number of hours of religion courses that students can potentially take. From the outset, religious minorities faced difficulties in respect of the implementation of the law. Where non-Muslim students are granted exemption from the mandatory religion course, they may find themselves having to take an elective course on Islam, due to the obligation to obtain a minimum of elective credits and the fact that opening a new elective course requires the written request of at least 10 students.

Another disconcerting Government practice concerns the centralised competitive examinations for entrance to higher education. The Administration for the Selection and Placement of Students decided to include in the 2013 examination 13 questions based on the religion courses. Non-Muslims protested against the decision on the ground that it would result in unequal treatment of minority children who had received an exemption. In response, the Ministry of National Education declared that there would be alternative questions for such students.<sup>180</sup> The 2014 national examination was the first in which students were tested on religion, although the Administration claimed that the questions resembled the questions on philosophy.<sup>181</sup> From 2015, the Administration applied yet another system, whereby students who were not 'legally obliged' to take the religion courses or who took a different curriculum were allowed to answer alternative questions based on the philosophy course, whereas the rest of the students were tested on religion.<sup>182</sup> In 2019, the same system was applied.<sup>183</sup> Students from unrecognised religious minorities continue to be tested on the Sunni denomination of Islam.

### *Students belonging to ethnic minorities*

In Turkey, the general approach to education for pupils belonging to ethnic and linguistic minorities raises problems. Permitting the teaching of minority languages in private courses in 2002 was followed by the opening of Kurdish language and literature departments at public universities from 2009 and the introduction of on-demand elective courses in selected minority languages in secondary schools.<sup>184</sup> From the academic year 2012-2013, public secondary schools started to offer elective courses on demand in selected minority languages (the Kurmanji and Zazaki dialects of Kurdish, the Adige and Abkhaz dialects of Circassian and the Laz language). The various Roma languages were not included among the selected languages. During the academic year 2012-2013, a total of 28 587 students nationwide opted for these elective courses. While 9 714 did not

---

<sup>177</sup> Law on Amendments in Law on Primary Education and Various Other Laws (*İlköğretim ve Eğitim Kanunu ile Bazı Kanunlarda Değişiklik Yapılmasına Dair Kanun*), No. 4306, 30 March 2012.

<sup>178</sup> Law on Amendments in Law on Primary Education and Various Other Laws, No. 6287, 30 March 2012, Article 9.

<sup>179</sup> Ministry of National Education, Circular No. 2012/37, 31 August 2012.

<sup>180</sup> European Commission (2013), *Turkey 2013 Progress Report*, Brussels, p. 54, available at: [https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key\\_documents/2013/package/tr\\_rapport\\_2013\\_en.pdf](https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key_documents/2013/package/tr_rapport_2013_en.pdf).

<sup>181</sup> Statement by the Administration for the Selection and Placement of Students regarding the religion course questions in the 2015 national examination (no longer publicly available on the internet).

<sup>182</sup> Statement by the Administration for the Selection and Placement of Students regarding the religion course questions in the 2015 national examination (no longer publicly available on the internet).

<sup>183</sup> Administration for the Selection and Placement of Students (2019), *Higher Education Institutions Exam Guide-2019 (Yükseköğretim Kurumları Sınavı (YKS) Kılavuzu)*, p. 8, available at: [https://dokuman.osym.gov.tr/pdfdokuman/2019/YKS/kilavuz\\_11022019.pdf](https://dokuman.osym.gov.tr/pdfdokuman/2019/YKS/kilavuz_11022019.pdf).

<sup>184</sup> Law on Amendments in Law on Primary Education and Various Other Laws, No. 6287, 30 March 2012.

express a demand for a specific language, the rest demanded classes in Kurdish and Caucasian languages.<sup>185</sup> The number of students enrolled in Kurdish language courses during the academic year 2012-2013 was 18 847.<sup>186</sup> According to the Turkish Government's report to the UN, a total of 23 697 fifth-grade pupils and 19 896 sixth-grade pupils enrolled in Kurdish, Circassian and Laz language classes in the academic years 2012-2013 and 2013-2014.<sup>187</sup> According to figures from the Ministry of Education, a total of 77 931 students chose this elective course in 2015-2016.<sup>188</sup> Since then, for the years 2016-2019, no official statistics in that regard have been provided. According to figures provided by the Ministry of Education, between 2014 and 2018 only 118 Kurdish-language teachers were appointed to the public schools.<sup>189</sup> The majority of the appointed teachers are unable to teach Kurdish because there is insufficient demand.<sup>190</sup> No Kurdish-language teachers were appointed in 2019.

On 2 March 2014, the Law on the Teaching of and Education in Foreign Languages and the Learning of Different Languages and Dialects by Turkish Citizens was amended to allow the opening of secondary schools providing education in non-official languages.<sup>191</sup> However, the scope of this right is limited to private secondary schools and does not extend to elementary schools or to public secondary schools.

Although not permitted to do so, three NGOs established private elementary schools in Turkey's Kurdish-populated region and commenced providing education on 15 September 2014. The schools, each given a Kurdish name, were opened in the predominantly Kurdish-populated provinces of Diyarbakır, Hakkari and Şırnak. Opened, funded and run on the civil initiative of three NGOs, the schools were immediately closed down by the judicial authorities on the instructions of the Ministry of Interior. Since 2016, no educational facility providing education in Kurdish has existed in Turkey.

#### a) Pupils and students with disabilities

In Turkey, the general approach to education for pupils with disabilities gives rise to problems.

After decades of endorsing the principle of segregation for the education of children with disabilities, which went against its commitments under international human rights norms,<sup>192</sup> today Turkey formally endorses integrated/mainstream education as the ruling principle and special education as the exception.<sup>193</sup>

<sup>185</sup> 'İşte "Seçmeli Kürtçe"nin Türkiye Haritası' ('And here is the Turkey Map of the "Elective Kurdish"'), *Hürriyet*, 6 February 2013, available at: <http://www.hurriyet.com.tr/gundem/22534618.asp>.

<sup>186</sup> European Commission (2013), *Turkey 2013 Progress Report*, Brussels, p. 62, available at: [https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key\\_documents/2013/package/tr\\_rapport\\_2013\\_en.pdf](https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key_documents/2013/package/tr_rapport_2013_en.pdf).

<sup>187</sup> Turkey (2014), *National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21*, submitted to the UN Human Rights Council Working Group on the Universal Periodic Review twenty-first session: 19-30 January 2015, p. 14.

<sup>188</sup> 'Seçtirilmeyen Seçmeli Ders: Kürtçe' ('Non-elective Elective Course: Kurdish'), *Evrensel*, 9 September 2019, available at: <https://www.evrensel.net/haber/386372/sectirilmeyen-secmeli-ders-kurtce>.

<sup>189</sup> Ministry of National Education (2020), *Presidency of Strategy Development*, 24 March 2020, available at: <https://www.tbmm.gov.tr/d27/7/7-25749c.pdf>.

<sup>190</sup> 'Seçtirilmeyen Seçmeli Ders: Kürtçe' ('Non-elective Elective Course: Kurdish'), *Evrensel*, 9 September 2019, available at: <https://www.evrensel.net/haber/386372/sectirilmeyen-secmeli-ders-kurtce>.

<sup>191</sup> Law on the Teaching of and Education in Foreign Languages and the Learning of Different Languages and Dialects by Turkish Citizens (*Yabancı Dil Eğitimi ve Öğretimi ile Türk Vatandaşlarının Farklı Dil ve Lehçelerinin Öğrenilmesi Hakkında Kanun*), No. 6529, 2 March 2014.

<sup>192</sup> The Tohum Autism Early Diagnosis and Education Foundation and Education Reform Initiative (Tohum Türkiye Otizm Erken Tanı ve Eğitim Vakfı ve Eğitim Reformu Girişimi) (2011), *The Status of Integrated Education in Turkey (Türkiye'de Kaynaştırma/Bütünleştirme Yoluyla Eğitimin Durumu)*, p. 20, available at: [http://www.egitimreformugirisimi.org/wp-content/uploads/2017/03/Turkiyede\\_Kaynastirma\\_Butunlestirme\\_Yoluyla\\_Egitimin\\_Durumu.pdf](http://www.egitimreformugirisimi.org/wp-content/uploads/2017/03/Turkiyede_Kaynastirma_Butunlestirme_Yoluyla_Egitimin_Durumu.pdf).

<sup>193</sup> The Tohum Autism Early Diagnosis and Education Foundation and Education Reform Initiative (2011), *The Status of Integrated Education in Turkey*, p. 24, available at: [http://www.egitimreformugirisimi.org/wp-content/uploads/2017/03/Turkiyede\\_Kaynastirma\\_Butunlestirme\\_Yoluyla\\_Egitimin\\_Durumu.pdf](http://www.egitimreformugirisimi.org/wp-content/uploads/2017/03/Turkiyede_Kaynastirma_Butunlestirme_Yoluyla_Egitimin_Durumu.pdf).

The following provisions regulate the special education of pupils with disabilities. Article 42 of the Constitution entrusts the state with the duty to 'take necessary measures to rehabilitate those in need of special education due to their conditions so as to render such people useful to society'; Article 8 of the Basic Law on National Education stipulates that the state shall adopt special measures for 'children who need special education and protection'; Article 12 of the Law on Primary Teaching and Education requires children with disabilities to be provided with special education and teaching at primary school level; and Article 39 of Law on Vocational Education provides for special vocational courses in order to prepare students with special needs for professional life. Article 35 of the Law on Persons with Disabilities imposes a duty on the state to meet a portion of the education costs for children with disabilities who attend special education institutions.

Following other legislative attempts, 2005 saw the adoption of the Law on Persons with Disabilities, which endorses the principle of mainstream education. Article 15 recognises the right of children with disabilities to access integrated education on the basis of their special situations. While the provision states that the education of students with disabilities 'cannot be prevented on the basis of any reason', it does not prohibit discrimination. The 2006 Regulation on Special Education Services puts forth the rules and principles to be followed for the establishment of special education schools, but stresses that special education is the exception to mainstream education.<sup>194</sup> The July 2012 amendments to the Regulation on Special Education Services were largely about terminology, with very little potential positive impact on implementation.<sup>195</sup> Although it was stated in the Annual Presidential Programme 2019 that 'the quality of services for students in need of special education will be improved', that was not case in 2019, and the targets could not be achieved.<sup>196</sup>

The existing legal framework classifies children with disabilities as children who can be placed in an inclusive class or in a special education institution. The principles that should be followed and the criteria that should be considered are regulated in a by-law on special education services that was issued in 2018.<sup>197</sup> The type of education that will be provided to the children with disabilities is assessed and determined by the counselling and research centres established by the Ministry of Education. The evaluation of children with disabilities is carried out at the request of school administrations or parents, or, if the child is older than 18, at the child's own request. Following an educational assessment and diagnosis, children with disabilities are referred to public special education schools, special education classes, full-time inclusive/integration classes or private special education institutions.

The implementation of these laws and regulations concerning mainstream education lags far behind the legal framework. Mainstream education facilities, transportation to these schools, educative tools (charts, maps etc.) and other education materials are not accessible to most children with disabilities. Neither teachers in mainstream education nor students without disabilities and their families receive training in this regard. Students with disabilities tend to be excluded by their peers, whose families express discomfort regarding the presence of students with disabilities in classrooms.<sup>198</sup> Studies conducted in these schools show that the teachers lack the training and skills to address these problems and

<sup>194</sup> The Tohum Autism Early Diagnosis and Education Foundation and Education Reform Initiative (2011), *The Status of Integrated Education in Turkey*, pp. 21-23, available at: [http://www.egitimreformugirisimi.org/wp-content/uploads/2017/03/Turkiyede\\_Kaynastirma\\_Butunlestirme\\_Yoluyla\\_Egitimin\\_Durumu.pdf](http://www.egitimreformugirisimi.org/wp-content/uploads/2017/03/Turkiyede_Kaynastirma_Butunlestirme_Yoluyla_Egitimin_Durumu.pdf).

<sup>195</sup> Sabancı University (2013), *Towards a Barrier-Free Turkey: Where do we Stand? The Status Quo and Proposals* (Engelsiz Türkiye için: Yolun Neresindeyiz? Mevcut Durum ve Öneriler), p. 179, available at: [https://gazetesu.sabanciuniv.edu/sites/gazetesu.sabanciuniv.edu/files/2013/13019\\_sabanci\\_rapor\\_tr.pdf](https://gazetesu.sabanciuniv.edu/sites/gazetesu.sabanciuniv.edu/files/2013/13019_sabanci_rapor_tr.pdf).

<sup>196</sup> Presidency of the Republic of Turkey (2018), Annual Presidential Programme 2019 (2019 Yılı Cumhurbaşkanlığı Yıllık Programı), p. 78, available at: [http://www.sbb.gov.tr/wp-content/uploads/2018/11/2019\\_Yili\\_Cumhurbaşkanlığı\\_Yıllık\\_Programı.pdf](http://www.sbb.gov.tr/wp-content/uploads/2018/11/2019_Yili_Cumhurbaşkanlığı_Yıllık_Programı.pdf). Also available in *Official Gazette*, 27 October 2018.

<sup>197</sup> *Official Gazette*, 7 July 2018.

<sup>198</sup> 'Aksaray'da veliler otizmli çocukları yuhaladılar' ('Parents booed children with autism in Aksaray'), *Birgün*, 7 November 2019, available at: <https://www.birgun.net/haber/aksaray-da-veliler-otizmli-cocuklari-yuhaladilar-275500>.

feel desperate and frustrated as a result. Of the teachers working in integrated schools, 86.4 % felt that they lacked sufficient knowledge about mainstream education for students with disabilities; 77.1 % said that individualised education programmes were not being prepared for students with disabilities in their classrooms; and 70.9 % said they simply implement the standard curricula for these students.<sup>199</sup>

In 2019, a new strategy was developed by the Ministry of National Education for the years 2019-2023. The fifth objective mentioned in the strategy is to support the physical, spiritual and mental development of individuals by increasing the effectiveness of special education and guidance services. To that end, a 'justice-based' approach model will be developed in education that does not isolate individuals with special educational needs from their peers and reinforces a culture of cohabitation (Objective 5.2).<sup>200</sup> The term 'equality' is used only three times in the strategy paper as a reference to 'equal opportunities', which is in keeping with Government policy to replace the term 'equality' with 'justice' in recent years.

Although statistics are available on the number of children who are registered as having disabilities, there are no up-to-date data on the number or percentage of students with disabilities who have successfully completed their primary education and continued their education in secondary schools. According to a survey published in 2011, the rate of literacy for persons with disabilities is 76.7 %, in comparison with a rate of 95.5 % for the general population.<sup>201</sup> Currently, the only statistics provided by the Government date back to a survey conducted in 2010, which is no more accurate in terms of indicating the extent of the problem. The lack of up-to-date data shared by the authorities also prevents the introduction of appropriate policies to eliminate discrimination against pupils with disabilities in education. As a matter of fact, the CRPD has criticised this situation and recommended that the Government develops and regularly updates a centralised database in which data are disaggregated by age, sex, ethnicity, geographical location including residential settings, and impairment type.<sup>202</sup>

According to the Ministry of National Education's annual report, during the academic year 2018-2019 the total number of students with disabilities receiving integrated or special education was 398 815.<sup>203</sup> The numbers continue to be extremely low in comparison with the estimated total number of children of school age and the number of students with disabilities in higher education. In 2009-2010, the total number of children with disabilities in the age group 0-19 years who received half- or part-time education at pre-school, primary and secondary levels was 116 031. That fell far below the overall population of children with disabilities in that age group, for whom the estimated number in 2010 was

---

<sup>199</sup> The Tohum Autism Early Diagnosis and Education Foundation and Education Reform Initiative (2011), *The Status of Integrated Education in Turkey*, pp. 29, 13, available at:

[http://www.egitimreformugirisimi.org/wp-content/uploads/2017/03/Turkiyede\\_Kaynastirma\\_Butunlestirme\\_Yoluyla\\_Egitimin\\_Durumu.pdf](http://www.egitimreformugirisimi.org/wp-content/uploads/2017/03/Turkiyede_Kaynastirma_Butunlestirme_Yoluyla_Egitimin_Durumu.pdf).

<sup>200</sup> Ministry of National Education (2019), 2019-2023 Strategy Plan (2019-2023 Stratejik Planı), Strategy Development Presidency, Ankara, p. 42, available at:

[http://sgb.meb.gov.tr/meb\\_iys\\_dosyalar/2019\\_12/31105532\\_Milli\\_EYitim\\_BakanIYYY\\_2019-2023\\_Stratejik\\_PlanY\\_31.12.pdf](http://sgb.meb.gov.tr/meb_iys_dosyalar/2019_12/31105532_Milli_EYitim_BakanIYYY_2019-2023_Stratejik_PlanY_31.12.pdf).

<sup>201</sup> CRPD (2015), *Initial Report on the Convention on the Rights of Persons with Disabilities based on Article 35 of the Convention, Turkey*, p. 6, available at:

[http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD%2fC%2fTUR%2f1&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD%2fC%2fTUR%2f1&Lang=en).

<sup>202</sup> CRPD (2019), *Concluding Observations on Initial Report of Turkey*, CRPD/C/TUR/CO/1, para. 63, available at:

<http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsvOO0RvDbzSfy057%2ffih1RyuPPMs4u7aeyVVDXGO7kQaXeKOi4HmWskQKenk8jrF0o0FZVcmmCHHclLeRFN8xZdyiEIIfNklx7v5pDbMNvM2>.

<sup>203</sup> Ministry of National Education (2020), *National Education Statistics: Formal Education (Milli Eğitim İstatistikleri: Örgün Eğitim)* (2018-19), p. 40, available at:

[https://sgb.meb.gov.tr/meb\\_iys\\_dosyalar/2019\\_09/30102730\\_meb\\_istatistikleri\\_orgun\\_egitim\\_2018\\_2019.pdf](https://sgb.meb.gov.tr/meb_iys_dosyalar/2019_09/30102730_meb_istatistikleri_orgun_egitim_2018_2019.pdf).



1 105 630.<sup>204</sup> According to figures provided by the Council of Higher Education, the total number of disabled students in higher education in 2018-2019 was 47 751 out of a total of 7 740 502.<sup>205</sup>

Turkish legislation recognises the right of students with disabilities to receive the special education support that they need because of their impairments. However, only eight hours of individual special education support, or an additional four hours of group special education support monthly, is covered financially by the state. This means one or two hours of special education support per week. This support education is provided at private rehabilitation centres for students enrolled in mainstream schools. Students who need more hours of special education support have to cover the costs themselves. In this context, a total of TRY 3 234 million (EUR 426 million) in education expenses per month was paid by the Ministry of National Education for 380 000 disabled individuals in 2019. However, the Court of Accounts stated that this allocation had not been used effectively or efficiently.<sup>206</sup>

There is a scarcity of special education institutions. On 5 May 2012, in response to a parliamentary question, the Ministry of National Education stated that there are 667 special education institutions within the mandate of the Ministry, 38 of which are fully physically accessible for students with disabilities.<sup>207</sup> The fact that a mere 5.7 % of educational institutions that have been specially established for students with disability are accessible to those students speaks volumes about the state's deliberate neglect of persons with disabilities and the absence of comprehensive planning and coherence in Government policies.

While the UN estimates the number of deaf people in Turkey to be 2.5 million, in 1998 the Turkish Ministry of National Education reported that the number was 400 000, of which 120 000 were reportedly children.<sup>208</sup> The current official schooling data from the Ministry indicate the extremely low level of schooling for deaf children. In the academic year 2018-2019, the total number of deaf children in primary and secondary schools was 3 432.<sup>209</sup>

The ECtHR's 2016<sup>210</sup> and 2018<sup>211</sup> rulings, which found that Turkey's failure to provide reasonable accommodation to a young woman with visual disability and to a university student with physical disability violated the prohibition on discrimination under Article 14 together with the right to education under Article 2 of Protocol 1, did not lead to a change in practice. As of 31 December 2019, both cases are still pending before the Committee of Ministers.<sup>212</sup>

---

<sup>204</sup> The Tohum Autism Early Diagnosis and Education Foundation and Education Reform Initiative (2011), *The Status of Integrated Education in Turkey*, p. 26, available at: [http://www.egitimreformugirisimi.org/wp-content/uploads/2017/03/Turkiyede\\_Kaynastirma\\_Butunlestirme\\_Yoluyla\\_Egitimin\\_Durumu.pdf](http://www.egitimreformugirisimi.org/wp-content/uploads/2017/03/Turkiyede_Kaynastirma_Butunlestirme_Yoluyla_Egitimin_Durumu.pdf).

<sup>205</sup> The Council of Higher Education (2019), 'Student Statistics' ('Öğrenci İstatistikleri') available at: <https://istatistik.yok.gov.tr/>.

<sup>206</sup> Ministry of National Education (2020), *Administration Activity Report-2019 (2019 Yılı İdare Faaliyet Raporu)*, Strategy Development Presidency, Ankara, pp. 61 and 138, available at: [http://sgb.meb.gov.tr/meb\\_iys\\_dosyalar/2020\\_03/12144540\\_28191618\\_Milli\\_EYitim\\_BakanlYYY\\_2019\\_YYI\\_Y\\_Idare\\_Faaliyet\\_Raporu\\_28.02.2020.pdf](http://sgb.meb.gov.tr/meb_iys_dosyalar/2020_03/12144540_28191618_Milli_EYitim_BakanlYYY_2019_YYI_Y_Idare_Faaliyet_Raporu_28.02.2020.pdf).

<sup>207</sup> Sabancı University (2013), *Towards a Barrier-Free Turkey: Where do we Stand? The Status Quo and Proposals*, p. 186, available at: [https://gazetesu.sabanciuniv.edu/sites/gazetesu.sabanciuniv.edu/files/2013/13019\\_sabanci\\_rapor\\_tr.pdf](https://gazetesu.sabanciuniv.edu/sites/gazetesu.sabanciuniv.edu/files/2013/13019_sabanci_rapor_tr.pdf).

<sup>208</sup> 'Turkish Sign Language', prepared as part of Dr. Aslı Özyürek's research project, information previously available at: <http://turkisaret dili.ku.edu.tr/en/tid.aspx> (website no longer online).

<sup>209</sup> Ministry of National Education (2020), *National Education Statistics: Formal Education (2018-19)*, p. 40, available at: [https://sgb.meb.gov.tr/meb\\_iys\\_dosyalar/2019\\_09/30102730\\_meb\\_istatistikleri\\_orgun\\_egitim\\_2018\\_2019.pdf](https://sgb.meb.gov.tr/meb_iys_dosyalar/2019_09/30102730_meb_istatistikleri_orgun_egitim_2018_2019.pdf).

<sup>210</sup> *Çam v. Turkey*, No. 51500/08, 23 February 2016.

<sup>211</sup> *Enver Şahin v. Turkey*, No. 23065/12, 30 January 2018.

<sup>212</sup> Committee of Ministers (2019), *Çam v. Turkey*, No. 51500/08, 23 February 2016, available at: <http://hudoc.exec.coe.int/eng?i=004-37394>.

b) Trends and patterns regarding Roma pupils

In Turkey, there are specific trends and patterns (whether legal or societal) in education regarding Roma pupils, such as segregation.

The fact that there is a lack of public funds in Turkey to cover the basic needs of primary schools means that school administrators are forced to collect contributions from parents in cash or in kind both during registration and throughout the school year. During the collection of these contributions, referred to as 'donations', teachers, parents and children—in particular in schools with a low socioeconomic standing—are placed in a very difficult position, and there are major differences between schools at the higher and lower ends of the socioeconomic scale in terms of the amount of donations collected and the schools' operating revenue. Due to the economic disadvantage of the Roma and similar ethnic groups,<sup>213</sup> they cannot give a sufficient amount in donations. This means that conditions at schools attended by Roma children are much worse than at other schools, and Roma children therefore receive education in insufficient conditions. This in turn serves to deepen the state of inequality among schools.

National legislation prohibits segregation. Article 4(1)(a) of the Law on the Human Rights and Equality Institution of Turkey lists segregation among the enumerated prohibited forms of discrimination.

In 2013, the Government recognised the fact that one of the most important problems facing Roma and similar ethnic groups is access to education.<sup>214</sup> According to ECRI and CERD, literacy rates for Roma are lower than rates for the general population due to lower school completion rates among Roma children.<sup>215</sup> UN Development Programme data indicates that in 2014, the literacy rate in Turkey was 94.5 %.<sup>216</sup> Taking into account the fact that poverty rates are high among the Roma, it is not difficult to surmise that the literacy rate among Roma is lower than the national average; a report published in 2010 estimated literacy rates among Roma to be somewhere between 30 % and 40 %.<sup>217</sup> According to another study of Roma and similar ethnic groups, which was carried out in five provinces, 168 of 460 interviewees were illiterate.<sup>218</sup>

The greatest hurdle to access to education for the Roma is poverty. Due to their dire socioeconomic conditions, exacerbated by the forced displacement generated by urban transformation projects in Roma neighbourhoods (see Section 3.2.10), Roma families are unable to meet the minimum education needs of their children. Absenteeism rates for children from these groups are high due to widespread poverty and a lack of support

---

<sup>213</sup> The term 'Roma' includes Dom, Lom and Rom living in Turkey, whereas 'similar ethnic groups' is also inclusive of Abdals living in Turkey, as they have a similar lifestyle to the Roma. In some places, 'Roma' is used on its own for the sake of brevity, but it should be taken to include all such ethnic groups, including Abdals, that have a similar lifestyle. Therefore, such a term has been used to cover all of these groups as preferred by Roma groups in Turkey.

<sup>214</sup> 'Roman Açılımı Paketi Kasım Ayında Edirne'de Açıklanacak' ('Roma Initiative to be Announced in November in Edirne'), T24, 14 December 2013, available at: <http://t24.com.tr/haber/roman-acilimpaketi-kasim-ayinda-edirne-de-aciklanacak,241886>.

<sup>215</sup> ECRI (2011), *Report on Turkey (fourth monitoring cycle)*, CRI(2011)5, Strasbourg, p. 107, available at: <https://rm.coe.int/fourth-report-on-turkey/16808b5c7e>; CERD (2016), *Concluding observations on the combined fourth to sixth periodic reports of Turkey*, CERD/C/TUR/CO/4-6, para. 27, available at: <https://digitallibrary.un.org/record/821788>.

<sup>216</sup> UN Development Programme (2015), *Human Development Report 2015*, p. 243, available at: [http://hdr.undp.org/sites/default/files/2015\\_human\\_development\\_report.pdf](http://hdr.undp.org/sites/default/files/2015_human_development_report.pdf).

<sup>217</sup> Alp, S. and Taştan, N. (2011), *Monitoring Report on Discrimination Based on Race and Ethnic Roots in Turkey*, 1 January-31 July, (Türkiye'de Irk veya Etnik Köken Temelinde Ayrımcılığın İzlenmesi Raporu 1 Ocak-31 Temmuz 2010, Human Rights Law Research Centre, Istanbul Bilgi University, p. 54, available at: <https://humanrightscenter.bilgi.edu.tr/tr/publication/12-turkiyede-irk-veya-etnik-koken-temelinde-ayrimcign-izlenmesi-raporu/>.

<sup>218</sup> Opişan, A. (2015), *Identification of Factors Impacting the Situation of Roma and Similar Social Groups in Turkey (Türkiye'de Romanlar ve Romanlar Gibi Yaşayan Grupların Durumlarına Etki Eden Faktörlerin Belirlenmesi)*, The Zero Discrimination Association, Istanbul, p. 26.

mechanisms such as tutoring centres. Roma are able to receive their course books free of charge, but since the majority live in cities, they are not eligible for the school transport services provided by the state in rural areas.<sup>219</sup> The only other form of support that the state provides is 'conditional education aid' in the form of monthly payments between TRY 35 and TRY 60 (EUR 4.60 and EUR 7.90) which is discontinued in cases of excessive absenteeism; upon graduation; when the parents start working and receiving social security; or when the family's economic situation improves.<sup>220</sup> Currently there is no data available concerning the number of children of Roma families and families of similar ethnic groups who are receiving this form of aid. Course materials, school uniforms and clothing are prohibitively expensive for Roma families, leading to low levels of school attendance and high drop-out rates.

Roma and similar ethnic groups face multiple obstacles in this regard – such as the lack of financial means to keep their children in school and children having to work so they can contribute to the family economy – which are linked with other elements of social exclusion. Although the Ministry of National Education provides drop-out and absenteeism rates, due to the lack of segregated data on ethnic and religious minorities it is not known what percentage of these figures is represented by Roma children. UNICEF has not gathered data that indicates levels of access to education by ethnic group, and as such there is no information about non-registration at school, late registration, absenteeism or drop-out rates among Roma children. According to UNICEF, children from Roma families and similar ethnic groups rank among the lowest in terms of school attendance.<sup>221</sup> The CRC has pointed out that there is a lack of mechanisms to observe and report on the access of education of all groups, including Roma and similar ethnic groups, and recommends that a comprehensive monitoring system be established.<sup>222</sup> In the European Commission's 2014 *Turkey Progress Report* on Turkey's progress towards EU accession, it reported high school drop-out levels, absenteeism and child labour among Roma children.<sup>223</sup> In its *Turkey 2019 Report*, the European Commission noted that 'Inadequate access to education and high drop-out rates persist, especially at lower and upper secondary levels. Participation in pre-primary education remains very low'.<sup>224</sup> The education system in Turkey offers students who drop out of school numerous options for returning to school. However, it has been noted that Roma families and children often do not have enough information about the opportunities the system offers or about how to get back into school once they have dropped out.<sup>225</sup>

The education system in Turkey has an extremely centralised structure. The curriculum was developed and standardised in a centralised way without taking into account the characteristics of the populations in different areas of the country or their cultural, social and economic particularities. Textbooks are approved in Ankara and no changes can be made in this regard except on the initiative of the central Administration. Roma are not mentioned in the existing curriculum in Turkey or in any instructional materials. Issues around the Roma and similar ethnic groups are not included in events organised by schools

---

<sup>219</sup> Karan, U. (2017), *Ignored and Unequal: Roma Access to the Right to Housing and Education in Turkey*, Minority Rights Group International/The Zero Discrimination Association, pp. 18-19, available at: [https://minorityrights.org/wp-content/uploads/2017/06/MRG\\_Rep\\_ENG.pdf](https://minorityrights.org/wp-content/uploads/2017/06/MRG_Rep_ENG.pdf).

<sup>220</sup> Ministry of Family, Labour and Social Services (2019), *Şartlı Eğitim Yardımı (Conditional Education Aid)*, available at: <https://www.ailevecalisma.gov.tr/tr-tr/ssssosyal-yarimlar-genel-mudurlugu/sartli-egitim-saglik-yardimi/>.

<sup>221</sup> UNICEF (2012), *Türkiye'de Çocuk ve Genç Nüfusun Durumunun Analizi (Analysis of the Situation of Children and Young People in Turkey)*, p. 50, available at: <https://abdigm.meb.gov.tr/projeler/ois/egitim/033.pdf>.

<sup>222</sup> CRC (2012), *Concluding Observations: Turkey*, para. 58-59.

<sup>223</sup> European Commission (2014), *Turkey Progress Report*, Brussels, p. 62, available at: [https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key\\_documents/2014/20141008-turkey-progress-report\\_en.pdf](https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key_documents/2014/20141008-turkey-progress-report_en.pdf).

<sup>224</sup> European Commission (2019), *Turkey 2019 Report*, Brussels, p. 40, available at: <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20190529-turkey-report.pdf>.

<sup>225</sup> Opişan, A. (2015), *Türkiye'de Romanlar ve Romanlar Gibi Yaşayan Grupların Durumlarına Etki Eden Faktörlerin Belirlenmesi (Identification of Factors Impacting the Situation of Roma and Similar Social Groups in Turkey)*, The Zero Discrimination Association, Istanbul, p. 13.



or the Ministry of Education, and as such these cultures are ignored entirely. Furthermore, textbooks contain discriminatory and prejudiced views, and may encourage intolerance. Turkey's education system is not pluralist, and instead of strengthening diversity, it incites discrimination.<sup>226</sup> ECRI recommends that the textbooks used in primary and middle school be reviewed from the perspective of human rights and that any content that incites prejudice, stereotypes or excessively nationalistic be removed.<sup>227</sup>

Another phenomenon encountered by the Roma and similar ethnic groups is that of 'Roma schools'. The schools that children will attend are automatically selected in advance according to the address at which they are registered. Since most Roma live together in particular neighbourhoods, the schools located in those neighbourhoods are primarily attended by Roma children. It has been noted that in the neighbourhoods in Edirne that are populated by Roma, the percentage of Roma studying at certain schools can be as high as 100 %. As the schools attended by Roma generally offer poor-quality education, parents who have the means to do so resort to methods such as paying a 'donation' so that their children can attend a better school.<sup>228</sup> The non-Roma residents of the neighbourhood do not want their children to study with Roma children and therefore change their addresses on paper. As a result, despite the school being located in a mixed neighbourhood, it has no non-Roma students, and in this way the children's school environment has been completely cut off from the rest of society.<sup>229</sup> Other examples of segregation include requiring students to study in different buildings or classrooms based on their social group, or if they remain in the same classroom, having them sit in separate parts of the classroom from other children or intentionally seating all Roma children in the same row, as well as forcing Roma children to study in different schools from non-Roma children.<sup>230</sup> It has been noted that some non-Roma parents do not want their children to sit in the same classroom or the same row as Roma students, and in some cases Roma students are required to study in a separate classroom.<sup>231</sup>

Roma and similar ethnic groups are sometimes subjected to harassment of a discriminatory nature. Cases of harassment are usually not reported to the authorities, and children who are victims of harassment rarely complain to their teachers; for the most part, when it is a teacher who harasses the student, no complaints are filed with the school administration, and when a complaint is filed, no official measures are taken. It has been reported that Roma children are blamed for every problem that arises and that they are humiliated by teachers – for example, by being asked to sit in the back row of the classroom. While

---

<sup>226</sup> Minority Rights Group International (2008), Written Comments by Minority Rights Group International Concerning Turkey for Consideration by the Committee on the Elimination of Racial Discrimination at Its 74th Session, p. 19, available at: [https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/TUR/INT\\_CERD\\_NGO\\_TUR\\_74\\_10204\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/TUR/INT_CERD_NGO_TUR_74_10204_E.pdf).

<sup>227</sup> ECRI (2016), *Report on Turkey (fifth monitoring cycle)*, CRI(2016)37, Strasbourg, para. 88, available at: <https://rm.coe.int/fifth-report-on-turkey/16808b5c81>.

<sup>228</sup> Karan, U. (2017), *Ignored and Unequal: Roma Access to the Right to Housing and Education in Turkey*, Minority Rights Group International/The Zero Discrimination Association, p. 22, available at: [https://minorityrights.org/wp-content/uploads/2017/06/MRG\\_Rep\\_ENG.pdf](https://minorityrights.org/wp-content/uploads/2017/06/MRG_Rep_ENG.pdf).

<sup>229</sup> Kaya, N. (2015), Discrimination in the Turkish Education System Based on Colour, Ethnic Origin, Language, Religion and Beliefs, (Türkiye Eğitim Sisteminde Renk, Etnik Köken, Dil, Din ve İnanç Temelli Ayrımcılık), Minority Rights Group International, History Foundation (Tarih Vakfı), İstanbul, p. 63, available at: <https://minorityrights.org/wp-content/uploads/2015/10/EN-turkiye-egitim-sisteminde-ayirimcilik-24-10-2015.pdf>.

<sup>230</sup> Karan, U. (2017), *Ignored and Unequal: Roma Access to the Right to Housing and Education in Turkey*, Minority Rights Group International/The Zero Discrimination Association, p. 22, available at: [https://minorityrights.org/wp-content/uploads/2017/06/MRG\\_Rep\\_ENG.pdf](https://minorityrights.org/wp-content/uploads/2017/06/MRG_Rep_ENG.pdf).

<sup>231</sup> European Roma Rights Centre and Edirne Roma Association ((2008), Written Comments of the European Roma Rights Centre and the Edirne Roma Association Concerning Turkey for Consideration by the Committee on the Elimination of Racial Discrimination at its 74th Session, p. 21, available at: [https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/TUR/INT\\_CERD\\_NGO\\_TUR\\_74\\_10205\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/TUR/INT_CERD_NGO_TUR_74_10205_E.pdf).

complaints have been made about such situations to school principals, they produce no results because the principals take the side of the teachers.<sup>232</sup>

Another discriminatory practice faced by Roma children is the fact that they are sometimes sent to special needs institutions known as 'guidance and research centres' (GRC). The families of children who are performing poorly at school are convinced by teachers or GRC employees that their children need to receive an education in line with their needs; this, along with the monthly financial support from the Government paid to families while their children are enrolled at a special needs school, are among the factors leading parents to accept this practice.<sup>233</sup> A similar practice sees some Roma children taken into 'individual education programmes' on the basis of reports stating that they have special educational needs. It has been noted that these children are sent to various classes in the school, where they are made to sit at the back of the class and are paid little attention by the teachers.<sup>234</sup>

There have been some Government initiatives at national and local level to meet the educational needs of Roma children. Some steps have been made recently concerning the right to education. One of the first of these measures was a policy paper published in 2016, the Strategy Paper for Roma Citizens 2016-2021, which was drawn up by the Ministry of Family, Labour and Social Services and Board, and a related document entitled Stage 1 Action Plan (2016-2018).<sup>235</sup> The strategy document acknowledged that Roma and similar ethnic groups have historically been disadvantaged and that children from such groups experience problems in accessing education. It stated that access to education would henceforth be a strategic goal. However, a comparison of the scope of work to be carried out, as per the terms of the Stage 1 Action Plan, to realise the strategic goal of 'ensuring that all Roma children have equal access to quality education and that Roma youth successfully complete at least their mandatory schooling', with the size of the problem reveals that the planned efforts are quite limited in scale. It should nonetheless be recognised that this is the first concrete framework for implementing official measures to identify and solve the problem. Roma organisations have responded positively to the fact that, for the first time, a strategy targeting Roma and similar ethnic groups has been developed and that it has become state policy. At the same time, however, there have been numerous criticisms of the strategy: primarily, that it was drawn up in a non-comprehensive way using very general information, and that the plan includes no concrete steps for solving the existing problems. Furthermore, a budget has not been drawn up to realise the intended goals; the strategy places little emphasis on the issue of discrimination; and it does not take a rights-based approach but rather tends to attribute problems to the Roma themselves.<sup>236</sup>

ECRI stated in its 2016 report that it was pleased that the plan had been adopted. However, it noted that political leaders must work to put an end to the marginalisation of Roma and similar ethnic groups and that much effort would be needed to implement the strategy. Furthermore, the report stated that clear budgets would need to be established for the implementation of the strategy within the action plans, and that binding financial contracts

---

<sup>232</sup> Kaya, N. (2015), *Discrimination in the Turkish Education System Based on Colour, Ethnic Origin, Language, Religion and Beliefs*, (Türkiye Eğitim Sisteminde Renk, Etnik Köken, Dil, Din ve İnanç Temelli Ayrımcılık), Minority Rights Group International, History Foundation, Istanbul, p. 26, available at: <https://minorityrights.org/wp-content/uploads/2015/10/EN-turkiye-egitim-sisteminde-ayirimcilik-24-10-2015.pdf>.

<sup>233</sup> Karan, U. (2017), *Ignored and Unequal: Roma Access to the Right to Housing and Education in Turkey*, Minority Rights Group International/The Zero Discrimination Association, pp. 23-24, available at: [https://minorityrights.org/wp-content/uploads/2017/06/MRG\\_Rep\\_ENG.pdf](https://minorityrights.org/wp-content/uploads/2017/06/MRG_Rep_ENG.pdf).

<sup>234</sup> Opişan, A. (2015), *Türkiye'de Romanlar ve Romanlar Gibi Yaşayan Grupların Durumlarına Etki Eden Faktörlerin Belirlenmesi (Identification of Factors Impacting the Situation of Roma and Similar Social Groups in Turkey)*, The Zero Discrimination Association, Istanbul, p. 13.

<sup>235</sup> *Official Gazette*, 30 April 2016. The text of the Action Plan is available at: <https://www.resmigazete.gov.tr/eskiler/2016/04/20160430-11-1.pdf>.

<sup>236</sup> 'Romanlar Strateji Belgesine Ne Dedi?' ('What was the Response to the Roma Strategy Plan?'), *Bianet*, 2 May 2016, available at: <http://bianet.org/bianet/toplum/174391-romanlar-strateji-belgesine-ne-dedi>.

would need to be drawn up for authorities and other shareholders. Emphasis was also placed in the report on ensuring that Roma take part in every stage of the implementation and monitoring process to make certain that measures suitably meet the needs at hand.<sup>237</sup> In the first implementation phase of the strategy, the steps that are mentioned in the paper have not been taken. The Stage 2 Action Plan (2019-2021) was published at the end of 2019, and education was again considered as one of the priority areas.<sup>238</sup>

Initiatives at local level are also not adequate to address the current problems faced by the Roma in Turkey. One of the few projects conducted at local level was undertaken in the province of Edirne, which has a significant Roma population. The British Council and the Ministry of National Education and its provincial representation cooperated during the 2005-2006 school year on a project which sought to improve the situation of Roma children.<sup>239</sup> However, these positive examples are the exception rather than the rule, as is evident from the fact that the Government's Roma opening initiative has not produced any long-standing policy or strategy for enabling equal access to education for the Roma (on the Roma opening, see Section 8.1).

With regard to multiple discrimination against Roma pupils, the CRPD expressed its concerns about intersectional discrimination and the exclusion of, Roma girls with disabilities from education in particular. It suggested that Turkey adopt legislation and policies to address the multiple and intersecting forms of discrimination against girls with disabilities, including those belonging to Roma communities.<sup>240</sup>

### **3.2.9 Access to and supply of goods and services that are available to the public (Article 3(1)(h) Directive 2000/43)**

In Turkey, national legislation prohibits discrimination in access to and the supply of goods and services, as formulated in the Racial Equality Directive.

Article 5(1) and (3) of the Law on the Human Rights and Equality Institution of Turkey prohibits discrimination in access to services and the access to and supply of goods. Under Article 3(2), non-discrimination grounds are limited to race/ethnicity, religion/belief, disability and age. Sexual orientation is excluded.

Article 122 of the Turkish Penal Code prohibits discrimination in the provision of services available to the public. It prohibits hatred based on language, race, nationality, colour, gender, disability, political opinion, philosophical belief, religion or sect in the sale or transfer of goods, the execution of a service, employment, the provision of food services and undertaking economic activity. Hate offences based on ethnic origin and sexual orientation are not included. However, as stated above (Section 3.2.1), Article 122 has hardly any effect in practice and seems not to be applicable in cases of discrimination in access to and supply of goods and services.

According to Article 73 of the Law on Notaries (No. 1512), transactions and signatures by deaf or blind persons shall be carried out in the presence of two witnesses only if the person with disability requests this. Under Article 15 of the Law of Obligations, blind persons

<sup>237</sup> ECRI (2016), *Report on Turkey (fifth monitoring cycle)*, CRI(2016)37, Strasbourg, para. 75-77, available at: <https://rm.coe.int/fifth-report-on-turkey/16808b5c81>.

<sup>238</sup> *Official Gazette*, 11 December 2019.

<sup>239</sup> Edirne Roma Association, European Roma Rights Centre, the Helsinki Citizens' Assembly (2008), *We are Here! Discriminatory Exclusion and Struggle for Rights of Roma in Turkey (Biz Buradayız! Türkiye'de Romanlar, Ayrımcı Uygulamalar ve Hak Mücadelesi)*, Istanbul, pp. 92-95, available at: <https://www.hyd.org.tr/attachments/article/30/we-are-here!-discriminatory-exclusion-and-struggle-for-rights-of-roma-in-turkey.pdf>.

<sup>240</sup> CRPD (2019), *Concluding Observations on Initial Report of Turkey*, CRPD/C/TUR/CO/1, para. 17-18, available at: <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsvOO0RvDbzSfy057%2f1fh1RyuPPMs4u7aeyVVDXGO7kQaXeKQi4HMWskQKenk8jrFoo0FZVcmmCHHcLleRFN8xZdyiEIifNklx7v5pDbMNVm2>.

cannot be bound by their signatures unless it is proven that they were informed about the content of the text upon signature, or unless the transaction was properly approved.<sup>241</sup> In practice, disability NGOs indicate that there is divergence in practice and that there are too many problems encountered in this regard.<sup>242</sup>

Article 91 of the Regulation on the Law on Notaries stipulates that notaries can ask for a health report if there is suspicion regarding the legal capacity of the person who requires the services of the notary. A similar rule applies to transactions at land registry offices. Although registrars are not under an obligation to ask for a health report, they are recommended to ask questions in order to test the capacity of the person who is a party to the transaction. In cases where the registrar is not convinced with regard to the capacity of the person, a health report might be required. However, there is no legal basis for this. The practice is based on a general order issued by the General Directorate of Land Registry and Cadastre.<sup>243</sup>

a) Distinction between goods and services available publicly or privately

In Turkey, national law does not distinguish between goods and services that are available to the public (e.g. in shops, restaurants and banks) and those that are available only privately (e.g. those restricted to members of a private association).

Article 5 of the Law on the Human Rights and Equality Institution does not distinguish or define in any way the scope of the goods and services covered.

Article 122 of the Turkish Penal Code prohibits 'hatred' in the execution of a service, without making a distinction between public and private services.

Article 7 of the Law on Civil Servants prohibits discrimination by civil servants in the conduct of their duties. Article 125(D)(i) provides that those who discriminate based on language, race, gender, political thought, philosophical belief, religion and denomination in the performance of the duty shall be subjected to a disciplinary sanction. Thus, the prohibition of discrimination in the provision of public services is implicitly covered by this provision.

### **3.2.10 Housing (Article 3(1)(h) Directive 2000/43)**

In Turkey, national legislation prohibits discrimination in the area of housing, as formulated in the Racial Equality Directive.

According to Article 57 of the Constitution, entitled 'Right to Housing', 'the State shall take measures to meet the need for housing within the framework of a plan that takes into account the characteristics of cities and environmental conditions, and also support community housing projects.' In terms of setting priorities and the amount of resources to be allocated, the aim of Article 65 is to keep the state's discretionary powers broad in such a way that they are not subject to judicial review. With regard to the right to housing, the primary standard addressing discrimination is again found in Article 10.

Article 5(1) of the Law on the Human Rights and Equality Institution of Turkey prohibits discrimination in housing. Under Article 3(2), non-discrimination grounds are limited to race/ethnicity, religion/belief, disability and age. Sexual orientation is excluded. While migrants are not explicitly specified as right-bearers, the law's exceptions clause refers to the conditions imposed on, and the treatment of, non-nationals for the purpose of their

---

<sup>241</sup> Law of Obligations (*Türk Borçlar Kanunu*), No. 6098, 11 January 2011.

<sup>242</sup> 'Avukatım Ama Noterde Tanıksız İşlem Yapamıyorum' ('Even though I'm a Lawyer, I am Also Asked for Witnesses in Transactions in Notaries'), *Bianet*, 2016, available at: <https://m.bianet.org/bianet/toplum/181419-avukatim-ama-noterde-taniksiz-islem-yapamiyorum>.

<sup>243</sup> General Directorate of Land Registry and Cadastre (Tapu Kadastro Genel Müdürlüğü), No. 074/148-1568, 14 May 2003.

entry into and residence in Turkey but not their access to public services, including housing (Article 7(g)). By implication, migrants arguably have the right to be protected against discrimination in the field of housing.

While the 2013 Law on Foreigners and International Protection provides access to education, social services and employment for migrants and refugees, it does not address the field of housing. Around 98 % of the Syrian refugees in Turkey live outside the camps built by the Government and face dire housing problems. As of December 2019, there are around 3.5 million Syrian refugees living under temporary protection in Turkey. Of these, only around 108 000 (nearly 3.07 %) live in temporary accommodation centres.<sup>244</sup>

Several laws and decrees have an impact on housing: Law on Municipalities (No. 5393); Law on Metropolitan Municipalities (No. 5216); Law on Privatisation Arrangements (No. 4046); Coastal Law (No. 3621); Law on Housing Aid for Employed and Retired Public Servants and Workers (No. 3320); Mass Housing Law (No. 2985); Expropriation Law (No. 2942); Law on Prevention of Slums (No. 775); Decree-Law on the Amendment of Various Provisions in the Law on Prevention of Slums; and the Law on the Protection of Deteriorated Historic and Cultural Heritage through Renewal and Re-use (Urban Renewal Law) (No. 5366). However, there is no specific legislation which prohibits discrimination in housing in general.

One major problem regarding housing is the situation of internally displaced persons (IDPs), most of whom are of Kurdish origin and were displaced in the 1990s. While a Government programme – the Return to Village and Rehabilitation Project, in force since 1999 – provides aid in kind to IDPs who wish to return to their homes, the assistance is insufficient, in addition to other obstacles, to enable returnees to rebuild their houses and restart their lives in their villages. Although a compensation law was enacted in 2004 to provide IDPs with compensation for their pecuniary losses, the substance and implementation of the law has suffered major setbacks such as the slow handling of applications, a high rate of rejections (around 30 % nationwide), low amounts of compensation and a high burden of evidentiary proof.<sup>245</sup>

Since the summer of 2015, the problem of forced displacement originating from and affecting the Kurdish population in south-eastern Anatolia has been exacerbated by an operation which started in July 2015 and continued into 2017. During this period, over 355 000 Kurdish civilians were displaced.<sup>246</sup> Satellite imagery documents the wholesale destruction of entire neighbourhoods, which in most cases were razed to the ground by the authorities in the immediate aftermath of security operations to prevent the return of the displaced inhabitants.<sup>247</sup> According to the UN, 'based on satellite image analysis, UNOSAT attributes such damage to the use of heavy weapons and, possibly, air-dropped

---

<sup>244</sup> Directorate General of Migration Management (Göç İdaresi Genel Müdürlüğü) (2019), 'Geçici Korumamız Altındaki Suriyeliler' ('Number of Syrians under Temporary Protection'), available at: <https://www.goc.gov.tr/gecici-korumamiz-altindaki-suriyeliler>.

<sup>245</sup> For the latest study on the implementation of the law in the province of Van, see Kurban, D. and Yeğen, M. (2012), *On the Verge of Justice: The State and the Kurds in the Aftermath of Forced Migration- An Assessment of the Compensation Law no. 5233 – The Case of Van (Adaletin Kiyısında: 'Zorunlu' Göç Sonrasında devlet ve Kürtler/ 5233 Sayılı Tazminat Yasası'nın bir Değerlendirmesi- Van Örneği)*, available at: [https://www.tesev.org.tr/wp-content/uploads/rapor\\_Adaletin\\_Kiyisinda\\_Zorunlu\\_Goc\\_Sonrasında\\_Devlet\\_Ve\\_Kurtler\\_Duzeltimis\\_2\\_Baski.pdf](https://www.tesev.org.tr/wp-content/uploads/rapor_Adaletin_Kiyisinda_Zorunlu_Goc_Sonrasında_Devlet_Ve_Kurtler_Duzeltimis_2_Baski.pdf).

<sup>246</sup> Office of the United Nations High Commissioner for Human Rights (OHCHR) (2017), *Report on the human rights situation in South-East Turkey: July 2015 to December 2016*, pp. 5-7, available at: [http://www.ohchr.org/Documents/Countries/TR/OHCHR\\_South-East\\_TurkeyReport\\_10March2017.pdf](http://www.ohchr.org/Documents/Countries/TR/OHCHR_South-East_TurkeyReport_10March2017.pdf).

<sup>247</sup> OHCHR (2017), *Report on the human rights situation in South-East Turkey: July 2015 to December 2016*, p. 10, available at: [http://www.ohchr.org/Documents/Countries/TR/OHCHR\\_South-East\\_TurkeyReport\\_10March2017.pdf](http://www.ohchr.org/Documents/Countries/TR/OHCHR_South-East_TurkeyReport_10March2017.pdf).



munitions.<sup>248</sup> The destruction of private property was 'systematic'.<sup>249</sup> In March 2016, the Turkish Government adopted a decision to expropriate up to 100 % of the plots of land in the historical Sur district of Diyarbakır province, 'which has been largely populated by citizens of Kurdish origin'.<sup>250</sup> Residents of the Sur and Diyarbakır municipalities were reportedly never involved in or informed about the plans. Legal cases filed against the expropriation of Sur district have been lost in administrative courts.<sup>251</sup> On 4 September 2016, the Turkish Government announced a reconstruction and economic development plan for the region, including USD 21 billion to be spent in areas 'destroyed by the PKK since July 2015'.<sup>252</sup> However, the European Commission reported in 2019 that '[d]espite some reconstruction, only few internally displaced persons have received compensation' and 'only a small percentage of internally displaced persons have been offered new housing'.<sup>253</sup>

Although the Turkish Government claims that racial discrimination 'by those who rent or sell houses or apartments is alien to Turkish society',<sup>254</sup> there is widespread discrimination by private individuals.

Housing is a major problem for LGBTI individuals, especially for transgender persons. Article 25 of the Flat Ownership Law lists 'to act against morality and decency' as one of the unbearable circumstances for claimant owners. The provision is not directed specifically at trans persons; however, it has been applied to such persons in particular to remove them from their properties. They may choose to hide their identity to avoid having trouble renting homes. Many landowners decline to sell or rent houses to transgender individuals. Consequently, they can rent apartments only in certain areas of big cities, and they often have to pay rent above the market rates. Where they can find housing, they are harassed by other residents of the neighbourhood or by shop owners. In addition, as the areas where transgender individuals live are publicly known, they face physical attacks which are aimed at displacing them.<sup>255</sup> The fact that lesbian and trans women are not admitted to women's shelters is another example of discrimination in access to the right to housing.

It is possible to evaluate the care and rehabilitation centres that are affiliated with the Ministry of Family, Labour and Social Services, and which provide accommodation services under the scope of the right to shelter for disabled people. According to the Ministry's 2019 data, there are 104 such centres throughout Turkey, with a total capacity of 8 289. In addition to the care and rehabilitation centres, 'hope houses' were opened in 2008 in order to enable disabled people to live in small groups in a home environment and participate in social life. There are currently 151 'hope houses' under the auspices of the Ministry. In

<sup>248</sup> OHCHR (2017), *Report on the human rights situation in South-East Turkey: July 2015 to December 2016*, p. 10, available at: [http://www.ohchr.org/Documents/Countries/TR/OHCHR\\_South-East\\_TurkeyReport\\_10March2017.pdf](http://www.ohchr.org/Documents/Countries/TR/OHCHR_South-East_TurkeyReport_10March2017.pdf).

<sup>249</sup> OHCHR (2017), *Report on the human rights situation in South-East Turkey: July 2015 to December 2016*, p. 12, available at: [http://www.ohchr.org/Documents/Countries/TR/OHCHR\\_South-East\\_TurkeyReport\\_10March2017.pdf](http://www.ohchr.org/Documents/Countries/TR/OHCHR_South-East_TurkeyReport_10March2017.pdf).

<sup>250</sup> OHCHR (2017), *Report on the human rights situation in South-East Turkey: July 2015 to December 2016*, p. 12, available at: [http://www.ohchr.org/Documents/Countries/TR/OHCHR\\_South-East\\_TurkeyReport\\_10March2017.pdf](http://www.ohchr.org/Documents/Countries/TR/OHCHR_South-East_TurkeyReport_10March2017.pdf).

<sup>251</sup> European Commission (2018), *Turkey 2018 Report*, Strasbourg, p. 18, available at: <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20180417-turkey-report.pdf>.

<sup>252</sup> OHCHR (2017), *Report on the human rights situation in South-East Turkey: July 2015 to December 2016*, p. 13, available at: [http://www.ohchr.org/Documents/Countries/TR/OHCHR\\_South-East\\_TurkeyReport\\_10March2017.pdf](http://www.ohchr.org/Documents/Countries/TR/OHCHR_South-East_TurkeyReport_10March2017.pdf).

<sup>253</sup> European Commission (2019), *Turkey 2019 Report*, Brussels, pp. 6 and 19, available at: <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20190529-turkey-report.pdf>.

<sup>254</sup> CERD (2014), *Consideration of reports submitted by States parties under article 9 of the Convention, Combined fourth to sixth periodic reports of States parties due in 2013: Turkey*, CERD/C/TUR/4-6, p. 22, available at: [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CERD%2fC%2fTUR%2f4-6&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CERD%2fC%2fTUR%2f4-6&Lang=en).

<sup>255</sup> Öz, Y., *Study on Homophobia, Transphobia and Discrimination on Grounds of Sexual Orientation and Gender Identity, Legal Report: Turkey*, Danish Institute for Human Rights, p. 36, available at: [http://www.coe.int/t/commissioner/source/lgbt/turkeylegal\\_e.pdf](http://www.coe.int/t/commissioner/source/lgbt/turkeylegal_e.pdf).

addition, there are 257 maintenance centres owned by private enterprises; these centres have capacity for 24 796 people.<sup>256</sup>

Persons with disabilities have difficulties in finding physically accessible houses. If there is a family member with an intellectual or psychosocial disability in their household, it is hard for families to find a house to rent. Even if such families can find a house, it is not exceptional for them to be harassed via continuous complaints to various authorities because of noise, etc. With the Social Housing Construction Protocol and the Additional Protocol signed by the Housing Development Administration of Turkey (Toplu Konut İdaresi Başkanlığı – TOKİ) and the Ministry of Family, Labour and Social Services' General Directorate of Social Benefits in 2009 and 2011, repayment arrangements are available to provide dwellings for economically deprived persons without any social security, including persons with disabilities. In mass housing projects, a 10 % quota is allocated for persons with at least 50 % disability. According to the figures, under the Protocol, 39 974 houses were built in the period leading up to 2015, and 100 000 dwellings are due to be built by 2023.<sup>257</sup>

a) Trends and patterns regarding housing segregation for Roma

In Turkey, there are trends and patterns of housing segregation and discrimination against the Roma.<sup>258</sup>

The major problem relating to the housing rights of Roma and similar ethnic groups concerns poor housing conditions.<sup>259</sup> People belonging to these groups are mostly poor; 80 % live in ghettos, while others live in poor neighbourhoods that are under threat from urban renewal projects. Poor living conditions and inadequate nutrition lead to health problems,<sup>260</sup> a situation officially acknowledged in a report produced following a Roma workshop held in 2009.<sup>261</sup> In some places, multiple families live together in one residence, and in some regions families live in shacks and tents in areas that are separate from the rest of society. Infrastructure is also largely lacking in places that are heavily populated by Roma and similar ethnic groups, and most of the homes do not have running water or drainage systems.<sup>262</sup>

From 2003 to 2014, TOKİ constructed 633 295 housing units, 85 % of which were designed as social housing units. However, of those 528 000 social housing units, just 144 000 were built as low-income housing. Various state institutions carry out social housing projects in Turkey, but it is not known which groups benefit from these projects. According to figures provided by TOKİ, 5 133 of the housing units constructed in that period were for Roma and similar ethnic groups.<sup>263</sup> In reply to a written parliamentary question on the issue, the

<sup>256</sup> Ministry of Family, Labour and Social Services General Directorate of Disabled and Elderly Services, 'Statistical Bulletin of Disabled and Elderly', December 2019, pp. 59-63, available at: <https://ailevecalisma.gov.tr/media/34054/istatistik-bulteni-aralik2019.pdf>.

<sup>257</sup> ECSR (2016), *Conclusions 2016: Turkey*, 2016/def/TUR/15/3/EN, 9 December 2016, Article 15-3, available at: <http://hudoc.esc.coe.int/eng?i=2016/def/TUR/15/3/EN>.

<sup>258</sup> With regard to parliamentary discussions in 2015 on the segregation of Roma in housing, see Section 7(h).

<sup>259</sup> European Roma Rights Centre and Edirne Roma Association (2008), *Written Comments of the European Roma Rights Centre and the Edirne Roma Association Concerning Turkey for Consideration by the Committee on the Elimination of Racial Discrimination at its 74th Session*, p. 16, available at: [https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/TUR/INT\\_CERD\\_NGO\\_TUR\\_74\\_10205\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/TUR/INT_CERD_NGO_TUR_74_10205_E.pdf).

<sup>260</sup> ECRI (2016), *Report on Turkey (fifth monitoring cycle)*, CRI(2016)37, Strasbourg, para. 74, available at: <https://rm.coe.int/fifth-report-on-turkey/16808b5c81>.

<sup>261</sup> See 'Roman Çalıştayı Raporu: Aralık 2009'da yapılan Roman Çalıştayı'nın raporu açıklandı' ('New Workshop Report: The report of the Roma Workshop held in December 2009 has been announced'), T24, 1 March 2010, available at: <https://t24.com.tr/haber/roman-calistayi-raporu.71526>.

<sup>262</sup> Timo Piirainen, *Preliminary Study on the Social Situation of Roma in Turkey and Policies Supporting Social Inclusion (Romanların Türkiye'deki Sosyal Durumu ve Sosyal İçermenin Desteklenmesine Yönelik Kamu Politikaları Ön Çalışma)*, Second Report, July 2016, p. 18.

<sup>263</sup> ECSR, *Conclusions 2015: Turkey*, 2015/def/TUR/31/3/EN, 4 December 2015, Article 31-3, available at: <http://hudoc.esc.coe.int/eng?i=2015/def/TUR/31/3/EN>.

Ministry of the Environment and Urbanisation stated that from 2010 to 2015, of the 6 720 housing units planned for Roma and similar ethnic groups, 6 147 had been completed. The Ministry's answer also indicated in which provinces and regions those housing units were located.<sup>264</sup> However, it should be noted that not all of those projects actually targeted Roma and similar ethnic groups per se; some were simply carried out in regions heavily populated by such groups. The Committee on Economic, Social and Cultural Rights (CESCR) is of the opinion that the number of housing units constructed by TOKİ is far lower than what is actually needed, and that a national housing strategy must be drawn up.<sup>265</sup>

Roma and similar ethnic groups generally live within the same area in what are called 'Roma neighbourhoods', resulting in social exclusion. TOKİ housing units are mostly located on the outskirts of the cities. Individuals who are displaced as a result of urban renewal projects are forced to live in another part of the city, again separate from other ethnic groups, thus perpetuating the existing situation. The current housing policy spatially or socially segregates disadvantaged groups such as the Roma. One study revealed that the majority (75.28 %) of the Roma and similar ethnic groups want to continue to reside where they are currently living and do not want to move to TOKİ housing units, which further the existing segregation. Housing projects that do not take such factors into account pave the way for the continuation of practices of segregation and also incur the risk of taking away individuals' traditional livelihoods.<sup>266</sup>

Roma and similar ethnic groups are the disadvantaged group that is most affected by forced evictions, and it cannot be said that the evictions carried out have been executed in a manner respectful of human dignity.<sup>267</sup> In general, those who have been evicted have not been provided with housing or financial assistance, or have been provided with such assistance only temporarily.<sup>268</sup> The Urban Renewal Law of 2005 had a disparate impact on Roma people, giving impetus to urban transformation projects, most of which resulted in massive destruction and dislocation of Roma neighbourhoods throughout Turkey.<sup>269</sup> According to a joint report submitted by the Habitat International Coalition and its national partners for Turkey's universal periodic review by the UN Human Rights Council, the number of Roma displaced due to the Government's urban transformation projects by 2014 was about 10 000.<sup>270</sup> In many cases, the displaced Roma had to move to neighbourhoods where rent was several times higher than in their old neighbourhoods or to high-rise buildings constructed by the TOKİ in neighbourhoods outside city centres, which posed

<sup>264</sup> Reply submitted by Fatma Güldemet, Minister of the Environment and Urbanisation, on 7 April 2016 to the written interpellation bearing docket number 7/658 submitted by MP Özcan Purçu in December 2015, available at: <https://www2.tbmm.gov.tr/d26/7/7-0658sqc.pdf>.

<sup>265</sup> Committee on Economic, Social and Cultural Rights (2011), *Concluding observations of the Committee on Economic, Social and Cultural Rights, Turkey*, E/C.12/TUR/CO/1, para. 28, available at: <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=4slO6QSmIBEDzFEovLCuW1IHUI72P161pGVYxuGhhIz0Jd33mw7A3K7nMZzgFqcO2%2f%2fPO5O2H7%2bXohy%2b8g9BVNKVCYOYicgPgSrN3GUjj7qEbq7iOzBLXFImSI%2bDZICqy>.

<sup>266</sup> Timo Piirainen, *Preliminary Study on the Social Situation of Roma in Turkey and Policies Supporting Social Inclusion*, Second Report, July 2016, p. 19.

<sup>267</sup> Commissioner for Human Rights (2009), *Report by the Commissioner for Human Rights of the Council of Europe following his visit to Turkey on 28 June-3 July 2009*, Comm DH (2009) 30, paras. 135-138, available at: <https://dispatch.coe.int/?home=wcd.coe.int&home=wcd.coe.int&p&id=1511197&Site=CommDH&BackColorInternet=FEC65B&BackColorIntranet=FEC65B&BackColorLogged=FFC679>.

<sup>268</sup> European Roma Rights Centre and Edirne Roma Association (2008), *Written Comments of the European Roma Rights Centre and the Edirne Roma Association Concerning Turkey for Consideration by the Committee on the Elimination of Racial Discrimination at its 74th Session*, p. 13, available at: [https://www2.ohchr.org/english/bodies/cerd/docs/ngos/ERRC\\_Turkey\\_CERD74.pdf](https://www2.ohchr.org/english/bodies/cerd/docs/ngos/ERRC_Turkey_CERD74.pdf).

<sup>269</sup> European Roma Rights Centre and Edirne Roma Association (2008), *Written Comments of the European Roma Rights Centre and the Edirne Roma Association Concerning Turkey for Consideration by the Committee on the Elimination of Racial Discrimination at its 74th Session*, available at: [http://www2.ohchr.org/english/bodies/cerd/docs/ngos/ERRC\\_Turkey\\_CERD74.pdf](http://www2.ohchr.org/english/bodies/cerd/docs/ngos/ERRC_Turkey_CERD74.pdf).

<sup>270</sup> Office of the UN High Commissioner for Human Rights (2014), *Summary prepared in accordance with paragraph 15(c) of the annex to Human Rights Council resolution 5/1 and paragraph 5 of the annex to Council resolution 16/21: Turkey*, submitted to the UN Human Rights Council Working Group on the Universal Periodic Review 21st session: 19-30 January 2015, p. 9, available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G14/191/56/PDF/G1419156.pdf?OpenElement>.



serious problems regarding access to employment. Many families could not afford the increases in their rental payments and had to move out of their new apartments to live with relatives. Homeowners had to sell their houses, but they could not afford to buy houses in other neighbourhoods.

The most high-profile and controversial urban transformation project was carried out in Istanbul's historical Roma neighbourhood of Sulukule. The residents and civil society organisations filed a court case in December 2007, requesting the suspension of the project. Despite appeals from the international community, 'the neighbourhood was razed in 2009 to make way for middle-income housing, its inhabitants displaced far from the centre and some of them compelled into forced nomadism'.<sup>271</sup> The demolition of Sulukule and the ensuing resettlement 'caused dislocation and disruption';<sup>272</sup> unable to afford life in TOKİ houses outside the city centre, all but three of the families returned<sup>273</sup> 'to live in much poorer conditions'.<sup>274</sup> The court case ended in June 2012 with a unanimous judgment ordering the revocation of the project. In the meantime, however, the project had nearly reached completion. The mayor of Fatih Municipality declared that they would not abide by the court's judgment, pointing out that 95 % of the construction of houses and shops had been completed.<sup>275</sup> Following the judgment, a second project was prepared by the Fatih Municipality, which was also brought before the administrative courts. In 2019, the Council of State also revoked the second project.<sup>276</sup>

On 12 December 2013, Amnesty International issued an urgent action on behalf of around 30 Roma families who were under the threat of forced eviction by municipal authorities to make way for road construction.<sup>277</sup> Amnesty called on the authorities to alleviate the living conditions of around 120 people – including 37 children, two of whom had disabilities – and prevent their eviction. The group had been living in conditions of extreme poverty since their forced eviction on 19 July 2006 from their homes in the district of Küçükbakkalköy as part of a municipal urban regeneration project. They had been living on vacant land in Pendik since early 2008, without access to electricity, clean water, basic sanitation, health, education and employment. In response to Amnesty's call for action, the authorities informed the Roma families that they would receive fuel and cash assistance during the winter period. In addition, the mayor of Pendik stated that his municipality did not have any plans for eviction.<sup>278</sup> In November 2013, officials from the Ministry of Family and Social Policies visited the site to identify the conditions and needs of the Roma families. The delegation found that the vast majority of the children living at the site did not go to school and half of them were not officially registered. In response to Amnesty's urgent action, the Ministry of Families and Social Policies stated that it was looking into the case. No further developments on this issue have been reported.

The Roma evictions drew reaction from the UN treaty bodies. In its feedback for the 2014 universal periodic review of Turkey by the UN Human Rights Council, the Committee on Economic, Social and Cultural Rights 'noted with concern that forced evictions had taken

<sup>271</sup> Commissioner for Human Rights (2012), *Human rights of Roma and Travellers in Europe*, Strasbourg, p. 151, available at: <https://rm.coe.int/the-human-rights-of-roma-and-travellers-in-europe/168079b434>.

<sup>272</sup> European Commission (2011), *Turkey 2011 Progress Report*, Brussels, p. 40, available at: [http://ec.europa.eu/enlargement/pdf/key\\_documents/2011/package/tr\\_rapport\\_2011\\_en.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2011/package/tr_rapport_2011_en.pdf).

<sup>273</sup> Vardar, N., 'Sulukule Gönüllüleri Romanlara Destek Oluyor' ('Sulukule Volunteers Give a Hand to the Roma'), *Bianet*, 5 May 2011, available at: <http://bianet.org/bianet/toplum/129771-sulukule-qonulluleri-romanlara-destek-oluyor>.

<sup>274</sup> European Commission (2011), *Turkey 2011 Progress Report*, Brussels, p. 40, available at: [http://ec.europa.eu/enlargement/pdf/key\\_documents/2011/package/tr\\_rapport\\_2011\\_en.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2011/package/tr_rapport_2011_en.pdf).

<sup>275</sup> 'Yeni "Sulukule" Yıkılmayacak' ('The New "Sulukule" will not Come Down'), *Bianet*, 19 June 2013, available at: <http://www.bianet.org/bianet/bianet/139176-yeni-sulukule-yikilmayacak>.

<sup>276</sup> 'Sulukule yok olduktan sonra proje iptal edildi' ('Project revoked after Sulukule vanishes'), 13 September 2019, available at: <https://www.gazeteduvar.com.tr/turkiye/2019/09/13/av-hilal-kuvey-sulukule-karari-40-yildir-ayni/>.

<sup>277</sup> Amnesty International, 'Urgent action, "Children, Elderly at Risk of Forced Eviction, Turkey"', EUR 44/030/2013, 12 December 2013, available at: <http://ua.amnesty.ch/urgent-actions/2013/12/331-13>.

<sup>278</sup> Amnesty International (2013), 'Urgent action, "Roma Families to Receive Winter Aid"' 18 December 2013, available at: <https://www.amnesty.org/en/documents/EUR44/032/2013/en/>.

place in Istanbul, without adequate compensation or alternative accommodation' and emphasised their adverse effects on the schooling of children. The Committee urged the Government to review the legal framework governing urbanisation projects 'to ensure those affected received adequate compensation and/or relocation'.<sup>279</sup> In its 2019 report, the European Commission noted that urban renewal projects continue to primarily affect Roma settlements, forcibly displacing families.<sup>280</sup>

Acts of violence are another factor leading to violations of the right to housing for the Roma. Such acts targeting these groups can result in their relocation and pave the way for violations of their right to housing, not to mention violations of other rights as well. In all cases, the authorities failed to act effectively and promptly to protect the victims who, in most cases, were asked to leave the district or province 'for their own safety'. One such attack took place on 5 January 2010, when a crowd of more than 1 000 locals in the district of Selendi, in the province of Manisa, attacked Roma residents. The crowd threw stones at, and set fire to, the houses of Roma families and set cars on fire, causing panic and disorder. Slogans such as 'Get the Gypsies out' were chanted in the streets. The local police could not control the situation and sought reinforcements. The pretext for the attack was a fight between a Roma man and the owner of a coffee house on 31 September 2009 over the former's refusal to abide by the smoking ban. However, it became clear after the incidents that the attack was planned and systematic, and was the outcome of long-term tensions between the Roma and other residents of Selendi. Instead of providing the Roma families with protection, the Governor of Manisa forcibly relocated the victims to the district of Gördes, and subsequently to the district of Salihli, on the ground that the local authorities would not be able to ensure their security in Selendi. The displaced Roma continue to live in exile in Salihli. Having lost their houses, furniture, businesses and savings, they live in economic hardship.

After some delay, a criminal case was launched against the perpetrators. On 23 December 2015, five years after the first hearing was held on 16 December 2010, the court delivered its judgment, which was published on 9 May 2016.<sup>281</sup> The court held that the defendants were part of a concerted action of around 150 individuals who had raided the Roma neighbourhood with stones, bats and rifles, thrown a Molotov cocktail and tried to burn houses, tents and cars belonging to the Roma. Some of the defendants openly incited the public to hatred and enmity by chanting slogans such as, 'They will leave here or else we will do what is necessary'; 'Selendi is ours and will remain so'; 'The Gypsies are insulting our mosques, religions, wives and daughters'; 'We do not want them here'; 'Let's kill them, let's burn their houses'; 'These are Gypsies, let's teach them a lesson'; and 'We have had enough of the Roma, who are stealing and harassing us.' The court found that the defendants had also attacked the law enforcement officers who tried to prevent them from burning down houses and offices belonging to the Roma. The court convicted 38 of the 80 defendants for incitement to enmity or hatred and denigration under Article 216 of the Turkish Penal Code, and for property damage under Articles 151 and 152. It sentenced them to terms of imprisonment of between eight months and 45 years, using its discretion to impose terms at the upper limits of available sentences.<sup>282</sup> The rest of the defendants were acquitted. The defendants appealed to the Court of Cassation, which had not issued its ruling as of the end of 2019. Pending a decision, the judgment is not final.

---

<sup>279</sup> Office of the UN High Commissioner for Human Rights (2014), *Compilation prepared in accordance with paragraph 15(b) of the annex to Human Rights Council resolution 5/1 and paragraph 5 of the annex to Council resolution 16/21: Turkey*, submitted to the UN Human Rights Council Working Group on the Universal Periodic Review 21st session: 19-30 January 2015, p. 12, available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G14/191/56/PDF/G1419156.pdf?OpenElement>.

<sup>280</sup> European Commission (2019), *Turkey 2019 Report*, Brussels, p. 40, available at: <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20190529-turkey-report.pdf>.

<sup>281</sup> 'Selendi Kararı: Saldırı, Romanlara karşı Birlik içinde Yapıldı' ('The Selendi Verdict: This was an organised attack against the Roma'), *Hürriyet*, 9 May 2016, available at: <https://www.hurriyet.com.tr/gundem/selendi-karari-saldiri-romanlara-karsi-birlik-icinde-yapildi-40101577>.

<sup>282</sup> Information received from the victims' lawyer, Necati Özdemir, 19 January 2016.

That was the first time that a Turkish Court had convicted perpetrators of hate crimes under Article 216 of the Turkish Penal Code, which had previously been used to protect individuals engaged in hate speech or acts against minorities rather than victims who had been subjected to such crimes.

In 2015, in the district of Keşan in Edirne, 700 policemen took part in an operation targeting neighbourhoods populated primarily by Roma, as a result of which 44 people were taken into custody, including the president of the Federation of Trakya Roma Associations, on the grounds of 'disturbing the peace, extortion, issuing threats and resisting the police.' After the operation, around 200 riot police and Special Forces walked through the streets chanting, 'The police bring peace and security', as well as the slogan 'Happy is the one who says I am a Turk'.<sup>283</sup> The fact that acts of violence committed against Roma have been insufficiently investigated and that Roma were not provided with protection represents a violation of the right to housing.

The Roma face discrimination in access to housing. Private individuals are reported to refuse housing to Roma individuals on the basis of their identity.<sup>284</sup> For example, some landlords in Uşak and Diyarbakır recently decided to cancel rental agreements with potential tenants, or refused outright to rent to them, when they discovered that they were Roma.<sup>285</sup>

A policy paper published in 2016, the Strategy Paper for Roma Citizens 2016-2021, which was drawn up by the Ministry of Family, Labour and Social Services and Board, along with a related document entitled Stage 1 Action Plan (2016-2018) (see Section 3.2.8.b), deals with the right to housing of the Roma.<sup>286</sup> The strategy document acknowledges that the housing conditions of the Roma and similar ethnic groups are poor and that urban renewal projects place Roma at an even greater disadvantage. The strategy to be followed entails ensuring access to adequate housing in disadvantaged regions, while ensuring that such housing is located in a healthy and habitable physical environment; has access to the necessary infrastructure services; and is suitable for the lifestyles and demands of the Roma and similar ethnic groups. As with the right to education, in the first implementation phase of the strategy, the steps that the document mentions with regard to the right to housing have not been taken. The Stage 2 Action Plan (2019-2021) was published at the end of 2019, and housing was again considered as one of the priority areas.<sup>287</sup> However, the action that will be taken focuses only on analysis and awareness-raising activities, and is therefore far from sufficient to address the major problems of the Roma in this field.

---

<sup>283</sup> '200 Polis Roman Mahallelerinde "Ne Mutlu Türküm Diyene" Sloganıyla Yürüdü' ('200 Police March through Roma Neighbourhoods Chanting "Happy is the one who says I am a Turk"'), *Evrensel*, 1 July 2015, available at: <https://www.evrensel.net/haber/254933/200-polis-roman-mahallelerinde-ne-mutlu-turkum-diyene-sloganıyla-yurudu>.

<sup>284</sup> European Roma Rights Centre and Edirne Roma Association (2008), *Written Comments Concerning Turkey for Consideration by the United Nations Committee on the Elimination of Racial Discrimination at its 74th Session*, p. 18, available at: [http://www2.ohchr.org/english/bodies/cerd/docs/ngos/ERRC\\_Turkey\\_CERD74.pdf](http://www2.ohchr.org/english/bodies/cerd/docs/ngos/ERRC_Turkey_CERD74.pdf).

<sup>285</sup> Monitoring activities carried out in Uşak from March to August 2016, in Diyarbakır in October 2016, and in Artvin in April 2016, within the scope of a project run by the Minority Rights Group International and The Zero Discrimination Association entitled 'Mobilising Civil Society for Monitoring Equality for Roma People in the Education and Housing Systems in Turkey'.

<sup>286</sup> See *Official Gazette*, 30 April 2016.

<sup>287</sup> See *Official Gazette*, 11 December 2019.

## **4 EXCEPTIONS**

### **4.1 Genuine and determining occupational requirements (Article 4)**

In Turkey, national legislation provides for an exception for genuine and determining occupational requirements.

Article 7(1)(a) of the Law on the Human Rights and Equality Institution of Turkey provides that 'any differential treatment which is appropriate and proportional to the aim where inherent professional requirements exist with respect to employment and self-employment' shall not be deemed discrimination. In 2016, this provision was contested by the main Opposition, the Republican People's Party, in the Constitutional Court. Arguing that the provision violated Article 2 of the Constitution (on the rule of law), the applicant asked the Constitutional Court to annul Article 7(1)(a) and to issue an injunction prohibiting its execution.

In a majority ruling issued on 15 November 2017, the Constitutional Court rejected these requests.<sup>288</sup> According to the Constitutional Court, it is not possible for the legislation to positively identify each and every inherent requirement for each professional activity, and in implementing the law, such requirements will need to be assessed on an individual basis. More generally, the Constitutional Court considered 'special skills, physical qualities, graduation from certain schools, acquisition of certain documents and information' as examples of inherent professional requirements that would justify differential treatment.<sup>289</sup> In his dissenting opinion, Judge Engin Yıldırım said that 'inherent professional requirements' and 'differential treatment which is appropriate and proportional to the aim' were uncertain and vague and would enable employers to engage in discrimination by arbitrarily indicating anything as an inherent occupational requirement. The second dissenting judge (Osman Paksüt) said that the Human Rights and Equality Institution of Turkey, which is tasked with implementing the anti-discrimination legislation, lacked the expertise both to implement the Law and to determine what constitutes 'inherent professional requirement' and 'appropriate and proportional to the aim'. According to Paksüt, the law granted the Institution an open-ended discretionary power that could be exercised arbitrarily. The dissenting judges found that Article 7(1)(a) lacks legal certainty and foreseeability in violation of Article 2 of the Constitution.

In a 2017 ruling, the Constitutional Court did not explicitly state that heterosexuality is an occupational requirement for teaching. However, its failure to find that there had been discrimination in the dismissal of an elementary school teacher on the basis of his sexual orientation could be interpreted as effectively saying just that.<sup>290</sup>

### **4.2 Employers with an ethos based on religion or belief (Article 4(2) Directive 2000/78)**

In Turkey, national law provides for an exception for employers with an ethos based on religion or belief.

Article 7(1)(d) of the Law on the Human Rights and Equality Institution of Turkey provides for an exception for religious institutions that provide services, education or teaching in a particular religion, allowing exclusive admission to such institutions to members of the religion concerned.

Although the exemption in the Law seems to be aligned with Article 4(2) of the Employment Equality Directive (2000/78/EC), there is nothing in the Law that alludes to whether this exception may not amount to discrimination on another ground, which leads to an

<sup>288</sup> Constitutional Court, E. 2016/132, K. 2017/154, 15 November 2017.

<sup>289</sup> Constitutional Court, E. 2016/132, K. 2017/154, 15 November 2017, para. 15.

<sup>290</sup> Constitutional Court, Z.A., Application No. 2013/2928, 18 October 2017.

interpretation that gives it a broader range than the Directive. This exception seems inapplicable since, despite the provisions for minority foundations, religious communities, including various sects or denominations of Islam, do not have any legal personality in Turkey, and officially there are no institutions belonging to any religion except for minority foundations. Even those institutions do not have any legal status, which hampers their activities.

- Religious institutions affecting employment in state-funded entities

In Turkey, religious institutions are permitted to select people (on the basis of their religion) to be hired for or dismissed from a job when that job is in a state entity, or in an entity financed by the state.

All religious institutions in Turkey are affiliated to the Presidency of Religious Affairs (Diyanet). Pursuant to Article 1 of the Law on Establishment and Duties of Presidency of Religious Affairs (Law No. 633), the duties of the Presidency are defined as being to carry out activities related to the beliefs, the principles of worship and morality of Islam, to enlighten the community about religion and to manage places of worship. The exception is therefore actually valid only for institutions belonging to the Islamic religion, and it stipulates that preventing non-Muslims from working in institutions established to provide services or education related to the Islamic religion will not constitute discrimination. Therefore, the exception provided in the Law on the Human Rights and Equality Institution would apply mainly in the case of recognition of the legal personality of religious communities in Turkey.

The tutors for the mandatory religious classes that are provided in primary and secondary education are civil servants or contracted employees. There is no legal requirement for someone to be a Muslim in order to be appointed as a teacher, but in practice all the teachers are Muslims. In one case, a contract teacher in Aydın was prosecuted for being Christian, following a complaint from a conservative teacher's association. She was suspended from her post and she was also prosecuted for missionary activities.<sup>291</sup> However, the official statement issued by the Ministry of National Education claimed that she was prosecuted for her posts on social media relating to an illegal organisation.<sup>292</sup>

#### **4.3 Armed forces and other specific occupations (Article 3(4) and Recital 18 Directive 2000/78)**

In Turkey, national legislation does not provide for an explicit exception for the armed forces in relation to age or disability discrimination (Article 3(4), Directive 2000/78/EC).

Although there is no explicit exception for persons with disabilities provided in law, the requirement to pass a medical examination excludes them from military service. The Turkish Armed Forces Regulation applies to military students, all civil and military personnel of the Turkish Armed Forces and all persons who are under an obligation to serve in the military.<sup>293</sup> Decisions regarding these persons depend on health board reports prepared following medical examination.<sup>294</sup> Health board reports are based on the Regulation on the Criteria and Classification of Disability and Health Board Reports to be given to the Disabled.

<sup>291</sup> 'Din kültürü öğretmeni Hristiyan olduğu gerekçesiyle görevden alındı' ('The religious culture teacher was dismissed on the grounds that she was a Christian'), *Te1e1*, 9 November 2019, available at: <https://te1e1.com.tr/din-kulturu-ogretmeni-hristiyan-oldugu-gerekcesiyle-gorevden-alindi-99454/>.

<sup>292</sup> See the written reply of the Ministry of National Education to the question of MP Tuma Çelik, No. 7/21594, 6 January 2020, available at: <https://www2.tbmm.gov.tr/d27/7/7-21594sgc.pdf>.

<sup>293</sup> Military service is obligatory in Turkey.

<sup>294</sup> Regulation on Health Capability of the Turkish Armed Forces, Gendarmerie General Command and Coats Guard Command (*Türk Silahlı Kuvvetleri, Jandarma Genel Komutanlığı ve Sahil Güvenlik Komutanlığı Sağlık Yeteneği Yönetmeliği*), *Official Gazette*, 11 November 2016.

General and special laws regarding employment in the public sector contain age restrictions: however, these are not limited to the armed forces. The Law on the Personnel of the Turkish Armed Forces (No. 926) of 10 August 1967; the Law on Commissioned and Non-commissioned Officers to be Recruited under Contracts (No. 4678) of 21 June 2001; and the Law on Expert Gendarmerie (No. 3466) of 4 June 1988 set upper age limits.

There are maximum age limits for many professions, including the police, prison and emergency services. According to Additional Article 24 of the Law on Police Organisation (No. 3201), the maximum age limit for recruitment is 28 years for Special Forces Units. According to Article 29 of the Regulation on the Establishment, Duties and Functioning of Staff Training Centres for Prison and Detention Centres,<sup>295</sup> in order to be accepted as a candidate student for becoming a prison or detention centre guard, the candidate should not be younger than 18 years of age or older than 30 years of age.

Various laws and regulations pertaining to the armed forces have discriminatory provisions in relation to LGBTI individuals. A 2013 law<sup>296</sup> explicitly enumerates homosexuality among the violations of disciplinary rules which require immediate dismissal from the Turkish Armed Forces (see Section 2.1.1).

#### **4.4 Nationality discrimination (Article 3(2))**

##### **a) Discrimination on the ground of nationality**

In Turkey, national law includes exceptions relating to difference of treatment based on nationality. Article 7(1)(g) of the Law on the Human Rights and Equality Institution of Turkey provides for an exception for differential treatment arising from the legal status and conditions for entry into Turkey and residence for non-nationals.

Article 16 of the Turkish Constitution stipulates that the fundamental rights and freedoms of foreigners can be limited only in accordance with international law. Thus, the Constitution does not limit the rights beyond the international human rights treaties to which Turkey is party. With the exception of freedom of residence and movement, political rights and the right to enter public service, the fundamental rights and freedoms set forth in the Constitution do not envisage any distinction between citizens and foreigners. In addition, certain professions are restricted to Turkish citizens. Foreigners are not allowed to work as: lawyers, public notaries, security guards, customs brokers, nurses, dentists, midwives, veterinarians, pharmacists and directors in private hospitals. They are also not allowed to fish in Turkey's continental waters.<sup>297</sup>

In Turkey, nationality (as in citizenship) is not explicitly mentioned as a protected ground, in national anti-discrimination law. However, Article 10 of the Constitution is also valid in respect of the ground of nationality on the basis of the phrase 'any such grounds' in the text of the said Article.

Article 3(2) of the Turkish Penal Code prohibits discrimination based on nationality. Revisions made in 2014 in Article 122 of the same Law added nationality to the grounds on which 'hatred and discrimination' are prohibited. The Law prohibits the prevention of the sale, transfer or rental of goods offered for public use; access to public services; recruitment; and the exercise of a regular economic activity, with a hate motive based on

<sup>295</sup> Regulation on the Establishment, Duties and Functioning of Staff Training Centres for Prison and Detention Centres (*Ceza İnfaz Kurumları ve Tutukevleri Personeli Eğitim Merkezleri Kurulu, Görev ve Çalışma Yönetmeliği*), *Official Gazette*, 4 May 2004.

<sup>296</sup> Turkish Armed Forces Discipline Law, No. 6413, 31 January 2013.

<sup>297</sup> CERD (2017), *Concluding Observations on the Combined fourth to sixth periodic reports of Turkey Addendum: Information Received from Turkey on Follow-up to the Concluding Observations*, CERD/C/TUR/CO/4-6/Add.1, p. 24, available at: [https://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CERD%2fC%2fTUR%2fCO%2f4-6%2fAdd.1&Lang=en](https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CERD%2fC%2fTUR%2fCO%2f4-6%2fAdd.1&Lang=en).



– among other grounds – nationality. Article 8(e) of the Law on the Foundation and Broadcasting of Radio and Television Channels prohibits broadcasts that discriminate on the basis of nationality. Article 2(1) of the Law on the Execution of Penalties and Security Measures prohibits discrimination based on nationality. However, the material scope of these prohibitions is limited to areas where the relevant laws are applicable.

b) Relationship between nationality and ‘racial or ethnic origin’

There are discriminatory references to race in various laws and regulations. Under Article 3 of the Settlement Law (No. 5543), only individuals ‘of Turkish descent and belonging to the Turkish culture’ are admitted to Turkey as migrants. An executive regulation dated 23 February 2009 exempts ‘foreigners of Turkish descent’ who live in Turkey from the requirement to obtain work permits and allows them to become members of professional organisations. The case brought by the Chamber of Architects and Engineers of Turkey for the annulment of this exemption was rejected by the Council of State.<sup>298</sup>

Similarly, favourable treatment exists in a regulation which exempts foreign students and trainees of Turkish descent from payment for tuition in private education institutions and provides them with scholarships.<sup>299</sup>

These favourable treatments seek to favour individuals of Turkish race/ethnicity, irrespective of their nationality. Turkish laws do not contain definitions of race and ethnicity or differentiation between the two.

#### **4.5 Health and safety (Article 7(2) Directive 2000/78)**

In Turkey, there are no exceptions in relation to disability and health and safety as allowed under Article 7(2) of the Employment Equality Directive.

However, there are certain restrictions regarding persons with disabilities which might be considered as exceptions in relation to health and safety. One of the most controversial restrictions was contained in Article 53(b)(4) of the Road Traffic Regulation, which required a special sign on the registration plates of cars used by persons with disabilities. This provision was unsuccessfully challenged in 2009 before the Council of State by an applicant with disabilities.<sup>300</sup> In September 2011, Article 53 was revised and the requirement for persons with disabilities to have a special sign on their registration plates was removed for new plates issued after the entry into force of the revised regulation on 9 September 2011.<sup>301</sup>

#### **4.6 Exceptions related to discrimination on the ground of age (Article 6 Directive 2000/78)**

##### **4.6.1 Direct discrimination**

In Turkey, national law provides for specific exceptions for direct discrimination on the ground of age.

Article 3(2) of the Law on the Human Rights and Equality Institution of Turkey prohibits discrimination on the basis of age. However, Article 7(1)(c) of the said Law provides that any distinction based on age in recruitment and employment processes shall not be deemed to be discrimination when the treatment is appropriate and necessary for the

---

<sup>298</sup> Council of State, 10th Chamber, E. 2009/9270, 22 December 2009.

<sup>299</sup> Regulation on Graduate Education and Exams at Kafkas University (*Kafkas Üniversitesi Lisansüstü Eğitim-Öğretim ve Sınav Yönetmeliği*), *Official Gazette*, 9 February 2009.

<sup>300</sup> Council of State, 8th Chamber, E. 2007/4208, K. 2009/795, 17 March 2009.

<sup>301</sup> Regulation on the Amendment of the Regulation on Traffic on Highways (*Karayolları Trafik Yönetmeliğinde Değişiklik Yapılmasına Dair Yönetmelik*), *Official Gazette*, 9 September 2011.



inherent requirements of a job. The term 'inherent requirements' used in the text of the Law seems vague, and the Law and its rationale provide no explanation as regards its meaning and the scope of its application.

a) Justification of direct discrimination on the ground of age

In Turkey, national law does not provide for justifications for direct discrimination on the ground of age.

b) Permitted differences of treatment based on age

In Turkey, national law permits differences of treatment based on age for any activities within the material scope of Directive 2000/78/EC.

A Government policy initiated in 2002 with the support of the World Bank provides conditional child grants to lower-income families who do not have any social security coverage. Known as 'conditional cash transfer', the programme provides monthly stipends per child, for children of both pre-school and school age. Payment is conditional on school enrolment for school-age children and on regular health checks for pre-school children. The amounts vary, based on the gender of the child (more for girls than boys) and the level of schooling (more for secondary than elementary school).<sup>302</sup> The policy, which started as a pilot programme in six provinces, began to be implemented across the country in 2005.

c) Fixing of ages for admission or entitlement to benefits of occupational pension schemes

In Turkey, national law allows occupational pension schemes to fix ages for admission to the scheme or entitlement to benefits, taking up the possibility provided for by Article 6(2).

There are two mandatory occupational schemes: for the armed forces, there is the Turkish Army Members Solidarity Fund (Ordu Yardımlaşma Kurumu – OYAK), and for employees of the state-owned coal-mining enterprise, there is the Labour Union (Amele Birliği). In addition, voluntary occupational schemes have been established by numerous private sector corporations.<sup>303</sup> In 2014, there were news reports about Government preparatory work to introduce an OYAK-inspired occupational pension scheme for retirees from specific sectors, such as steel and automobile manufacturing, which are regarded as sectors with difficult working conditions.<sup>304</sup> There is no public information about the preparatory work done in this regard, nor have there been any further developments.

Under the provisions of the Individual Pension Savings and Investment System Law (No. 4632) on automatic participation, which came into force on 1 January 2017, employers are obliged to include their employees in the Auto Enrolment System (AES). Accordingly, employers shall transfer at least 3 % of their employees' premium-based earnings for the private sector, and pension deduction-based salary for civil servants, into the system. Employees have the right to remain in this system for as long as they wish. AES covers employees who work as salaried individuals in the public or private sectors and who are citizens of the Republic of Turkey or former citizens holding blue cards, and who are under the age of 45. By remaining in the system, employees who are automatically entered in the system shall get an additional income on top of the pension income from the social security system. In order to retire from the AES, it is necessary for an individual

---

<sup>302</sup> On average, the payments are between TRY 35 and TRY 60 (EUR 5 and EUR 8.50) per child per month.

<sup>303</sup> Organisation for Economic Co-operation and Development (OECD) (2009), *Private Pensions Outlook 2008 – Pension Country Profile: Turkey*, pp. 289-290, available at: <http://www.oecd.org/finance/private-pensions/42575085.pdf>.

<sup>304</sup> 'OYAK modeli mesleki emeklilik' ('OYAK-style occupational pension'), *Hürriyet*, 3 September 2014, available at: <http://www.hurriyet.com.tr/oyak-modeli-mesleki-emeklilik-27128112>.

to have remained in the system for at least 10 years from the date of first entry into the system, and to have attained the age of 56. As of 31 December 2019, 3 331 657 persons were enrolled in the system.<sup>305</sup>

#### **4.6.2 Special conditions for young people and older workers**

In Turkey, there are no special conditions set by law for older and/or younger workers in order to promote their vocational integration.

#### **4.6.3 Minimum and maximum age requirements**

In Turkey, there are exceptions permitting minimum and/or maximum age requirements in relation to access to employment and training.

According to Article 71 of the Labour Law, the minimum working age is 15 years. However, this applies only to the private sector.

According to Article 4(1)(b) of the Regulation on the conditions and procedure regarding recruitment of workers in public institutions, applicants should not be below the age of 18.<sup>306</sup>

There are general and special laws regarding employment in the public sector and different requirements are laid down with regard to age limits. According to Additional Article 3 of the Regulation on the Examinations Organised for Those to be Appointed to Public Offices for the first time,<sup>307</sup> unless it is explicitly laid down by special provisions in laws, by-laws and regulations, public institutions cannot require an age limit for those who are to be placed through central examinations. According to Article 48 of the Law on Civil Servants, in order to be recruited as a civil servant, a person should not be below the age of 18. The Regulation on the examinations organised for those to be appointed to public offices for the first time also refers to Article 48 of the Law on Civil Servants regarding recruitment conditions, including the minimum age limit of 18. However, following a court judgment on declaration of maturity, those who are above the age of 15 can be appointed to a public office. There are numerous special laws which stipulate minimum and/or maximum age requirements. For example, according to Article 8 of the Law on Judges and Prosecutors, the maximum age for entry to those professions is 35 years.

Age limits also apply to training. The Law on the Personnel of the Turkish Armed Forces; the Law on Commissioned and Non-commissioned Officers to be Recruited under Contracts; and the Law on Expert Gendarmerie provide various upper age limits. For example, the upper age limit for recruitment as a pilot is 32.

#### **4.6.4 Retirement**

##### **a) State pension age**

In Turkey, there is a state pension age, at which individuals must begin to collect their state pensions.

The pension age is stipulated in the Law on Social Insurance and Universal Health Insurance Law, adopted on 31 May 2006. Those who became insurance holders after the

<sup>305</sup> Pension Monitoring Centre (2019), *Data Centre, Statistics, Summary AES Data*, available at: <https://www.egm.org.tr/data-center/statistics/ips-statistics/summary-ips-data>.

<sup>306</sup> Regulation on the Conditions and Procedure Regarding Recruitment of Workers in Public Institutions (*Kamu Kurum ve Kuruluşlarına İşçi Alınmasında Uygulanacak Usul ve Esaslar Hakkında Yönetmelik*), *Official Gazette*, 9 August 2009.

<sup>307</sup> As amended in 2006. The original Regulation was published in the *Official Gazette* on 3 May 2002. The Regulation was amended many times. The amendment regarding 'age limits' was published in the *Official Gazette* on 4 March 2006.

adoption of the Law shall retire and begin to collect their pension at the age of 58 years (women) and 60 years (men). According to Article 28 of this Law, the state pension age will increase gradually and will reach 65 years for both men and women, for the former from 2044 onwards and for the latter from 2048 onwards.

If an individual wishes to work beyond the state pension age, the pension cannot be deferred.

An individual can retire, collect a pension and still work. However, a special premium has to be paid. The premium to be paid varies depending on the date of entry into the work force, the type of retirement pension and the type of occupation. The law in this area is in constant flux.<sup>308</sup>

Persons with disabilities have the right to retire and collect pensions earlier than other persons. Those who began work after 1 January 2015 and who are between 60 % and 100 % disabled can retire after 15 years of work, if they have paid premiums for 3 960 days, and can collect their pension. Those who are between 50 % and 59 % disabled can retire after 16 years of work, if they have paid premiums for 4 320 days, and can collect their pension. Those who are between 40 % and 49 % disabled can retire after 18 years of work, if they have paid premiums for 4 680 days, and can collect their pension. Persons with disabilities who run their own businesses, and mothers of children with disabilities who are in need of special care, can also retire early and collect their pension.

#### b) Occupational pension schemes

In Turkey, there is no standard age at which people can begin to receive payments from occupational pension schemes and other employer-funded pension arrangements.

There are only two mandatory occupational schemes for the armed forces and the mining industry. Under the OYAK mandatory occupational pension scheme, since 1961 the armed forces have paid a supplementary pension to retired members in addition to the state pension they receive. Armed forces members who have made monthly contributions to the pension scheme for at least 10 years are eligible for this supplementary pension. Recipients can no longer work in the Armed Forces; this does not preclude their employment elsewhere. (See also Section 4.6.1)

#### c) State imposed mandatory retirement ages

In Turkey, there are state-imposed mandatory retirement ages.

These are valid only for public employees. According to Article 40 of Law No. 5434, the mandatory retirement age is 65 years. For university professors, the mandatory retirement age is 67 years (this applies only to public universities). The mandatory retirement age for military personnel, the police and some other state institutions varies, depending on rank or position. However, in particular circumstances, the age limit that applies to those who hold certain posts can be extended at the discretion of their respective superiors. For instance, the retirement age of university faculty members, which is 67, can be extended until the age of 75 on a contract basis in accordance with the faculty member's own wishes and the approval of the Higher Education Council.

---

<sup>308</sup> In 2017, changes were introduced to the state pension system whereby individuals who worked under a service contract in the private sector or public sector and who continue to work after retirement have to pay a premium amounting to 32 % of their new salaries. Individuals who were self-employed until their retirement and who continue in self-employed work no longer have to pay the 10 % premium.

d) Retirement ages imposed by employers

In Turkey, national law permits employers to set retirement ages (or ages at which the termination of an employment contract is possible) by contract and/or collective bargaining and/or unilaterally.

e) Employment rights applicable to all workers irrespective of age

The law on protection against dismissal and other laws protecting employment rights apply to all workers irrespective of age, even if they remain in employment after attaining pensionable age or any other age.

f) Compliance of national law with CJEU case law

In Turkey, national legislation is not in line with the CJEU case law on age regarding mandatory retirement.

Mandatory age limits vary for civil servants, depending on their public office and rank. Turkish law does not impose an objective justification test for the introduction of mandatory retirement ages.

#### **4.6.5 Redundancy**

a) Age and seniority taken into account for redundancy selection

In Turkey, national law permits age or seniority to be taken into account in selecting workers for redundancy.

One of the most well-established principles of the Labour Law is that, in the selection of workers for redundancy, the employer should take into account the period for which the employee has worked for the employer. The shorter the period of work, the bigger the risk of selection for redundancy.

b) Age taken into account for redundancy compensation

In Turkey, national law provides compensation for redundancy. Such compensation is not affected by the age of the worker.

Instead, compensation is affected by seniority (length of employment), whereby the longer an employee has worked, the higher amount of compensation he or she receives.

#### **4.7 Public security, public order, criminal offences, protection of health, protection of the rights and freedoms of others (Article 2(5), Directive 2000/78)**

In Turkey, national law does not include exceptions that seek to rely on Article 2(5) of the Employment Equality Directive.

#### **4.8 Any other exceptions**

In Turkey, other exceptions to the prohibition of discrimination (on any ground) provided in national law are as follows:

‘Situations which oblige the employment of a particular sex’; ‘special measures and protective precautions towards children or individuals who need to be kept in a special

place’;<sup>309</sup> and conditions for membership to associations, foundations, trade unions, political parties and professional organisations (Article 7(1)(b), (ç) and (e) of the Law on the Human Rights and Equality Institution of Turkey).

With regard to the exception in relation to gender, no example is provided in the Law or its *ratio legis*. In 2016, Article 7(1)(b) was contested by the main Opposition party, the Republican People’s Party, in the Constitutional Court. Arguing that the provision violated Article 2 (on the rule of law), Article 10 (on the right to equality) and Article 90 (on the supremacy of duly ratified international human rights documents) of the Constitution, the applicant asked the Constitutional Court to annul Article 7(1)(b) and to issue an injunction prohibiting its execution. In a majority ruling issued on 15 November 2017, the Constitutional Court rejected these requests.<sup>310</sup> The broad and vaguely formulated exception clauses in Article 7(1)(b), (c) and (e) are not compatible with the directives.

---

<sup>309</sup> The law does not indicate or define what a ‘special place’ is.

<sup>310</sup> Constitutional Court, E. 2016/132, K. 2017/154, 15 November 2017.

## **5 POSITIVE ACTION (Article 5 Directive 2000/43, Article 7 Directive 2000/78)**

### **a) Scope for positive action measures**

In Turkey, positive action is permitted in national law in respect of racial or ethnic origin, religion or belief, disability or age. Positive action in respect of sexual orientation is not explicitly provided for in law.

While not explicitly stating it as such, Article 10 of the Constitution entails the principle of positive action. It stipulates that measures to be adopted to ensure equality between men and women, as well as measures to be adopted for children, elderly persons, persons with disabilities, widows and orphans of martyrs, ex-soldiers disabled in the war, and veterans, shall not be considered as a violation of the principle of equality. As stated above (Section 2.1), Article 10 of the Constitution has an open-ended character with respect to protected grounds, thus an obligation for positive action can be derived from Article 5, which encompasses positive obligations of the state along with the non-discrimination principle.

Article 7(1)(f) of the Law on the Human Rights and Equality Institution of Turkey provides an exception to the prohibition of discrimination for 'treatment which is necessary, appropriate and proportional towards eliminating inequalities'. The Law prohibits discrimination on grounds of racial or ethnic origin, religion or belief, disability or age.

Although they are not designated as positive action, there are a number of laws and regulations that stipulate positive measures in education, employment and a number of services (social insurance, transportation etc.), including employment quotas, for persons with disabilities. The special situation of non-Muslim groups under the Treaty of Lausanne does not confer on them a right to special measures based on religion. On the contrary, the state in Turkey continues to limit state funding for religious services to the Sunni Muslim majority by paying the salaries of Sunni preachers (*imams*).

Discussions regarding discrimination in Turkey are still very new. Legal and political discussions focus more on the existence of discrimination and inequalities in Turkey. In other words, at this point the state and the general public are still not convinced that discrimination and inequalities exist in Turkey and that some groups are more disadvantaged than others. In the past, demands by women's organisations for quotas for women in political participation have been dismissed by the Prime Minister as being against international practice.

### **b) Quotas in employment for people with disabilities**

In Turkey, national law provides for quotas for the employment of people with disabilities.

There is a quota system in both private sector and public sector employment. Article 53(1) of the Law on Civil Servants requires a 3 % quota for civil servants with disabilities working in public institutions, for individuals who are officially recognised as having a disability. Under Article 30(1) of the Labour Law, the percentage of employees with disabilities of the total number of employees must be 3 % in private sector establishments and 4 % in public enterprises. However, this quota obligation applies only to workplaces where 50 or more persons are employed. If an employer has employed persons with disabilities within the quota obligation or has employed more persons with disabilities than the quota requires; if an employer who is not under an obligation to do so has employed persons with disabilities; all of the insurance premiums that normally have to be paid by the employer for the employees with disabilities shall be paid by the Treasury. According to Article 101 of the Labour Law, if employers do not employ the number of persons with disabilities necessary to fulfil their quotas, they are penalised with a fine of TRY 3 250 (EUR 430) per month for every person with disability not employed. The same Article explicitly prescribes that public employers cannot be exempt from this fine.

The quota regime is favourable, as it guarantees access to employment to a degree. However, the system is applied as if it prescribes an upper limit for the employment of persons with disabilities. Employers who are under a quota obligation employ the required number of persons with disabilities on paper and ask them not to come to work. In many cases, workplaces are not accessible or there is no accessible transportation to the workplace. The quota system is also understood as an alternative to the prohibition of discrimination. In other words, when employers comply with their quota obligations, they feel that they are no longer under any equal treatment obligation.

Until 2012, the recruitment of persons with disabilities for employment in public institutions was carried out on the basis of special examinations held separately by each institution. This decentralised system had caused major problems when public employers rejected candidates who chose to take the general and centralised examination instead of the special examinations for candidates with disabilities. In response, and to strengthen enforcement of the 3 % quota in public service recruitment, the Government amended Article 53(2) of the Law on Civil Servants<sup>311</sup> and introduced a new system for the recruitment of persons with disabilities, based on a separate centralised examination only for disabled persons. The first such examination was held on 29 April 2012. However, disabled persons can opt to take the general examination (KPSS) or examination for persons with disabilities (EKPSS).

In addition to recruitment by examination, persons with disabilities who do not have any education higher than primary level are employed in public institutions through a lottery system. In 2012 and 2013, 1 579 individuals out of a total of 131 600 applicants were placed for employment in public institutions through the lottery system.

According to September 2019 data from the Turkish Statistical Institute, the labour force participation rate in Turkey is 72.6 % for men, 34.9 % for women and 53.5 % in total. The labour force participation rate of the population with at least one disability is 35.4 % for men, 12.5 % for women, and 22.1 % in total. As of October 2019, the total number of workplaces under an obligation to employ persons with disabilities was 18 882, and there is a quota gap in those workplaces, which means that 21 511 jobs reserved for disabled people under the quota have not been filled. Civil servants employed in public institutions with a disabilities quota numbered 55 196, of whom 41 391 were men and 13 805 were women, which highlights the existence of intersectional discrimination against women with disabilities. As of November 2019, the total disability quota deficit in the public sector was 7 119 posts, of which 5 086 were in the Ministry of Education and 1 348 in the Directorate of Religious Affairs. At that time, the total number of civil servants was 1 987 176, which reveals that the number of state employees with disability is particularly low when the proportion of persons with disabilities in the general population is taken into consideration.<sup>312</sup>

In 2019, the Committee on the Rights of Persons with Disabilities expressed concerns about the low level of compliance with employment quotas for persons with disabilities in the public sector and the private sector in Turkey, and recommended that the Turkish Government ensure equal requirements for employment quotas in the public and other work sectors; monitor their implementation and collect data on compliance with the quota system; and provide for adequate sanctions in cases of non-compliance.<sup>313</sup>

---

<sup>311</sup> Law on the Restructuring of Certain Debts and on the Amendment of Social Securities and General Health Insurance Law and of Various Other Laws and Decrees having the Force of Law, 13 February 2011, Article 99.

<sup>312</sup> Ministry of Family, Labour and Social Services General Directorate of Disabled and Elderly Services, *Statistical Bulletin of Disabled and Elderly*, December 2019, pp. 20-41, available at: <https://ailevecalisma.gov.tr/media/34054/istatistik-bulteni-aralik2019.pdf>.

<sup>313</sup> CRPD (2019), *Concluding Observations on Initial Report of Turkey*, CRPD/C/TUR/CO/1, paras. 52-53, available at: <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsvOO0RvDbzSfy0>



## 6 REMEDIES AND ENFORCEMENT

### 6.1 Judicial and/or administrative procedures (Article 7 Directive 2000/43, Article 9 Directive 2000/78)

- a) Available procedures for enforcing the principle of equal treatment

In Turkey, the following procedures exist for enforcing the principle of equal treatment:

Discrimination claims are filed through general administrative and legal channels.

#### *Judicial Procedures*

In the courts, victims of discrimination can claim compensation for pecuniary damages, loss of earnings and/or damages for pain and suffering. Parallel proceedings are possible with regard to criminal, civil or administrative courts. Persons may simultaneously pursue a civil claim for compensation in the civil or labour courts, an administrative application or a criminal complaint. If the discriminatory act or action is administrative in nature, before going to court the victim of discrimination has to request compensation from the administrative body responsible for the action. The decisions of the courts are binding by definition.

To obtain a legal remedy, employment-related discrimination claims filed under Article 5 of the Labour Law must be brought before a labour court. There are labour courts that deal with employment-related issues in every province. On appeal, employment-related discrimination cases come before the civil chambers of regional courts of appeal. On the condition that the claim in the civil case is above TRY 58 800 (EUR 7 737), the judgment of a regional court of appeal may be subjected to a judicial review before the Court of Cassation (9th Chamber). The possible remedies for termination of a work agreement based on discrimination may include, but are not limited to, an order to continue the employment relationship, payment of lost income, compensation etc. An existing labour relationship is a precondition for bringing a labour lawsuit and those who face discrimination in the recruitment process cannot take this route. Article 5 does not explicitly provide that discriminatory provisions in employment contracts shall be null and void – an issue that ECRI raised in its monitoring reports.<sup>314</sup> However, Article 6 of the Law on the Human Rights and Equality Institution of Turkey prohibits discrimination in the recruitment process as well and provides for an administrative fine for such acts.

Judicial control of the acts and actions of the governorships, district governorships, local administrative bodies and provincial administration of ministries and other public establishments and institutions is undertaken by the administrative courts. According to Article 125 of the Turkish Constitution 'all acts and actions of the administration shall be subject to judicial review' and 'the administration shall be liable for the damage caused by its own acts and actions'. Three principles derived from this provision are as follows: i) lawsuits need to be filed within a time limit; ii) judicial power is limited to control of the legality of administrative acts and actions; iii) judicial control cannot eliminate the discretionary power of the administrative organs. In cases of acts, if the administrative court finds a violation, it can order the annulment of the administrative act and/or full compensation. In cases of actions, the remedy is full compensation.

Article 148 of the Constitution guarantees the right of individual application to the Constitutional Court. The right to file an application requires exhaustion of the national ordinary legal remedies prior to filing a petition to the Constitutional Court. The scope of

---

[57%2ff1f1RyuPPMs4u7aeyVVDXGO7kQaXeKOi4HMWskQKenk8jrFoo0FZVcmmCHHcLleRFN8xZdyiEIIfNklx7v5pDbMNVm2](https://rm.coe.int/57%2ff1f1RyuPPMs4u7aeyVVDXGO7kQaXeKOi4HMWskQKenk8jrFoo0FZVcmmCHHcLleRFN8xZdyiEIIfNklx7v5pDbMNVm2).

<sup>314</sup> ECRI (2016), *Report on Turkey (fifth monitoring cycle)*, CRI(2016)37, Strasbourg, p. 16, available at: <https://rm.coe.int/fifth-report-on-turkey/16808b5c81>.

such applications is limited to those rights and liberties protected under the Constitution which fall within the scope of the ECHR and its additional protocols to which Turkey is party. Although Article 10 of the Constitution does not limit the application of the equality and non-discrimination clause to the rights set forth in ECHR and is a free-standing non-discrimination right, in practice, since the very beginning of the individual application procedure, the Constitutional Court, by referring to the 'common protection zone', denies the application of the protection afforded by the rights and freedoms that are not protected in the ECHR.<sup>315</sup> Persons can file a complaint against infringement of any of these rights by public authorities. Assessment of applications is subject to a two-tier process: admissibility and substantive review. Persons whose complaints are found to be inadmissible reserve the right to petition the ECtHR. On 23 September 2012, the Constitutional Court began to receive complaints filed against judicial decisions and actions that have become final (for details on the implementation of the mechanism, see Section 0.1).

### *Non-judicial procedures*

There are also non-judicial mechanisms available to victims of discrimination, but they have not functioned properly from the outset. Human rights boards, which have been established at district and province levels since 2000, accept discrimination complaints from individuals and issue non-binding decisions. The Bureau for Inquiry on Allegations of Human Rights Violations, established within the Ministry of the Interior in 2004, receives complaints concerning human rights violations, including claims of discrimination related to law enforcement officers.<sup>316</sup>

The Human Rights Inquiry Commission of the Grand National Assembly of Turkey 'functions as a parliamentary monitoring mechanism' and examines the extent to which human rights practices comply with obligations under the Constitution, national legislation and international conventions to which Turkey is party.<sup>317</sup> In 2011, the Commission 'gained a status of legislation commission' by being authorised to examine draft laws concerning human rights.<sup>318</sup> It has investigatory powers to request information from the Government, public institutions, local authorities and private establishments. However, there is no corresponding duty, and in the past Government institutions and the military have often refrained from sharing 'sensitive' information. The Commission has the power to conduct on-site inspections without prior notification in detention centres and prisons. It has the power to establish, on its own initiative, ad hoc inquiry commissions on specific issues. Since 2010, the Commission has worked on – among other issues – racism, labour rights, the rights of persons with disabilities, allegations of profiling and refugee rights. It publishes annual and ad hoc reports with recommendations for relevant Government bodies. However, its recommendations are not binding and often remain unimplemented. Over the past decade, except for examining allegations of human rights violations against Turkish citizens in foreign countries, the Commission has not been working properly and has not conducted any investigations with regard to human rights violations, including discrimination, or provided any input in respect of draft laws.

<sup>315</sup> Constitutional Court, *Onurhan Solmaz*, Application No. 2012/1049, 26 March 2013.

<sup>316</sup> CERD (2014), *Consideration of reports submitted by States parties under article 9 of the Convention, Combined fourth to sixth periodic reports of States parties due in 2013: Turkey*, CERD/C/TUR/4-6, 17 April 2014, p. 9, available at: [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CERD%2fC%2fTUR%2f4-6&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CERD%2fC%2fTUR%2f4-6&Lang=en).

<sup>317</sup> CERD (2014), *Consideration of reports submitted by States parties under article 9 of the Convention, Combined fourth to sixth periodic reports of States parties due in 2013: Turkey*, CERD/C/TUR/4-6, p. 12, available at: [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CERD%2fC%2fTUR%2f4-6&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CERD%2fC%2fTUR%2f4-6&Lang=en).

<sup>318</sup> Turkey (2014), *National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21*, submitted to the UN Human Rights Council Working Group on the Universal Periodic Review 21st session: 19-30 January 2015, p. 5, available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G14/191/56/PDF/G1419156.pdf?OpenElement>.

In December 2012, the Commission set up a sub-commission to investigate disability rights and violations of the human rights of persons with disabilities. The sub-commission published its report in 2013.<sup>319</sup> The report concluded, *inter alia*, that: the derogatory term 'özürlü' (which means handicapped, defective, deficient) continued to be used by Government agencies and in legislation; both the private sector and the public sector do not comply with the legal obligation to hire persons with disabilities, warranting criminal sanctions; the payment of disability pensions to persons with disabilities has served to encourage them not to work and isolated them from social life; and reports prepared by labour inspectors do not include any findings regarding physical conditions at workplaces, which prevented the Commission from assessing the accessibility of workplaces for persons with disabilities. In addition, the report recommended that measures must be adopted to ensure that individuals with hearing and visual disabilities can use emergency police, ambulance and other hotlines; to ensure the accessibility of pavements, public institutions and schools for persons with disabilities; and to ensure the participation of persons with disabilities in public life.

Individuals can also file discrimination complaints with the Human Rights and Equality Institution of Turkey, which started to operate in 2017, and with the Ombudsman Institution, which has a mandate to receive complaints concerning general human rights issues as well as disability (see Section 7). The decisions of both institutions are not binding. However, the Human Rights and Equality Institution of Turkey has the authority to impose administrative fines in cases of discrimination.

#### *International Procedures*

After local remedies have been exhausted, claimants can file a discrimination claim with the ECtHR under Article 14 of the ECHR in conjunction with a substantive right protected under the Convention. Since Turkey has not ratified the optional Protocol 12 to the ECHR, which recognises a free-standing right to non-discrimination, claimants cannot bring a claim against Turkey on the basis of this protocol. Turkey is a party to the First Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR) of the United Nations, and individual persons can also make an individual complaint to the Human Rights Committee under the anti-discrimination provision of Article 26 of the ICCPR. On 26 March 2015, Turkey ratified the Optional Protocol to the UNCRPD, enabling individuals or groups subject to its jurisdiction to file complaints with the CRPD.<sup>320</sup>

#### *Alternative Dispute Resolution Mechanisms*

If the victim seeks an amicable settlement instead of a court action, there are limited alternative dispute settlement methods, such as mediation, for disputes in civil matters. There are also labour inspectors, insurance inspectors and school inspectors tasked respectively under the Labour Law, the Social Security Institution Law and the laws governing education with inspecting compliance. Inspection under the Consumer Protection Law is carried out by executive officials at national and local levels (governors and district governors). These inspectors have powers to issue administrative and monetary fines where they identify violations of the respective laws. Labour and school inspectors have the competence to receive and review individual complaints, including those alleging violation of the anti-discrimination provisions of the Labour Law and the Law on National Education. Labour inspectors have the competence to issue sanctions, which include warnings or fines. School inspectors, on the other hand, lack sanctioning powers.

---

<sup>319</sup> Turkish Grand National Assembly Human Rights Inquiry Commission (TBMM İnsan Haklarını İnceleme Komisyonu) (2013), *Engelli Hakları İnceleme Raporu (Investigatory Report on the Rights of the Disabled)*, available at: [https://www.tbmm.gov.tr/komisyon/insanhaklari/docs/2013/raporlar/engelli\\_haklari\\_inceleme\\_raporu.pdf](https://www.tbmm.gov.tr/komisyon/insanhaklari/docs/2013/raporlar/engelli_haklari_inceleme_raporu.pdf).

<sup>320</sup> Turkey signed the Optional Protocol on 28 September 2009.

## Administrative Procedures

Persons whose requests for reasonable accommodation are denied by their employers can ask labour inspectors to monitor the observance of the Law on Persons with Disabilities. However, the inspectors do not have the power to order employers to provide reasonable accommodation, nor can they provide expertise on the concept. In cases of a breach of the duty to provide reasonable accommodation, employees in the private sector can go to the labour courts, and those in the public sector to the administrative courts. However, the labour courts do not have the power to order employers to provide reasonable accommodation or to award compensation in cases of denial of reasonable accommodation.

### b) Barriers and other deterrents faced by litigants seeking redress

There are various barriers faced by litigants seeking redress through a court judgment. Except in cases in criminal courts, the litigants themselves have to collect evidence to establish the facts and prove their case, which makes the pursuit of a case without the support of a lawyer extremely difficult. Filing a lawsuit is costly, legal aid is provided only under very strict criteria and the assessment of legal aid applications takes an extended period of time.<sup>321</sup> The legal aid allowance in the state budget in 2019 was TRY 94.4 million (EUR 12.4 million) and the amount of legal aid per person was TRY 1.14 (EUR 0.15).<sup>322</sup> The amount of legal aid per person in 2014 was EUR 1.30, which points to a drastic decrease that hinders access to legal aid.<sup>323</sup> Therefore, the lack of an adequate budget makes it very difficult for bar associations to appoint lawyers within the scope of the legal aid mechanism, and the number of appointments has been quite low. Unlike the ECtHR's individual petition mechanism, individual application to the Constitutional Court is not free of charge: in 2019, the fee was TRY 364.60 (EUR 48). Litigants often face lengthy judicial proceedings. As a result, in many cases, taking a case to court does not solve the problem. For example, if a student was expelled from school on the basis of ethnicity, or if an employment contract was terminated because the employer thought that the employee was gay, a court decision given years after the discriminatory act will have limited effect. Similarly, administrative court cases filed by parents to exempt their children from mandatory religion courses can last for years, and may be finalised long after the students concerned have completed their secondary school education. In criminal cases brought against civil servants alleged to have engaged in discrimination, their superior's permission to prosecute is required under the Law on the Prosecution of Civil Servants and Other Public Employees and Article 129 of the Constitution. This is one of the major barriers facing victims of discrimination, as in many cases permission is not given.

Finally, there are strict time limits, which vary according to the type of legal remedy sought. Under administrative law, the time limit to repeal regulations and administrative decisions is 60 days after the day of promulgation of the regulation or notification of the decision to the persons concerned. For compensation for damages which are the result of administrative action, applications should be submitted within one year of the victim being informed and, in any case, within five years of the date of the action causing damage.<sup>324</sup> Appeals should be made within 30 days of the notification of the lower court's decisions.<sup>325</sup> Under criminal law, the time limits depend on the punishment. For offences resulting in

<sup>321</sup> ECRI (2016), *Report on Turkey (fifth monitoring cycle)*, CRI(2016)37 Strasbourg, p. 16, available at: <https://rm.coe.int/fifth-report-on-turkey/16808b5c81>.

<sup>322</sup> Presidency of the Republic of Turkey (2019), *Annual Presidential Programme 2020 (2020 Yılı Cumhurbaşkanlığı Yıllık Programı)* p. 98, available at: [http://www.sbb.gov.tr/wp-content/uploads/2019/11/2020\\_Yili\\_Cumhurbaşkanligi\\_Yillik\\_Programi.pdf](http://www.sbb.gov.tr/wp-content/uploads/2019/11/2020_Yili_Cumhurbaşkanligi_Yillik_Programi.pdf). See also *Official Gazette*, 4 November 2019.

<sup>323</sup> Presidency of the Republic of Turkey (2018), *Annual Presidential Programme 2019 (2019 Yılı Cumhurbaşkanlığı Yıllık Programı)* p. 92, available at: [http://www.sbb.gov.tr/wp-content/uploads/2018/11/2019\\_Yili\\_Cumhurbaşkanligi\\_Yillik\\_Programi.pdf](http://www.sbb.gov.tr/wp-content/uploads/2018/11/2019_Yili_Cumhurbaşkanligi_Yillik_Programi.pdf). Also available in *Official Gazette*, 27 October 2018.

<sup>324</sup> Law on Administrative Adjudication Procedure, (*İdari Yargılama Usulü Kanunu*), No. 2577, 6 January 1982, Article 13.

<sup>325</sup> Law on Administrative Adjudication Procedure, No. 2577, 6 January 1982, Article 46.

less than five years' imprisonment, the limit for exercising the right of appeal is eight years. If the term of imprisonment is five to 20 years, the limit is 15 years; if the term of imprisonment is more than 20 years, the limit is 20 years; and for life imprisonment – depending on the type of such imprisonment – it is 25 or 30 years.<sup>326</sup> For some offences, investigation and prosecution is bound to a complaint. Unless a complaint is brought within six months after the complainer becomes aware of the malicious act and of the offender, an investigation or prosecution cannot proceed.<sup>327</sup> Finally, constitutional complaints must be filed within 30 days of the exhaustion of domestic judicial remedies, or after the occurrence of the alleged human rights violation, where there are no other remedies available.

Another barrier concerns the social stigma and harmful publicity surrounding litigation, particularly for LGBTI litigants who have been subjected to discrimination on the basis of sexual orientation.

c) Number of discrimination cases brought to justice

In Turkey, statistics on the number of cases relating to discrimination that are brought to justice are only partially available.

However, such statistics do not fully cover the existing remedies and are not fully available to the public.

The Ministry of Justice does not collect data on the number of the cases brought before civil courts. Statistics on criminal cases are selectively published. In 2018, only 13 persons were charged with discrimination under Article 122 of the Penal Code; however, only seven of them were convicted.<sup>328</sup> There are no publicly available disaggregated data on the grounds of discrimination in any of these statistics.

There is better access to data on the use of newly available judicial and non-judicial mechanisms. As of the end of 2018, the Constitutional Court had received a total of 254 636 applications. Of the 211 801 applications that the Court has concluded since the right of individual complaint came into force in 2012, only 8 369 resulted in a ruling in which a violation was found. Of these, only 12 (0.3 %) entailed a finding of a violation of non-discrimination legislation.<sup>329</sup>

The only publicly available statistics on discrimination claims made through the constitutional complaint mechanism have been reported by the Government to CERD. In its combined fourth to sixth report presented in February 2014, the Government reported that, of more than 10 000 individual complaints filed with the Constitutional Court between September 2012 and December 2013, 48 applications concerned racial discrimination. Of these, seven were found to be inadmissible, four were refused due to improper application and the rest were under review.<sup>330</sup> There are no current statistics provided in that regard. According to the database provided by the Constitutional Court, 253 judgments or decisions were published in which the applicants had brought forward an allegation of discrimination in individual applications to the Constitutional Court.<sup>331</sup>

---

<sup>326</sup> Penal Code, No. 5273, 26 September 2004, Article 66.

<sup>327</sup> Penal Code, No. 5273, 26 September 2004, Article 73.

<sup>328</sup> See: <https://adlisicil.adalet.gov.tr/>.

<sup>329</sup> Constitutional Court (2019), *İstatistikler 2012-2019 (Statistics 2012-2019)*, available at: <https://www.anayasa.gov.tr/tr/yayinlar/istatistikler/bireysel-basvuru/>.

<sup>330</sup> CERD (2014), *Consideration of reports submitted by States parties under article 9 of the Convention, Combined fourth to sixth periodic reports of States parties due in 2013: Turkey*, CERD/C/TUR/4-6, 17 April 2014, p. 31, available at: [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CERD%2fC%2fTUR%2f4-6&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CERD%2fC%2fTUR%2f4-6&Lang=en).

<sup>331</sup> See Constitutional Court (2019), *Database of Decisions and Judgments*, available at: <https://kararlarbilgibankasi.anayasa.gov.tr/>.



The Ombudsman Institution began receiving complaints as of 29 March 2013. In contrast with a total of 24 851 complaints received by the Ombudsman Institution by the end of 2016,<sup>332</sup> it received 17 131, 17 585 and 20 968 complaints in 2017, 2018 and 2019 respectively.<sup>333</sup> Only a fraction of the complaints concerned individual rights. Of the applications received in 2019, 1.12 % concerned human rights and 2.07 % concerned disability rights.<sup>334</sup> Of the 234 complaints concerning human rights, only one related to non-discrimination.<sup>335</sup> The breakdown of the 435 complaints received in 2019 concerning disability rights is as follows: social services and assistance (305); rehabilitation services (one); discrimination (six); protection, care and assistance (10); and other issues (113).<sup>336</sup> There has also been a significant increase in the number of recommendations issued by the Ombudsman Institution. In contrast with the 792 recommendations or partial recommendations issued during 2013-2017, 946 and 1270 recommendations were adopted in 2018 and 2019 respectively.<sup>337</sup> Of the 19 582 decisions issued in 2019, 1 607 resulted in friendly settlements.<sup>338</sup> The rate of compliance with the Ombudsman Institution's recommendations has also increased, from 20 % in 2013 to 75 % in 2019.<sup>339</sup> Yet, according to the European Commission, 'the Institution still lacks ex officio powers to initiate investigations and to intervene in cases with legal remedies, and such limitations curtail effectiveness (...) therefore, the efficiency and capacity of the Ombudsman to deal with such applications also need to be stepped up'.<sup>340</sup>

In 2018, the Ombudsman Institution issued a special report on Syrian refugees in Turkey. For a discussion of the report's findings on Syrian refugees' access to education, work, social assistance and healthcare, see Section 3.2.8.

The Human Rights and Equality Institution of Turkey, the body with responsibility for implementing Turkey's anti-discrimination legislation, became operational in March 2017. According to its *2019 Activity Report*, the Institution received a total of 422, 1 107 and 1 189 individual complaints in 2017, 2018 and 2019 respectively. The number of complaints relating to discrimination in those years were 102, 371 and 70 respectively.<sup>341</sup> The Institution issued its first decision on 30 October 2018, 20 months after it had been set up. As of 31 December 2019, the Institution had issued a total of 10 decisions (seven in 2018 and three in 2019), one of which concerned discrimination claims falling within the scope of the directives.<sup>342</sup> The Institution is neither explicitly tasked with nor precluded from addressing issues relating to migrants. As of 31 December 2019, one of the three violations of non-discrimination concerned migrants.

<sup>332</sup> Ombudsman Institution (2017), *2016 Activities Report (2016 Faaliyet Raporu)*, p. 87, available at: <https://www.ombudsman.gov.tr/contents/files/kdk-2016-yili-faaliyet-raporu.pdf>.

<sup>333</sup> Ombudsman Institution (2020), *2019 Annual Report (2019 Yıllık Raporu)*, p. 90, available at: [https://www.ombudsman.gov.tr/kdk-pdf/2019\\_yili\\_yillik\\_rapor/mobile/index.html](https://www.ombudsman.gov.tr/kdk-pdf/2019_yili_yillik_rapor/mobile/index.html).

<sup>334</sup> Ombudsman Institution (2020), *2019 Annual Report (2019 Yıllık Raporu)*, p. 94, available at: [https://www.ombudsman.gov.tr/kdk-pdf/2019\\_yili\\_yillik\\_rapor/mobile/index.html](https://www.ombudsman.gov.tr/kdk-pdf/2019_yili_yillik_rapor/mobile/index.html).

<sup>335</sup> Ombudsman Institution (2020), *2019 Annual Report (2019 Yıllık Raporu)*, p. 111, available at: [https://www.ombudsman.gov.tr/kdk-pdf/2019\\_yili\\_yillik\\_rapor/mobile/index.html](https://www.ombudsman.gov.tr/kdk-pdf/2019_yili_yillik_rapor/mobile/index.html).

<sup>336</sup> Ombudsman Institution (2020), *2019 Annual Report (2019 Yıllık Raporu)*, p. 110, available at: [https://www.ombudsman.gov.tr/kdk-pdf/2019\\_yili\\_yillik\\_rapor/mobile/index.html](https://www.ombudsman.gov.tr/kdk-pdf/2019_yili_yillik_rapor/mobile/index.html).

<sup>337</sup> Ombudsman Institution (2020), *2019 Annual Report (2019 Yıllık Raporu)*, p. 104, available at: [https://www.ombudsman.gov.tr/kdk-pdf/2019\\_yili\\_yillik\\_rapor/mobile/index.html](https://www.ombudsman.gov.tr/kdk-pdf/2019_yili_yillik_rapor/mobile/index.html).

<sup>338</sup> Ombudsman Institution (2020), *2019 Annual Report (2019 Yıllık Raporu)*, p. 104, available at: [https://www.ombudsman.gov.tr/kdk-pdf/2019\\_yili\\_yillik\\_rapor/mobile/index.html](https://www.ombudsman.gov.tr/kdk-pdf/2019_yili_yillik_rapor/mobile/index.html).

<sup>339</sup> Ombudsman Institution (2020), *2019 Annual Report (2019 Yıllık Raporu)*, p. 117, available at: [https://www.ombudsman.gov.tr/kdk-pdf/2019\\_yili\\_yillik\\_rapor/mobile/index.html](https://www.ombudsman.gov.tr/kdk-pdf/2019_yili_yillik_rapor/mobile/index.html).

<sup>340</sup> European Commission (2019), *Turkey 2019 Report*, Brussels, pp. 15 and 29, available at: <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20190529-turkey-report.pdf>.

<sup>341</sup> Human Rights and Equality Institution of Turkey (2020), *2019 Activity Report (2019 Faaliyet Raporu)*, p. 51, available at: [https://www.tihek.gov.tr/upload/file\\_editor/2020/02/1582925332.pdf](https://www.tihek.gov.tr/upload/file_editor/2020/02/1582925332.pdf).

<sup>342</sup> Human Rights and Equality Institution of Turkey, Decision No. 2019/29, 7 May 2019, available at: [https://www.tihek.gov.tr/upload/file\\_editor/2019/06/1561530224.pdf](https://www.tihek.gov.tr/upload/file_editor/2019/06/1561530224.pdf). For the list and content of these decisions, see, <https://www.tihek.gov.tr/kategori/2018-kurul-kararlari> (for 2018) and <https://www.tihek.gov.tr/kategori/2019-kurul-kararlari> (for 2019).

- d) Registration of discrimination cases by national courts

In Turkey, discrimination cases are not registered as such by national courts.

## **6.2 Legal standing and associations (Article 7(2) Directive 2000/43, Article 9(2) Directive 2000/78)**

- a) Engaging in proceedings on behalf of victims of discrimination (representing them)

In Turkey, trade unions are entitled to act on behalf of victims of discrimination.

Apart from trade unions, only consumer protection associations are partly entitled to represent consumers in judicial proceedings. There are no membership or permanency requirements imposed on trade unions or consumer protection associations that are granted standing. As the scope of acting on behalf of victims of discrimination is limited to such institutions, this possibility is applicable only in rare circumstances.

The defunct Human Rights Institution of Turkey had granted human rights organisations and trade unions standing to file complaints with the Institution on behalf of victims of human rights violations. The Human Rights and Equality Institution of Turkey does not grant third parties such standing.

According to Article 26(2) of the Law on Unions and Collective Agreements, trade unions have the right to initiate cases on behalf of their members concerning the latter's rights arising from employment contracts and social security rights. Since the Labour Law provides legal protection against discrimination, the legal standing granted to trade unions is arguably also applicable in discrimination cases. However, this requires judicial interpretation. An analogous provision is stipulated in Article 19(2)(f) of the Law on Civil Servants' Trade Unions and Collective Agreement (Law No. 4688).

Associations or organisations cannot act on behalf of victims of discrimination in civil and administrative proceedings. In civil procedures, the claimant should have a legal interest in filing a lawsuit – in other words, a subjective right. In administrative proceedings, depending on the motion, a violation of interest or violation of rights needs to be fulfilled along with other procedural conditions.

- b) Engaging in support of victims of discrimination (joining existing proceedings)

In Turkey, associations, organisations and trade unions are not entitled to act in support of victims of discrimination.

According to Article 237(1) of the Law on Criminal Procedure, it is possible for the victim and others who have been harmed by the offence to attend criminal proceedings. Thus, it seems that only legal persons who have suffered direct harm from the crime committed can participate in the proceedings. Since the provision does not explicitly mention discrimination cases and sets forth a requirement of being harmed by the crime, its implementation in discrimination cases requires judicial interpretation. However, so far, there exists no such case in practice. This also applies in terms of civil and administrative proceedings.

Turkish courts are notorious for the way in which they persistently deny requests by human rights organisations to intervene on behalf of or in support of victims of discrimination. The most high-profile example of this phenomenon occurred in a criminal case against a number of police officers in Istanbul who were charged with the torture and murder of an African immigrant named Festus Okey, who was killed in police custody. Since the beginning of the case, the Progressive Lawyers Association (PLA) – as well as hundreds of individual lawyers – have unsuccessfully attempted to intervene in the case under Article



237(1) on behalf of the deceased victim, who is not represented in the case by a lawyer. However, on each occasion, the court has denied such requests on the ground that the PLA failed to demonstrate harm. On 13 December 2011, the lower court convicted one police officer and sentenced him to four years and two months' imprisonment.<sup>343</sup> The Court of Cassation found the sentence to be too low and overturned the judgment, stating that the prosecutor should ask for 20 years' imprisonment. The case was reopened in June 2014 and, as of November 2019, the Court of First Instance for the first time allowed the relatives of the victim to intervene in criminal proceedings.<sup>344</sup>

LGBTI organisations have begun to use Article 237(1) as a way to get involved in criminal cases to act in support of victims of hate crime and honour killings. While in many cases the courts reject such requests, there have been a few instances in which courts have accepted requests for intervention from LGBTI organisations. In a decision on 26 March 2012, a court in Izmir granted a request from the Black Pink Triangle Izmir Association on Sexual Orientation and Sexual Identity Studies and Solidarity against Discrimination to intervene in a criminal case concerning the killing of a transgender woman.<sup>345</sup> The court did not elaborate on the reasoning for this decision. The contradictory stance of lower courts continued in 2013. On 18 January 2013, a favourable decision was given by a criminal court in Diyarbakır, which accepted the request of the Social Policies, Gender Identity and Sexual Orientation Studies Association (*Sosyal Politikalar, Cinsiyet Kimliği ve Cinsel Yönelim Çalışmaları Derneği* – SPoD), a national LGBTI organisation, to act on behalf of the victim in a case concerning a so-called 'honour killing'. However, the Court revoked its decision afterwards.<sup>346</sup>

Soon afterwards, decisions by two different courts in Istanbul concerning the standing of LGBTI groups went in the same direction. On 25 January 2013, during the 12th hearing of a criminal case concerning the 'honour killing' of a homosexual man by members of his family,<sup>347</sup> and on 13 February 2013, in a criminal case concerning the killing of a transgender woman,<sup>348</sup> the courts in both cases rejected SPoD's request to intervene on the ground that the association did not suffer direct harm from the crimes committed.<sup>349</sup>

### c) Actio popularis

In Turkey, national law does allow associations, organisations and trade unions to act in the public interest on their own behalf, without a specific victim to support or represent (*actio popularis*).

However, with the adoption of the new Civil Procedure Code (Law No. 6100) in 2011, a new type of civil case was introduced. According to Article 113, associations and other legal entities are entitled to file group actions on their own behalf to protect the rights of their members or the group they represent. These cases can be filed for the purposes of determining the rights of the individuals concerned, or rectifying an unlawful situation or preventing a probable violation of the rights of the individuals concerned. These new types

<sup>343</sup> Istanbul 21st Heavy Penal Court, 13 December 2011.

<sup>344</sup> 'Family of murdered Nigerian migrant to join criminal proceedings after 13-year struggle', *Hurriyet*, 16 January 2020, available at: <https://www.hurriyetdailynews.com/family-of-murdered-nigerian-migrant-to-join-criminal-proceedings-after-13-year-struggle-151039>.

<sup>345</sup> İzmir 7th Heavy Penal Court, E. 2010/224, 26 March 2012.

<sup>346</sup> 'Eşcinsel R.Ç. Davasında Mahkeme Bir Derneğin Müdahillik Kararını Kaldırdı' ('The Court Revoked its Decision on Intervention of an Association in the case of Gay R.Ç.'), *Diyarbakır Söz*, 6 December 2013, available at: <https://www.diyarbakirsoz.com/turkiye/escinsel-rc-davasinda-mahkeme-bir-dernegin-mudahillik-kararini-kaldirdi-95806>.

<sup>347</sup> Üsküdar 1st Heavy Penal Court, E. 2009/166, 25 January 2013.

<sup>348</sup> Bakırköy 4th Heavy Penal Court, E. 2012/74, 13 February 2013.

<sup>349</sup> In December 2014, in a landmark decision that constituted a first in Turkey, the Constitutional Court granted seven national NGOs and a European NGO leave to submit *amicus curiae* briefs in an ongoing case. While this is not a discrimination case, nor has the applicant made a claim for equal treatment, the decision of the Constitutional Court to accept *amicus curiae* briefs from civil society organisations has set a significant precedent, which CSOs are likely to use in supporting victims of discrimination.

of actions do not allow associations or other legal entities to claim compensation for damages suffered by its members or the group they represent. The Law stipulates that only organisations with legal personality, and whose internal rules include the right to file an action on behalf of its members or the group that it represents, are entitled to file a group action. These civil procedure rules are explicitly applicable to disputes over discrimination. Currently the concept is still not well known, so its application is therefore very limited and the rules are used largely by trade unions in cases relating to matters other than discrimination.

d) Class action

In Turkey, national law does not allow associations, organisations or trade unions to act in the interest of more than one individual victim for claims arising from the same event (class action).

### **6.3 Burden of proof (Article 8 Directive 2000/43, Article 10 Directive 2000/78)**

In Turkey, national law permits a shift in the burden of proof from the complainant to the respondent.

Under Article 21 of the Law on the Human Rights and Equality Institution of Turkey, once an applicant establishes a *prima facie* case of discrimination, the burden of proof shifts back to the respondent to prove that discrimination has not occurred. However, ECRI has pointed out that this provision seems to be restricted to applications to the Turkish Human Rights and Equality Institution and does not apply to court proceedings.<sup>350</sup>

Apart from the provisions in the Law on the Human Rights and Equality Institution of Turkey, the Labour Law contains provisions that include rules on the burden of proof in discrimination cases. According to Article 5, with regard to violations of the principle of equality, the burden of proof rests with employees. However, if an employee brings forward a claim that strongly suggests the probability of such a violation, the employer is obliged to prove that no such violation exists.

According to Article 20 of the Labour Law, in cases in which a contract is terminated by the employer, the employer is under the obligation to prove that the termination is based on a valid reason. If the employee alleges that the termination is based on discrimination, the employee has to prove this allegation. According to Article 18, the following cannot be valid reasons for the termination of an employment relationship: race, colour, sex, civil status, family responsibilities, pregnancy, religion, political opinion and ethnic and social origin. However, under the same Article, the obligation to justify dismissal is binding only on employers who employ a minimum of 30 employees, and only if the dismissed employee has completed a minimum of six months' employment. This means that the reversal of burden of proof under Article 20 is not applicable in around 80 % of dismissal cases.<sup>351</sup>

Other related legislation does not provide for shifting or sharing of the burden of proof. The Law on Civil Servants does not contain a special provision on the burden of proof, which means that general rules shall apply. The Law on Persons with Disabilities does not contain a special burden-of-proof provision either. Consequently, apart from the two exceptions found in the Labour Law, general rules apply.

---

<sup>350</sup> ECRI (2019), *Conclusions on the implementation of the recommendations in respect of Turkey subject to interim follow-up*, CRI(2019)27, Strasbourg, p. 6, available at: <https://rm.coe.int/interim-follow-up-conclusions-on-turkey-5th-monitoring-cycle-/168094ce03>.

<sup>351</sup> Korkut, L. (2003), *Report on Measures to Combat Discrimination in the 13 Candidate Countries (VT/2002/47)*, Country Report Turkey, p. 35, available at: <http://www.humanconsultancy.com/project?pid=22>.

#### **6.4 Victimisation (Article 9 Directive 2000/43, Article 11 Directive 2000/78)**

In Turkey, there are legal measures for protection against victimisation.

Article 4(2) of the Law on the Human Rights and Equality Institution of Turkey, without using the concept, indicates that the unfavourable treatment of persons and their representatives who initiate or participate in administrative or judicial procedures in order to comply with the principle of equal treatment or to prevent discrimination shall also constitute discrimination. Although the Article seems to conform with the Directives, it is still unclear whether it also covers other persons, such as witnesses, who are not parties to judicial or administrative proceedings. In addition, it does not cover cases of victimisation that occur outside the context of an administrative or judicial procedure.

Article 18 of the Labour Law, application to administrative or judicial authorities against an employer with a view to seeking the rights arising from laws or the labour contract will not constitute a valid reason for termination of the contract. This provision protects only the person who makes an administrative or judicial application, and not any other person who supports the applicant employee. Moreover, Article 18 of the Labour Law covers workers covered by employment security; i.e. it covers employees who have been employed for more than six months under an indefinite employment contract in a workplace that employs 30 or more people. Therefore, except for Article 4(2) of the Law on the Human Rights and Equality Institution, there is no regulation that protects against victimisation of employees who are not covered by Article 18.

The other provision prohibiting victimisation is found in the Regulation on Complaints and Applications of Civil Servants. According to Article 10 of the Regulation, civil servants who exercise their right of complaint cannot be subjected to disciplinary measures. Again, the protection covers only the person who makes the complaint. Article 4 prohibits collective complaints by civil servants.<sup>352</sup>

#### **6.5 Sanctions and remedies (Article 15 Directive 2000/43, Article 17 Directive 2000/78)**

##### **a) Applicable sanctions in cases of discrimination – in law and in practice**

As part of its mediation powers stipulated in Article 18(3) of the Law on the Human Rights and Equality Institution of Turkey, *ex officio* or with the request of one of the parties, the Human Rights and Equality Institution of Turkey is able to invite the parties to a mediation procedure which may involve payment of compensation to the victim. In addition, under Article 25(1) of the Law on the Human Rights and Equality Institution of Turkey, the Institution can impose administrative fines ranging from TRY 1 000 to TRY 15 000 (EUR 132 to EUR 1 974) depending on the gravity of the impact and consequences of the breach, the financial status of the perpetrator and the aggravating effect of multiple discrimination, if applicable. Where the Board – the Institution's decision-making body – deems it necessary, the fine may be converted into a warning on one occasion only. In the case of reoffending, the fine will be increased by 50 %.

In labour law, termination of the employment contract, invalidity of the employment contract or collective agreement, re-employment, and pecuniary or non-pecuniary compensation are possible sanctions stemming from various provisions that may be applied in different circumstances. According to Article 21 of the Labour Law, if a court or arbitrator concludes that a termination is invalid (because it was based on discrimination, among other reasons), the employer must reinstate the employee within one month. If, upon the application of the employee, the employer does not re-engage the employee in work,

---

<sup>352</sup> Regulation on Complaints and Applications of Civil Servants (*Devlet Memurlarının Şikayet ve Müracaatları Hakkında Yönetmelik*), *Official Gazette*, 12 January 1983.

compensation of not less than four months' wages and not more than eight months' wages shall be paid to the employee by the employer. In its judgment ruling the termination invalid, the court shall designate the amount of compensation to be paid to the employee if they are not re-engaged. In 2016, the European Social Rights Committee stated that such an upper limit precludes damages from making good the loss suffered and from being sufficiently dissuasive.<sup>353</sup> One such sanction is stipulated in Article 5 of the Labour Law. If employers violate the said Article prohibiting discrimination, employees may demand compensation of up to four months' wages plus other benefits of which they have been deprived, with the possibility of shifting the burden of proof in such a case. Moral damages cannot be claimed.

With regard to administrative law, the main types of administrative sanctions are pecuniary and non-pecuniary compensation, administrative fines and disciplinary punishment. Article 125 of the Law on Civil Servants prescribes that if civil servants discriminate on the grounds of language, race, gender, political opinion, philosophical belief, religion or sect in carrying out their duties, their promotion shall be suspended for a period of between one and three years. Moreover, according to Article 99 of the Labour Law, in the case of violation of Article 5, employers shall also be subject to a fine of TRY 219 (EUR 29) for each employee. As stated above, employers under the quota obligation pay a monthly fine of TRY 3 250 (EUR 428) for each person with disability that they do not employ.

In addition, labour inspectors and school inspectors can issue sanctions for violations of anti-discrimination provisions or positive obligations.

In civil law, possible applicable sanctions include invalidating the contract and pecuniary and non-pecuniary damages arising from the contractual relationship or from tort. Anyone who is subject to harassment can ask for judicial protection under Articles 24(1) and 25(1) of the Civil Code. As regards compensation, material and moral damages can be claimed by victims of discrimination under Article 49, 58 and 417 of the Code of Obligations. However, there are no judicial precedents in respect of those remedies. As the Human Rights and Equality Institution of Turkey can only impose administrative fines that are far from being effective and cannot adequately compensate the victims, the general provisions of civil law seem to be the only available avenue with regard to compensating the damages suffered by the victims of discrimination.

With regard to criminal law, individuals who violate the prohibition on hatred and discrimination based on the limited grounds and limited material scope stipulated in Article 122 of the Turkish Penal Code face imprisonment. The criminal penalty for these offences is one to three years' imprisonment. In the case of extenuating circumstances, it is possible to convert the penalty of imprisonment to a judicial fine. Article 125 of the Turkish Penal Code is also applicable in cases of harassment, with a penalty of three months to two years' imprisonment. However, Article 122 of the Penal Code seems to be ineffective on the basis of statistics provided by the Ministry of Justice for the past decade. The number of accused subjected to a verdict of conviction between 2009 and 2018 was only 12, although the total number of persons tried was 147.<sup>354</sup>

	Number of Defendant	Number of Convictions	Number of Acquittals
2009	20	1	4
2010	8	0	10
2011	13	0	9
2012	14	1	13

<sup>353</sup> ECSR (2016), *Conclusions 2016 – Turkey*, 2016/def/TUR/1/2/EN, 9 December 2016, Article 1-2, available at: <http://hudoc.esc.coe.int/eng?i=2016/def/TUR/1/2/EN>.

<sup>354</sup> Compiled from statistics provided by the Ministry of Justice General Directorate of Criminal Records and Statistics, available at: <http://www.adlisicil.adalet.gov.tr/Home/SayfaDetay/adalet-istatistikleri-yayin-arsivi>.

2013	14	1	11
2014	16	0	6
2015	13	0	13
2016	21	2	7
2017	15	0	6
2018	13	7	7
Total	147	12	86

b) Compensation - maximum and average amounts

In Turkey, almost all the sanctions provided by the Labour Law have an upper limit. Articles 5 and 21 of the Labour Law stipulate an upper limit for compensation. Although employees may claim other benefits of which they have been deprived in addition to compensation of up to four months' wages, these claims are limited to actual damage suffered. For example, if discrimination was suffered regarding wages, only the wage difference can be claimed. Moral damages cannot be claimed. According to Article 17 of the Labour Law, in cases where the right of termination of the employment contract is applied maliciously, the employer is obliged to pay the worker compensation – in practice known as compensation for malfeasance – which amounts to three times the payment for the termination notice period. The amount of the compensation may differ from six weeks to 24 weeks of weekly wages.

There are no other specific provisions regarding compensation in Turkey's legal framework. Thus, as stated above, the general rules of Turkish civil law on compensation should apply.

c) Assessment of the sanctions

Sanctions are not explicitly mentioned in various laws containing anti-discrimination provisions. Where they are mentioned, they are not dissuasive, proportional and effective. The number of cases in which discrimination is claimed is very small. The court decisions regarding most of these cases are not accessible. Violations that are criminal offences are punishable with short prison sentences, which are often convertible to small fines or suspended. Information is not available regarding the average amount of compensation provided for victims of discrimination. Consequently, it is not possible to provide any information regarding the amount of compensation.

## **7 BODIES FOR THE PROMOTION OF EQUAL TREATMENT (Article 13 Directive 2000/43)**

- a) Body/bodies designated for the promotion of equal treatment irrespective of racial/ethnic origin according to Article 13 of the Racial Equality Directive

Pursuant to the Law on the Human Rights and Equality Institution of Turkey, Turkey has a 'specialised body' for the promotion of equal treatment irrespective of racial or ethnic origin which, however, is not in accordance with Article 13 of the Racial Equality Directive. The new equality body was set up and its members were appointed in March 2017, and secondary legislation regarding its anti-discrimination powers was adopted in November 2017.

The Ombudsman Institution, which was established in June 2012 with a mandate for receiving complaints concerning general human rights issues and disability, partially fulfils the requirements of the Racial Equality Directive.

- b) Political, economic and social context of the designated body

On 11 January 2016, Turkey's Deputy Prime Minister announced the decision to establish a national equality body in response to the EU's condition for visa liberalisation included in its refugee deal with Turkey. The equality body was established pursuant to the Law on the Human Rights and Equality Institution of Turkey, which was adopted on 6 April 2016.<sup>355</sup>

The establishment of the Institution drew criticism from local human rights groups from the outset. Citing the UN Paris Principles, which require that civil society participate in the preparatory work for the establishment of national equality bodies, human rights NGOs criticised the Government for drafting the law 'behind closed doors' from an instrumental perspective, 'in exchange for the visa exemption', without the knowledge and participation of civil society.<sup>356</sup> Following the finalisation of the draft without any consideration of their criticisms, human rights organisations issued a second press release. Recalling that the now defunct Human Rights Institution of Turkey had already been criticised by the European Commission,<sup>357</sup> the Council of Europe and the United Nations<sup>358</sup> for its lack of independence from the executive branch, the election procedure of its members and the

---

<sup>355</sup> Law on the Human Rights and Equality Institution of Turkey, No. 6701, 6 April 2016.

<sup>356</sup> Human Rights Foundation of Turkey, Human Rights Association, Association of Human Rights and Solidarity with the Oppressed, Helsinki Citizens Assembly, Human Rights Agenda Association, Human Rights Studies Association and Amnesty International Turkey Branch (joint statement), 'Government Statement regarding the Establishment of the Human Rights and Equality Institution of Turkey: The Issue of the Institutionalisation of Human Rights is Perceived Fully from an Instrumental Perspective', 18 January 2016, available at: <https://ihd.org.tr/en/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-p/>.

<sup>357</sup> In its 2019 report, the European Commission noted that it is not 'operationally, structurally or financially independent, and their members are not appointed in compliance with the Paris Principles. So far, the NHREI has not applied for accreditation with the relevant International Coordinating Committee (ICC) of National Institutions for the Promotion and Protection of Human Rights. Turkey should urgently ensure that any and all cases of alleged human rights violations are effectively dealt with and processed, and that these bodies fully comply with the Paris Principles and the European Commission Recommendation on Standards for Equality Bodies, adopted on 22 June 2018.' European Commission (2019), *Turkey 2019 Report*, Brussels, p. 29, available at: <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20190529-turkey-report.pdf>.

<sup>358</sup> In its submission for Turkey's universal periodic review, the UN Country Team (UNCT) pointed out that the Human Rights Institution of Turkey had not requested accreditation from the International Coordinating Committee of National Human Rights Institutions and that the law establishing the Institution fell short of the Paris Principles. The UNCT also recommended legal amendment 'so as to guarantee the organic and financial independence' of the Institution. See Office of the UN High Commissioner for Human Rights (2014), *Compilation prepared in accordance with paragraph 15(b) of the annex to Human Rights Council resolution 5/1 and paragraph 5 of the annex to Council resolution 16/21: Turkey*, submitted to the UN Human Rights Council Working Group on the Universal Periodic Review 21st session: 19-30 January 2015, p. 4, available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G14/194/36/PDF/G1419436.pdf?OpenElement>.

limitations on civil society involvement, the organisations declared that they saw the Human Rights and Equality Institution of Turkey as a further setback. Human rights groups criticised the Government for not taking into account the internal reform efforts of the Human Rights Institution, made in consultation with and with the involvement of civil society, to enhance the independence of this institution.

c) Institutional architecture

In Turkey, the designated body forms part of a body with multiple mandates.

In addition, to being the national equality body, the Human Rights and Equality Institution of Turkey is vested with the additional mandate of preventing torture, also functioning as the national prevention mechanism in order to fulfil Turkey's obligation under the Optional Protocol to the UN Convention against Torture. This decision was criticised by local human rights groups as a measure seeking to create an ineffective counter-torture mechanism from the outset.<sup>359</sup> The Human Rights and Equality Institution of Turkey was also designed as a national human rights institution by the Government. The intention of establishing such an institution was to fulfil three different obligations stemming from international law.

While the Institution has the duty and power to investigate discrimination claims upon application or *ex officio*, it has the duty and power to investigate general human rights violations only *ex officio*. The duty and power to receive and investigate general applications regarding human rights violations is vested with the Ombudsman Institution, which also receives applications concerning disability rights. The major difference between the two bodies is that the Ombudsman Institution deals only with individual complaints filed against the actions or omissions of the public administration.

d) Status of the designated body/bodies – general independence

i) Status of the body

Under Article 8 of the Law on the Human Rights and Equality Institution of Turkey, the Human Rights and Equality Institution of Turkey is a public-law legal entity and has administrative and financial autonomy. Article 10(1) stipulates that the Institution exercises its duties independently and that no other authority, individual or institution shall give orders, recommendations, suggestions or instructions to the decision-making organ of the Institution ('the Board') in the exercise of its authority.

Under Article 10(2) the Board has 11 members, all of whom are appointed by the executive. Originally, eight of these members were appointed by the Cabinet and three by the President. Pursuant to amendments made to the Law on the Human Rights and Equality Institution of Turkey on 2 July 2018 following Turkey's transition to a so-called presidential system, all 11 members are appointed by the President among candidates who apply to vacant positions advertised publicly. The president and the vice-president of the Board are also appointed by the President (Article 10(2)).

The Institution has the exclusive powers to recruit and manage its 150 staff members.

The original Article 10(2), before it was amended on 2 July 2018, was contested by the main Opposition party, the Republican People's Party, before the Constitutional Court. Arguing that the provision violated Article 2 (on the rule of law); Article 7 (on the law-making power to be vested in the Parliament); and Article 123 (on the administrative

---

<sup>359</sup> Human Rights Joint Platform (İnsan Hakları Ortak Platformu), *Türkiye İnsan Hakları ve Eşitlik Kurumu Kanunu Tasarısı Hakkındaki Görüşlerimiz* (Our Opinions on the Draft Law on the Human Rights and Equality Institution of Turkey), 18 January 2016, available at: <https://www.ihd.org.tr/turkiye-insan-haklari-ve-esitlik-kurumu-kurulmasi-ile-ilgili-hukumet-aciklamasi-insan-haklari-kurumsallasmasina-tamamen-aracsal-bakiliyor-18-ocak-2015/>.



structure of the Turkish state) of the Constitution, the applicant asked the Constitutional Court to annul Article 10(2) and to issue an injunction prohibiting its execution. In a majority ruling issued on 15 November 2017, the Constitutional Court rejected these requests.<sup>360</sup> The Constitutional Court reasoned that, in the absence of constitutional rules governing the issue, determination of the rules and procedures governing the appointment of members of the Institution falls within the discretion of the Parliament. Given that the qualifications required for members of this organ are objectively, concretely and clearly laid out in the law, the discretionary power granted to the President and the Council of Ministers in their appointment can be exercised only on the basis of these conditions and therefore does not jeopardise the Institution's impartiality and independence.

Originally accountable to the Prime Ministry, pursuant to Article 8(1) of the Law on the Human Rights and Equality Institution of Turkey, as amended on 2 July 2018, the Institution is accountable to the President. According to Article 23, the sources of the Institution's budget are contributions to be made from the national budget, revenues to be obtained from the movables and immovable belonging to the Institution, revenues to be obtained from the investment of its revenues and other revenues.

According to Article 4(1) of Law on the Ombudsman Institution (No. 6328), the Ombudsman Institution is a public entity affiliated with the Turkish Parliament. Article 12(1) stipulates that no individual, authority or institution may give orders and instructions, issue circulars, or give recommendations or suggestions to the Chief Ombudsperson and Ombudspersons in the exercise of their mandate.

Under Article 4(2), the Ombudsman Institution constitutes of the Chief Ombudsman's Office and a General Secretariat. There is one Chief Ombudsman and five Ombudsmen. Ombudspersons are appointed by the Ombudsman Institution among qualified candidates who have applied to publicly announced vacancies.

Under Article 29, the sources of the Ombudsman Institution's budget are as follows: contributions made from the budget of the Turkish Parliament and other sources.

## ii) Independence of the body

The independence of the Human Rights and Equality Institution of Turkey is stipulated in Article 10(1) of the Law on the Human Rights and Equality Institution of Turkey. Accordingly, the Institution shall exercise its powers and fulfil its duties 'in an independent manner' and shall not receive instructions from anyone or any institution.

In practice, however, the body cannot be considered independent due to the election of its members by and its dependence on the executive branch. The body's lack of independence had been voiced by several stakeholders following the adoption of the Law on the Human Rights and Equality Institution of Turkey in its original form. Local human rights groups drew attention to the Institution's failure to comply with the UN Paris Principles, which require that national equality bodies are structurally, functionally and financially independent. The European Commission concluded that the equality body's 'functional, structural and financial independence has not been ensured in line with the Paris Principles and the EU *acquis*.'<sup>361</sup> In addition, ECRI stated that it is 'strongly concerned about the insufficient level of independence' of the Institution, noting that the Law on the Human Rights and Equality Institution of Turkey provides that the Institution shall be 'associated with the Prime Minister' and that the members of the new body shall be selected by the executive branch, which 'is incompatible with ECRI's standards on independence'.<sup>362</sup>

<sup>360</sup> Constitutional Court, E. 2016/132, K. 2017/154, 15 November 2017.

<sup>361</sup> European Commission (2019), *Turkey 2019 Report*, Brussels, p. 29, available at: <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20190529-turkey-report.pdf>.

<sup>362</sup> ECRI (2016), *Report on Turkey (fifth monitoring cycle)*, CRI(2016)37, Strasbourg, p. 18, available at: [https://www.ecoi.net/en/file/local/1227812/1226\\_1476797859\\_tur-cbc-v-2016-037-eng.pdf](https://www.ecoi.net/en/file/local/1227812/1226_1476797859_tur-cbc-v-2016-037-eng.pdf).

Following Turkey's transition to the so-called presidential system and the amendments made to the Law on the Human Rights and Equality Institution of Turkey, which now authorises the President to unilaterally appoint all 11 members of the Board, concerns about the Institution's lack of independence are heightened. Following the amendment in 2017, ECRI reiterated its criticism and stated that 'the executive should not have a decisive influence in any stage of the process for the selection of the persons holding leadership positions in the equality body.'<sup>363</sup>

Similar concerns have been raised regarding the independence of the Ombudsmen. Article 74(5) of the Constitution states that the Chief Ombudsperson shall be elected by the Parliament with a qualified majority. However, if an absolute majority cannot be obtained in the third ballot, a fourth ballot shall be held between the two candidates who have received the greatest number of votes in the third ballot, and the candidate who receives the greatest number of votes in the fourth ballot shall be elected. The election system provided in Article 74(5) leads to majority-oriented candidates being appointed to the post. According to ECRI, there are 'concerns regarding the impartiality and neutrality of the Ombudsmen', referring to members of the Ombudsman Institution.<sup>364</sup> ECRI stated that, 'the low number of complaints against law enforcement officers and the fact that in only one of these cases a decision with a recommendation was issued, point to an additional problem of de facto independence.'<sup>365</sup> According to the European Commission, neither the Human Rights and Equality Institution of Turkey nor the Ombudsman Institution 'has operational, structural or financial independence and [its] members are not appointed in compliance with the Paris Principles.'<sup>366</sup>

e) Grounds covered by the designated body/bodies

The Human Rights and Equality Institution of Turkey has a mandate to receive discrimination claims on grounds of gender, race, colour, language, religion, belief, sect (denomination), philosophical or politic opinion, ethnic origin, wealth, birth, marital status, health, disability and age. Sexual orientation is not mentioned among the mandates of the Institution, nor is it ever addressed by the Institution.

The Ombudsman Institution and the human rights boards in provinces and districts do not have explicit mandates to receive discrimination claims. While their mandate for general human rights protection arguably covers discrimination issues, the duty and power to investigate discrimination claims *ex officio* or on application is explicitly vested in the Human Rights and Equality Institution of Turkey. At the same time, one of the five Ombudsmen is responsible for disability issues and the Ombudsman Institution receives complaints concerning disability rights.

f) Competences of the designated body/bodies – and their independent exercise

i) Independent assistance to victims

The Human Rights and Equality Institution of Turkey has the competence to provide independent assistance to victims on available administrative and legal remedies. In light of the Institution's lack of independence from the executive, the highly polarised political

---

<sup>363</sup> ECRI (2019), *Conclusions on the implementation of the recommendations in respect of Turkey subject to interim follow-up*, CRI(2019)27, Strasbourg, p. 4, available at: <https://rm.coe.int/interim-follow-up-conclusions-on-turkey-5th-monitoring-cycle-/168094ce03>.

<sup>364</sup> ECRI (2013), *Conclusions on the implementation of the recommendations in respect of Turkey subject to interim follow-up*, CRI(2014)6, Strasbourg, p. 7, available at: <https://rm.coe.int/interim-follow-up-conclusions-on-turkey-4th-monitoring-cycle/16808b5c93>.

<sup>365</sup> ECRI (2019), *Conclusions on the implementation of the recommendations in respect of Turkey subject to interim follow-up*, CRI(2019)27, Strasbourg, p. 7, available at: <https://rm.coe.int/interim-follow-up-conclusions-on-turkey-5th-monitoring-cycle-/168094ce03>.

<sup>366</sup> European Commission (2019), *Turkey 2019 Report*, Brussels, p. 29, available at: <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20190529-turkey-report.pdf>.

environment in Turkey and the extreme politicisation of the notion of human rights, the Institution is not expected to perform this function effectively.

#### ii) Independent surveys and reports

The Human Rights and Equality Institution of Turkey has the competence to publish independent reports. It is tasked with preparing annual reports on anti-discrimination for the Presidency, the Parliament and the Prime Ministry as well as special reports on issues falling within its mandate where it deems this necessary.

In 2019, the Institution published 17 investigation reports, none of which were pursuant to the anti-discrimination mandate. One of the reports concerned the conditions in a private institution providing care for persons with disabilities.<sup>367</sup> The Institution conducted its visit and issued its report pursuant to its torture-prevention mandate under the Optional Protocol to the UN Convention against Torture and not under its anti-discrimination competences. While the Institution published an investigative report in 2018 on migrants with regard to the conditions of detention in a repatriation centre, it did so pursuant to its torture-prevention mandate under the Optional Protocol to the UN Convention against Torture and not under its anti-discrimination competences.<sup>368</sup>

The Human Rights and Equality Institution of Turkey does not have the competence to conduct independent surveys. Under Article 24 of the Law on the Human Rights and Equality Institution of Turkey, the Institution, together with the Turkish Statistical Institute and other public bodies, is empowered to decide on areas where official statistics are needed for the purpose of combating discrimination. However, the Turkish Statistical Institute is responsible for gathering such statistics.

#### iii) Recommendations

The Human Rights and Equality Institution of Turkey has the competence to make recommendations on discrimination issues by monitoring and contributing to legislative activities relevant to its mandate. Due to reasons discussed earlier, the Institution is not able to effectively perform this task in an independent manner, as is evident from the fact that it has not yet made any recommendations (or issued decisions) concerning discrimination.

The Ombudsman Institution also has the competence to make recommendations on issues falling within its mandate. It is tasked with reviewing the acts and operations of the administration and making suggestions to ensure the administration's compliance with the principles of human rights, justice and the rule of law. According to ECRI, the Ombudsman Institution might also take on the function of an independent body on racial discrimination, but it 'lacks the power to carry out investigations on its own initiative'.<sup>369</sup> The Ombudsman is therefore dependent on information provided to it by third parties (NGOs, Government) to exercise its review powers.

#### iv) Other competences

The other competences of the Human Rights and Equality Institution of Turkey include the prevention of discrimination and protection of human rights; raising awareness on anti-discrimination; assisting in the preparation of a curriculum on anti-discrimination to be

<sup>367</sup> Human Rights and Equality Institution of Turkey (2019), *Samsun Dr. Nejat Akyol Özel Bakım Merkezi Ziyareti* (Report No. 2019/3), available at: [https://www.tihek.gov.tr/upload/file\\_editor/2019/02/1551179882.pdf](https://www.tihek.gov.tr/upload/file_editor/2019/02/1551179882.pdf).

<sup>368</sup> Human Rights and Equality Institution of Turkey (2018), *Izmir Harmandalı Geri Gönderme Merkezi Ziyareti* (Report No. 2017/18), available at: [https://www.tihek.gov.tr/upload/file\\_editor/2019/02/1551172797.pdf](https://www.tihek.gov.tr/upload/file_editor/2019/02/1551172797.pdf).

<sup>369</sup> ECRI (2013), *Conclusions on the implementation of the recommendations in respect of Turkey subject to interim follow-up*, Strasbourg, p. 7, available at: <https://rm.coe.int/interim-follow-up-conclusions-on-turkey-4th-monitoring-cycle/16808b5c93>.

used in secondary education; investigating human rights violations and violations of non-discrimination; and monitoring implementation of the international conventions that Turkey is a party to and participating in the meetings of relevant treaty bodies where Turkey's official country reports are presented. The Institution is able to receive complaints against both public and private legal and natural persons and, where it succeeds in reaching a friendly settlement between the parties, to order the party which has committed discrimination to pay compensation.

g) Legal standing of the designated body/bodies

In Turkey, the designated body does not have legal standing to bring discrimination complaints on behalf of identified victims to court.

In Turkey, the designated body does not have legal standing to bring discrimination complaints on behalf of non-identified victims to court.

In Turkey, the designated body does not have legal standing to bring discrimination complaints *ex officio* to court.

In Turkey, the designated body does not have legal standing to intervene in legal case concerning discrimination, for example as an *amicus curiae*.

Under Article 18(5) of the Law on the Human Rights and Equality Institution of Turkey, the Institution may file criminal complaints with respect to complaints it has received where it finds that there is discrimination. However, the Institution is not able to initiate or participate in court proceedings on its own initiative. Article 11(1)(d) stipulates that the courts can ask the Institution for its opinion.

The Ombudsman Institution does not have any standing to bring discrimination complaints.

h) Quasi-judicial competences

In Turkey, the body is a quasi-judicial institution.

The Human Rights and Equality Institution of Turkey has the competence to receive discrimination complaints from natural and legal persons. Filing a complaint is free of charge. Under Article 17(4) of the Law, acts relating to the exercise of legislative and judicial competences, the decisions of Council of Prosecutors and Judges and acts that are exempt from judicial review under the Constitution cannot be the subject of complaints filed with the Institution. After receiving the written and, if it sees a need, oral statements of the parties, the Institution can invite the parties to reach a friendly settlement. The mediation process may conclude with an agreement to pay compensation to the victim. Where the parties are unwilling or unable to settle their dispute through mediation, the Institution will reach a non-binding decision as to whether discrimination has taken place. Where it finds that discrimination has occurred, the Institution, along with its ability to impose an administrative fine, also has the competence to file a criminal complaint.

In addition to the competence to receive individual complaints, the Institution has some general powers whose nature is rather vague. Under Article 9(1)(f), the Institution has *ex officio* powers to begin, on its own initiative, investigations into violations of human rights and non-discrimination. However, this is not a power to initiate *actio popularis* procedure. As noted by ECRI, the Institution 'can neither initiate nor participate in court proceedings on its own initiative'.<sup>370</sup> Indeed, under Article 11(d), the Institution can give opinions to courts only when it is asked to do so. Article 11(1)(c) provides that the Institution can

---

<sup>370</sup> ECRI (2016), *Report on Turkey (fifth monitoring cycle)*, CRI(2016)37, Strasbourg, p. 17, available at: <https://rm.coe.int/fifth-report-on-turkey/16808b5c81>.

monitor the execution of court judgments regarding human rights breaches and discrimination.

While the Institution has the power to impose sanctions (see Section 6.5.a above), the low amount of such monetary sanctions renders them ineffective. It is not possible to lodge an appeal against the Institution's decisions with the body itself. However, following a non-scrutiny decision by the Institution, an applicant filed a case in the administrative court. A decision should have been taken by the board, but instead the decision was taken on behalf of the president with the signature of the vice-president, which is against the law. This decision showed that the decisions of the Institution could be subject to judicial review.<sup>371</sup> The law is silent on whether the Institution can take follow-up actions to track and secure the implementation of its decisions.

Since the Institution issued its first decisions only in October 2018 and the total number of decisions is so low, any assessment of whether they are respected would be premature. In 2019, a total of 30 files were examined on their merits, and 18 of those were concluded. A violation of non-discrimination law was found in only four cases.<sup>372</sup> In three of those cases, the Institution imposed administrative fines of between TRY 1 000 (EUR 132) and TRY 1 500 (EUR 198).<sup>373</sup> In the third decision, an administrative fine of TRY 1 000 (EUR 132) was imposed at first, and the penalty was subsequently commuted to a warning.<sup>374</sup>

The Ombudsman Institution can also receive complaints from individual persons regarding human rights violations, including discrimination. However, it lacks a mandate to carry out investigations on its own initiative and its reports and recommendations are not binding. It does not have powers to impose sanctions. An appeal to the Ombudsman Institution's recommendations is not possible. The law is silent on follow-up actions to track and secure the implementation of the Ombudsman Institution's recommendations.

#### i) Registration by the bodies of complaints and decisions

In Turkey, the bodies register the number of complaints of discrimination made and decisions (by ground, field, type of discrimination, etc.).

These data are not available to the public.

The Human Rights and Equality Institution registers the number of complaints of discrimination made and decisions reached by field (whether they concern discrimination, torture or general human rights issues). It publishes its decisions on its website. In 2019, the Institution has selectively issued 26 decisions, of which only six concern discrimination.<sup>375</sup>

The Human Rights and Equality Institution provides general statistics about complaints that it has received and decisions that it has issued each year, but these do not provide a

---

<sup>371</sup> See Pink Life Association (2019), 'Pembe Hayat Derneği, TİHEK'e açtığı davayı kazandı' ('The Pink Life Association won its lawsuit against TİHEK'), available at: <http://www.pembehayat.org/haberler/detay/2284/pembe-hayat-dernegi-tiheksquo-e-actigi-davayi-kazandi>.

<sup>372</sup> Human Rights and Equality Institution of Turkey (2020), *2019 Activity Report*, p. 59, available at: [https://www.tih.gov.tr/upload/file\\_editor/2020/02/1582925332.pdf](https://www.tih.gov.tr/upload/file_editor/2020/02/1582925332.pdf).

<sup>373</sup> Human Rights and Equality Institution of Turkey (2019), Decision No. 2019/15, 5 March 2019, available at: [https://www.tih.gov.tr/upload/file\\_editor/2019/07/1562844689.pdf](https://www.tih.gov.tr/upload/file_editor/2019/07/1562844689.pdf); Decision No. 2019/54, 10 September 2019, available at: [https://www.tih.gov.tr/upload/file\\_editor/2019/10/1571480585.pdf](https://www.tih.gov.tr/upload/file_editor/2019/10/1571480585.pdf); Decision No. 2019/64, 19 November 2019, available at: [https://www.tih.gov.tr/upload/file\\_editor/2020/01/1579282358.pdf](https://www.tih.gov.tr/upload/file_editor/2020/01/1579282358.pdf).

<sup>374</sup> Human Rights and Equality Institution of Turkey (2019), Decision No. 2019/29, 7 May.2019, available at: [https://www.tih.gov.tr/upload/file\\_editor/2019/06/1561530224.pdf](https://www.tih.gov.tr/upload/file_editor/2019/06/1561530224.pdf).

<sup>375</sup> Human Rights and Equality Institution of Turkey (2019), *Decisions in 2019 (2019 Kararları)*, available at: <https://www.tih.gov.tr/kategori/2019-kurul-kararlari/>.

detailed picture of discrimination claims and how they are assessed. The annual reports only provide information on the grounds of discrimination claims.<sup>376</sup>

j) Stakeholder engagement

In Turkey, the designated bodies do not engage with stakeholders as part of implementing their mandate.

Although the institutions seem to engage with ministries and other Government institutions, universities, NGOs and trade unions, they do not engage with independent NGOs that advocate for human rights, anti-discrimination and equality for all.

k) Roma and Travellers

Neither the Human Rights and Equality Institution of Turkey nor the Ombudsman Institution treats Roma and Travellers as a priority issue.

---

<sup>376</sup> Human Rights and Equality Institution of Turkey (2020), *2019 Activity Report*, p. 55, available at: [https://www.tihek.gov.tr/upload/file\\_editor/2020/02/1582925332.pdf](https://www.tihek.gov.tr/upload/file_editor/2020/02/1582925332.pdf).



## 8 IMPLEMENTATION ISSUES

### 8.1 Dissemination of information, dialogue with NGOs and between social partners

- a) Dissemination of information about legal protection against discrimination (Article 10 Directive 2000/43 and Article 12 Directive 2000/78)

As the Directives are not transposed, no specific action has been taken by the Turkish Government to disseminate information about legal protection against discrimination.

- b) Measures to encourage dialogue with NGOs with a view to promoting the principle of equal treatment (Article 12 Directive 2000/43 and Article 14 Directive 2000/78)

In Turkey, the Government does not adopt measures to encourage dialogue with NGOs with a view to promote the principle of equal treatment.

The Turkish Government develops policies, designs laws and adopts executive measures in the area of human rights and anti-discrimination without consulting NGOs or, in the rare cases where it does so, without taking into account their suggestions or criticisms. Most recently, the Law on the Human Rights and Equality Institution of Turkey was adopted 'behind closed doors' without the knowledge and participation of civil society.<sup>377</sup> Similarly, the Action Plan on Prevention of Violations of the European Convention on Human Rights was adopted in 2014<sup>378</sup> without the involvement of civil society.<sup>379</sup> The European Commission has stated that: 'There was limited implementation of the 2014 Action Plan on preventing violations of the ECHR. The implementation reports are not made public, thus limiting the accountability of institutions responsible for implementation.'<sup>380</sup> In developing the new Action Plan, a series of meetings was conducted with scholars, trade unions and NGOs in 2019.<sup>381</sup> However, as the new plan has not yet been published, it is not known whether the views expressed by NGOs have been taken into account.

In rare cases in which NGOs are invited to provide opinions and proposals on pending laws, their input is not (fully) taken into consideration at the drafting stage. For example, an initial version of the anti-discrimination law was distributed to universities and NGOs for their contributions and was revised on the basis of their feedback. However, the Government subsequently amended the text that had been agreed on and, despite the protests of the LGBTI movement and the NGOs that had collaborated on the draft, removed 'sexual identity' from the prohibited grounds of discrimination. Since the Regulation on the Drafting of Legislation that was previously in force has been repealed, there is no mechanism for taking the opinions of NGOs on board in the preparation of draft legislation.

---

<sup>377</sup> Human Rights Foundation of Turkey, Human Rights Association, Association of Human Rights and Solidarity with the Oppressed, Helsinki Citizens Assembly, Human Rights Agenda Association, Human Rights Studies Association and Amnesty International Turkey Branch (joint statement), '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', 18 January 2016, available at: <https://ihd.org.tr/en/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-p/>.

<sup>378</sup> Avrupa İnsan Hakları Sözleşmesi İhlallerinin Önlenmesine İlişkin Eylem Planı (Action Plan on Prevention of Violations of the European Convention on Human Rights), *Official Gazette*, 1 March 2014.

<sup>379</sup> European Commission (2014), *Turkey Progress Report*, Brussels, p. 48, available at: [https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key\\_documents/2014/20141008-turkey-progress-report\\_en.pdf](https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key_documents/2014/20141008-turkey-progress-report_en.pdf).

<sup>380</sup> European Commission (2019), *Turkey 2019 Report*, Brussels, p. 29, available at: <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20190529-turkey-report.pdf>.

<sup>381</sup> See Ministry of Justice Department of Human Rights, 'Faaliyetler' ('Activities'), available at: <https://inhak.adalet.gov.tr/Home/TumHaberler/1>.



A rare positive example concerns the drafting of amendments to the Law on Persons with Disabilities in 2013. The Government shared with NGOs representing persons with disabilities the draft of the first national report which Turkey was to present to the CRPD regarding the Law on Persons with Disabilities and asked for their feedback. The Ministry of Family and Social Policies organised an evaluation meeting to receive in person the opinions and assessments of the relevant NGOs on the draft national report. The Ministry also formed a special section on the official website of its General Directorate of Services for Persons with Disabilities and the Elderly in order to raise awareness of the efforts to implement the UNCRPD.<sup>382</sup>

- c) Measures to promote dialogue between social partners to give effect to the principle of equal treatment in workplace practices, codes of practice, workforce monitoring (Article 11 Directive 2000/43 and Article 13 Directive 2000/78)

No measures have been taken by the authorities in this regard.

- d) Addressing the situation of Roma and Travellers

The Ministry of Family and Social Policies has been appointed at the national level to address Roma issues. In 2011, it was tasked with the coordination of all initiatives undertaken by the Government under the 'Roma opening'. On 27 April 2016, the Turkish Government adopted the 2016-2021 National Strategy for the Roma and the first stage of an Action Plan for the period 2016-2018. To monitor the implementation of the national strategy, a monitoring and evaluation board was set up, with membership comprised of relevant public institutions (half of the membership) and non-public sector representatives from NGOs, the academic community and professional organisations. The Council was expected to meet in February to assess the progress made in the previous calendar year and issue its annual report by the end of May. So far, the Council has met twice, in February 2017 and 2018, but it has not issued an annual report. In the first implementation phase of the strategy, the steps mentioned in the Action Plan have not been taken. The Stage 2 Action Plan (2019-2021) was published at the end of 2019, with the same priority areas.<sup>383</sup> However, the new Action Plan is far from sufficient to address the major problems of the Roma in this field.

In addition, the Institute for the Study of Roma Language and Culture at the University of Trakya, which opened in 2014,<sup>384</sup> is expected to contribute to the development of Government policies on the Roma community. The Institute has a mandate to conduct research and issue publications on the Roma; to partner with national and international institutions pursuing similar goals; and to engage in training, consulting, monitoring and data collection activities.<sup>385</sup> The Institute is located in the province of Edirne, which hosts one of the largest Roma communities in Turkey. Two other research centres have been established in Aydın Adnan Menderes University<sup>386</sup> and Zonguldak Bülent Ecevit University,<sup>387</sup> in 2011 and 2015 respectively.

---

<sup>382</sup> CRPD (2015), *Initial Report on the Convention on the Rights of Persons with Disabilities based on Article 35 of the Convention, Turkey*, p. 14, available at: [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD%2fC%2fTUR%2f1&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD%2fC%2fTUR%2f1&Lang=en).

<sup>383</sup> See *Official Gazette*, 11 December 2019

<sup>384</sup> See the announcement on the University of Trakya's website: <http://www.trakya.edu.tr/news/roman-dili-ve-kulturu-arastirmalari-enstitusu-kuruldu>.

<sup>385</sup> The decision to open a university institute specialising in Roma was announced as part of the 'democratisation package' launched by the Prime Minister on 30 September 2013. On 5 November 2013, the High Council on Education decided that the institute should be opened at the University of Trakya. Council of Ministers, Decision No. 2014/6070, *Official Gazette*, 23 March 2014.

<sup>386</sup> Aydın Adnan Menderes University Roma Research Centre, available at: <https://akademik.adu.edu.tr/aum/romanlar/default.asp>.

<sup>387</sup> Zonguldak Bülent Ecevit University Roma Culture Research Centre, available at: <https://romer.beun.edu.tr/>.

## **8.2 Measures to ensure compliance with the principle of equal treatment (Article 14 Directive 2000/43, Article 16 Directive 2000/78)**

### **a) Compliance of national legislation (Articles 14(a) and 16(a))**

In Turkey, laws, regulations or rules that are contrary to the principle of equality are still in force or are interpreted in such a manner.

So far, no study that exhaustively identifies discriminatory legislation has been carried out. In 2019, no measures were taken by Turkey in order to ensure compliance with the directives.

### **b) Compliance of other rules/clauses (Articles 14(b) and 16(b))**

Article 5 of the Labour Law, which prohibits discrimination, applies to employment contracts. Article 5 is silent with regard to contractual clauses that are contrary to the principle of equality. However, when considered together with Article 10 of the Constitution and Article 27 of the Law on Obligations, which makes contracts against imperative provisions of the law null and void, Article 5 of the Labour Law implicitly prohibits and annuls contractual clauses that are contrary to the principle of equality.

The Labour Law is not applicable in all areas or in all employment relationships. According to Article 33(5) of the Law on Trade Unions and Collective Agreements (No. 6356), collective agreements shall comply with the provisions of the Constitution and imperative provisions of laws. In any case, Article 10 of the Constitution provides a general provision which is binding on all persons, including contractual clauses that are contrary to the principle of equality.

In 2019, no measures were taken by Turkey in order to ensure compliance with other rules/clauses in the directives.

## 9 COORDINATION AT NATIONAL LEVEL

Turkey does not have a Government department/other authority responsible for dealing with or coordinating issues regarding anti-discrimination on the grounds covered by this report.

According to a press statement issued on April 2010 by the Secretariat General for EU Affairs, a task force on anti-discrimination was established to monitor and coordinate the steps to be taken in the fight against discrimination.<sup>388</sup> The task force was reported to include representatives from the Ministry of Justice, Ministry of the Interior, Ministry of Foreign Affairs, Ministry of Labour and Social Security, Human Rights Institution, General Directorate on the Status of Women, Disability Administration and Agency for Social Services and Child Protection. These representatives would be in touch with 81 deputy governors, and those efforts would be coordinated by the Secretariat-General for EU Affairs.<sup>389</sup> However, no further information is available on the initiative, and the outcome of it is not known. In 2013, the Disabled Rights Monitoring and Evaluation Board was established to 'carry out necessary administrative and legal arrangements for the protection and promotion of the rights of the disabled'.<sup>390</sup>

Turkey does not have any anti-racism or anti-discrimination national action plans.

As far as persons with disabilities are concerned, the General Directorate of Services for Persons with Disabilities and the Elderly within the Ministry of Family and Social Policy is the designated focal point for the implementation of the UNCRPD. The Strategy Paper on Accessibility and the National Action Plan (SPANAP), which was adopted in November 2010 pursuant to a Government decision which declared 2010 the year of accessibility for persons with disabilities, exists only on paper.<sup>391</sup> SPANAP is based on the premise that, despite a number of laws and regulations adopted since the late 1990s, the central Turkish Government and local municipalities fail to work in a holistic and systematic manner; rules concerning accessibility are implemented in an inadequate and inaccurate fashion; and many of the limited measures adopted to ensure accessibility are unusable. To remedy these problems, SPANAP aims to achieve the following three goals: revising the legislative framework, raising societal awareness and ensuring implementation.

Since 2011, the Ministry of Family and Social Policies is tasked with national coordination of all initiatives undertaken by the Government under the 'Roma opening' policy, which was declared in 2009 'with a view to identifying and seeking solutions for the problems faced by the Roma particularly in the fields of employment, housing, health and education through increasing dialogue between the Roma and relevant Government units'.<sup>392</sup> To that end, starting in December 2009 a series of workshops and meetings was held between senior Government leaders and representatives of the Roma community.<sup>393</sup> The tangible

<sup>388</sup> Republic of Turkey Prime Ministry Secretariat General for EU Affairs, 'Conclusions of the 20th Reform Monitoring Group Meeting' (press statement), Konya, 9 April 2010, available at: [https://www.ab.gov.tr/files/BasinMusavirligi/20.rig/20rig\\_press.pdf](https://www.ab.gov.tr/files/BasinMusavirligi/20.rig/20rig_press.pdf).

<sup>389</sup> Müderrisoğlu, O., 'Ayrımcılık için Özel Görev Gücü Kuruluyor' ('New Task Force to be Established against Discrimination'), *Sabah*, 14 March 2010, available at: [http://www.sabah.com.tr/Gundem/2010/03/14/ayrimcilik\\_icin\\_ozel\\_gorev\\_gucu\\_kuruluyor](http://www.sabah.com.tr/Gundem/2010/03/14/ayrimcilik_icin_ozel_gorev_gucu_kuruluyor).

<sup>390</sup> Turkey (2014), *National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21*, submitted to the UN Human Rights Council Working Group on the Universal Periodic Review 21st session: 19-30 January 2015, p. 18, available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G14/194/36/PDF/G1419436.pdf?OpenElement>.

<sup>391</sup> Strategy Paper on Accessibility Strategy and the National Action Plan (Ulaşılabilirlik Stratejisi ve Eylem Planı) (2010-2011), *Official Gazette*, 12 November 2010.

<sup>392</sup> CERD (2014), *Consideration of reports submitted by States parties under article 9 of the Convention, Combined fourth to sixth periodic reports of States parties due in 2013: Turkey*, CERD/C/TUR/4-6, p. 5, available at: [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CERD%2fC%2fTUR%2f4-6&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CERD%2fC%2fTUR%2f4-6&Lang=en).

<sup>393</sup> For a detailed listing of these events prior to 2014, see CERD (2014), *Consideration of reports submitted by States parties under article 9 of the Convention, Combined fourth to sixth periodic reports of States parties*

outcomes of this deliberative process were as follows: an action plan to detect irregular school attendance and prevent Roma children dropping out of school among was drafted; the Turkish Employment Agency initiated various programmes to enhance Roma participation in the labour market; all governorates were instructed to issue identity cards to Roma citizens; and housing has been constructed for the Roma. On the other hand, despite this recent evidence of political will and the considerable lip-service paid to addressing the problems of the Roma, the Government did not join the international 2005-2015 Decade of Roma Inclusion initiative.<sup>394</sup>

The single most important outcome of this process was the adoption on 27 April 2016 of the 2016-2021 National Strategy for the Roma and the first stage of the Action Plan for the period 2016-2018. The strategy addresses key obstacles to the social inclusion of Roma and proposes measures in areas such as housing, education, employment and health. In the education field, the strategy aims to achieve equal opportunity and access to quality education for Roma students and seeks to ensure that Roma young people complete compulsory education at the very least. In the field of employment, the strategic aim is to facilitate the entry of Roma citizens to the job market and to enhance their employment in quality jobs with safe working conditions. In housing, health and social services, the strategic goals are to provide Roma with access to adequate housing and to ensure that they enjoy health and social services more effectively. At the same time, an item on discrimination is notably missing from the National Strategy and the Action Plan. Representatives of international and domestic Roma civil society organisations who had taken part in the deliberative process during 2009-2016 criticised the Government for having significantly shortened and watered down the draft national strategy that the Ministry of Family and Social Policies had shared with them in February 2016, and on which they had provided feedback.<sup>395</sup> Following the first Action Plan for 2016-2018, another Action Plan was issued in 2019 covering the final three years of the strategy.<sup>396</sup> However, since almost none of the targets in the first Action Plan have been achieved, the second Action Plan does not offer much hope.

---

due in 2013: Turkey, CERD/C/TUR/4-6, pp. 12-15, available at:

[http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CERD%2fC%2fTUR%2f4-6&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CERD%2fC%2fTUR%2f4-6&Lang=en).

<sup>394</sup> European Commission (2014), *Turkey Progress Report*, Brussels, p. 62, available at:

[https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key\\_documents/2014/20141008-turkey-progress-report\\_en.pdf](https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key_documents/2014/20141008-turkey-progress-report_en.pdf).

<sup>395</sup> Foggo, H., 'Ulusal Roman Strateji Planı "İzleme Kurulu"na Öneriler-1' ('Proposals for the National Roma Strategy Plan "Monitoring Council"'), P24, 24 February 2017, available at:

<http://www.platform24.org/p24blog/yazi/2838/roman-strateji-izleme-kurulu-na-oneriler>.

<sup>396</sup> See *Official Gazette*, 11 December 2019.

## **10 CURRENT BEST PRACTICES**

There were no best practices to report in 2019.

## **11 SENSITIVE OR CONTROVERSIAL ISSUES**

### **11.1 Potential breaches of the directives at the national level**

The directives have not (yet) been transposed to national law.

### **11.2 Other issues of concern**

Although the directives have not (yet) been transposed into national law, the following issues raise concern.

- The overarching issue of concern is the rapid eradication of democracy and the rule of law in Turkey. The backsliding continued in 2019.
- The Government's preoccupation with 'counter-terrorism' and the effective halt of the EU accession process has led human rights reforms, including in the area of anti-discrimination, to be entirely dropped from the agenda of public institutions.
- The equality body also fulfils the function of national prevention mechanism on torture and national human rights institution, which may dilute its strength and effectiveness.
- The equality body's independence has not been ensured in line with the Paris Principles and the EU *acquis*.
- The equality body became operational after considerable delay. Rather than combating discrimination, the Institution often uses discriminatory discourse. The Institution carries out activities largely from a conservative perspective and in a way that contradicts universal human rights values.
- The grounds of anti-discrimination in the Law on the Human Rights and Equality Institution of Turkey, the Constitution and various laws still do not explicitly include sexual orientation, although the Constitutional Court ruled that it is included in the open-ended list of non-discrimination grounds. In a decision in 2019, the Institution explicitly refused to examine a complaint regarding discrimination based on gender identity.
- The scope of the duty to provide reasonable accommodation is more limited than the Employment Equality Directive 2000/78/EC. The test regarding reasonable accommodation is non-existent: consequently, there is no guidance for labour inspectors, judges, employers and persons with disabilities.
- There is no specific prohibition regarding discrimination by association or hate speech.
- The Law on the Human Rights and Equality Institution of Turkey and the Law on Disabilities do not elaborate on what can be considered a legitimate aim for the purpose of objective justification of indirect discrimination.
- Sanctions are not explicitly mentioned in various laws containing anti-discrimination provisions. Where they are mentioned, they are not dissuasive, proportional and effective. Violations that are criminal offences are punishable with short prison sentences, which are often convertible to small fines and inapplicable in practice.
- The Constitutional Court's narrow interpretation of Article 10 of the Constitution, restricting it to the rights and freedoms enshrined in the European Convention on Human Rights, limits the application of the equality clause beyond the protection afforded by the European Court of Human Rights.
- Turkish law does not recognise the standing of NGOs to bring claims in support of victims of discrimination, and standing to act on behalf of victims is granted only to trade unions and consumer protection associations.
- The mandates of the national and local human rights bodies and the Ombudsman Institution do not explicitly refer to protection from discrimination and offer limited possibilities for intervention and influence. Provincial and district human rights bodies have been ineffective and inactive for years. The accessibility and awareness of the Ombudsman Institution is low.

- Discriminatory and hate speech and conduct against minorities, particularly the Roma, LGBTI persons, Kurds and non-Muslims (especially Jews) is rampant in daily life, political discourse and the media.
- The authorities fail utterly in protecting non-Muslims, especially Jews, against the prevalence of hate speech and hate crimes in the media, political discourse and daily life. The judicial authorities are reluctant to enforce legislation prohibiting hate speech and discrimination.
- There is widespread discrimination against the Roma, Kurds and LGBTI people in education, employment, health, housing and access to services. LGBTI people also face physical insecurity, including killings, targeted at transgender people in particular.
- Discrimination in access to education, by way of de facto imposing an obligation on parents to pay for schooling, hinders access to education for certain groups such as the Roma.
- Public authorities and private individuals use the amorphous concept of 'public morality' to dismiss LGBTI people from employment, refuse to give them housing and prosecute them.
- Non-Muslim minorities face significant restrictions on their freedom of religion. The inability to train clergy due to the absence of theological schools and the Government's refusal to grant permission to open new churches (for non-recognised Christian denominations) are among the main problems. The ECtHR's rulings against mandatory religion courses, the non-recognition of Alevi places of worship and the exclusion of these places of worship from social advantages granted to mosques remain unimplemented. The ECtHR's ruling concerning the inability of Jehovah's Witnesses to open places of worship also remains unimplemented.
- The ECtHR's rulings concerning the right of access to education of students with disabilities also remain unimplemented.
- Turkey is the only member of the Council of Europe which does not recognise the right to conscientious objection to military service. The ECtHR's rulings on this issue remain unimplemented.



## **12 LATEST DEVELOPMENTS IN 2019**

### **12.1 Legislative amendments**

In 2019, no legislative amendments were adopted in relation to anti-discrimination law in Turkey.

### **12.2 Case law**

In 2019, no case that could be accessed in any of the various electronic databases was issued by either the ECtHR, the Constitutional Court or any other high or regional courts under the remit of the directives.

### **12.3 Cases brought by Roma and Travellers**

In 2019, no cases were brought by Roma or Travellers in Turkey.

## ANNEX 1: MAIN TRANSPOSITION AND ANTI-DISCRIMINATION LEGISLATION

**Country:** Turkey  
**Date:** 31 December 2019

**Title of the law: Law on the Human Rights and Equality Institution of Turkey (no. 6701)**

Abbreviation: N/A

Date of adoption: 6 April 2016

Latest relevant amendment: 2 July 2018

Entry into force: 20 April 2016

Web link: <http://www.mevzuat.gov.tr/MevzuatMetin/1.5.6701.pdf>

Grounds covered: sex, race, colour, language, religion, belief, denomination, philosophical and political opinion, ethnic origin, wealth, birth, marital status, health, disability and age  
Civil law

Material scope: Employment, social protection, social advantages, access to goods and services, education, housing (public and private)

Principal content: direct discrimination; indirect discrimination; failure to provide reasonable accommodation; harassment; discrimination by assumption; multiple discrimination; mobbing; segregation; instruction to discriminate and compliance with such instruction

**Title of the law: Labour Law (no. 4857)**

Abbreviation: N/A

Date of adoption: 22 May 2003

Latest amendments: 2 July 2018

Entry into force: 10 June 2003

Web link: <http://www.mevzuat.gov.tr/MevzuatMetin/1.5.4857.pdf>

Grounds covered: Language, race, colour, gender, disability, political opinion, philosophical belief, religion and sect or any such considerations  
Civil law

Material scope: Employment (public and private)

Principal content: Direct discrimination, indirect discrimination (gender and pregnancy based), (sexual) harassment, Victimisation (very limited)

Principal content: Direct discrimination, (sexual) harassment

**Title of the law: Law on Persons with Disabilities (no. 5378)**

Abbreviation: N/A

Date of adoption: 1 July 2005

Latest amendments: 18 November 2014

Entry into force: 7 July 2005

Web link: <http://www.mevzuat.gov.tr/MevzuatMetin/1.5.5378.pdf>

Grounds covered: Disability

Civil law

Material scope: Public and private employment

Principal content: Direct discrimination, reasonable accommodation

**Title of the law: Basic Law on National Education (no. 1739)**

Abbreviation: N/A

Date of adoption: 14 June 1973

Latest amendments: 2 December 2016

Entry into force: Entry into force: 24 June 1973

Web link: <http://www.mevzuat.gov.tr/MevzuatMetin/1.5.1739.pdf>

Grounds covered: Language, race, gender, religion, disability

Civil law

Material scope: Education

Principal content: Direct discrimination

**Title of the law: Law on Civil Servants (no. 657)**

Abbreviation: N/A

Date of adoption: 14 July 1965

Latest amendments: 27 March 2015

Entry into force: 23 July 1965

Web link: <http://www.mevzuat.gov.tr/MevzuatMetin/1.5.657.pdf>

Grounds covered: Language, race, gender, political thought, philosophical belief, religion and sect

Civil law

Material scope: All acts of civil servants – unlimited material scope (Public employment, access to goods or services (including housing) provided by the public sector, social protection, social advantages, public education)

Principal content: Direct discrimination

## ANNEX 2: INTERNATIONAL INSTRUMENTS

**Country:** Turkey

**Date:** 31 December 2019

<b>Instrument</b>	<b>Date of signature</b>	<b>Date of ratification</b>	<b>Derogations/ reservations relevant to equality and non-discrimination</b>	<b>Right of individual petition accepted?</b>	<b>Can this instrument be directly relied upon in domestic courts by individuals?</b>
European Convention on Human Rights (ECHR)	4.11.1950	18.05.1954	No	Yes	Yes, particularly in constitutional complaints
Protocol 12, ECHR	18.04.2001	Not ratified	N/A	No	N/A
Revised European Social Charter	16.10.2004	27.06.2007	Article 4 (3), 7(5), 8, 15, 19, 20, 23, 27	Ratified collective complaints protocol?  No	No
International Covenant on Civil and Political Rights	15.08.2000	23.09.2003	Article 27	Yes	In theory yes, but courts are reluctant to accept
Framework Convention for the Protection of National Minorities	Not signed	N/A	N/A	N/A	N/A
International Covenant on Economic, Social and Cultural Rights	15.08.2000	23.09.2003	Articles 13(3) and 4	N/A	In theory yes, but courts are reluctant to accept
Convention on the Elimination of All Forms of Racial Discrimination	13.10.1972	16.09.2002	No	No	In theory yes, but courts are reluctant to accept
ILO Convention No. 111 on Discrimination	13.12.1966	21.09.1967	No	Yes	In theory yes, but courts are reluctant to accept
Convention on the Rights of the Child	14.09.1990	4.04.1995	Articles 29 and 30	N/A	In theory yes, but courts are reluctant to accept

<b>Instrument</b>	<b>Date of signature</b>	<b>Date of ratification</b>	<b>Derogations/ reservations relevant to equality and non-discrimination</b>	<b>Right of individual petition accepted?</b>	<b>Can this instrument be directly relied upon in domestic courts by individuals?</b>
Convention on the Rights of Persons with Disabilities	30.03.2007	28.09.2009	None	No	In theory yes, but courts are reluctant to accept

## **GETTING IN TOUCH WITH THE EU**

### **In person**

All over the European Union there are hundreds of Europe Direct information centres. You can find the address of the centre nearest you at: [https://europa.eu/european-union/contact\\_en](https://europa.eu/european-union/contact_en).

### **On the phone or by email**

Europe Direct is a service that answers your questions about the European Union. You can contact this service: – by freephone: 00 800 6 7 8 9 10 11 (certain operators may charge for these calls), – at the following standard number: +32 22999696, or – by email via: [https://europa.eu/european-union/contact\\_en](https://europa.eu/european-union/contact_en).

## **FINDING INFORMATION ABOUT THE EU**

### **Online**

Information about the European Union in all the official languages of the EU is available on the Europa website at: [https://europa.eu/european-union/index\\_en](https://europa.eu/european-union/index_en).

### **EU publications**

You can download or order free and priced EU publications from: <https://publications.europa.eu/en/publications>. Multiple copies of free publications may be obtained by contacting Europe Direct or your local information centre (see [https://europa.eu/european-union/contact\\_en](https://europa.eu/european-union/contact_en)).

### **EU law and related documents**

For access to legal information from the EU, including all EU law since 1952 in all the official language versions, go to EUR-Lex at: <http://eur-lex.europa.eu>.

### **Open data from the EU**

The EU Open Data Portal (<http://data.europa.eu/euodp/en>) provides access to datasets from the EU. Data can be downloaded and reused for free, for both commercial and non-commercial purposes.

