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Country report

Non-discrimination

Turkey

2022

including summary



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and Consumers

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Country report

Non-discrimination

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

Turkey

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Reporting period 1 January 2021 – 31 December 2021

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EXECUTIVE SUMMARY

1. Introduction

Following presidential elections on 24 June 2018, Turkey changed from a parliamentary system to a so-called 'presidency system' against the principles of the separation of powers and the supremacy of the Parliament in law-making, 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'.¹ 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 appoints six of the 13 members of the Council of Judges and Prosecutors, which oversees the appointment, promotion and dismissal of judges and prosecutors. He also appoints 12 of the 15 members of the Constitutional Court. Moreover, he appoints one fourth of the judges of the Council of State directly, and the general prosecutor and deputy general prosecutor of the Court of Cassation, who can file a case with Constitutional Court for the dissolution of a political party, from among five candidates nominated for each office by the General Assembly of the Court of Cassation. The President also has wide de facto legislative powers by virtue of his authority to issue presidential decrees on 'matters relating to executive powers'.

As has been the case in previous years, combating discrimination was not thoroughly on the Government's agenda in 2021. In respect of discrimination, one minor step taken was the issuing of a presidential circular regarding the celebration of 8 April (International Roma Day) as Roma Day in Turkey.² A new action plan on human rights was adopted and issued in March 2021. However, it does not address critical issues regarding discrimination or present any concrete steps to remedy the most acute problems in this area.³ Although one of the main principles reflected in the document was anti-discrimination and one of the goals of the plan is 'Improving the Effectiveness of the Fight against Hate Speech and Discrimination', which is mistakenly categorised under the aim of 'Protection and Promotion of the Freedoms of Expression, Association and Religion', no concrete steps have been taken in 2021.⁴ As with the previous programmes, the Annual Presidential Programme for 2021 did not specifically take into account the problems and needs of disadvantaged groups effectively. 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.⁵ Following the widespread homophobic and anti-gender discourse in Turkish politics, Turkey withdrew from the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention).⁶

There are no reliable statistics as regards persons with disabilities, ethnic and religious diversity. The first statistical research on disability in Turkey – conducted in 2002 – identified the number of persons with disabilities as 8 431 937, which is 12.29 % of the

¹ 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).

² Presidency of the Republic of Turkey (2021), Presidential Circular No. 2021/7, *Official Gazette*, 8 April 2021.

³ European Commission (2021), *Turkey 2021 Report*, Strasbourg, 19 October 2021, pp. 4, 29, available at: https://ec.europa.eu/neighbourhood-enlargement/document/download/892a5e42-448a-47b8-bf62-b22d52c4ba26_en.

⁴ Ministry of Justice (2021), *Action Plan on Human Rights: Free Individual, Strong Society, More Democratic Turkey*, pp. 14, 57, 61, available at: https://inhak.adalet.gov.tr/Resimler/SayfaDokuman/1262021081047Action_Plan_On_Human_Rights.pdf.

⁵ Presidency of the Republic of Turkey (2020), *Annual Presidential Programme 2021* (2021 Yılı Cumhurbaşkanlığı Yıllık Programı) pp. 279, 317, 318, 321 and 356, available at: https://www.sbb.gov.tr/wp-content/uploads/2020/11/2021_Yili_Cumhurbaskanligi_Yillik_Programi.pdf. Also available in *Official Gazette*, 27 October 2020.

⁶ Presidency of the Republic of Turkey (2021), Presidential Decision No. 3718, 19 March 2021, *Official Gazette*, 20 March 2021 and Presidential Decision No. 3928, 29 April 2021, *Official Gazette*, 30 April 2021.

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. Those were the first and last official surveys on disability in Turkey. In addition, a National Disabled Database System was established by the Ministry of Family and Social Services. As of December 2021, the number of persons with disabilities registered in the National Disability Data System was 2 511 950.⁷ As regards data on different religions, although the Government has such data, it is not accessible and has not been published in any form. Statistics concerning the ethnic identity of citizens have not been collected by the Turkish Statistical Institute for decades and there has been no attempt to collect such statistics.

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. The grounds covered by the Law are limited and it prohibits discrimination only on the basis of sex, race, colour, language, religion, belief, denomination, philosophical or political opinion, ethnic origin, wealth, birth, marital status, health, disability and age.

Furthermore, there are anti-discrimination provisions in the Constitution and in several laws. Most notable among the laws with anti-discrimination clauses is the Law on Persons with Disabilities, which could be considered as 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 Turkish 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. 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,⁸ age was also recognised as a ground by the Constitutional Court.⁹ The said laws and provisions, as well as precedents set by the Constitutional Court, are not being implemented.

While hatred and incitement to hatred are prohibited under the Turkish 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'.¹⁰ Moreover, hate speech grounds are exhaustive and do not include ethnicity, age and sexual orientation. Besides, existing provisions are scarcely applied to cases of hate crimes or hate speech. The anti-discrimination law does not prohibit hate speech or hate crime. The Constitutional Court for the first time found a violation in a hate speech case in 2021.¹¹

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. However, this provision is often disregarded by the courts and has a very limited impact. Turkey is a

⁷ Ministry of Family and Social Services General Directorate of Disabled and Elderly Services (2021), *Statistical Bulletin of Disabled and Elderly (Engelli ve Yaşlı İstatistik Bülteni)*, December 2021, pp. 5, 16, available at: https://aile.gov.tr/media/96693/eyhgm_istatistik_bulteni_aralik_2021.pdf.

⁸ Constitutional Court, *Sadika Şeker*, Application No. 2013/1948, 23 January 2014.

⁹ Constitutional Court, *Tuğba Arslan*, Application No. 2014/256, 25 June 2014, para. 114.

¹⁰ 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>.

¹¹ Constitutional Court, *Mehmet Aytaç*, Application No. 2017/26514, 11 February 2021.

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 and the International Convention on Economic, Social and Cultural Rights. 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 guidance provided in 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).¹²

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 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', 'dishonourable behaviour' and 'unnatural intercourse'. As stated in the European Commission report, hate speech by high-level Government officials, including the President of the Directorate of Religious Affairs (*Diyanet*), the Human Rights and Equality Institution of Turkey and the Ombudsman Institution reflect the Government's discriminatory stance against the LGBTI+ community/rights.¹³

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 and covers a series of exceptions. There is no case law concerning indirect discrimination, multiple discrimination, discrimination by assumption or reasonable accommodation. 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. The only regulation that can be considered as positive action is the quota for persons with disabilities in employment.

¹² Court of Justice of the European Union (CJEU), Joined Cases C-335/11 and C-337/11, *Ring and Skouboe Werge v. Denmark*, 11 April 2013.

¹³ European Commission (2020), *Turkey 2020 Report*, Brussels, 6 October 2020, p. 40, available at: https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/turkey_report_2020.pdf.

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 and funds allocated for legal aid are far from being adequate. 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 the Human Rights and Equality Institution of Turkey. It 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 the Ombudsman Institution are non-binding and its 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, set up in 2016, 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'. However, there is a blanket ban that covers all groups and to date there is no example of such an intervention by NGOs being approved by a court. 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.¹⁴ 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. However, the Constitutional Court did not refer to such petitions in its judgments and, considering the outcome of the cases, it seems that third-party interventions do not have any impact.

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 Institution and does not apply to court proceedings'.¹⁵ Labour law contains the only provisions that include rules on the burden of proof in discrimination cases.

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 1 963 and TRY 29 500 (EUR 130 and EUR 1 970) in 2021, 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 Board – 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 limited compensation. Where discrimination in violation of the Turkish 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 provided in general 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 well-known example of this was the adoption of the National Strategy for the Roma 2016-2021 in 2016. Representatives of civil society organisations that had taken part in the deliberative process during 2009-2016 criticised the Government for significantly shortening and watering down

¹⁴ Constitutional Court, *Birsen Gülünay*, Application No. 2013/2640, 8 April 2013.

¹⁵ 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 draft strategy that was shared with them in February 2016, on which they had provided feedback.¹⁶ There has been no follow-up or any effort to renew this strategy in 2021.

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).

The Institution, which became operational in March 2017, issued its first decision on 30 October 2018, 20 months after it had been set up. According to the figures provided by the Institution, it received a total of 1 107, 1 189 and 1 363 individual complaints in 2018, 2019 and 2020 respectively. The number of complaints relating to discrimination in those years were 371, 70 and 276 respectively.¹⁷ As of 7 March 2022, the activity report for 2021 had not been published and the Institution had issued a total of 42 decisions concerning discrimination claims and found a violation of prohibition of discrimination in 10 applications in 2020; however, none of them fell within the scope of the directives.¹⁸ New members and a new chairman were appointed to the Turkish Human Rights and Equality Institution by the President.¹⁹ Following the appointment, the Institution seemed more active in activities as regards discrimination. For the first time, the Institution reached out to NGOs and established an advisory commission with the relevant experts in the field of non-discrimination. However, as was the case in 2020, there was no attempt to empower the Institution.

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.

¹⁶ 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>.

¹⁷ Human Rights and Equality Institution of Turkey (2022), *Decisions Regarding Prohibition of Discrimination 2018-2020 (Ayrımcılık Yasağı Kararları 2018-2020)*, p. 3, available at: https://www.tihek.gov.tr/upload/file_editor/2022/02/1645712182.pdf.

¹⁸ Human Rights and Equality Institution of Turkey (2021), *2020 Activity Report (2020 Faaliyet Raporu)*, p. 69, available at: https://www.tihek.gov.tr/upload/file_editor/2021/02/1614496238.pdf. For the decisions rendered in 2020 and published via the website of the Institution, see <https://www.tihek.gov.tr/kategori/2020-kurul-kararlari/page/1>.

¹⁹ Presidency of the Republic of Turkey (2021), Presidential Decision No. 2021/349, 14 July 2021, *Official Gazette*, 14 July 2021.

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 2021, the rate of compliance with its recommendations had increased to 79.5 %.²⁰

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, national human rights institution and national rapporteur on human trafficking, 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 Persons with Disabilities do not elaborate on what can be considered a legitimate aim for the purpose of objective justification of indirect discrimination.
- Most 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 and cases overwhelmingly concluded with an acquittal.
- 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 in a limited fashion.
- 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, Alevis 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 remain unimplemented. The ECtHR's ruling concerning the inability of Jehovah's Witnesses to open places of worship also remains unimplemented.
- Turkey is still reluctant to recognise the right to conscientious objection to military service. The ECtHR's rulings on this issue remain unimplemented.

²⁰ Ombudsman Institution (2022), *2021 Annual Report (2021 Yıllık Raporu)*, p. 81, available at: <https://www.ombudsman.gov.tr/kdk-pdf/2021-Yillik-Rapor/mobile/index.html>.

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 'presidency 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'.²¹ 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 six of the 13 members of the Council of Judges and Prosecutors, which oversees the appointment, promotion and dismissal of judges and public prosecutors. The remaining members are elected by the Legislature, in which the ruling parties hold the majority of the seats. These changes are, the Venice Commission said, a decisive move 'towards an authoritarian and personal regime',²² wiping out any remnants of democracy and the rule of law in Turkey. The President 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. Beginning in July 2018, Turkey has been ruled by a so-called 'presidency system' that disregarded the constitutional principles of the separation of powers, constitutional review and the supremacy of the Parliament in law-making for a period of two years. Although the period of emergency rule expired on 19 July 2018, its impacts on democracy and fundamental rights still prevail.²³

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. However, this provision is often disregarded by the courts and has a very limited impact. 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. Although, it was one of the first signatories of the Convention and was the first state that ratified it, Turkey became the first state to withdraw from the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention) as of 1 July 2020.²⁴ According to the official statement, the rationale of the withdrawal was the Convention was 'hijacked by a group of people attempting to normalize homosexuality - which is incompatible with Turkey's social and familial values.'²⁵

²¹ 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).

²² 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).

²³ European Commission (2020), *Turkey 2020 Report*, Brussels, 6 October 2020, p. 10, available at: https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/turkey_report_2020.pdf.

²⁴ Presidency of the Republic of Turkey (2021), Presidential Decision No. 3718, 19 March 2021, *Official Gazette*, 20 March 2021 and Presidential Decision No. 3928, 29 April 2021, *Official Gazette*, 30 April 2021.

²⁵ Directorate of Communications (2021), *Statement by the Directorate of Communications on Türkiye's Withdrawal from the Istanbul Convention*, 21 March 2021, available at: <https://www.iletisim.gov.tr/english/duyurular/detay/statement-by-the-directorate-of-communications-on-turkiyes-withdrawal-from-the-istanbul-convention>.

List of main legislation transposing and implementing the directives

Law on the Human Rights and Equality Institution of Turkey (No. 6701)²⁶

Date of adoption: 6 April 2016

Latest amendments: 2 July 2018

Grounds covered: gender, 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)²⁷

Date of adoption: 22 May 2003

Latest amendments: 23 July 2020

Grounds covered: language, race, colour, gender, disability, political opinion, philosophical belief, religion and denomination, 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)²⁸

Date of adoption: 26 September 2004

Latest amendments: 9 July 2021

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

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

Law on Persons with Disabilities (No. 5378)²⁹

Date of adoption: 1 July 2005

Latest amendments: 18 July 2021

Grounds covered: disability

Material scope: public and private employment

Basic Law on National Education (No. 1739)³⁰

Date of adoption: 14 June 1973

Latest amendments: 3 February 2022

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

Material scope: education

Law on Civil Servants (No. 657)³¹

Date of adoption: 14 July 1965

Latest amendments: 24 November 2021

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

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)

²⁶ Law on the Human Rights and Equality Institution of Turkey (*Türkiye İnsan Hakları ve Eşitlik Kurumu Kanunu*), No. 6701, 6 April 2016.

²⁷ Labour Law (*İş Kanunu*), No. 4857, 22 May 2003.

²⁸ Turkish Penal Code (*Türk Ceza Kanunu*), No. 5237, 26 September 2004.

²⁹ Law on Persons with Disabilities (*Engelliler Hakkında Kanun*), No. 5378, 1 July 2005.

³⁰ Basic Law on National Education (*Milli Eğitim Temel Kanunu*), No. 1739, 14 June 1973.

³¹ 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 dealing 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 denomination, 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.’³²

As can be seen from the text, Article 10 explicitly covers the grounds of language, race, colour, gender, political opinion, philosophical belief, religion and denomination, 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.³³ 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.³⁴ 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.³⁵ This was the first ruling in which the Constitutional Court explicitly recognised sexual orientation as a ground on which discrimination is prohibited. However, those cases simply involved a statement, as sexual orientation is covered by Article 10, and as at the end of 2021 no judgment has been rendered regarding violation of the prohibition of discrimination on the basis of sexual orientation. Age and disability were also

³² The official translation provided by the Turkish Constitutional Court, available at: <https://www.anayasa.gov.tr/en/legislation/turkish-constitution/>.

³³ 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).

³⁴ 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.

³⁵ 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.

overtly acknowledged as prohibited grounds under Article 10 by the Constitutional Court in 2014.³⁶

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. Up until 1 January 2022, there have been 22 judgments in which the Court decided that a violation of the non-discrimination clause had occurred accessible from the official database; however, only two out of 22 (*Tuğba Arslan*³⁷ and *T.A.A.*³⁸ cases) may be regarded as related to a ground (religion – headscarf ban and disability – HIV-positive status) covered by the directives. It is worth mentioning that instead of finding a case of discrimination on the basis of religion, the Court referred to a difference in treatment based on wearing a headscarf.³⁹ 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.⁴⁰ In 2021, although not having found violations of prohibition of discrimination, the Constitutional Court rendered violations of right to private life in two cases for consideration of having sex reassignment surgery as a condition for the acceptance of name change requests.⁴¹ Lastly, the Constitutional Court for the first time found a violation of the right to protection of reputation in a case concerning hate speech.⁴²

Article 10 is directly applicable, and by virtue of Article 11, it can be enforced against private individuals and entities (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 adopted for children, elderly persons, persons with disabilities, widows and orphans of martyrs,⁴³ 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.⁴⁴ Thus, it can be inferred that reference to 'mental disabilities' covers both intellectual disabilities and psychosocial disabilities. The material scope of the Article is not broader than that of the directives. The Article is directly applicable and can be enforced against private individuals and entities.

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.'

³⁶ Constitutional Court, *Tuğba Arslan*, Application No. 2014/256, 25 June 2014, para. 114.

³⁷ Constitutional Court, *Tuğba Arslan*, Application No. 2014/256, 25 June 2014.

³⁸ Constitutional Court, *T.A.A.*, Application No. 2014/19081, 1 February 2017. The applicant was first suspended from his workplace and subsequently dismissed after being diagnosed as HIV positive on the ground of his health status. The Court concluded that 'the public authorities failed to fulfil their positive obligations to protect the applicant's corporeal and spiritual existence as well as his right to respect for his private life'.

³⁹ The main grounds concerned in these other 22 cases are: gender (family names of children after divorce), trade union membership, tax assessment, date of acquiring citizenship, overtime pay for night shifts, non-payment of on-duty payments, marital status.

⁴⁰ Constitutional Court, *Z.A.*, Application No. 2013/2928, 18 October 2017.

⁴¹ Constitutional Court, *Turgay Karaca*, Application No. 2018/34343, 27 January 2021; *H.K.*, Application No. 2019/42944, 17 June 2021.

⁴² Constitutional Court, *Mehmet Aytaç*, Application No. 2017/26514, 11 February 2021.

⁴³ 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.

⁴⁴ Constitutional Court, *E.* 2006/101, K. 2008/126, 19 June 2008.

No criteria other than the qualifications for the office concerned shall be taken into consideration for recruitment into public service.’ When the word ‘Turk’ in Article 70 is construed together with Article 66 of the Constitution, it can be interpreted as ‘Turkish citizen’ rather than an ethnic identity. It is directly applicable and due to its material scope, it cannot be enforced against private individuals and entities (although it can be enforced against the state).

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.⁴⁵

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.'⁴⁶

2.1 Grounds of unlawful discrimination explicitly covered

The following grounds of discrimination are explicitly prohibited in the main legislation (listed under section Introduction, transposing and implementing the directives)

⁴⁵ Constitutional Court, E. 2008/95, K. 2010/18, 28 January 2010.

⁴⁶ Constitutional Court, *Tuğba Arslan*, Application No. 2014/256, 25 June 2014, para. 114.

transposing the two EU anti-discrimination directives: race,⁴⁷ language,⁴⁸ colour,⁴⁹ gender,⁵⁰ disability,⁵¹ political opinion/thought,⁵² philosophical belief/opinion,⁵³ religion,⁵⁴

- ⁴⁷ 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); Turkish 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; Turkish Civil Code (*Türk Medeni Kanunu*), 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 (*Radio ve Televizyonların Kuruluş ve Yayın Hizmetleri Hakkında Kanun*), 15 February 2011, Article 8(e).
- ⁴⁸ Constitution, 7 November 1982, Article 10; Law on the Human Rights and Equality Institution of Turkey, 6 April 2016, Article 3(2); Turkish 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; Turkish 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).
- ⁴⁹ Constitution, 7 November 1982, Article 10; Law on the Human Rights and Equality Institution of Turkey, 6 April 2016, Article 3(2); Turkish Penal Code, 26 September 2004, Article 3(2); Labour Law, 22 May 2003, Article 5(1); Turkish 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).
- ⁵⁰ Constitution, 7 November 1982, Article 10; Law on the Human Rights and Equality Institution of Turkey, 6 April 2016, Article 3(2); Turkish 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; Turkish 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.
- ⁵¹ 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).
- ⁵² Constitution, 7 November 1982, Article 10; Law on the Human Rights and Equality Institution of Turkey, 6 April 2016, Article 3(2); Turkish 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).
- ⁵³ Constitution, 7 November 1982, Article 10; Law on the Human Rights and Equality Institution of Turkey, 6 April 2016, Article 3(2); Turkish 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).
- ⁵⁴ Constitution, 7 November 1982, Article 10; Law on the Human Rights and Equality Institution of Turkey, 6 April 2016, Article 3(2); Turkish 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; Turkish 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).

denomination,⁵⁵ nationality,⁵⁶ national origin,⁵⁷ ethnic origin,⁵⁸ social origin,⁵⁹ birth,⁶⁰ economic or other social status,⁶¹ family,⁶² marital status,⁶³ class,⁶⁴ profession,⁶⁵ regional differences,⁶⁶ health⁶⁷ and age.⁶⁸ Discrimination is occasionally prohibited more generally, without enumerating any grounds.⁶⁹ Thus, the only ground of discrimination that is not prohibited under Turkish law is sexual orientation.⁷⁰

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 Turkish legislation, the phrase 'ethnic origin' was included for the first time in the Law on the Foundation and Broadcasting of Radio and Television Channels and the Law on Prevention of Violence and Disorder in Sports in 2011. Subsequently, the Law on the Human Rights and Equality Institution of Turkey and the Law on Protection of Personal Data⁷¹ entered into force in 2016, referring to 'ethnic origin' without any definition.

⁵⁵ Constitution, 7 November 1982, Article 10; Law on the Human Rights and Equality Institution of Turkey, 6 April 2016, Article 3(2); Turkish 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; Turkish 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); 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.

⁵⁶ 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).

⁵⁷ Penal Code, 26 September 2004, Article 3(2).

⁵⁸ 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; Law on the Foundation and Broadcasting of Radio and Television Channels, 15 February 2011, Article 9.

⁵⁹ Penal Code, 26 September 2004, Article 3(2); Law on the Execution of Penalties and Security Measures, 13 December 2004, Article 2(1).

⁶⁰ Law on the Human Rights and Equality Institution of Turkey, 6 April 2016, Article 3(2); Turkish Penal Code, 26 September 2004, Article 3(2); Law on the Execution of Penalties and Security Measures, 13 December 2004, Article 2(1).

⁶¹ Law on the Human Rights and Equality Institution of Turkey, 6 April 2016, Article 3(2) (wealth); Turkish Penal Code, 26 September 2004, Article 3(2); Law on the Execution of Penalties and Security Measures, 13 December 2004, Article 2(1).

⁶² Turkish Civil Code, 22 November 2001, Article 68; Law on Political Parties, 22 April 1983, Article 12. It should be borne in mind that this would probably not include protection for same-sex families.

⁶³ Law on the Human Rights and Equality Institution of Turkey, 6 April 2016, Article 3(2).

⁶⁴ Turkish 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).

⁶⁵ Law on Political Parties, 22 April 1983, Article 12.

⁶⁶ Law on Social Services, 24 May 1983, Article 4(d).

⁶⁷ Law on the Human Rights and Equality Institution of Turkey, 6 April 2016, Article 3(2).

⁶⁸ Law on the Human Rights and Equality Institution of Turkey, 6 April 2016, Article 3(2).

⁶⁹ 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).

⁷⁰ 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.'

⁷¹ Law on Protection of Personal Data (*Kişisel Verilerin Korunması Kanunu*), No. 6698, 24 March 2016.

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 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.⁷² 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.⁷³ However, although the court concluded in its reasoning that all non-Muslim communities are entitled to minority rights under the Treaty, due to the fact that the Ministry decided not to appeal the decision, it cannot be regarded as a legal precedent and state policies in this field is far from being constant. 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.⁷⁴

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 at the person's will. 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.⁷⁵ 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,

⁷² 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.

⁷³ Ankara, 13th Administrative Court, E. 2012/1746, K. 2013/952, 18 June 2013.

⁷⁴ See: <http://www.suryanianaokulu.com/>.

⁷⁵ 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.

Hinduism, Confucianism, Taoism, Zoroastrianism and Buddhism were accepted to be registered on the old identity cards.⁷⁶ 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.⁷⁷ 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, 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.⁷⁸

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 Islam⁷⁹ 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-Hanafi 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.

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'.⁸⁰ The law defines discrimination based on disability as 'every kind of difference, exclusion or restriction based on impairment 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*.⁸¹ 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

⁷⁶ See Şirin, T., Duymaz, 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.

⁷⁷ 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.

⁷⁸ 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>.

⁷⁹ The majority of Muslims in Turkey belong to the Sunni denomination of Islam.

⁸⁰ Law on Persons with Disabilities, No. 5378, 1 July 2005, Article 3(c).

⁸¹ Court of Justice of the European Union (CJEU), Joined Cases C-335/11 and C-337/11, *Ring and Skouboe Werge v. Denmark*, 11 April 2013.

for disability benefits, the person with disability must receive a disability report from disability health boards established under the 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 Persons with Disabilities issued in 2019.⁸²

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'. The phrase found in the original text of the said Article, which referred to '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', was removed by Law No. 7343 adopted in 2021.⁸³ 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'.⁸⁴

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 Turkish Civil Code, Anti-Terror Law, Law on Civil Servants, Law on Social Services, Law on Persons with Disabilities, the Turkish 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.⁸⁵ 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'.⁸⁶ 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

⁸² 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 Persons with Disabilities (*Özürlülük Ölçütü, Sınıflandırması ve Özürlülere Verilecek Sağlık Kurulu Raporları Hakkında Yönetmelik*), *Official Gazette*, 30 March 2013.

⁸³ Law on Making Amendments in Code of Execution and Bankruptcy and Various Laws (*İcra İflas Kanunu ile Bazı Kanunlarda Değişiklik Yapılması Hakkında Kanun*), No. 7343, 24 November 2021, Article 16.

⁸⁴ See also Notary Law (*Noterlik Kanunu*), No. 1512, 5 February 1972, Article 7(11) and the Law on the Union of Chambers and Commodity Exchanges of Turkey and Chambers and Commodity Exchanges (*Türkiye Odalar ve Borsalar Birliği ile Odalar ve Borsalar Kanunu*), No. 5174, 18 May 2004, Article 74(e).

⁸⁵ 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*), No. 6462, 25 April 2013.

⁸⁶ Constitutional Court, *Cemal Duğan*, Application No. 2014/19308, 15 February 2017, para. 39.

contain a definition. In practice, members of judiciary have not been able to differentiate between sexual orientation and gender identity.

2.1.2 Multiple discrimination

In Turkey, multiple discrimination is prohibited by law.

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'.⁸⁷ Under Article 25(1), multiple discrimination is an aggravating factor to be taken into account in determining the amount of administrative fines – ranging between EUR 67 and EUR 1 000 (TRY 1 000 and TRY 15 000) in 2016 – imposed on natural or legal persons found to have engaged in discrimination. The administrative fines were revaluated and implemented as EUR 130 and EUR 1 970 (TRY 1 963 and TRY 29 500) in 2021.⁸⁸

In Turkey, there is no case law dealing with multiple discrimination. The Human Rights and Equality Institution of Turkey, in an earlier decision rendered in 2021 regarding a claim that a person had been discriminated against because she was single and a woman, did not qualify the case as an example of multiple discrimination.⁸⁹ However, following that decision, in a similar case also involving a single woman, the Institution for the first time acknowledged the difference in treatment as multiple discrimination.⁹⁰ Nevertheless, this situation was unfortunately not accepted as an aggravating factor and no increase was applied to the fine imposed. On the contrary, the fine was commuted to a warning.

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'.⁹¹

There is no case law dealing with discrimination by assumption.

⁸⁷ Law on the Human Rights and Equality Institution of Turkey, Article 2(1)(c).

⁸⁸ Human Rights and Equality Institution of Turkey (2021), *2020 Activity Report (2020 Faaliyet Raporu)*, p. 68, available at: https://www.tihek.gov.tr/upload/file_editor/2021/02/1614496238.pdf.

⁸⁹ Human Rights and Equality Institution of Turkey (2021), Decision No. 2021/68, 30 March 2021, available at: https://tihek.gov.tr/upload/file_editor/2021/07/1625215794.pdf.

⁹⁰ Human Rights and Equality Institution of Turkey (2021), Decision No. 2021/191, 17 August 2021, available at: https://tihek.gov.tr/upload/file_editor/2021/11/1637909789.pdf.

⁹¹ Law on the Human Rights and Equality Institution of Turkey, Article 2(1)(m).

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 2016.⁹²

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.

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 Turkish Penal Code; Article 5(1) of the Labour Law; Article 4 of the Basic Law on National Education; Article 68 of the Turkish 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

⁹² 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>.

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.⁹³ Adoption of the Law on the Human Rights and Equality Institution of Turkey has largely eliminated the need for reference to EU directives. However, the courts continue to refer to EU directives, which reveals that there is still a lack of awareness of the law among law professionals.

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.

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.

⁹³ As an example, see Court of Cassation, 9th Civil Chamber, E. 2010/48111 K. 2011/1847, 1 February 2011.

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 once and for all 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'.⁹⁴

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.⁹⁵ 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.⁹⁶ 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 importance and needs to be fully implemented by the judiciary. As of 2021, 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.⁹⁷

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. Despite mere references, there is no case law on this relatively 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.

The Law on Protection of Personal Data (Law No. 6698) was adopted in 2016 to protect fundamental rights and freedoms of persons, in particular the right to privacy, with respect to processing of personal data, and to set forth obligations, principles and procedures which shall be binding upon natural or legal persons who process personal data. Article 6(1) states that along with other personal data relating to the race, ethnic origin, philosophical belief, religion, denomination or other belief and sexual life (which may cover homosexual sexual acts) are deemed to be special categories of personal data. According to Article 6(2) and 6(3) of the Law, it is prohibited to process such data without the explicit consent of the data subject and, in cases stipulated by law, without the explicit consent of the persons concerned.

⁹⁴ Constitutional Court, *Tuğba Arslan*, Application No. 2014/256, 25 June 2014, para. 115.

⁹⁵ As an example, see Court of Cassation, 9th Civil Chamber, E. 2010/48111, K. 2011/1847, 1 February 2011.

⁹⁶ For examples, 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. 22nd Civil Chamber, E. 2015/28627, K. 2018/6793, 15 March 2018.

⁹⁷ For examples, see Court of Cassation, Assembly of Civil Chambers, E. 2018/880, K. 2021/1153, 5 October 2021; E. 2018/592, K. 2021/1129, 30 September 2021; E. 2017/3193, K. 2021/1025, 16 September 2021; E. 2016/2384, K. 2021/112, 18 February 2021.

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 as of 1 January 2022, 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 (which may also cover homosexual sexual acts), health conditions and connections to trade unions as an aggravating factor in sentencing. Any person who violates this provision is liable to imprisonment from one year to 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'.⁹⁸

Turkey officially declared that it does not collect, keep or use qualitative or quantitative data on the ethnic backgrounds of its citizens,⁹⁹ noting that this is 'a sensitive issue, especially for those nations living in diverse multicultural societies for a long period of time'.¹⁰⁰

⁹⁸ 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>.

⁹⁹ 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>.

¹⁰⁰ 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. See also, 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>.

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. 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 population registry records contain a confidential 'racial code'.¹⁰¹ 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.¹⁰² 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. In March 2016, an 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.¹⁰³

In 2019, for the first time, the Government decided to collect data in order to strengthen policy-making and decision-making processes. However, these are limited to data such as birth, nationality, disability, education, employment status, income and housing, and do not cover ethnic origin.¹⁰⁴ Even this aim had not been implemented by the end of 2021. The current situation indicates that the traditional approach as regards collecting data on ethnicity still prevails.

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.¹⁰⁵ In 2002, the then Presidency of Administration for Disabled People, under the auspices of the Prime Ministry, commissioned the Turkish Statistical Institute to conduct a survey.¹⁰⁶ 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.¹⁰⁷ Those were the first and last official surveys on disability in Turkey, and ten years later Government policies are still developed on the basis of the data generated by those studies. Another statistical source on persons with disabilities, the National Disabled Data System, was established within the Ministry of Family and Social Services. Statistics in that database are collected through Disability Health Board Reports issued by public institutions and organisations. As of December 2021, the number of persons with

¹⁰¹ 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>.

¹⁰² 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>.

¹⁰³ '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>.

¹⁰⁴ Presidency of the Republic of Turkey (2019), *Annual Presidential Programme 2020* (2020 Yılı Cumhurbaşkanlığı Yıllık Programı) p. 376, available at: https://www.sbb.gov.tr/wp-content/uploads/2019/11/2020_Yili_Cumhurbaşkanlığı_Yıllık_Programı.pdf. Also available in *Official Gazette*, 4 November 2019.

¹⁰⁵ 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 Ayrımcılığın İzlenmesi Raporu: 1 Ocak-30 Haziran 2010), İstanbul Bilgi University, p. 13.

¹⁰⁶ 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.

¹⁰⁷ Ministry of Family and Social Services General Directorate of Disabled and Elderly Services (2021), *Statistical Bulletin of Disabled and Elderly* (Engelli ve Yaşlı İstatistik Bülteni), December 2021, p. 5, available at: https://aile.gov.tr/media/96693/eyhqm_istatistik_bulteni_aralik_2021.pdf.

disabilities registered in the National Disability Data System was 2 511 950. It should be noted that this figure does not include persons who have not applied to authorised hospitals to receive a Disability Health Board Report and have not contacted any Government body to receive public services.¹⁰⁸

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.¹⁰⁹

According to the Annual Presidency Programme 2020, in order to provide more systematic and reliable data, statistics and information production to strengthen policy-making and decision-making processes, data will be obtained from all institutions and incoming data will be harmonised and standardised in terms of definition and concept.¹¹⁰ However, this policy had not been implemented as at the end of 2021.

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.¹¹¹ Since then,¹¹² this information has been provided by the Ministry of Family and Social Services.

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 Code of Civil Procedure (No. 6100),¹¹³ the Code of Administrative Procedure (No. 2577)¹¹⁴ and the Code of Criminal Procedure (No. 5271)¹¹⁵ 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.

¹⁰⁸ Ministry of Family and Social Services General Directorate of Disabled and Elderly Services (2021), *Statistical Bulletin on the Disabled and Elderly (Engelli ve Yaşlı İstatistik Bülteni)*, December 2021, p. 16, available at: https://aile.gov.tr/media/96693/eyhgm_istatistik_bulteni_aralik_2021.pdf.

¹⁰⁹ CRPD (2018), *Shadow Report Turkey prepared by the coordination of the Confederation of the Disabled of Turkey*, 20 August 2018, para. 19.

¹¹⁰ Presidency of the Republic of Turkey (2019), *Annual Presidential Programme 2020 (2020 Yılı Cumhurbaşkanlığı Yıllık Programı)* p. 376, available at: https://www.sbb.gov.tr/wp-content/uploads/2019/11/2020_Yili_Cumhurbaskanligi_Yillik_Programi.pdf. Also available in *Official Gazette*, 4 November 2019.

¹¹¹ This information is no longer publicly available on the website of the Turkish Statistical Institute.

¹¹² Ministry of Family and Social Services, General Directorate of Disabled and Elderly Services, available at: <https://aile.gov.tr/eyhgm/sayfalar/istatistikler/engelli-ve-yasli-istatistik-bulteni/>.

¹¹³ Code of Civil Procedure (*Hukuk Muhakemeleri Kanunu*), No.6100, 12 January 2011.

¹¹⁴ Code of Administrative Procedure (*İdari Yargılama Usulü Kanunu*), No. 2577, 6 January 1982.

¹¹⁵ Code of Criminal Procedure (*Ceza Muhakemesi Kanunu*), No. 5271, 4 December 2004.

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.

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 Turkish 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 Turkish 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 Turkish Code 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, in Turkey 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 of the Turkish 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

(torture), civil servants cannot be prosecuted for crimes committed in the exercise of their duties 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 Code 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, 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.

The case law concerning instruction to discriminate is limited to the resolutions of the Human Rights and Equality Institution of Turkey. In a series of resolutions, the Institution decided that instructions given by landlords to real-estate agents in different contexts were considered under the concept of instructions to discriminate.¹¹⁶

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 Code 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

¹¹⁶ For the decisions between 2018-2020, see, Human Rights and Equality Institution of Turkey (2022), *Decisions Regarding Prohibition of Discrimination 2018-2020 (Ayrımcılık Yasağı Kararları 2018-2020)*, pp. 14-83, available at: https://www.tihek.gov.tr/upload/file_editor/2022/02/1645712182.pdf. See also, Human Rights and Equality Institution of Turkey (2021), Decision No. 2021/191, 17 August 2021, available at: https://tihek.gov.tr/upload/file_editor/2021/11/1637909789.pdf; Decision No. 2021/196, 17 August 2021, available at: https://tihek.gov.tr/upload/file_editor/2021/11/1637911076.pdf; Decision No. 2021/229, 14 September 2021, available at: https://tihek.gov.tr/upload/file_editor/2021/11/1638016210.pdf.

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 persons with disabilities in the area of employment

In Turkey, the duty on employers to provide reasonable accommodation for persons 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 'proportional, 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 Law does not define what would constitute a 'disproportionate burden' on employers or give any definition of 'reasonable'. However, the reference in Article 2(1)(i) of the Law to 'the proportional, necessary and appropriate changes and precautions, to the extent that financial resources permit' may be used to meet a set of criteria that may be taken into account in assessing the scope of the duty in a given situation.

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 to the European Social Charter, on the ground that the legal obligation to provide reasonable accommodation has not been respected.¹¹⁷ The only sanction in this regard is the termination of the employment contract by the worker, and filing a civil action against the employer with a claim of compensation set forth in relevant laws, 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

¹¹⁷ ESCR, *Conclusions 2016: Turkey*, 2016/def/TUR/15/2/EN, 9 December 2016, Article 15-2, available at: <http://hudoc.esc.coe.int/enq?i=2016/def/TUR/15/2/EN>.

to ensure that persons with disabilities 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 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 job applicants with disabilities are entitled to reasonable accommodation in that respect too.

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 whether a burden is disproportionate in a given situation. 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.

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.¹¹⁸

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) Case law

The concept of reasonable accommodation has been used by courts in recent years. However, it is evident that the concept is mostly just mentioned as part of a claim of discrimination against persons with disabilities and is not applicable in those cases.¹¹⁹ The

¹¹⁸ 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.

¹¹⁹ For examples, see Council of State, Assembly of Administrative Chambers, E. 2020/457, K. 2021/61, 18 January 2021; 8th Chamber, E. 2020/3361, K. 2020/5377, 8 December 2020.

Constitutional Court, in a case regarding access to education for a child with a disability, although it did not find a violation, referred to ECtHR case law concerning Turkey such as *Çam v. Turkey* and *Sanlısoy v. Turkey* and defined the concept in parallel with the UN Disability Convention.¹²⁰ The Court ruled that 'a failure to act on the development of measures in line with the requirements of the concept of reasonable accommodation in the context of the right to education may also raise the issue of discrimination based on disability and may violate the prohibition of discrimination guaranteed in Article 10 of the Constitution in conjunction with Article 42 of the Constitution.'¹²¹ Although the duty to provide reasonable accommodation stipulated in Law on Persons with Disabilities is applicable only in the context of employment, the Council of State, without referring to specific legislation, has emphasised the concept of reasonable accommodation, mostly in cases relating to the right to education.¹²² As with the Constitutional Court, the Council of State followed the definition in the UN Convention and stated that the 'state should ensure that persons with disabilities have access to higher education, vocational training, adult education and lifelong education on an equal basis with others without discrimination, and make reasonable accommodation appropriate to their needs.'¹²³ In some cases, the concept is erroneously used instead of positive action, which reveals a conceptual confusion within the judiciary.¹²⁴ As regards the Court of Cassation, there is no relevant case law at present.¹²⁵

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 persons with disabilities

In Turkey, failure to meet the duty of reasonable accommodation in employment for persons with disabilities is recognised as a form of discrimination.

However, there is a discrepancy in the law. A failure to meet the duty of reasonable accommodation in employment for persons 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. In Article 4(1)(f), 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.

¹²⁰ Constitutional Court, *U.D.K. ve Diğerleri*, Application No. 2014/19352, 24 May 2018, paras. 31, 32, 50, 51.

¹²¹ Constitutional Court, *U.D.K. ve Diğerleri*, Application No. 2014/19352, 24 May 2018, para. 55. See also, Council of State, Assembly of Administrative Chambers, E. 2021/41, K. 2021/374, 1 March 2021.

¹²² For examples, see Council of State, Assembly of Administrative Chambers, E. 2020/457, K. 2021/61, 18 January 2021; 8th Chamber, E. 2020/3361, K. 2020/5377, 8 December 2020.

¹²³ Council of State, Assembly of Administrative Chambers, E. 2008/2220, K. 2012/2239, 21 November 2012.

¹²⁴ Council of State, 8th Chamber, E. 2020/3361, K. 2020/5377, 8 December 2020.

¹²⁵ Council of State, 12th Chamber, E. 2021/5479, K. 2012/4389, 1 June 2021.

Neither law envisages 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 persons with disabilities

In Turkey, there is a legal duty to provide reasonable accommodation for persons 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 persons with disabilities 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. The Council of State, in a recent judgment, while referring only to the Law on Persons with Disabilities, ruled that the duty to provide reasonable accommodation is applicable only in the field of employment.¹²⁶

In the ECtHR's 2016 ruling¹²⁷ 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. However, the Constitutional Court has referred to that judgment in two cases.¹²⁸

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. 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).¹²⁹

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

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

¹²⁶ Council of State, 10th Chamber, E. 2016/1097, K. 2021/3385, 17 June 2021.

¹²⁷ *Çam v. Turkey*, No. 51500/08, 23 February 2016.

¹²⁸ Constitutional Court, *U.D.K. ve Diğerleri*, Application No. 2014/19352, 24 May 2018; *Devrim Alyüz*, Application No: 2017/40383, 16 September 2020.

¹²⁹ *Enver Şahin v. Turkey*, No. 23065/12, 30 January 2018.

In past years, there were some examples of reasonable accommodation in respect of religion or belief in the public sector. 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 2012.¹³⁰ 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.

In 2016, in some of the collective agreements – which adequately reflect the religious diversity – between trade unions and municipalities, a bonus was provided to employees as a '*Muharrem*' or '*Aşure*' and 'Christmas' bonus,¹³¹ with an extra day off during the month of *Muharrem*.¹³² There is no publicly available information on whether those collective agreements are still in place. Considering the limited information, it is not known whether this is a general approach or an approach that is valid only in some municipalities. As similar information is not widely available, it can be said that this practice is limited to only a few municipalities.

¹³⁰ '*Muharrem* fast menu at the restaurant of the Turkish Parliament' (TBMM Lokantasında Muharrem Orucu Menüsü), *Hürriyet*, 14 November 2012, available at: <http://www.hurriyet.com.tr/tbmm-lokantasinda-muharrem-orucu-menu-21924575>.

¹³¹ As an example, see 'Maltepe Municipality Will Give Bonuses to the Workers in the month of *Muharrem* and Christmas' (Maltepe Belediyesi işçilere Muharrem ayı ve Noel'de de ikramiye verecek), *İleri*, 1 June 2016, available at: <https://ilerihaber.org/icerik/maltepe-belediyesi-iscilere-muharrem-ayi-ve-noelde-de-ikramiye-verecek-55183.html>.

¹³² As an example, see 'Alevi faith was included in a collective agreement for the first time' (Alevi İnancı İlk Kez Toplu Sözleşme'ye Girdi), *Sözcü*, 8 January 2016, available at: <https://www.sozcu.com.tr/2016/qundem/alevi-inanci-ilk-kez-toplu-sozlesmeye-girdi-1035293/>.

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.

Except for under the Law on the Human Rights and Equality Institution of Turkey, legal persons are not protected. 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 Turkish 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 Turkish 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 persons¹³³ and legal persons¹³⁴ against discrimination.

Civil law explicitly refers to the distinction between natural and legal persons. Article 48 of the Turkish 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.¹³⁵ 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 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

¹³³ For examples, see Constitutional Court, *Tuğba Arslan*, Application No. 2014/256, 25 June 2014 (finding that the barring of a lawyer wearing a headscarf in the courtroom constitutes discrimination. For more, see Introduction); *Şule Bayburt*, Application No. 2017/38724, 21 July 2020 (finding on the obligation to bear the surname of the father of a child who is in the custody of the mother after divorce).

¹³⁴ For examples, see Constitutional Court, *Reis Otomotiv Ticaret v. Sanayi A.Ş.*, Application No. 2015/6728, 1 February 2018; *Reis Otomotiv Ticaret v. Sanayi A.Ş. (3)*, Application No. 2015/6735, 3 July 2019.

¹³⁵ '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.

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, 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 denomination, and Article 125, which provides for disciplinary sanctions for civil servants who engage in discrimination, are other relevant legal provisions.¹³⁶

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, denomination and similar grounds in employment relations; and Article 122 of the Turkish Penal Code, which prohibits hate acts based on language, race, nationality, colour, gender, disability, political opinion, philosophical belief, religion or denomination in the sale, lease or transfer of goods, the execution of a service, employment, and the undertaking of economic activity, are relevant laws that cover the private sector for the purpose of protection against discrimination.¹³⁷

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 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

¹³⁶ See also Article 8(6)(a) of the Law on Disciplinary Sanctions of General Law Enforcement (Law No. 7068, 31 January 2018), which also provides a sanction in the form of dismissal from the profession for acts of discrimination in the course of their duties;¹³⁶ 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. These are relevant laws that cover the public sector, including public bodies, for the purpose of protection against discrimination.

¹³⁷ See also 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; and Article 68 of the Turkish Civil Code, which prohibits discrimination among members of associations on the basis of language, race, gender, religion, sect, family, group or class.

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(1)(c) of the Turkish 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 are applicable.

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'. Under this Article, the legislative organ is given discretionary power in determining the skills or qualifications required to apply for jobs in the public sector. On the other hand, while determining the criteria in question, the restrictions to be imposed on this right are possible only if they are compatible with the qualifications required by the duty. Accordingly, the restriction to be imposed by determining a criterion for the right to enter the public service cannot be stipulated other than by the qualifications required by the duty.¹³⁸

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. Despite these regulations, the European Social Rights Committee concluded that the protection against discrimination in employment, in particular on grounds of sexual orientation, ethnic origin and disability cannot be deemed sufficient.¹³⁹

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 gradually lifted in the last decade and is no longer being applied. The headscarf bans in the judiciary and for lawyers, police and military have 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). One 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. 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

¹³⁸ Constitutional Court, E. 2020/14, K. 2020/58, 15 October 2020, para. 19.

¹³⁹ 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>; *Conclusions 2020: Turkey*, 2020/def/TUR/1/2/EN, 29 January 2021, Article 1-2, available at: <https://hudoc.esc.coe.int/eng?i=2020/def/TUR/1/2/EN>.

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.¹⁴⁰

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. However, the Constitutional Court did not consider this situation to be against the prohibition of discrimination.¹⁴¹ 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.

Given its use of the term 'employment relation', 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 applicable to the pre-employment stages such as job announcements and recruitment processes.

There exists no specific legislation and sufficient protection for the prohibition of discrimination on the ground of sexual orientation, with the exception of vague statements by the Constitutional Court. As has been acknowledged by the European Social Rights Committee, discrimination against LGBTI+ people in employment is widespread.¹⁴² 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 former High Military Administrative Court.¹⁴³ This is only valid for same-sex sexual intercourse and does not cover individuals who attend LGBTI+ 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 (ğ), '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' (*gayri tabii mukarenet*) also 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.'¹⁴⁴ In a strongly worded opinion, which made extensive references to international human rights

¹⁴⁰ CRPD (2019), *Concluding Observations on the Initial Report of Turkey*, CRPD/C/TUR/CO/1, 1 October 2019, paras. 27-28, available at: <https://digitallibrary.un.org/record/3848320>.

¹⁴¹ Constitutional Court, E. 2018/104, K. 2020/39, 16 July 2020, para. 223.

¹⁴² ESCR, *Conclusions 2016: Turkey*, 2016/def/TUR/1/2/EN, 9 December 2016, Article 1-2, available at: <https://hudoc.esc.coe.int/eng?i=2016/def/TUR/1/2/EN>; *Conclusions 2020: Turkey*, 2020/def/TUR/1/2/EN, 29 January 2021, Article 1-2, available at: <https://hudoc.esc.coe.int/eng?i=2020/def/TUR/1/2/EN>.

¹⁴³ (Former) High Military Administrative Court, E. 1998/888, K. 1999/482, 11 May 1999. Following the amendments made to the Constitution in 2017, this court was abrogated.

¹⁴⁴ Constitutional Court, E. 2015/68, K. 2017/166, 29 November 2017, para. 14.

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.¹⁴⁵ 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, in the past 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.¹⁴⁶ 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. The process of psychological tests typically lasts for several days and requires multiple visits to a hospital.¹⁴⁷ Turkey stated that accepting sexual orientation as a reason for dismissal cannot be considered within the scope of prohibition of all kinds of discrimination in employment and that such dismissals are necessary for the protection of the military discipline and to ensure the orderly functioning of the public service. However, it was considered that such an explanation is not compliant with the prohibition of discrimination in employment.¹⁴⁸

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).

Although not implemented, Article 41(2) of the Conscription Law prohibits the employment of examination evaders and absentees¹⁴⁹ in both the private and public sectors, and according to Article 75(1) of the Military Penal Code,¹⁵⁰ those who employ deserters, examination evaders and absentees may be subjected to imprisonment from three months to one year. This provision potentially affects gay men, as well as those who prefer not to come out and do not want to perform military duty.

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

¹⁴⁵ *Savda v. Turkey*, No. 42730/05, 12 June 2012; *Tarhan v. Turkey*, No. 9078/06, 17 July 2012.

¹⁴⁶ 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>.

¹⁴⁷ May 17, 'Information Note on Military Service Exemption Processes' (Askerlik Muafiyet Süreçlerine İlişkin Bilgi Notu), available at: <https://www.17mayis.org/images/publish/pdf/askerlikten-muafiyet-sureclerine-iliskin-bilgi-notu-30-04-2021.pdf>.

¹⁴⁸ ESCR, *Conclusions 2020: Turkey*, 2020/def/TUR/1/2/EN, 29 January 2021, Article 1-2, available at: <https://hudoc.esc.coe.int/eng?i=2020/def/TUR/1/2/EN>.

¹⁴⁹ Conscription Law (*Askerlik Kanunu*), No. 7179, 25 June 2019.

¹⁵⁰ Military Penal Code (*Askeri Ceza Kanunu*), No. 1632, 22 May 1930.

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'.¹⁵¹ According to the European Commission's reports on Turkey, the overall employment rate for the Roma is 31 %¹⁵² and Roma remain largely excluded from formal jobs.¹⁵³ Field research conducted by Roma associations has produced empirical evidence of employment discrimination against the Roma.¹⁵⁴ Due to the discrimination that they face in their working lives, Roma people mostly work in unsecured and low-income jobs such as musicianship in the entertainment sector, domestic solid waste collection and basketry, floristry etc.

The COVID-19 outbreak and the curfews have exacerbated the existing unemployment problem among the Roma.¹⁵⁵ A recent study conducted from August to December 2021 revealed that Roma people, the majority of whom work in the informal sector, had experienced additional problems with employment. Although the Government provided EUR 600 million in support during the COVID-19 outbreak, Roma people were largely unable to access support mechanisms such as a prohibition on dismissal, the short-term working allowance, support for workers on unpaid leave and a cash transfer to the impoverished due to their largely taking up informal employment opportunities in informal sectors.¹⁵⁶ According to a survey carried out by NGOs, the rate of people who stated that they were unemployed at least once during the pandemic, among 600 Roman citizens who participated in the survey, was 65.9 %, and 77.5 % of those interviewed for the survey had struggled with unemployment.¹⁵⁷

3.2.2 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.

¹⁵¹ 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>; *Conclusions 2020: Turkey*, 2020/def/TUR/1/1/EN, 29 January 2021, Article 1-2, available at: <https://hudoc.esc.coe.int/eng?i=2020/def/TUR/1/1/EN>.

¹⁵² 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>.

¹⁵³ European Commission (2021), *Turkey 2021 Report*, Strasbourg, 19 October 2021, p. 94, available at: https://ec.europa.eu/neighbourhood-enlargement/document/download/892a5e42-448a-47b8-bf62-b22d52c4ba26_en.

¹⁵⁴ 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.

¹⁵⁵ 'The Poor and Vulnerable Group Excluded by Covid-19: Roma' (Covid-19'un dışladığı yoksul ve kırılgan grup: Romanlar), *BIANET*, 23 September 2020, available at: <https://m.bianet.org/bianet/toplum/231349-covid-19-un-disladigi-yoksul-ve-kirilgan-grup-romanlar>. However, except with regard to curfew for the elderly, no research has been conducted on the discriminatory effects of anti-COVID measures in Turkey. So, this should be regarded as the personal opinion of the author.

¹⁵⁶ Adaman, F., Demir, İ. A., Uncu, B. A. and Yeniev, G. (2022), *Socio-Economic Impact Study of Covid-19 on Roma Communities in Turkey (Covid-19'un Türkiye'deki Roman Toplulukları Üzerindeki Sosyo-ekonomik Etki Araştırması)*, Roma Dialogue Network (Roman Diyalog Ağı), pp. 9-10, available at: <https://www.stgm.org.tr/sites/default/files/2022-02/covid-19un-turkiyedeki-roman-topluluklari-uzerindeki-sosyo-ekonomik-etkisi-raporu.pdf>.

¹⁵⁷ Social Democracy Foundation (*Sosyal Demokrasi Vakfı*), Istanbul Planning Agency (*İstanbul Planlama Ajansı*) and Zero Discrimination Association (*Sıfır Ayrımcılık Derneği*) (2021), *Roma Communities in Turkey and Poverty Research (Türkiye'de Roman Toplulukları ve Yoksulluk Araştırması)*, available at: <https://sodev.org.tr/sodev-turkiyede-roman-topluluklari-ve-yoksulluk-arastirmasi/>.

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(1)(c) of the Turkish Penal Code is limited to recruitment and does not cover employment and working conditions. Article 5 of 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 denomination, and which, since February 2014, explicitly mentions disability but not ethnic origin, sexual orientation or age. There are examples of where Article 5 of the Labour Law has been interpreted as covering ethnic origin and sexual orientation (as 'sexual preference').¹⁵⁸

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. While Article 29 of the Labour Law 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. In addition, Article 8(6)(cc) of the Law on Disciplinary Sanctions of General Law Enforcement states that 'to act unnaturally with a person or to have this act done with his/her consent' is a disciplinary matter to result in dismissal from a post.¹⁵⁹ 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.¹⁶⁰ There is an ongoing case before the Council of State in which the provincial administrative court and administrative court of appeal concluded that the dismissal of a policeman due to having sexual intercourse with a male is not compliant with the law.¹⁶¹ On the other hand, in 2014 and in 2021, the Council of State ruled otherwise and found that the dismissal of a teacher¹⁶² and a janitor¹⁶³ from the profession due to his/her sexual

¹⁵⁸ For examples, see: Court of Cassation, 9th Civil Chamber, E. 2015/11719, K. 2017/2875, 28 February 2017 (ethnic origin); 7th Civil Chamber, E. 2015/3256, K. 2015/3201, 03.03.2015 (ethnic origin); 9th Civil Chamber, E. 2016/34268, K. 2020/17873, 9 December 2020 ('sexual preference').

¹⁵⁹ Law on Disciplinary Sanctions of General Law Enforcement (*Genel Kolluk Disiplin Hükümleri Hakkında Kanun Hükümünde Kararnamenin Kabul Edilmesine Dair Kanun*), Law No. 7068, 31 January 2018.

¹⁶⁰ Council of State, 5th Chamber, E. 2018/4703, K. 2020/5481, 30 November 2020.

¹⁶¹ Ankara Administrative Court of Appeal, 2nd Administrative Chamber, E. 2020/438, K. 2020/1800, 15 October 2020.

¹⁶² 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'.

¹⁶³ Council of State, 12th Chamber, E. 2018/10177, K. 2021/988, 25 February 2021.

orientation violated the Turkish Constitution and the ECHR (see section 2.1.1.). In a judgment rendered in 2020, the Council of State concluded that ‘propagating LGBT and homosexuality’ or ‘praising homosexuality’ can be regarded as valid reasons for dismissal.¹⁶⁴ 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.¹⁶⁵ 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 EUR 200 (TRY 3 000) in pecuniary damages and EUR 1 330 (TRY 20 000) in non-pecuniary damages.¹⁶⁶ 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.¹⁶⁷ The Court noted that the health report that exempted the applicant from military service diagnosed the applicant with a ‘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 Turkish Code 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 EUR 200 (TRY 3 000) 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 EUR 1 330 (TRY 20 000) 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 EUR 7 330 (TRY 110 000) 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

¹⁶⁴ Council of State, 8th Chamber, E. 2019/5327, K. 2020/5876, 23 December 2020.

¹⁶⁵ Kaos GL (2020), *Situation of Lesbian, Gay, Bisexual, Trans, Intersex and Plus Employees in Private Sector in Turkey – 2020 Research*, available at: <https://kaosgilderne.org/images/library/private-sector-2020.pdf>.

¹⁶⁶ 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.

¹⁶⁷ Istanbul, 20th Civil Court of First Instance, E. 2010/399, K. 2015/554, 29 December 2015.

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 as regards non-pecuniary damage and dismissed the case.¹⁶⁸ This ruling was also upheld by the Court of Cassation in 2021. However, one of the judges, Salim Küçük, emphasised in his dissenting opinion that since the practice of not appointing the victim to work at the matches due to his sexual orientation fell within the scope of the victim's right to demand respect for his private life and the prohibition of discrimination, an appropriate amount of non-pecuniary damage should therefore be awarded in favour of the claimant.¹⁶⁹ The case 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 is 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 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.¹⁷⁰

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. In 2021, the gross minimum wage was around EUR 189 (TRY 2 825) per month.¹⁷¹

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.¹⁷² 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.¹⁷³

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.

¹⁶⁸ 'Decision on compensation awarded to homosexual referee was withdrawn' (Eşcinsel hakeme verilen tazminat kararı geri alındı), *Cumhuriyet*, 6 February 2020, available at: <http://www.cumhuriyet.com.tr/haber/escinsel-hakeme-verilen-tazminat-karari-geri-alindi-1718924>.

¹⁶⁹ Court of Cassation, 4th Civil Chamber, E. 2020/3822, K. 2021/1035, 8 March 2021.

¹⁷⁰ CRPD (2019), *Concluding Observations on Initial Report of Turkey*, CRPD/C/TUR/CO/1, 1 October 2019, para. 53, available at: <https://digitallibrary.un.org/record/3848320>.

¹⁷¹ Minimum Wage Determination Commission (2020), *Official Gazette*, 30 December 2020.

¹⁷² See: www.turkstat.gov.tr.

¹⁷³ 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'. See 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>.

3.2.3 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.

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.

The Turkish Employment Agency (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.'¹⁷⁴ Since 1991, İŞKUR has also provided vocational and occupational counselling services to persons with disabilities to help them find an occupation that suits their personal abilities and interests. According to the Turkish Government, 1 923 696 people received consultancy services of this kind in 2021.¹⁷⁵

In formal education institutions, students can attend vocational education after the completion of their secondary school education. In order to graduate, students must complete 40 working days as interns in the workplace in the vocational high schools. Students are required to complete 20 working days of this internship at the end of the 10th grade and the remaining 20 working days at the end of the 11th grade.

In higher (university) education, there are vocational high schools (polytechnics) providing associate degrees 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 a secondary school graduate. 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.

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.

¹⁷⁴ 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: <https://digitallibrary.un.org/record/1308046>.

¹⁷⁵ Turkish Employment Agency (2022), *Activity Report 2021 (2021 Yılı Faaliyet Raporu)*, p. viii, available at: https://media.iskur.gov.tr/53368/2021_yili_faaliyet_raporu.pdf.

3.2.4 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.

3.2.5 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 (No. 5510) 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 of the Constitution, 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.¹⁷⁶ The medical treatment costs of persons who receive a disability pension are covered by general health insurance. As of December 2021, the number of persons receiving a disability pension was around 625 000; it was 640 000 in 2020.¹⁷⁷

¹⁷⁶ 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%2fQ%2f1%2fAdd.1&Lang=en.

¹⁷⁷ Ministry of Family and Social Services General Directorate of Disabled and Elderly Services (2021), *Statistical Bulletin of Disabled and Elderly (Engelli ve Yaşlı İstatistik Bülteni)*, December 2021, p. 47, available at: https://aile.gov.tr/media/96693/eyhqm_istatistik_bulteni_aralik_2021.pdf.

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.

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 servants the prohibition also covers discrimination in the provision of social services.

Likewise, Article 122(1)(b) of the Turkish Penal Code prohibits preventing a person from benefiting from a certain service offered to the public by virtue of hate stemming from differences based on language, race, nationality, colour, gender, disability, political opinion, philosophical belief, religion or denomination. Although there is no direct reference to social protection, the wording of the Article, that is to say 'a certain service offered to the public', can be interpreted broadly as it also encompasses social services provided by the state.

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

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

3.2.6 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, denomination 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, persons with disabilities and everyone above the age of 65 years can use urban public transportation free of charge.¹⁷⁸ 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, known as 'conditional cash transfer', provides conditional monthly stipends per child for children of both pre-school and school age to lower-income families that do not have any social security coverage. The 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).¹⁷⁹ 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 760 858 beneficiaries as of the end of 2021.¹⁸⁰

¹⁷⁸ Regulation on Free of Charge or Discounted Travel Cards (*Ücretsiz veya İndirimli Seyahat Kartları Yönetmeliği*), 4 March 2014.

¹⁷⁹ Ministry of Family and Social Services (2021), available at: <https://www.aile.gov.tr/sygm/programlarimiz/sosyal-yardim-programlarimiz/>. In 2021, the payments were approximately EUR 3.60 to EUR 60 (TRY 55 to TRY 90) per child.

¹⁸⁰ Turkish Red Crescent (2021), Conditional Cash Transfer for Education Programme (CCTE), available at: <https://platform.kizilaykart.org/en/sev.html>. Moreover, Syrian refugees living under temporary protection

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(1)(b) 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.

3.2.7 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. In addition, Article 7 of the Law on Civil Servants prohibits discrimination on enumerated grounds by civil servants while carrying out their duties, which implicitly covers education. Again, Article 122(1)(b) of the Turkish Penal Code prohibits discrimination in education, as it can be regarded as 'a certain service offered to the public'. Sexual orientation is excluded in all of these laws and provisions.

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. There is no education provided for pupils as regards discrimination, and discriminatory content about all religious and faith groups remains in place.¹⁸¹ As stated by the European Commission, school textbooks still need to be revised, especially regarding some content on secularism, religion and gender inequality, as they carry discriminatory content based on religion and gender.¹⁸²

As regards students to belonging 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

(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 are given special cards worth EUR 10 (TRY 155) per person (as of 2021, 1 529 495 persons) per month respectively for needs such as food shopping, and additional payments are also made to persons with severe disabilities and dependent individuals by the Turkish Red Crescent. See Turkish Red Crescent (2021), Emergency Social Safety Net Programme (ESSN), available at: <https://platform.kizilaykart.org/en/suy.html>.

¹⁸¹ European Commission, *Turkey 2020 Report*, Brussels, 6 October 2020, p. 32, available at: https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/turkey_report_2020.pdf.

¹⁸² European Commission (2021), *Turkey 2021 Report*, Strasbourg, 19 October 2021, p. 38, available at: https://ec.europa.eu/neighbourhood-enlargement/document/download/892a5e42-448a-47b8-bf62-b22d52c4ba26_en.

instruments to which Turkey is party', and the only international treaty that covers minority rights is the Lausanne Treaty.¹⁸³ 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 Alevi. 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 or other ethnic groups are also excluded from its protection.¹⁸⁴

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'. 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.

Official figures provided by the state in 2021 show that the number of schools belonging to non-Muslim minorities is 58. 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 2020-21 are as follows:¹⁸⁵

	Number of Schools	Number of Students
Pre-primary education	4 ¹⁸⁶	1105
Primary education	23	1099
Secondary education	20	1005
Upper secondary education	11	937
Total	58	4146

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

¹⁸³ 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.

¹⁸⁴ 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>. See also, CESCR (2011), *Concluding observations of the Committee on Economic, Social and Cultural Rights, Turkey*, E/C.12/TUR/CO/1, para. 10 and 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>.

¹⁸⁵ Ministry of National Education (2020), *National Education Statistics: Formal Education 2020-21 (Milli Eğitim İstatistikleri: Örgün Eğitim 2020-21)*, pp. 59, 74, 75, 133, available at: https://sqb.meb.gov.tr/meb_iys_dosyalar/2021_09/10141326_meb_istatistikleri_orgun_egitim_2020_2021.pdf.

¹⁸⁶ There are also 41 nursery classes in minority schools. Although the number of pre-primary schools was decreased from 25 to four in 2020, this seemed to be mainly due to a change in classification of schools by the Ministry. Primary schools also have pre-primary education classes, so this situation may also be the result of the schools in question now being regarded as classes of primary schools.

Jewish students from these classes,¹⁸⁷ in practice the exemption is limited to the officially recognised non-Muslim minorities (Jews, Armenian and Greek Orthodox Christians), excluding other Christian groups and non-Sunni denominations such as Alevi.

The ECtHR found in 2007¹⁸⁸ and in 2014,¹⁸⁹ in considering applications lodged by Alevi parents, that the content of these classes violated Article 2 of the First Protocol to the ECHR, 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, which is problematic in practice, 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.

Despite those judgments, no exemptions are provided to the parents, and the religion course continues to teach a particular religion and fails to fulfil the criteria of inclusiveness, impartiality and lack of indoctrination.¹⁹⁰ On the contrary, a law adopted in 2012 introduced new elective courses on religion in secondary schools.¹⁹¹ Thus, the law increased from two to eight per week the number of hours of religion courses that students can potentially take.¹⁹²

Concerning 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.¹⁹³ From the academic year 2012-2013, public secondary schools started to offer elective courses of two hours per week on demand in selected minority languages. As of 2021, eight elective courses (the Kurmanji and Zazaki dialects of Kurdish, the Adige and Abkhaz dialects of Circassian, the Laz language, Bosnian, Albanian and Georgian) are offered in public secondary schools.¹⁹⁴ The various Roma languages were not included among the selected languages. Arabic is offered as a foreign language.

According to figures from the Ministry of Education, a total of 77 931 students chose this elective course in 2015-2016.¹⁹⁵ Since then, for the years 2016-2021, only limited official statistics have been provided in that regard. In a written reply issued by the Ministry of National Education to a question lodged by an MP, it was stated that the number of pupils enrolled in elective Kurdish classes in the school years 2018-19, 2019-20, 2020-21 and

¹⁸⁷ Ministry of National Education, Religious Education General Directorate for Higher Education and Training Committee decision, 9 July 1990.

¹⁸⁸ *Hasan and Eylem Zengin v. Turkey*, No. 1448/04, 9 January 2007.

¹⁸⁹ *Mansur Yalçın and Others v. Turkey*, No. 21163/11, 16 September 2014.

¹⁹⁰ Yıldırım, M. (2021), *Compulsory Religious Education in Turkey: A Human Rights Based Evaluation of the Religious Culture and Ethics Courses and Textbooks (Türkiye’de Zorunlu Din Eğitimi: Din Kültürü Ahlak Bilgisi Dersi ve Kitapları Hakkında İnsan Hakları Temelli Bir Değerlendirme)*, Eşit Haklar için İzleme Derneği (Association for Monitoring of Equal Rights), p. 59, available at: <https://www.esithaklar.org/wp-content/uploads/2021/02/Tu%CC%88rkiyede-Zorunlu-Din-Eg%CC%86itimi.pdf>.

¹⁹¹ 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.

¹⁹² From the outset, religious minorities have 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.

¹⁹³ Law on Amendments in Law on Primary Education and Various Other Laws, No. 6287, 30 March 2012.

¹⁹⁴ Ministry of National Education (2022), Reply to Parliamentary Question Lodged by Ömer Faruk Gergerlioğlu No. 7/57978, 10 February 2022, available at: <https://www2.tbmm.gov.tr/d27/7/7-57978c.pdf>.

¹⁹⁵ ('Non-elective Elective Course: Kurdish' (Seçtirilmeyen Seçmeli Ders: Kürtçe), *Evrensel*, 9 September 2019, available at: <https://www.evrensel.net/haber/386372/sectirilmeyen-secmeli-ders-kurtce>).

2021-22 were 35 504, 20 720, 17 973 and 16 842 respectively.¹⁹⁶ According to figures provided by the Ministry of Education, as of 6 October 2020 only 142 Kurdish-language teachers were appointed to the public schools.¹⁹⁷ The current number of Kurdish language teachers in 2021 was 76.¹⁹⁸ The majority of the appointed teachers are unable to teach Kurdish because there is insufficient demand.¹⁹⁹ According to a report published by the Laz Institute, since 2012 the total number of pupils enrolled to elective Laz language courses is 496. However, in the school years 2019-20 and 2020-21, there were no courses available for pupils.²⁰⁰

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.²⁰¹ However, the scope of this right is limited to private secondary schools and does not extend to elementary schools or to public secondary schools.

As for 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,²⁰² today Turkey formally endorses integrated/mainstream education as the ruling principle and special education as the exception.²⁰³ However, the right of children with disabilities to mainstream education is still to be effectively guaranteed.²⁰⁴

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.

¹⁹⁶ Ministry of National Education (2022), Reply to Parliamentary Question Motioned by Murat Sarısaç No. 7/57843, 10 February 2022, available at: <https://www.tbmm.gov.tr/d27/7/7-57843c.pdf>.

¹⁹⁷ Ministry of National Education (2020), Reply to Parliamentary Question Motioned by Ebrü Günay No. 7/29562, 26 October 2020, available at: <https://www.tbmm.gov.tr/d27/7/7-29562sgc.pdf>.

¹⁹⁸ Ministry of National Education (2021), Reply to Parliamentary Question Motioned by Muazzez Orhan Işık No. 7/41945, 1 April 2021, available at: <https://www.tbmm.gov.tr/d27/7/7-41945sgc.pdf>.

¹⁹⁹ ('Non-elective Elective Course: Kurdish' (Seçtirilmeyen Seçmeli Ders: Kürtçe), *Evrensel*, 9 September 2019, available at: <https://www.evrensel.net/haber/386372/sectirilmeyen-secmeli-ders-kurtce>.

²⁰⁰ Laz Institute (2021), Bilmez, B., Çağatay, İ., *Sahipsiz Bir Hak, Dil Hakları Bağlamında Yaşayan Diller ve Lehçeler Seçmeli Dersi: Lazca Örneği (2012-2021) (An Unclaimed Right, Living Languages and Dialects Elective Course in the Context of Language Rights: The Example of Laz Language (2012-2021))*, p. 45, February 2021, available at: https://lazkulturderneği.org.tr/_img/RaporLKDMaster.pdf.

²⁰¹ 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.

²⁰² 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.

²⁰³ 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.

²⁰⁴ ESCR, *Conclusions 2020: Turkey*, 2020/def/TUR/15/1/EN, 29 January 2021, Article 15-1, available at: <https://hudoc.esc.coe.int/eng?i=2020/def/TUR/15/1/EN>.

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. Although it was stated in the *Annual Presidential Programme 2020* and the *Annual Presidential Programme 2021* that 'the human and physical resources will be improved so that individuals in need of special education can benefit from educational services', that was not the case as of 2021, and targets such as conducting province-based surveys to identify individuals in need of special education, mapping the needs of those individuals, increasing the standards of physical infrastructure of learning environments, varying the curriculum and material, self-care skills, integration practices and counseling services etc. could not be achieved.²⁰⁵

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 2018.²⁰⁶ 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.

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).²⁰⁷ 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. Currently, the only statistics provided by the Government date back to a survey conducted in 2010, thus the CRPD Committee has criticised this

²⁰⁵ Presidency of the Republic of Turkey (2019), *Annual Presidential Programme 2020 (2020 Yılı Cumhurbaşkanlığı Yıllık Programı)*, p. 259, available at: https://www.sbb.gov.tr/wp-content/uploads/2019/11/2020_Yili_Cumhurbaskanligi_Yillik_Programi.pdf. Also available in *Official Gazette*, 4 November 2019; Presidency of the Republic of Turkey (2020), *Annual Presidential Programme 2021 (2021 Yılı Cumhurbaşkanlığı Yıllık Programı)*, p. 269, available at: https://www.sbb.gov.tr/wp-content/uploads/2020/11/2021_Yili_Cumhurbaskanligi_Yillik_Programi.pdf. Also available in *Official Gazette*, 27 October 2020.

²⁰⁶ *Official Gazette*, 7 July 2018.

²⁰⁷ Ministry of National Education (2019), *2019-2023 Strategy Plan (2019-2023 Stratejik Planı)*, Strategy Development Presidency, Ankara, p. 42, available at: http://sqb.meb.gov.tr/meb_iys_dosyalar/2019_12/31105532_Milli_EYitim_BakanlYYY_2019-2023_Stratejik_PlanY_31.12.pdf.

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.²⁰⁸

According to the Ministry of National Education's annual report, during the academic year 2020-2021 the total number of students with disabilities receiving integrated or special education was 452 816.²⁰⁹ 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. That fell far below the overall population of children with disabilities in that age group, for whom the estimated number in 2010 was 1 105 630.²¹⁰ According to figures provided by the Council of Higher Education, the total number of students with disabilities in higher education in 2020-2021 was 54 232 of a total of 8 240 997.²¹¹

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 EUR 505 million (TRY 7.568 million) in education expenses was paid by the Ministry of National Education for individuals with disabilities in 2021.²¹² However, the Court of Accounts stated in 2020 that the funds allocated in 2019 had not been used effectively or efficiently, which reveals the ineffectiveness of the expenditure.²¹³

There is a scarcity of special education institutions. According to the figures provided by the Ministry of National Education, there are 1 517 special education institutions within the mandate of the Ministry.²¹⁴

The current official schooling data from the Ministry indicate the extremely low level of schooling for deaf children. In the academic year 2020-2021, the total number of deaf

²⁰⁸ CRPD (2019), *Concluding Observations on Initial Report of Turkey*, CRPD/C/TUR/CO/1, para. 63, available at: <https://digitalibrary.un.org/record/3848320>.

²⁰⁹ Ministry of National Education (2021), *National Education Statistics: Formal Education 2020-21 (Milli Eğitim İstatistikleri: Örgün Eğitim 2020-21)*, p. 44, available at: https://sgb.meb.gov.tr/meb_iys_dosyalar/2021_09/10141326_meb_istatistikleri_orgun_egitim_2020_2021.pdf.

²¹⁰ 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.

²¹¹ The Council of Higher Education (2021), *Student Statistics (Öğrenci İstatistikleri)*, available at: <https://istatistik.yok.gov.tr/>.

²¹² Minister of National Education (2020), *Budget Presentation for 2021 (2021 Yılı Bütçe Sunuşu)*, 30 December 2020, p. 197, available at: https://sgb.meb.gov.tr/meb_iys_dosyalar/2020_12/30125920_2021_BUTCE_SUNUYU.pdf.

²¹³ 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_BakanliYYY_2019_YYI_Y_Idare_Faaliyet_Raporu_28.02.2020.pdf.

²¹⁴ Ministry of National Education (2021), *National Education Statistics: Formal Education 2020-21 (Milli Eğitim İstatistikleri: Örgün Eğitim 2020-21)*, p. 44, available at: https://sgb.meb.gov.tr/meb_iys_dosyalar/2021_09/10141326_meb_istatistikleri_orgun_egitim_2020_2021.pdf.

children in primary and secondary schools that exclusively provide education for the deaf children was 2 752,²¹⁵ which was reported as 120 000 in 1998.²¹⁶

The ECtHR's 2016²¹⁷ and 2018²¹⁸ 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 1 January 2022, the execution process for both cases is still pending before the Committee of Ministers.²¹⁹

a) 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,²²⁰ 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.²²¹ 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.²²² UN Development Programme data

²¹⁵ Ministry of National Education (2021), *National Education Statistics: Formal Education 2020-21 (Milli Eğitim İstatistikleri: Örgün Eğitim 2020-21)*, p. 44, available at: https://sgb.meb.gov.tr/meb_iys_dosyalar/2021_09/10141326_meb_istatistikleri_orgun_egitim_2020_2021.pdf.

²¹⁶ 'Turkish Sign Language', prepared as part of Dr. Aslı Özyürek's research project, information previously available at: <http://turkisaretdili.ku.edu.tr/en/tid.aspx> (website no longer online).

²¹⁷ *Çam v. Turkey*, No. 51500/08, 23 February 2016.

²¹⁸ *Enver Şahin v. Turkey*, No. 23065/12, 30 January 2018.

²¹⁹ Committee of Ministers (2021), *Çam v. Turkey*, No. 51500/08, 23 February 2016, available at: <http://hudoc.exec.coe.int/eng?i=004-37394> and *Enver Şahin v. Turkey*, No. 23065/12, 30 January 2018, available at: <https://hudoc.exec.coe.int/eng?i=004-49961>.

²²⁰ 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.

²²¹ 'Roma Initiative to be Announced in November in Edirne' (Roman Açılımı Paketi Kasım Ayında Edirne'de Açıklanacak), T24, 14 October 2013, available at: <https://t24.com.tr/haber/roman-acilimi-paketi-kasim-ayinda-edirne-de-aciklanacak,241886>.

²²² 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>.

indicates that in 2014, the literacy rate in Turkey was 94.5 %.²²³ 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 %.²²⁴ According to another study of Roma and similar ethnic groups, which was carried out in five provinces, 168 of 460 interviewees were illiterate.²²⁵

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 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.²²⁶ The only other form of support that the state provides is 'conditional education aid' in the form of monthly payments between EUR 3.70 to EUR 6 (TRY 55 to TRY 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.²²⁷ 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.²²⁸ 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.²²⁹ 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.²³⁰ 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-

²²³ UN Development Programme (2015), *Human Development Report 2015*, p. 243, available at: http://hdr.undp.org/sites/default/files/2015_human_development_report.pdf.

²²⁴ Alp, S. and Taştan, N. (2011), *Monitoring Report on Discrimination Based on Race and Ethnic Roots in Turkey, 1 January-31 July*, (Türkiye'de İrk veya Etnik Köken Temelinde Ayrımcılığın İzlenmesi Raporu 1 Ocak-31 Temmuz 2010), Human Rights Law Research Centre, Istanbul Bilgi University, p. 54.

²²⁵ Oprışan, 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), Zero Discrimination Association, Istanbul, p. 26.

²²⁶ 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.

²²⁷ Ministry of Family and Social Services (2021), *Şartlı Eğitim Yardımları (Conditional Education Aids)*, available at: <https://aile.gov.tr/sygm/programlarimiz/sosyal-yardim-programlarimiz/>.

²²⁸ UNICEF (2012), *Analysis of the Situation of Children and Young People in Turkey* (Türkiye'de Çocuk ve Genç Nüfusun Durumunun Analizi), p. 50, available at: <https://abdigm.meb.gov.tr/projeler/ois/egitim/033.pdf>.

²²⁹ CRC (2012), *Concluding Observations: Turkey*, para. 58-59.

²³⁰ European Commission (2014), *Turkey Progress Report*, Brussels, p. 62, available at: https://ec.europa.eu/neighbourhood-enlargement/document/download/351f7f4d-8530-43c5-840f-147cfc0a5a8e_en.

primary education remains very low'.²³¹ The *Turkey 2020 Report* stated that a lack of adequate staff and a lack of resources are the main contributing factors to high drop-out rates.²³² 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.²³³

The COVID-19 pandemic has deepened the inequalities in education and increased the drop-out rates among Roma pupils.²³⁴ Subsequent to shifting to distance education, limited or no access to the internet in households, combined with a lack of, and low quality of, information-communication devices used at home has led to difficulties in following and participating in online courses for Roma pupils.²³⁵ This situation is also affirmed in the European Commission's *Turkey 2021 Report*, which states that 'the shift to distance education due to the COVID-19 pandemic negatively affected the participation of Roma children and youth in education, in the absence of access to internet or appropriate devices by many poverty-stricken households'.²³⁶ No Government action has been taken to overcome the difficulties faced by the Roma children.

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 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.²³⁷ 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.²³⁸

Another phenomenon encountered by the Roma and similar ethnic groups is that of 'Roma schools'.²³⁹ 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

²³¹ European Commission (2019), *Turkey 2019 Report*, Brussels, p. 40, available at:

<https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20190529-turkey-report.pdf>.

²³² European Commission (2020), *Turkey 2020 Report*, Brussels, 6 October 2020, p. 41, available at:

https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/turkey_report_2020.pdf.

²³³ Oprışan, 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)*, Zero Discrimination Association, Istanbul, p. 13.

²³⁴ Çuhadar, E. (2021), *Access of Roma Children to Education During the Pandemic Period (Pandemi Döneminde Roman Çocukların Eğitime Erişimi)*, Zero Discrimination Association, p. 22, available at: https://rodanetwork.org/upload/Dokuman/opt-pandemi-doneminde-roman-Cocuklarin-egitime-erisimi_ekin-Cuhadar-UKVOULLUBL2Q9Y3K057B.pdf.

²³⁵ Adaman, F., Demir, İ. A., Uncu, B. A. and Yeniev, G. (2022), *Socio-Economic Impact Study of Covid-19 on Roma Communities in Turkey (Covid-19'un Türkiye'deki Roman Toplulukları Üzerindeki Sosyo-ekonomik Etki Araştırması)*, Roma Dialogue Network (Roman Diyalog Ağı), p. 21, available at: <https://www.stgm.org.tr/sites/default/files/2022-02/covid-19un-turkiyedeki-roman-topluluklari-uzerindeki-sosyo-ekonomik-etkisi-raporu.pdf>.

²³⁶ European Commission (2021), *Turkey 2021 Report*, Strasbourg, 19 October 2021, p. 41, available at: https://ec.europa.eu/neighbourhood-enlargement/document/download/892a5e42-448a-47b8-bf62-b22d52c4ba26_en.

²³⁷ 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.

²³⁸ 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>.

²³⁹ Çuhadar, E. (2021), *Pandemi Döneminde Roman Çocukların Eğitime Erişimi (Access of Roma Children to Education During the Pandemic Period)*, Zero Discrimination Association, p. 6, available at: https://rodanetwork.org/upload/Dokuman/opt-pandemi-doneminde-roman-Cocuklarin-egitime-erisimi_ekin-Cuhadar-UKVOULLUBL2Q9Y3K057B.pdf.

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.²⁴⁰

Roma and similar ethnic groups are sometimes subjected to harassment of a discriminatory nature.²⁴¹ 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 complaints have been made about such situations to school principals, they produce no results because the principals take the side of the teachers.²⁴²

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.²⁴³ 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.²⁴⁴

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 and Social Services, and a related document entitled Stage 1 Action Plan (2016-2018).²⁴⁵ 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

²⁴⁰ 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.

²⁴¹ Çuhadar, E. (2021), *Pandemi Döneminde Roman Çocukların Eğitime Erişimi (Access of Roma Children to Education During the Pandemic Period)*, Zero Discrimination Association, p. 8, available at: https://rodanetwork.org/upload/Dokuman/opt-pandemi-doneminde-roman-Cocuklarin-egitime-erisimi_ekin-Cuhadar-UKVOULLUBL2Q9Y3K057B.pdf.

²⁴² 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>.

²⁴³ Karan, U. (2017), *Ignored and Unequal: Roma Access to the Right to Housing and Education in Turkey*, Minority Rights Group International/Zero Discrimination Association, pp. 23-24, available at: https://minorityrights.org/wp-content/uploads/2017/06/MRG_Rep_ENG.pdf.

²⁴⁴ Oprışan, 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)*, Zero Discrimination Association, Istanbul, p. 13.

²⁴⁵ *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>.

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.²⁴⁶ 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.²⁴⁷ However, the National Roma Strategy expired in 2021, having achieved limited results, and no new measures have been adopted, or a strategy developed, since then.²⁴⁸

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.²⁴⁹

3.2.8 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 denomination in the sale or transfer of goods, the execution of a service, access to employment, the provision of food services and undertaking economic activity. Hate offences based on ethnic origin and sexual orientation are not included. However, 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 Turkish Code of Obligations, blind persons 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

²⁴⁶ '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>.

²⁴⁷ *Official Gazette*, 11 December 2019.

²⁴⁸ European Commission (2021), *Turkey 2021 Report*, Strasbourg, 19 October 2021, pp. 41, 94, available at: https://ec.europa.eu/neighbourhood-enlargement/document/download/892a5e42-448a-47b8-bf62-b22d52c4ba26_en.

²⁴⁹ CRPD (2019), *Concluding Observations on Initial Report of Turkey*, CRPD/C/TUR/CO/1, para. 17-18, available at: <https://digitallibrary.un.org/record/3848320>.

approved.²⁵⁰ In practice, disability NGOs indicate that there is divergence in practice and that there are too many problems encountered in this regard.²⁵¹

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(1)(a) and 122(1)(b) of the Turkish Penal Code prohibits 'hatred' in the sale or transfer of goods and in the execution of a service respectively, 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. There are also laws as regards certain public sectors. For instance, Article 8(6)(a) of the Law on Disciplinary Provisions of General Law Enforcement also covers the same provision with a harsher sanction in the form of dismissal from the profession. In addition, Article 53(4)(h) of the Law on Higher Education includes a parallel provision to that set forth in the Law on Civil Servants, with the same sanction.²⁵² Thus, the prohibition of discrimination in the provision of public services is implicitly covered by this provision.

3.2.9 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. Article 122(1)(a) of the Turkish Penal Code criminalises the prevention of the sale, transfer or lease of a movable or immovable property to a person due to hatred arising from differences in language, race, nationality, colour, gender, disability, political opinion, philosophical belief, religion or denomination with imprisonment from one year to three years.

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); Mass Housing Law (No. 2985); Expropriation Law

²⁵⁰ Turkish Code of Obligations (*Türk Borçlar Kanunu*), No. 6098, 11 January 2011.

²⁵¹ '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>.

²⁵² Law on Higher Education (*Yükseköğretim Kanunu*), No. 2547, 4 November 1981.

(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 and in recent years.²⁵³ 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.²⁵⁴ As stated by the European Commission, only a few internally displaced persons have received compensation, and there were still no visible developments in the resumption of a credible political process to achieve a peaceful and sustainable solution in 2020.²⁵⁵ There was limited progress on the situation of internally displaced persons, and the COVID-19 pandemic exacerbated their economic exclusion and deteriorating living conditions.²⁵⁶

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'.²⁵⁷ 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.²⁵⁸ On 4 September 2016, the Turkish Government announced a reconstruction and economic development plan for the region;²⁵⁹ however, the European Commission reported in 2020 that '[d]espite some reconstruction, only few internally displaced persons have received compensation',²⁶⁰ which means that in fact, there is no effective remedy provided to those individuals as with displaced persons in the 1990s.

²⁵³ From the summer of 2015 until 2017, the problem of forced displacement originating from and affecting the Kurdish population in south-eastern Anatolia was exacerbated. During this period, over 355 000 Kurdish civilians were displaced. See 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.

²⁵⁴ For a 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_Sonrasinda_Devlet_Ve_Kurtler_Duzeltilmis_2_Baski.pdf.

²⁵⁵ European Commission (2020), *Turkey 2020 Report*, Brussels, 6 October 2020, p. 5, available at: https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/turkey_report_2020.pdf.

²⁵⁶ European Commission (2021), *Turkey 2021 Report*, Strasbourg, 19 October 2021, p. 18, available at: https://ec.europa.eu/neighbourhood-enlargement/document/download/892a5e42-448a-47b8-bf62-b22d52c4ba26_en.

²⁵⁷ 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.

²⁵⁸ European Commission (2018), *Turkey 2018 Report*, Strasbourg, p. 18, available at: <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20180417-turkey-report.pdf>.

²⁵⁹ 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.

²⁶⁰ European Commission (2020), *Turkey 2020 Report*, Brussels, 6 October 2020, p. 6, available at: https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/turkey_report_2020.pdf.

Although the Turkish Government claims that racial discrimination ‘by those who rent or sell houses or apartments is alien to Turkish society’,²⁶¹ 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 the potential to be applied to transgender 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.²⁶² The fact that 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 and Social Services, and which provide accommodation services under the scope of the right to shelter for persons with disabilities. According to the Ministry’s 2021 data, as was the case in 2019, there are 104 such centres throughout Turkey, with a total capacity of 8 142. In addition to the care and rehabilitation centres, ‘hope houses’ were opened in 2008 in order to enable persons with disabilities to live in small groups in a home environment and participate in social life. There are currently 144 ‘hope houses’ under the auspices of the Ministry. In addition, there are 294 maintenance centres owned by private enterprises; these centres have capacity for 29 508 people.²⁶³

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 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 5 % quota is allocated for persons with at least 40 % disability.²⁶⁴ 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 2023.²⁶⁵

²⁶¹ 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.

²⁶² 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.

²⁶³ Ministry of Family and Social Services General Directorate of Disabled and Elderly Services (2021), *Statistical Bulletin of Disabled and Elderly (Engelli ve Yaşlı İstatistik Bülteni)*, December 2021, pp. 52-57, available at: https://aile.gov.tr/media/96693/eyhgm_istatistik_bulteni_aralik_2021.pdf.

²⁶⁴ Housing Development Administration of Turkey (2021), available at: <https://www.toki.gov.tr/basvuru-sartlari>.

²⁶⁵ ECSR (2016), *Conclusions 2016: Turkey*, 2016/def/TUR/15/3/EN, 9 December 2016, Article 15-3, available at: <http://hudoc.esc.coe.int/enq?i=2016/def/TUR/15/3/EN>.

a) Trends and patterns regarding housing segregation for Roma

In Turkey, there are trends and patterns of housing segregation and discrimination against the Roma.²⁶⁶

The major problem relating to the housing rights of Roma and similar ethnic groups concerns poor housing conditions.²⁶⁷ 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,²⁶⁸ a situation officially acknowledged in a report produced following a Roma workshop held in 2009.²⁶⁹ 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.²⁷⁰

As of January 2022, TOKİ had constructed 1 062 676 housing units, 86 % of which were designed as social housing units.²⁷¹ However, as of 2020, just 143 021 had been built as low-income housing.²⁷² Various state institutions carry out social housing projects in Turkey, but it is not known which groups benefit from these projects. 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.²⁷³ According to figures provided by TOKİ, 5 133 of the housing units constructed in that period were for Roma and similar ethnic groups.²⁷⁴ In reply to a written parliamentary question on the issue, the 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.²⁷⁵ 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. Although martyr families, war and 'duty invalids',²⁷⁶ as well as widows and orphans, are offered a quota of 10 %, persons with disabilities of at least 40 % are offered a quota of 5 %, and a

²⁶⁶ With regard to parliamentary discussions in 2015 on the segregation of Roma in housing, see Section 7(h).

²⁶⁷ 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.

²⁶⁸ 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>.

²⁶⁹ See 'New Workshop Report: The report of the Roma Workshop held in December 2009 has been announced' (Roman Çalıştay Raporu: Aralık 2009'da yapılan Roman Çalıştay'ının raporu açıklandı), T24, 1 March 2010, available at: <https://t24.com.tr/haber/roman-calistayi-raporu,71526>.

²⁷⁰ 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.

²⁷¹ Housing Development Administration of Turkey (2022), available at: <http://www.toki.gov.tr/en/index.html>.

²⁷² Housing Development Administration of Turkey (2021); the link is no longer available.

²⁷³ 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=4slQ6QSmlBEDzFEovLCuW1IHUI72P161pGVYxuGhhIz0jd33mw7A3K7nMZqFqcO2%2f%2fPO5O2H7%2bXohy%2b8q9BVNKVCOYicqPqsrN3GUji7qEbg7IOzBLXFmsI%2bDZICqv>.

²⁷⁴ 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>.

²⁷⁵ 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/d26/7/7-0658sgc.pdf>.

²⁷⁶ 'Duty invalidity' is a status in which the provisions to be applied are determined in the event that public officials, non-commissioned officers and privates are 'disabled' while performing their duties, due to various reasons and as a result of their duties or due to accidents that occur in their workplaces. See, http://www.sgk.gov.tr/wps/wcm/connect/SGK+Internet/emeklilik/malulluk/vazife_malullugu/.

quota of 25 % is offered to retired citizens; there is no quota offered to any other disadvantaged groups such as the Roma.²⁷⁷ The *Annual Presidential Programme 2020* and the *Annual Presidential Programme 2021* state that 'in order to increase the access of disadvantaged groups to housing, it is envisaged to develop implementation strategies, including affordable housing financing methods, with the cooperation of public institutions and private sector actors.'²⁷⁸ However, as in 2020, no strategy was developed or implemented in 2021 that included Roma or any other such groups except persons with disabilities.

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.²⁷⁹

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.²⁸⁰ 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.²⁸¹ 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.²⁸² 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 10 000.²⁸³ 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 TOKİ in neighbourhoods outside city centres, which posed serious problems regarding access to employment. Many families could not afford the increases in

²⁷⁷ Housing Development Administration of Turkey (2021), available at: <http://www.toki.gov.tr/en/housing-programs.html>.

²⁷⁸ Presidency of the Republic of Turkey (2019), *Annual Presidential Programme 2020* (2020 Yılı Cumhurbaşkanlığı Yıllık Programı), p. 338, available at: https://www.sbb.gov.tr/wp-content/uploads/2019/11/2020_Yili_Cumhurbaskanligi_Yillik_Programi.pdf. Also available in *Official Gazette*, 4 November 2019.

²⁷⁹ Timo Piirainen, *Preliminary Study on the Social Situation of Roma in Turkey and Policies Supporting Social Inclusion*, Second Report, July 2016, p. 19.

²⁸⁰ 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>.

²⁸¹ 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.

²⁸² 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: https://www2.ohchr.org/english/bodies/cerd/docs/ngos/ERRC_Turkey_CERD74.pdf.

²⁸³ 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>.

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.

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'.

The Roma face discrimination in access to housing. Private individuals are reported to refuse housing to Roma individuals on the basis of their identity.²⁸⁴ 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.²⁸⁵

A policy paper published in 2016, the Strategy Paper for Roma Citizens 2016-2021, which was drawn up by the Ministry of Family and Social Services and Board, along with a related document entitled Stage 1 Action Plan (2016-2018), deals with the right to housing of the Roma.²⁸⁶ 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.²⁸⁷ However, the strategy comes to an end in 2021 and there has been no attempt to develop a new one. Due to its limited implementation, the current strategy has been far from sufficient to address the major problems of the Roma in this field.

²⁸⁴ 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.

²⁸⁵ 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'.

²⁸⁶ See *Official Gazette*, 30 April 2016.

²⁸⁷ 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.²⁸⁸ 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.²⁸⁹ 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.²⁹⁰

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.

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

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

²⁹⁰ Constitutional Court, Z.A., Application No. 2013/2928, 18 October 2017. Although the courts of instance based their rulings on the homosexual sexual intercourse involving the applicant, the Constitutional Court unsurprisingly, focusing on acts rather than orientation, seems to base its decision on the sexual relations of the teacher with local inhabitants in a small town, basically disregarding the homosexuality element in the case.

Although the exemption in the Law seems to be partly 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 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 established during the Ottoman era. Even those institutions do not have any legal status, which hampers their activities, despite ongoing criticism.²⁹¹

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.²⁹² 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.²⁹³

4.3 Armed forces and other specific occupations (Article 3(4) and Recitals 18 and 19, 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.²⁹⁴ Decisions regarding these persons depend on health board reports prepared following medical examination.²⁹⁵ Health board reports are based on the Regulation on the Criteria and Classification of Disability and Health Board Reports to be given to the Persons with Disabilities.

²⁹¹ European Commission (2020), *Turkey 2020 Report*, Brussels, 6 October 2020, pp. 32, available at: https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/turkey_report_2020.pdf.

²⁹² 'Din kültürü öğretmeni Hristiyan olduğu gerekçesiyle görevden alındı' ('The religious culture teacher was dismissed on the grounds that she was a Christian'), *Tele1*, 9 November 2019, available at: <https://tele1.com.tr/din-kulturu-ogretmeni-hristiyan-oldugu-gerekcesiyle-gorevden-alindi-99454/>.

²⁹³ 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>.

²⁹⁴ Military service is obligatory in Turkey.

²⁹⁵ 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,²⁹⁶ 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 gay, lesbian and bisexual individuals. A 2013 law²⁹⁷ 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, tourist guides, nurses, dentists, midwives, veterinarians, pharmacists and directors in private hospitals. Foreigners are also not allowed to fish in Turkey's continental waters.²⁹⁸

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;

²⁹⁶ Regulation on the Establishment, Duties and Functioning of Staff Training Centres for Prison and Detention Centres (*Ceza İnfaz Kurumları ve Tutukevleri Personeli Eğitim Merkezleri Kuruluş, Görev ve Çalışma Yönetmeliği*), *Official Gazette*, 4 May 2004.

²⁹⁷ Turkish Armed Forces Discipline Law, No. 6413, 31 January 2013.

²⁹⁸ Ministry of Family, Labour and Social Services (2020), *Professions Restricted to Turkish Citizens (Türk Vatandaşlarına Hasredilen Meslekler)*, available at: <https://www.csqb.gov.tr/uiqm/calisma-izni/turk-vatandaslarina-hasredilen-meslekler/>.

recruitment; and the exercise of a regular economic activity, with a hate motive based on – 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(1)(d) 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 accepted, and the relevant provision of the said regulation was annulled by the Council of State.²⁹⁹

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.

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

4.6.1 Direct discrimination

a) Exceptions to the prohibition of direct discrimination on grounds of age

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 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.

b) 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.

c) 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.

²⁹⁹ Council of State, 10th Chamber, E. 2009/9270, K. 2014/1039, 21 February 2014.

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).³⁰⁰ The policy, which started as a pilot programme in six provinces, began to be implemented across the country in 2005.

d) Fixing of ages for admission to occupational pension schemes

In Turkey, national law allows occupational pension schemes to fix ages for admission to the scheme 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, according to the provisional Article 20 of the Law on Social Insurances and General Health Insurance (No. 5510), employees of 17 legal entities such as banks, insurance companies, reinsurance companies, the stock exchange and chambers of commerce are exempted from enrolling in the public scheme. These employees get their pension from a foundation under the responsibility of their company or institution. In addition, voluntary occupational schemes have been established by numerous private sector corporations.³⁰¹

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 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 2021, 6 196 692 persons were enrolled in the system.³⁰² The total number of persons enrolled in the voluntary 'Individual Pension System' was 7 092 021 in 2021.³⁰³

4.6.2 Special conditions for younger or 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.

³⁰⁰ On average, the payments are between EUR 5 and EUR 8.30 (TRY 45 and TRY 75) per child per month.

³⁰¹ International Organisation of Pension Supervisors (IOPS) (2017), *IOPS Country Profile: Turkey*, available at: <http://www.iopsweb.org/resources/IOPS-profile-Turkey-2017.pdf>.

³⁰² Pension Monitoring Centre (2020), *Data Centre, Statistics, Summary AES Data*, available at: <https://www.egm.org.tr/data-center/statistics/ips-statistics/summary-ips-data>.

³⁰³ Pension Monitoring Centre (2021), *Data Centre, Statistics, Summary IPS Data*, available at: <https://www.egm.org.tr/data-center/statistics/ips-statistics/summary-ips-data>.

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 18.³⁰⁴

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,³⁰⁵ 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 Articles 40 and 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. Article 14 of 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, under Article 14(A) of the Law on the Personnel of the Turkish Armed Forces, 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 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.

³⁰⁴ 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*), 9 August 2009.

³⁰⁵ 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.

An individual can collect a pension and still work. However, a special premium has to be paid by the employer, which can be regarded as a disincentive for employers who employ retired persons and a policy to provide employment opportunities for younger workers. 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.³⁰⁶

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 mandatory occupational schemes for areas such as 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 both men and women. 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, according to Article 30 and Provisional Article 55 of the Law on Higher Education, the retirement age for university faculty members, which is 67, can be extended until the age of 75 on a contract basis in selected state universities in accordance with the faculty member's own wishes and the approval of the Higher Education Council until 2025.³⁰⁷ In such a case, these persons are exempted from paying the social security support premium that must be paid for those who have retired and are still working, and such deductions are not made from their salaries.

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.

³⁰⁶ 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.

³⁰⁷ Law on Higher Education, No. 2547, 4 November 1981.

In addition, with the adoption of the provisional Article 23 of Statutory Decree No. 375 in 2017, those who were employed as subcontracted workers by the state became permanent staff; however, their employment period cannot exceed the date on which they are entitled to retirement, old age or invalidity pension from social security institutions.

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 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 covered by this report) 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’;³⁰⁸ and conditions for membership to associations, foundations, trade unions,

³⁰⁸ The law does not indicate or define what a ‘special place’ is.

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.³⁰⁹ The broad and vaguely formulated exception clauses in Article 7(1)(b), (c) and (e) are not compatible with the directives.

³⁰⁹ 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'. To date, no case law has emerged on how to interpret or apply these criteria. The rationale for the Law does not provide any guidance on this matter. The Law prohibits discrimination on grounds of racial or ethnic origin, religion or belief, disability or age.

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 Government as being against international practice.

b) Quotas in employment for persons with disabilities

In Turkey, national law provides for quotas for the employment of persons 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 EUR 290 (TRY 4 345) per

month for every person with disability not employed in 2021.³¹⁰ 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. 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 Servants³¹¹ and introduced a new system for the recruitment of persons with disabilities, based on a separate centralised examination only for persons with disabilities. The first such examination was held on 29 April 2012. However, persons with disabilities 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, 2014, 2016, 2018 and 2020, a total of 126 174, 131 722, 119 386, 133 017, 125 265 persons applied for either EKPSS or to the lottery for a placement in a public institution respectively. The number of applicants to EKPSS and lottery and replacements are as follows:³¹²

Years	Number of Applicants to Lottery	Placements Through Lottery	Number of Applicants to EKPSS	Placements Through EKPSS
2012	65 800	1 579	60 374	11 180
2014	65 795	914	65 927	11 838
2016	44 961	1 466	74 425	8 175
2018	44 184	527	88 833	4 451
2020	27 621	135	97 644	2 096
Total		4 621		37 740

According to November 2021 data from the Turkish Statistical Institute, the labour force participation rate in Turkey is 71.3 % for men, 34.1 % for women and 52.5 % in total. According to a survey conducted in 2011, 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 November 2021, the total number of workplaces under an obligation to employ persons with disabilities was 19 289, and there is a quota gap in those workplaces, which means that 23 910 jobs reserved for persons with disabilities under the quota have not been filled. Civil servants employed in public institutions with a disabilities quota

³¹⁰ Ministry of Labour and Social Security (2021), 'Administrative Fines to be Applied According to the Labour Law No. 4857' (4857 Sayılı İş Kanununa Göre Uygulanacak İdari Para Cezaları), available at: <https://www.csqb.gov.tr/media/87980/4857.xlsx>.

³¹¹ 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, Article 99.

³¹² Ministry of Family and Social Services General Directorate of Disabled and Elderly Services (2021), *Statistical Bulletin of Disabled and Elderly (Engelli ve Yaşlı İstatistik Bülteni)*, December 2021, pp. 33-36, available at: https://aile.gov.tr/media/96693/eyhqm_istatistik_bulteni_aralik_2021.pdf.

numbered 62 356.³¹³ In 2019 the figure was 55 196, of whom 41 391 were men and 13 805 were women, which highlights the existence of intersectional discrimination against women with disabilities.³¹⁴ Although figures for 2021 are not available, 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.³¹⁵ 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.

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.³¹⁶ However, no further steps have been taken in that respect in 2021.

³¹³ Ministry of Family and Social Services General Directorate of Disabled and Elderly Services (2021), *Statistical Bulletin of Disabled and Elderly (Engelli ve Yaşlı İstatistik Bülteni)*, December 2021, p. 23-29, available at: https://aile.gov.tr/media/96693/eyhgm_istatistik_bulteni_aralik_2021.pdf.

³¹⁴ Ministry of Family and Social Services General Directorate of Disabled and Elderly Services, *Statistical Bulletin of Disabled and Elderly (Engelli ve Yaşlı İstatistik Bülteni)*, December 2019, pp. 20-41, available at: <https://aile.gov.tr/media/34054/istatistik-bulteni-aralik2019.pdf>.

³¹⁵ Ministry of Family and Social Services General Directorate of Disabled and Elderly Services, *Statistical Bulletin of Disabled and Elderly (Engelli ve Yaşlı İstatistik Bülteni)*, December 2020, pp. 33-45, available at: https://aile.gov.tr/media/66692/istatistik_bulteni_aralik_2020.pdf.

³¹⁶ CRPD (2019), *Concluding Observations on Initial Report of Turkey*, CRPD/C/TUR/CO/1, paras. 52-53, available at: <https://digitallibrary.un.org/record/3848320>.

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 EUR 5 242 (TRY 78 636) for the year 2021, the judgment of a regional court of appeal may be subjected to a judicial review before the Court of Cassation (9th Civil 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.³¹⁷ 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 such applications is limited to those rights and liberties protected under the Constitution

³¹⁷ 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>.

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.³¹⁸ 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.³¹⁹ Both venues have been ineffective for years and do not promise very much to victims of discrimination.

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.³²⁰ In 2011, the Commission 'gained a status of legislation commission' by being authorised to examine draft laws concerning human rights.³²¹ 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. 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 duly conducted any investigations with regard to human rights violations, including discrimination, or provided any substantial input in respect of draft laws.

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

³¹⁸ Constitutional Court, *Onurhan Solmaz*, Application No. 2012/1049, 26 March 2013.

³¹⁹ 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.

³²⁰ 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.

³²¹ 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://digitallibrary.un.org/record/3849168>.

published its report in 2013.³²² 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. Apart from this report, there exists no report focusing on discrimination published in the last decade.³²³ The Commission also accepts individual petitions as regards human rights violations allegations. Although they have not been effectively addressed, some of those petitions relate to discrimination claims. According to the latest activity report of the Commission covering the period between 25 June 2018 and 30 September 2020, among the 6 931 petitions received, 80 of them were related to allegations of discrimination.³²⁴ However, the report does not provide any information about the outcomes of those petitions.

Individuals can also file discrimination complaints with the Human Rights and Equality Institution of Turkey, which began 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, although far from being effective, 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.

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.

³²² Turkish Grand National Assembly Human Rights Inquiry Commission (TBMM İnsan Haklarını İnceleme Komisyonu) (2013), *Engelli Hakları İnceleme Raporu (Investigatory Report on the Rights of Persons with Disabilities)*, available at:

https://www.tbmm.gov.tr/komisyon/insanhaklari/docs/2013/raporlar/engelli_haklari_inceleme_raporu.pdf.

³²³ See Turkish Grand National Assembly Human Rights Inquiry Commission (TBMM İnsan Haklarını İnceleme Komisyonu), *Review Reports (Denetim Raporları)*, available at:

<https://www.tbmm.gov.tr/ihisaskomisyonlariinsanhaklari-denetim-raporlari>.

³²⁴ See Turkish Grand National Assembly Human Rights Inquiry Commission (TBMM İnsan Haklarını İnceleme Komisyonu) (2020), *27th Legislative Period 1st Term Activity Report (27. Yasama Dönemi I. Devre Faaliyet Raporu)*, pp. 35-36, available at:

https://www.tbmm.gov.tr/Files/Komisyonlar/insanhaklari/docs/2021/faaliyet_raporu_27_donem_1_%20devre.pdf.

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.

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 as regards court fees is provided only under very strict criteria and the assessment of legal aid applications takes an extended period of time.³²⁵ The legal aid allowance allocated to bar associations to be disbursed to lawyers providing legal aid in 2021 was EUR 9.16 million (TRY 137 408 450) and the amount of legal aid per person was EUR 0.11 (TRY 1.62).³²⁶ 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.³²⁷ 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 2021, the fee was EUR 32.5 (TRY 487.60).³²⁸ 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

³²⁵ 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>.

³²⁶ Union of Turkish Bar Associations (2021), Notice No. 2020/15 (*Duyuru No. 2020/27*), 31 March 2021, available at: <https://www.barobirlik.org.tr/Haberler/duyuru-202115-81692>.

³²⁷ 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_Cumhurbaskanligi_Yillik_Programi.pdf. Also available in *Official Gazette*, 27 October 2018.

³²⁸ General Circular on Law on Fees, Serial No. 86 (*Harçlar Kanunu Genel Tebliği, Seri No: 86*), *Official Gazette*, 29 December 2020.

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, in most cases, 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.³²⁹ Appeals should be made within 30 days of the notification of the lower court's decisions.³³⁰ Under criminal law, the time limits depend on the punishment. For offences resulting in 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.³³¹ 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.³³² 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.

Although a draft law on victims' rights has been circulating for years, a presidential decree was instead issued in 2020, providing limited protection for victims.³³³ The decree provides a legal basis for the establishment of Judicial Support and Victim Services Directorates (ADMs), and as of October 2021, 111 ADMs have been established in courthouses located in 81 provinces.³³⁴ Pursuant to Article 7(1), the groups that may benefit from the services provided to victims are children and victims of crimes against sexual inviolability, domestic violence, terrorism and human trafficking. Article 7(1) provides that, in particular, women, elderly and victims with disabilities, taking into account the personal characteristics of the victim, the nature and severity of the crime, the conditions in which the crime was committed, and the victims who are understood to be more affected by the crime and need to be protected with a preliminary assessment, may also benefit from the services. Despite the reference to persons with disabilities, there is no direct reference to any other disadvantaged groups or victims of discrimination on the basis of the grounds covered by the directives, and the administration is given wide discretion to determine a victim's eligibility for services provided under Article 7. Following the presidential decree, the Judicial Support and Victim Services Regulation was published on 30 April 2021 and entered into force on the same date.³³⁵ According to Article 5(1)(a), no discrimination can be made in the provision of support and services on the basis of gender, age, disability, race, social class, language, religion, political opinion or other reasons, and derogatory or degrading speech or behaviour is prohibited.

³²⁹ Code of Administrative Procedure, No. 2577, 6 January 1982, Article 13.

³³⁰ Code of Administrative Procedure, No. 2577, 6 January 1982, Article 46.

³³¹ Turkish Penal Code, No. 5273, 26 September 2004, Article 66.

³³² Turkish Penal Code, No. 5273, 26 September 2004, Article 73.

³³³ Presidential Decree on Supporting Victims of Crime (*Suç Mağdurlarının Desteklenmesi Hakkında Cumhurbaşkanlığı Kararnamesi*), No. 63, *Official Gazette*, 10 June 2020.

³³⁴ Presidency of the Republic of Turkey (2020), *Annual Presidential Programme 2021 (2021 Yılı Cumhurbaşkanlığı Yıllık Programı)*, p. 280, available at: https://www.sbb.gov.tr/wp-content/uploads/2020/11/2021_Yili_Cumhurbaskanligi_Yillik_Programi.pdf. Also available in *Official Gazette*, 27 October 2020.

³³⁵ Judicial Support and Victim Services Regulation (*Adli Destek ve Mağdur Hizmetleri Yönetmeliği*), *Official Gazette*, 30 April 2021.

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 2020, only 10 persons were charged with discrimination under Article 122 of the Turkish Penal Code. Two cases concluded with the acquittals of the defendants.³³⁶ 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 2021, the Constitutional Court had received a total of 361 153 applications. Of the 302 429 applications that the Court has concluded since the right of individual application came into force in 2012, only 25 827 resulted in a ruling in which a violation was found. Of these, only 0.5 % entailed a finding of a violation of non-discrimination.³³⁷

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.³³⁸ There are no current statistics provided in that regard. However, as of 1 January 2022, the Court had found only two violations of the prohibition of discrimination relating to the grounds protected by the directives, in respect of the headscarf ban for lawyers in hearing rooms³³⁹ and dismissal of a HIV-positive worker.³⁴⁰ According to the database provided by the Constitutional Court, only 301 judgments or decisions on admissibility were published in which the applicants had brought forward an allegation of discrimination in individual applications to the Constitutional Court.³⁴¹

The Ombudsman Institution began receiving complaints as of 29 March 2013. Only a fraction of the complaints concerned human rights in general or non-discrimination issues. Of the applications received in 2021, 0.99 % concerned human rights and 1.07 % concerned disability rights.³⁴² Of the 387 complaints concerning human rights and disability rights, only three complaints were classified as related to non-discrimination.³⁴³

³³⁶ Ministry of Justice General Directorate of Judicial Record and Statistics, Judicial Statistics Archive (Adalet İstatistikleri Yayın Arşivi), available at: <https://adlisicil.adalet.gov.tr/Home/SayfaDetay/adalet-istatistikleri-yayin-arşivi>.

³³⁷ Constitutional Court (2022), 'Individual Applications Statistics 2021 - (23/9/2012-21/12/2021)' (Bireysel Başvuru İstatistikleri 2021- (23/9/2012-21/12/2021)), available at: https://www.anayasa.gov.tr/media/7734/bb_2021_tr.pdf.

³³⁸ 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.

³³⁹ Constitutional Court, *Tuğba Arslan*, Application No. 2014/256, 25 June 2014.

³⁴⁰ Constitutional Court, *T.A.A.*, Application No. 014/19081, 1 February 2017.

³⁴¹ See Constitutional Court (2022), Decisions/Judgments Database, available at: <https://kararlarbilgibankasi.anayasa.gov.tr/Ara?Mudahale%5B%5D=17>.

³⁴² Ombudsman Institution (2022), *2021 Annual Report (2021 Yıllık Raporu)*, p. 60, available at: <https://www.ombudsman.gov.tr/kdk-pdf/2021-Yillik-Rapor/mobile/index.html>.

³⁴³ Ombudsman Institution (2022), *2021 Annual Report (2021 Yıllık Raporu)*, pp. 74-75, available at: <https://www.ombudsman.gov.tr/kdk-pdf/2021-Yillik-Rapor/mobile/index.html>.

The Human Rights and Equality Institution of Turkey, the body with responsibility for implementing Turkey's anti-discrimination legislation, became operational in March 2017. As of 7 March 2022, the activity report for 2021 had not been published. According to the figures provided by the Institution, it received a total of 1 107, 1 189 and 1 363 individual complaints in 2018, 2019 and 2020 respectively. The number of complaints relating to discrimination in those years were 371, 70 and 276 respectively.³⁴⁴ The Institution issued its first decision on 30 October 2018, 20 months after it had been set up. As of 2020, the Institution had issued a total of 42 decisions concerning discrimination claims and found a violation of the prohibition of discrimination in 10 applications; however, none of them fell within the scope of the directives.³⁴⁵

d) Registration of national court decisions on discrimination cases

In Turkey, court decisions on discrimination 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 (Law No. 6356), 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.

³⁴⁴ Human Rights and Equality Institution of Turkey (2022), *Decisions Regarding Prohibition of Discrimination 2018-2020 (Ayrımcılık Yasağı Kararları 2018-2020)*, p. 3, available at: https://www.tihk.gov.tr/upload/file_editor/2022/02/1645712182.pdf.

³⁴⁵ Human Rights and Equality Institution of Turkey (2021), *2020 Activity Report (2020 Faaliyet Raporu)*, p. 69, available at: https://www.tihk.gov.tr/upload/file_editor/2021/02/1614496238.pdf. For the decisions rendered in 2020 and published via the website of the Institution, see: <https://www.tihk.gov.tr/kategori/2020-kurul-kararlari/page/1>.

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.³⁴⁶ 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 2020, the Court of First Instance for the first time allowed the relatives of the victim to intervene in criminal proceedings; however, the prosecution again demanded that he should be sentenced to between two and six years' imprisonment.³⁴⁷ In the meantime, the Constitutional Court, upon the application of the sibling of the deceased, ruled that both procedural and material aspects of the right to life were violated.³⁴⁸ Following the judgment of the Constitutional Court, the first instance court found the defendant guilty and sentenced him to 16 years and eight months' imprisonment. However, the Court of Cassation, for the third time, quashed the judgment for imposition of a harsh sentence and remitted the case to the lower court.³⁴⁹ As of 1 January 2022, the case is open before the 21st Heavy Penal Court of Istanbul.

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.³⁵⁰ 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 (SPoD), a national LGBTI+

³⁴⁶ Istanbul 21st Heavy Penal Court, 13 December 2011.

³⁴⁷ 'Police shooting Nigerian Festus Okey sought up to 6 years in prison' (Nijeryalı Festus Okey'i vuran polisin 6 yıla kadar hapsi istendi), *Gazete Duvar*, 4 November 2020, available at: <https://www.gazeteduvar.com.tr/festus-okeyi-vuran-polis-memurunun-6-yil-hapsi-istendi-haber-1503570>.

³⁴⁸ Constitutional Court, *Tochukwu Gamaliah Ogu*, Application No. 2018/6183, 13 January 2021.

³⁴⁹ Court of Cassation, 1st Penal Chamber, E. 2021/10404, K. 2021/13876, 3 November 2021.

³⁵⁰ İzmir 7th Heavy Penal Court, E. 2010/224, 26 March 2012.

organisation, to act on behalf of the victim in a case concerning a so-called 'honour killing'. However, the Court revoked its decision afterwards.³⁵¹

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,³⁵² and on 13 February 2013, in a criminal case concerning the killing of a transgender woman,³⁵³ 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.³⁵⁴

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*).

With the adoption of the 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 types 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

³⁵¹ '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>.

³⁵² Üsküdar 1st Heavy Penal Court, E. 2009/166, 25 January 2013.

³⁵³ Bakırköy 4th Heavy Penal Court, E. 2012/74, 13 February 2013.

³⁵⁴ 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 NGOs are likely to use in supporting victims of discrimination.

Rights and Equality Institution and does not apply to court proceedings.³⁵⁵ The Human Rights and Equality Institution of Turkey has, in some cases, taking into account the evidence put forward by the complainants, shifted the burden of proof and opined that there was a case of discrimination as no compelling reasons were put forward by the discriminators.³⁵⁶ However, in other cases, it has found the evidence put forward by the complainant not sufficient to establish a *prima facie* case of discrimination.³⁵⁷ The decisions of the Institution and the application of the principle of shifting the burden of proof in those decisions suggests that there is a confusion among the members of the board as regards the said principle.

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.³⁵⁸

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.³⁵⁹ 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 most cases.

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 and the Law on the Human Rights and Equality Institution of Turkey, general rules apply.

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

³⁵⁵ 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>.

³⁵⁶ For example, see Human Rights and Equality Institution of Turkey (2020), Decision No. 2020/8, 14 January 2020, para. 75, available at: <https://www.tihek.gov.tr/2020-08-sayili-kurul-karari/> and Decision No. 2020/244, 1 December 2020, available at: https://www.tihek.gov.tr/upload/file_editor/2021/01/1611502762.pdf.

³⁵⁷ For example, see Human Rights and Equality Institution of Turkey (2020), Decision No. 2020/124, 5 May 2020, paras. 31-35, available at: https://www.tihek.gov.tr/upload/file_editor/2021/02/1613739401.pdf.

³⁵⁸ For example, see Court of Cassation, 9th Civil Chamber, E. 2016/34268, K. 2020/17873, 9 December 2020.

³⁵⁹ For example, see Court of Cassation, 9th Civil Chamber, E. 2016/36143, K. 2020/19005, 17 December 2020.

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.³⁶⁰

There is limited case law concerning victimisation. No case is published or accessible through the official online databases provided by the Council of State, the Court of Cassation or the Constitutional Court. The only relevant case law can be traced in the resolutions of the Human Rights and Equality Institution. Although no violation was found, the complaints were examined in the context of victimisation.³⁶¹

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 EUR 130 and EUR 1 970 (TRY 1 963 and TRY 29 500) in 2021³⁶² 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 the event that a respondent does not pay the fine, it is collected in accordance with the collection procedure for public debts.

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

³⁶⁰ Regulation on Complaints and Applications of Civil Servants (*Devlet Memurlarının Şikayet ve Müracaatları Hakkında Yönetmelik*), *Official Gazette*, 12 January 1983.

³⁶¹ Human Rights and Equality Institution of Turkey (2021), Decision No. 2019/54, 10 September 2019, available at: https://www.tihek.gov.tr/upload/file_editor/2021/04/1618297518.pdf; Decision No. 2021/194, 17 August 2021, available at: https://tihek.gov.tr/upload/file_editor/2021/11/1637910763.pdf.

³⁶² Human Rights and Equality Institution of Turkey (2021), *2020 Activity Report (2020 Faaliyet Raporu)*, p. 68, available at: https://www.tihek.gov.tr/upload/file_editor/2021/02/1614496238.pdf.

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, 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.³⁶³ 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 denomination in carrying out their duties, their promotion shall be suspended for a period of between one and three years. According to Article 8(6)(a) of the Law on Disciplinary Provisions of General Law Enforcement, the sanction is dismissal from the post. 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 EUR 19.50 (TRY 292) for each employee. As stated above, employers under the quota obligation pay a monthly fine of EUR 290 (TRY 4 345) for each person with disability that they do not employ in 2021.³⁶⁴

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 Turkish Civil Code. As regards compensation, material and moral damages can be claimed by victims of discrimination under Article 49, 58 and 417 of the Turkish 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 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 Turkish 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 2005 and 2020 was only 13, although the total number of persons tried was 174.³⁶⁵

³⁶³ 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>.

³⁶⁴ Ministry of Labour and Social Security (2021), 'Administrative Fines to be Applied According to the Labour Law No. 4857' (4857 Sayılı İş Kanununa Göre Uygulanacak İdari Para Cezaları), available at: <https://www.csqb.gov.tr/media/87980/4857.xlsx>.

³⁶⁵ Compiled from statistics provided by the Ministry of Justice General Directorate of Criminal Records and Statistics, available at: <https://adlisicil.adalet.gov.tr/Home/SayfaDetay/adalet-istatistikleri-yayin-arsivi>.

	Number of Defendant	Number of Convictions	Number of Acquittals	Other Decisions
2005	8	0	7	1
2006	7	0	4	3
2007	12	1	11	0
2008	2	0	2	0
2009	20	1	4	5
2010	8	0	10	4
2011	13	0	9	3
2012	14	1	13	2
2013	14	1	11	5
2014	16	0	6	2
2015	13	0	13	2
2016	21	2	7	1
2017	15	0	6	2
2018	13	7	7	1
2019	18	0	16	2
2020	2	0	2	0
Total	174	13	128	33

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 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 equality body was set up and its first 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 including non-discrimination and disability, only 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 2016.³⁶⁶

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.³⁶⁷ 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,³⁶⁸ the Council of Europe and the United Nations³⁶⁹ for its lack of independence from the executive branch, the election procedure of its members and the limitations on civil society involvement, the organisations declared that they saw the

³⁶⁶ Law on the Human Rights and Equality Institution of Turkey, No. 6701, 6 April 2016.

³⁶⁷ 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/>.

³⁶⁸ In its 2020 report, the European Commission noted that 'No revision was made to the mandate of the Ombudsman Institution, which only deals with complaints against the actions of the public administration. The HREI accepts only cases outside the remit of the Ombudsman. Neither of these institutions is operationally, structurally or financially independent, and their members are not accredited in compliance with the Paris Principles. So far, the HREI has not applied for accreditation to the Global Alliance for National Human Rights Institutions.' European Commission (2020), *Turkey 2020 Report*, Brussels, 6 October 2020, pp. 29-30, available at: https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/turkey_report_2020.pdf.

³⁶⁹ 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://digitallibrary.un.org/record/3849168>.

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.

Since its establishment, the Institution has not carried out any significant activity. The Institution does not have any critical statement to make as regards any human rights problem, or in the field of discrimination, directed at the Executive or the Administration. To date, the Institution has focused mostly on cooperation with the Independent Permanent Human Rights Commission of the Organisation of Islamic Cooperation, rather than the intergovernmental organisations that set standards in the field of human rights and non-discrimination such as the United Nations and the Council of Europe, thus it seems that the institution has a conservative perspective and distances itself from the principle of the universality of human rights in its activities. In recent years, it has engaged in efforts to bring about the withdrawal of Turkey from the Istanbul Convention,³⁷⁰ and there are examples of homophobic statements uttered by its members such as homosexuality being 'against Turkish family values'.³⁷¹

As regards the Ombudsman Institution, despite the increase in its caseload, the Institution has remained silent on politically critical issues concerning fundamental rights.³⁷²

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.³⁷³ 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. On 10 December 2020, the Institution undertook another mandate. With the decision of the Coordination Commission on Combating Human Trafficking, the Institution was designated as national rapporteur to monitor the anti-trafficking activities of state institutions and the implementation of national legislation in this field.³⁷⁴

³⁷⁰ Turkish Human Rights and Equality Institution (2020), *Chairman of TIHEK Arslan Attended the Meeting of the Committee on Equality of Opportunity for Women and Men (TIHEK Başkanı Arslan KEFEK Toplantısına Katıldı)*; 'Chairman of TIHEK stated that the Istanbul Convention did not have any aim of protecting the family in contrary to the United Nations Universal Declaration and the Law No. 6284 adopted based on this Convention has turned into a punishment mechanism going beyond the Istanbul Convention', 15 November 2019, available at: <https://www.tihek.gov.tr/tihek-baskani-arслан-kefek-toplantısına-katıldı/>.

³⁷¹ See former member Mehmet Altuntaş, available at: <https://twitter.com/insanhaklarim/status/1277329753368866818>; <https://twitter.com/insanhaklarim/status/1203733940554653696>; <http://www.pembehayat.org/haberler/detay/1895/altuntasin-twitterdaki-nefret-soylemi-kamu-deneticiliginde>; current member, Ünal Sade, available at: <https://twitter.com/unalsade/status/1145586323979427841>; current member, Muhammet Ecevit Carti, available at: <https://twitter.com/MUHAMMETCARTI/status/1277313847343357952>.

³⁷² European Commission (2021), *Turkey 2021 Report*, Strasbourg, 19 October 2021, p. 12, available at: https://ec.europa.eu/neighbourhood-enlargement/document/download/892a5e42-448a-47b8-bf62-b22d52c4ba26_en.

³⁷³ Human Rights Joint Platform (İnsan Hakları Ortak Platformu), *Our Opinions on the Draft Law on the Human Rights and Equality Institution of Turkey (Türkiye İnsan Hakları ve Eşitlik Kurumu Kanunu Tasarısı Hakkındaki Görüşlerimiz)*, 18 January 2016, available at: <https://www.ihd.org.tr/turkiye-insan-haklari-ve-esitlik-kurumu-kurulmasi-ile-ilgili-hukümet-aciklamasi-insan-haklari-kurumsallasmasina-tamamen-aracsal-bakiliyor-18-ocak-2015/>.

³⁷⁴ Human Rights and Equality Institution of Turkey (2020), available at: <https://www.tihek.gov.tr/insan-ticaretiyle-mucadele-egitimi/>.

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 – 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)). In 2021, following a four-year term, new members were appointed by the President.

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 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.³⁷⁵ 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. The budget allocated to the Institution in 2021 was EUR 1 482 000 (TRY 22 230 000) which was far from being adequate.³⁷⁶

³⁷⁵ Constitutional Court, E. 2016/132, K. 2017/154, 15 November 2017.

³⁷⁶ See *Official Gazette*, 31 December 2020.

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. The budget allocated to the Ombudsman Institution in 2021 was EUR 2 650 600 (TRY 39 759 000).³⁷⁷

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. All the board members are appointed by the President, and the members do not have sufficient guarantees against interference by the Government as well as lacking criminal and administrative immunities as such. The Institution does not have a pluralistic structure; its members are completely far from reflecting social diversity; and since there are only two women on the board, its composition goes completely against the principles of gender equality. As of 2021, few members have any experience or competence as regards discrimination or human rights in general.

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*'.³⁷⁸ 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'.³⁷⁹ 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

³⁷⁷ See *Official Gazette*, 31 December 2020.

³⁷⁸ European Commission (2019), *Turkey 2019 Report*, Brussels, p. 29, available at: <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20190529-turkey-report.pdf>.

³⁷⁹ 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.

selection of the persons holding leadership positions in the equality body.³⁸⁰ Eventually, the Institution decided to initiate the process of accreditation by the Global Alliance for National Human Rights Institutions (GANHRI) on 13 July 2021.³⁸¹ The Institution appears to be accredited with 'B' status (partially compliant with the Paris Principles) as 'C' status (non-compliant with the Paris Principles) is no longer granted. This should be seen as a result of both the legislation and the practices of the Institution. It is one of six members of the European Network of National Human Rights Institutions (ENNHRI), which does not have any accreditation scheme in place, that has not been accredited by GANHRI.³⁸²

Similar concerns have been raised regarding the independence of the Ombudsman Institution. 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.³⁸³ 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.'³⁸⁴ 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.'³⁸⁵ The current Ombudsman, who was a former key advisor to the President and former representative of the ruling party in the Supreme Council of Elections, was re-elected by the National Assembly for a second term in 2020.

e) Grounds covered by the designated body

The Human Rights and Equality Institution of Turkey has a mandate to receive discrimination claims on grounds of gender, race, colour, language, religion, belief, 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.

³⁸⁰ 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>.

³⁸¹ Human Rights and Equality Institution of Turkey (2021), *UN and National Human Rights Institutions (BM ve Ulusal İnsan Hakları Kurumları)*, available at: <https://www.tihk.gov.tr/bm-ve-ulusal-insan-haklari-kurumlari/>.

³⁸² ENNHRI (2020), available at: <http://ennhri.org/our-members/>. The other five states are: Belgium, Czech Republic, Kosovo, Liechtenstein and Romania.

³⁸³ 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>.

³⁸⁴ 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>.

³⁸⁵ European Commission (2021), *Turkey 2021 Report*, Strasbourg, 19 October 2021, p. 29, available at: https://ec.europa.eu/neighbourhood-enlargement/document/download/892a5e42-448a-47b8-bf62-b22d52c4ba26_en.

f) Competences of the designated body – and their independent exercise

i) Independent assistance to victims

According to Article 9(1)(g) of the Law on the Human Rights and Equality Institution of Turkey, the Institution 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 environment in Turkey and the extreme politicisation of the notion of human rights, the Institution is not expected to perform this function effectively. Legal advice to be offered in this regard can be offered only by lawyers. The scarcity of allocated staff positions requires that the Institution works jointly with the Union of Turkish Bar Associations, or with bar associations, to fulfil this duty. However, to date, no co-operation has been established with these institutions. Hence, from the Institution's previous activity reports, it seems that there is no activity carried out in this regard.

ii) Independent surveys and reports

The Human Rights and Equality Institution of Turkey has the competence to publish independent reports. Pursuant to Article 9(1)(k) of the Law on the Human Rights and Equality Institution of Turkey, it is tasked with preparing annual reports on anti-discrimination for the Presidency and the Parliament, as well as special reports on issues falling within its mandate where it deems this necessary.

In 2021, the Institution published 14 investigation reports, none of which were pursuant to the anti-discrimination mandate. Two of the reports concerned the conditions in a private institution providing care for persons with disabilities.³⁸⁶ 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.

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. So far, there has been no cooperation between these institutions as regards surveys in the field of discrimination, thus no survey has been conducted since the body's establishment in 2016. Furthermore, the Institution does not gather any data in particular on the number of complaints or lawsuits per discrimination ground or on the exercise and outcome of administrative and judicial proceedings.

iii) Recommendations

In accordance with Articles 9(1)(e) and 9(1)(l), 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 and publish ad hoc reports when it deems it necessary. Due to reasons discussed earlier, the Institution is not able to effectively perform these tasks in an independent manner, as is evident from the fact that it has not yet made any recommendations (or issued decisions) concerning discrimination. In addition, considering the composition of the board members, it is evident that the Institution does not have the expertise to fulfil such tasks.

³⁸⁶ Human Rights and Equality Institution of Turkey (2021), *Batman Özel Yenihayat Bakım Merkezi Raporu* (Report No. 2021/10), available at: https://www.tihek.gov.tr/upload/file_editor/2021/08/1629492806.pdf; *Ümitköy Yaşlı Bakım ve Rehabilitasyon Merkezi Ziyareti* (Report No. 2021/08), available at: https://www.tihek.gov.tr/upload/file_editor/2021/07/1625566170.pdf.

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'.³⁸⁷ 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 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

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*.

The Human Rights and Equality Institution of Turkey has neither the authority to take legal action on behalf and instead of victims where they are not identifiable nor the authority to seek recourse to legal remedies with their consent where they are identifiable. Since there are no *amicus curiae* or third-party intervention procedures in Turkish law, it is not possible for the Human Rights and Equality Institution of Turkey to intervene in cases pending before judicial bodies.

Article 11(1)(d) of the Law on the Human Rights and Equality Institution of Turkey lists 'submitting opinions to judicial bodies, public institutions and organizations and relevant persons regarding its mandate upon request' among the duties and authorities of the Board. This statement reveals that the Board, the decision-making body of the Institution, can submit an opinion only upon request. Therefore, it is not possible for the Human Rights and Equality Institution of Turkey to act as an expert before judicial bodies on its own initiative.

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.

³⁸⁷ 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>.

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.

Article 11(1)(b) of the Law on the Human Rights and Equality Institution of Turkey set forth that the Institution has the competence to receive discrimination complaints from natural and legal persons against acts of public authorities as well as real persons and private legal persons. As of 30 July 2021, complaints can be filed through the e-government portal³⁸⁸ and according to Article 17(1), it is free of charge. As a general rule, as stipulated in Article 17(2), there is a requirement to apply to the person or institution responsible for discriminatory treatment prior to any application before the Institution. 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. Article 17(5) sets forth that applications regarding the claims of discrimination falling under Article 5 of the Labour Law can be lodged only in cases in which no sanction is imposed following the execution of the complaint procedures stipulated in the Labour Law and the relevant legislation.³⁸⁹ Both provisions are open to interpretation even for lawyers; they are too hard to interpret for victims of discrimination and are quite problematic in terms of predictability, which is one of the aspects that would be improved through a legal provision. For example, it is uncertain whether a lawsuit claiming damages for discrimination will be required, as per Article 5 of the Labour Law, or whether an administrative fine will be requested due to contradiction of this Article, before an application to the Institution is filed. It is not possible for a victim of discrimination to decide, without seeking the help of a lawyer and recourse to the legal remedies in question, whether a case is subject to the Labour Law so that the person in question can file an action for damages under Article 5.

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, pursuant to Article 25(1), the Institution is entitled to impose an administrative fine, and in accordance with Article 18(5), it 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'.³⁹⁰ 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 monitor the execution of court judgments regarding human rights breaches and discrimination. Neither of those powers has so far been exercised by the Institution.

³⁸⁸ Human Rights and Equality Institution of Turkey (2021), 'Complaints can be filed through e-government portal' (Başvurular artık e-devlet kapısında), 30 July 2021, available at: <https://www.tihek.gov.tr/basvurular-artik-e-devlet-kapisinda>.

³⁸⁹ See also Human Rights and Equality Institution of Turkey (2021), Decision No. 2021/309, 1 December 2021, available at: https://tihek.gov.tr/upload/file_editor/2022/01/1641213773.pdf.

³⁹⁰ 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>.

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, the Institution stated in its decision that 'it is possible to apply for a judicial remedy in Ankara Administrative Courts within 60 days from the date of notification against the decision'.³⁹¹ Indeed, 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.³⁹² To date, there is no information as regards judicial review of the decisions on the Institution. In addition, the law is silent on whether the Institution can take follow-up actions to track and secure the implementation of its decisions.

The Institution issued its first decisions only in October 2018 and there is no available data on whether they have been respected. In 2020, a total of 42 applications were examined on their merits.³⁹³ As the activity report for 2021 has not been published, the figures for 2021 are only partially accessible. In the first half of 2021, the Institution received 35 complaints concerning allegations of discrimination and initiated one *ex officio* investigations.³⁹⁴ Among the decisions concerning discrimination published on the website of the body in 2021, a violation of non-discrimination law was found in five cases.³⁹⁵ In four of those cases, the Institution imposed administrative fines of EUR 131 (TRY 1 963), EUR 467 (TRY 7 000), EUR 667 (TRY 10 000) and EUR 1 334 (TRY 20 000).³⁹⁶ In one decision, an administrative fine of EUR 267 (TRY 4 000) was imposed at first, but the penalty was subsequently commuted to a warning.³⁹⁷

Considering the decisions published on the Institution's website, the majority of violation decisions rendered by the body do not concern areas where institutional or structural discrimination is widespread, and the number of violation decisions as regards the essential issues in relation to disadvantaged groups is quite low. The Institution has yet to issue a resolution on discrimination against different groups living in Turkey on the basis of ethnic origin or minority religion and belief groups. An evaluation of the resolutions of the Institution based on the grounds of non-discrimination shows that no resolution of violations has been issued up to now with regard to 'language' and 'race', two of the grounds of discrimination stipulated in Article 3(2) of the Law on the Human Rights and Equality Institution of Turkey. The only resolution of violation issued regarding 'ethnic origin' is an appropriate and significant resolution, although it is relevant not to ethnic groups living in Turkey, but to refugees.³⁹⁸ The number of applications filed with the

³⁹¹ Human Rights and Equality Institution of Turkey (2020), Decision No. 2020/8, 14 January 2020, available at: <https://www.tihek.gov.tr/2020-08-sayili-kurul-karari/>.

³⁹² 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-tihekrsguoe-actigi-davayi-kazandi>.

³⁹³ Human Rights and Equality Institution of Turkey (2021), *2020 Activity Report (2020 Faaliyet Raporu)*, p. 69, available at: https://www.tihek.gov.tr/upload/file_editor/2021/02/1614496238.pdf.

³⁹⁴ Human Rights and Equality Institution of Turkey (2021), *2021 Financial Situation and Expectations Report (2021 Yılı Mali Durum ve Beklentiler Raporu)*, p. 11, available at: https://www.tihek.gov.tr/upload/file_editor/2021/08/1628666282.pdf.

³⁹⁵ Human Rights and Equality Institution of Turkey (2021), *Violation Decisions in 2021 (2021 İhlal Kararları)*, available at: <https://www.tihek.gov.tr/kategori/2021-ihlal-kararlari/>.

³⁹⁶ Human Rights and Equality Institution of Turkey (2021), Decision No. 2021/275, 14 September 2021, available at: https://www.tihek.gov.tr/upload/file_editor/2021/11/1638016210.pdf; Decision No. 2021/19, 9 February 2021, available at: https://www.tihek.gov.tr/upload/file_editor/2021/03/1615977028.pdf; Decision No. 2021/253, 7 October 2021, available at: https://www.tihek.gov.tr/upload/file_editor/2021/11/1638019212.pdf; Decision No. 2021/239, 14 September 2021, available at: https://www.tihek.gov.tr/upload/file_editor/2022/01/1643635674.pdf.

³⁹⁷ Human Rights and Equality Institution of Turkey (2021), Decision No. 2021/191, 17 August 2021, available at: https://www.tihek.gov.tr/upload/file_editor/2020/09/1600975777.pdf.

³⁹⁸ Human Rights and Equality Institution of Turkey (2019), Decision No. 2019/29, 7 May 2019, available at: https://www.tihek.gov.tr/upload/file_editor/2019/06/1561530224.pdf.

Institution shows that it is not experiencing a heavy workload, and that it may be perceived as an ineffective institution, or may not be known about, by the general public.

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. 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'.³⁹⁹ Similar criticisms were expressed in the Commission's 2020 report,⁴⁰⁰ but it does not have powers to impose sanctions. It is not possible to appeal the Ombudsman Institution's recommendations. The law is silent on follow-up actions to track and secure the implementation of the Ombudsman Institution's recommendations. The rate of compliance with the Institution's recommendations has increased, from 20 % in 2013 to 79.5 % in 2021.⁴⁰¹ Yet, according to the European Commission, 'the Institution still lacks ex officio powers to initiate investigations and to intervene in cases with legal remedies'⁴⁰² and 'such limitations curtail effectiveness (...) therefore, the efficiency and capacity of the Ombudsman to deal with such applications also need to be stepped up'.⁴⁰³ This criticism is also accepted by the Institution itself, and the Institution demanded a legislative amendment in this direction in 2020 and 2021.⁴⁰⁴

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 2020, the Institution has selectively issued 40 decisions, of which only 19 concern discrimination.⁴⁰⁵ In 2021, the number of decisions published on its website increased, reaching 115; however, as the Institution does not classify the decisions, the total number of decisions published concerning discrimination is not clear.⁴⁰⁶

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 detailed picture of discrimination claims and how they are assessed.

In contrast with a total of 24 851 complaints received in the first four years following its establishment by the Ombudsman Institution as of 31 December 2016, it received 17 131, 17 585, 20 968, 90 209 and 18 843 complaints in 2017, 2018, 2019, 2020 and 2021

³⁹⁹ 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>.

⁴⁰⁰ European Commission (2020), *Turkey 2020 Report*, Brussels, 6 October 2020, p. 13, available at: https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/turkey_report_2020.pdf.

⁴⁰¹ Ombudsman Institution (2022), *2021 Annual Report (2021 Yıllık Raporu)*, p. 81, available at: <https://www.ombudsman.gov.tr/kdk-pdf/2021-Yillik-Rapor/mobile/index.html>.

⁴⁰² European Commission (2020), *Turkey 2020 Report*, Brussels, 6 October 2020, p. 13, available at: https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/turkey_report_2020.pdf.

⁴⁰³ 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>.

⁴⁰⁴ Ombudsman Institution (2021), *2020 Annual Report (2020 Yıllık Raporu)*, p. 576, available at: https://www.ombudsman.gov.tr/document/raporlar/yillik_rapor/2020_yili_yillik_rapor/mobile/index.html;

Ombudsman Institution (2022), *2021 Annual Report (2021 Yıllık Raporu)*, p. 556, available at: <https://www.ombudsman.gov.tr/kdk-pdf/2021-Yillik-Rapor/mobile/index.html>.

⁴⁰⁵ Human Rights and Equality Institution of Turkey (2020), *Decisions in 2020 (2020 Kararları)*, available at: <https://www.tihk.gov.tr/kategori/2020-kurul-kararlari/>.

⁴⁰⁶ Human Rights and Equality Institution of Turkey (2021), *Decisions in 2021 (2021 Kararları)*, available at: <https://www.tihk.gov.tr/kategori/2021-kararlari/>.

respectively.⁴⁰⁷ It should be mentioned that the 70 440 applications received by the Ombudsman Institution in 2020 were related to basic needs support loans provided by state banks with regard to the COVID-19 pandemic.⁴⁰⁸ Only a fraction of the complaints concerned non-discrimination or human rights in general. Of the applications received in 2021, 0.99 % concerned human rights and 1.07 % concerned disability rights.⁴⁰⁹ Of the 387 complaints concerning human rights and disability rights, only three related to non-discrimination.⁴¹⁰

j) Roma and Travellers

Neither the Human Rights and Equality Institution of Turkey nor the Ombudsman Institution treats Roma and Travellers as a priority issue. To date, no activity has been conducted in relation to Roma or Travellers by these institutions.

⁴⁰⁷ Ombudsman Institution (2022), *2021 Annual Report (2021 Yıllık Raporu)*, p. 56, available at: <https://www.ombudsman.gov.tr/kdk-pdf/2021-Yillik-Rapor/mobile/index.html>.

⁴⁰⁸ Ombudsman Institution (2021), *2020 Annual Report (2020 Yıllık Raporu)*, p. 95, available at: https://www.ombudsman.gov.tr/document/raporlar/yillik_rapor/2020_yili_yillik_rapor/mobile/index.html.

⁴⁰⁹ Ombudsman Institution (2022), *2021 Annual Report (2021 Yıllık Raporu)*, p. 60, available at: <https://www.ombudsman.gov.tr/kdk-pdf/2021-Yillik-Rapor/mobile/index.html>.

⁴¹⁰ Ombudsman Institution (2022), *2021 Annual Report (2021 Yıllık Raporu)*, pp. 74-75, available at: <https://www.ombudsman.gov.tr/kdk-pdf/2021-Yillik-Rapor/mobile/index.html>.

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. The most important piece of legislation on the issue is not a law but a regulation. The Regulation on the Procedures and Principles of Drafting Legislation⁴¹¹ states that legislation drafts shall be sent to related ministries and public institutions and civil society organisations to solicit their opinions. However, the Regulation does not make it obligatory to submit to the NGOs the laws, presidential decrees or regulations to be prepared by the Presidency, ministries, their affiliated, related and associated institutions and other public institutions and organisations. Article 6(2) of the Regulation stated that 'Relevant (...) non-governmental organisations shall be consulted about drafts'. Thus here, rather than an obligation, a discretionary authority has been accorded. Article 7(2) of the Regulation states, '(...) non-governmental organisations shall submit their opinions regarding the drafts within 30 days. Where no response is received in this time the lack of response will be treated as an affirmative opinion'. These provisions indicate that it is not obligatory to send legislation amendments to NGOs to solicit their opinion; however, where amendments are sent and NGOs do not reply within a certain period, their lack of response is treated as an affirmative opinion. Considering their limited institutional capacity, expecting NGOs to respond within 30 days is most often not realistic. Moreover, the Regulation was adopted in 2006 and still contains references to the former parliamentary system, thus it should be amended to read that all drafts will be made public and NGOs can submit their opinions if they would like to do so, regardless of whether they have been solicited for opinions or not, and adapted to the new 'presidency system' which entered into force in 2018.

The Law on the Human Rights and Equality Institution of Turkey was adopted 'behind closed doors' without the knowledge or participation of civil society.⁴¹² The cooperation of the Institution with NGOs carrying out activities on anti-discrimination is quite insufficient. The Law on the Human Rights and Equality Institution of Turkey stipulates that the institution can cooperate with NGOs in more than one instance. Article 9(1)(n) provides that one of the duties of the Institution is to cooperate with NGOs dealing with the fight against discrimination. As per Article 9(1)(ö) of the Law on the Human Rights and Equality

⁴¹¹ Regulation on the Procedures and Principles of Drafting Legislation (*Mevzuat Hazırlama Usul ve Esasları hakkında Yönetmelik*), 17 February 2006.

⁴¹² 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/>.

Institution of Turkey, it is necessary to consult NGOs while monitoring the implementation of international human rights conventions, to which Turkey is a party, and preparing the reports that must be submitted by Turkey in respect of the examination, monitoring and inspection mechanisms established as per these conventions. Article 14(4) ascertains that the Institution can establish temporary standing commissions for a maximum period of one year with the participation of NGOs in order to engage in activities on the subjects falling under its mandate. As per Article 22, an advisory committee can be formed with the participation of NGOs so as to discuss problems with discrimination as well as suggestions for solutions, and to exchange information and views on these matters. In addition, the Institution can hold consultation meetings with NGOs at its headquarters and in the provinces to discuss human rights problems and to exchange information and views on the subject of human rights. Although it is possible for the Institution to cooperate with NGOs on many issues, there is no provision regarding how the selection of NGOs will be determined. The criteria set out in Articles 87(3) and 91(3) of the Regulation published by the Institution is far from being objective.⁴¹³

The practices of the Institution during its first five years reveal that the aforementioned requirements have been completely ignored. The Institution does not have any policy document on cooperation with NGOs and has, up to now, had a tacit policy not to cooperate with groups frequently exposed to discriminatory treatment. The Institution does not have a transparent policy regarding how it determines which NGOs it cooperates with, even if such cooperation is limited. The Institution has organised a small number of consultation meetings so far, which are very narrow in terms of the participation of NGOs and other relevant experts. Following the appointment of the new chairman in 2021, the Institution has seemed to be more active in activities regarding discrimination. For the first time, the Institution has reached out to NGOs and established an advisory commission with the relevant experts in the field of non-discrimination.⁴¹⁴

The same criticism can be directed at the Ombudsman Institution, which, as is the case with Human Rights and Equality Institution of Turkey, usually cooperates with Government-oriented NGOs or trade unions.

The Action Plan on Prevention of Violations of the European Convention on Human Rights was adopted in 2014,⁴¹⁵ yet again without the involvement of civil society.⁴¹⁶ 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.'⁴¹⁷ In developing the new Action Plan, a series of meetings was conducted with scholars, trade unions and NGOs in 2019.⁴¹⁸ Although the new plan was published in 2021, it is not known whether the views expressed by NGOs have been taken into account.⁴¹⁹

⁴¹³ Regulation on Procedures and Principles of Application of the Law on Human Rights and Equality Institution of Turkey (*Türkiye İnsan Hakları ve Eşitlik Kurumu Kanununun Uygulanmasına İlişkin Usul ve Esaslar hakkında Yönetmelik*), 24 November 2017.

⁴¹⁴ Human Rights and Equality Institution of Turkey (2021), 'The First Meeting of the Advisory Committee in the Field of Combating Discrimination was held' ('Ayrımcılıkla Mücadele Alanında İstisare Komisyonunun İlk Toplantısı Gerçekleştirildi'), 19 November 2021, available at: <https://www.tihek.gov.tr/ayrimcilikla-mucadele-alaninda-istisare-komisyonunun-ilk-toplantisi-gercekleştirildi/>.

⁴¹⁵ '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.

⁴¹⁶ European Commission (2014), *Turkey Progress Report*, Brussels, p. 48, available at: https://ec.europa.eu/neighbourhood-enlargement/document/download/351f7f4d-8530-43c5-840f-147cfc0a5a8e_en.

⁴¹⁷ European Commission (2019), *Turkey 2019 Report*, Brussels, p. 29, available at: <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20190529-turkey-report.pdf>.

⁴¹⁸ See Ministry of Justice Department of Human Rights, 'Faaliyetler' ('Activities'), available at: <https://inhak.adalet.gov.tr/Home/TumHaberler/1>.

⁴¹⁹ Ministry of Justice (2021), *Action Plan on Human Rights: Free Individual, Strong Society, More Democratic Turkey*, available at: https://inhak.adalet.gov.tr/Resimler/SayfaDokuman/1262021081047Action_Plan_On_Human_Rights.pdf.

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.

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.⁴²⁰

- 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 regularly to assess the progress made in the previous calendar year and issue its annual report by the end of May. The Council has met twice, in February 2017 and 2018, but it has not issued an annual report. In 2020, a 24-month project entitled 'Technical Assistance for Establishing a Strong Monitoring, Evaluation and Coordination Mechanism for National Roma Integration Strategy' was initiated in order to strengthen the institutional capacity of the Ministry of Family and Social Services and other relevant state institutions through establishing strong monitoring, evaluation and coordination mechanisms, along with the capacity development of the beneficiary and key stakeholders with an inclusive approach to ensure the effective implementation of the National Roma Integration Strategy and the Action Plan at national and local level.⁴²¹ 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.⁴²² However, the new Action Plan is far from sufficient to address the major problems of the Roma in this field. The aforementioned strategy was adopted for the period 2016-2021, and as of 1 January 2022 there has been no attempt to develop another one for the forthcoming years.

⁴²⁰ 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: <https://digitallibrary.un.org/record/1308046>.

⁴²¹ Technical Assistance for Establishing a Strong Monitoring, Evaluation and Coordination Mechanism for National Roma Integration Strategy (for the Action Plans) Project, available at: https://romsid.com/?page_id=98&lang=en.

⁴²² See *Official Gazette*, 11 December 2019.

In addition, the Institute for the Study of Roma Language and Culture at the University of Trakya, which opened in 2014,⁴²³ 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.⁴²⁴ 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 University⁴²⁵ and Zonguldak Bülent Ecevit University,⁴²⁶ in 2011 and 2015 respectively. Aside from the Institute in Edirne, which has been publishing an academic journal on Roma languages and culture as well as conducting panels and meetings on related topics, the other two institutes seem to have been inactive for years.

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 2021, 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 Turkish Code of 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 2021, no measures were taken by Turkey in order to ensure compliance with other rules/clauses in the directives.

⁴²³ See the announcement on the University of Trakya's website: <http://www.trakya.edu.tr/news/roman-dili-ve-kulturu-arastirmalari-enstitusu-kuruldu>.

⁴²⁴ 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.

⁴²⁵ Aydın Adnan Menderes University Roma Research Centre, available at: <https://akademik.adu.edu.tr/aum/romanlar/default.asp>.

⁴²⁶ Zonguldak Bülent Ecevit University Roma Culture Research Centre, available at: <https://romer.beun.edu.tr/>.

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.⁴²⁷ 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.⁴²⁸ 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 by a circular to 'carry out necessary administrative and legal arrangements for the protection and promotion of the rights of the persons with disabilities'.⁴²⁹ Following the first meeting, held on 13 May 2014, there was no information available regarding any activities of the Board until 2020, creating the impression that it was completely ineffective during this time. It was stated by the Ministry in 2020 that, following a new circular to be issued by the President, the Board would be strengthened in 2021.⁴³⁰ A new circular, which was published on 3 December 2021, established the Board again with the participation of 20 members from various Government bodies.⁴³¹ Only two senior NGO representatives – one representative from each of the two confederations operating in the field of disability and having the most representative power at the national level – can attend the Board meetings. According to the European Commission, the work of the National Monitoring and Evaluation Committee for the Convention needs to be stepped up.⁴³²

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 Services 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.⁴³³ 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

⁴²⁷ 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/BasinMusavirlik/20.rig/20rig_press.pdf.

⁴²⁸ Müderrisoğlu, O., 'New Task Force to be Established against Discrimination' ('Ayrımcılık için Özel Görev Gücü Kuruluyor'), *Sabah*, 14 March 2010, available at: http://www.sabah.com.tr/Gundem/2010/03/14/ayrimcilik_icin_ozel_gorev_gucu_kuruluyor.

⁴²⁹ 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://digitallibrary.un.org/record/3849168>.

⁴³⁰ Ministry of Family, Labour and Social Services, General Directorate of Disabled and Elderly Services (2020), *E Bulletin (E Bülten)*, November-December 2020, 2020/6, p. 58, available at: https://www.aile.gov.tr/media/68046/eyhgm_kasim_aralik_2020_e_bulten.pdf.

⁴³¹ Presidential Circular No. 2021/23 on the Monitoring and Evaluation Board for the Rights of Persons with Disabilities, *Official Gazette*, 3 December 2021.

⁴³² European Commission (2021), *Turkey 2021 Report*, Strasbourg, 19 October 2021, p. 39, available at: https://ec.europa.eu/neighbourhood-enlargement/document/download/892a5e42-448a-47b8-bf62-b22d52c4ba26_en.

⁴³³ Strategy Paper on Accessibility Strategy and the National Action Plan (Ulaşılabilirlik Stratejisi ve Eylem Planı) (2010-2011), *Official Gazette*, 12 November 2010.

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. Although it was stated in 2018 that a 'National Disability Rights Strategy Document and Action Plan for the years 2019-2023' would be developed, no document of that type has been published since then.⁴³⁴ A series of workshops has been conducted since then; the last workshop was convened online on 23 June 2021 with the participation of 55 persons from Government bodies and NGOs on the extension of a rights-based approach.⁴³⁵

Since 2011, the Ministry of Family and Social Services 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'.⁴³⁶ 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.⁴³⁷ The tangible 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 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.⁴³⁸

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, which is mentioned in section 8.1. The strategy addresses key obstacles to the social inclusion of Roma and proposes measures in areas such as housing, education, employment and health. However, since almost none of the targets in the first Action Plan have been achieved, the second Action Plan does not offer much hope. As of 1 January 2022, no further steps have been taken within the context of the Action Plan, nor has a new strategy been developed.

⁴³⁴ Anadolu Agency (2018), 'An action plan as a "roadmap" for the persons with disabilities' (Engelliler için 'yol haritası' niteliğinde eylem planı), available at: <https://www.aa.com.tr/tr/turkiye/engelliler-icin-yol-haritasi-niteliğinde-eylem-planı/1055490>.

⁴³⁵ Ministry of Family and Social Services, General Directorate of Services for Persons with Disabilities and the Elderly (2021), *Meeting entitled "Extension of Rights-Based Approach" was held within the scope of the National Action Plan Preparation Workshops for the Rights of Persons with Disabilities (Engelli Hakları Ulusal Eylem Planı Hazırlık Çalıştayları Kapsamında "Hak Temelli Yaklaşımın Yaygınlaştırılması" Başlıklı Toplantı Gerçekleştirildi)* available at: <https://www.aile.gov.tr/eyhgm/haberler/engelli-haklari-ulusal-eylem-planı-hazırlık-calıstayları-kapsamında-hak-temelli-yaklaşımın-yaygınlaştırılması-başlıklı-toplantı-gerçekleştirildi/>.

⁴³⁶ 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.

⁴³⁷ 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 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.

⁴³⁸ European Commission (2014), *Turkey Progress Report*, Brussels, p. 62, available at: https://ec.europa.eu/neighbourhood-enlargement/document/download/351f7fd-8530-43c5-840f-147cfc0a5a8e_en.

10 CURRENT BEST PRACTICES

There were no best practices to report in 2021.

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 2021.
- 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, national human rights institution and national rapporteur for human trafficking, 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 standards and 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. Despite some positive rulings on the basis of private life (see below in section 12.2), none of the judicial bodies has ever ruled in any case that discrimination based on sexual orientation has occurred.
- 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. Accordingly, no case law has emerged on this issue to date.
- 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 Persons with Disabilities do not elaborate on what can be considered a legitimate aim for the purpose of objective justification of indirect discrimination.
- Most 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, and cases overwhelmingly conclude with an acquittal.
- 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, which 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 only to a limited extent.
- 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. A human rights monitoring and research bureau was established within the Ombudsman Institution; however, information concerning its mandate and activities is limited, and it therefore apparently seems to be ineffective.

- Discriminatory and hate speech and conduct against minorities, particularly the Roma, LGBTI+ persons, Kurds, Alevis and non-Muslims (especially Jews) is rampant in daily life, political discourse and the media.
- The authorities fail utterly in protecting non-Muslims and LGBTI+ people, 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' or specific provisions targeting LGBTI+ people to dismiss them from employment, refuse to give them housing or issue administrative fines or 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 still reluctant to recognise the right to conscientious objection to military service. The ECtHR's rulings on this issue remain unimplemented.

12 LATEST DEVELOPMENTS IN 2021

12.1 Legislative amendments

In 2021, few legislative amendments were adopted in relation to anti-discrimination law in Turkey. Turkey ratified the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled on 28 September 2021.⁴³⁹ With the Presidential Circular issued on 7 April 2021, it was decided that 8 April would be celebrated as Roma Day.⁴⁴⁰ Following a presidential decree issued in 2020, the Judicial Support and Victim Services Regulation was published and entered into force on 30 April 2021. Article 5(1)(a) of the Regulation states that no discrimination can be made in the provision of support and services on the basis of gender, age, disability, race, social class, language, religion, political opinion or other reasons, and that derogatory and degrading speech and behaviour is prohibited.⁴⁴¹

12.2 Case law

In 2021, no case that could be accessed in the HUDOC database was issued by the ECtHR. The Constitutional Court issued six judgments as regards non-discrimination in 2021; however, only one of them may be regarded as being under the remit of the directives.⁴⁴² Of the available judgments in the official database provided by the Court of Cassation in 2021, 170 were related to discrimination claims that were not directly or indirectly related to the directives, and none of the alleged discriminatory acts were based on the grounds covered by the directives.⁴⁴³ The total number of judgments related to discrimination claims rendered by the Council of State in 2021 that are accessible in its official database is 169.⁴⁴⁴ Only one case was under the remit of the directives.⁴⁴⁵

Relevant discrimination ground(s): Age

Name of the court: Constitutional Court

Date of decision: 29 April 2021

Name of the parties: N/A

Reference number: E. 2021/1, K. 2021/32

Link: <https://normkararlarbilgibankasi.anayasa.gov.tr/Dosyalar/Kararlar/KararPDF/2021-32-nrm.pdf>

Brief summary: In a judgment rendered by the Constitutional Court in 2021, a provision that stipulates that the retirement pensions of those over the age of 65 who continue to work in formal and non-formal education institutions on a basis of a course fee while receiving a pension must be cut off was found to be in accordance with the Constitution, since it has a legitimate aim of providing employment for the young and unemployed persons and finding a solution to the unemployment problem.⁴⁴⁶

⁴³⁹ *Official Gazette*, 23 September 2021.

⁴⁴⁰ Presidency of the Republic of Turkey (2021), *Presidential Circular No. 2021/7*, *Official Gazette*, 8 April 2021.

⁴⁴¹ Judicial Support and Victim Services Regulation (*Adli Destek ve Mağdur Hizmetleri Yönetmeliği*) (2021), 30 April 2021.

⁴⁴² Constitutional Court, *Yelda Dere*, Application No. 2018/10841, 24 March 2021; *Asuman Biçer Yeşilay*, Application No. 2018/19742, 13 April 2021; *Özge Can ve Diğerleri*, Application No. 2018/7782, 21 April 2021; *Ahmet Özgür Yeniel ve Diğerleri*, Application No. 2018/2221, 7 October 2021 (these four judgments relate to non-payment of on-duty fees to some of the doctors performing on-duty services in the same health institutions, based on their different status); *Nuriye Arpa*, Application No. 2018/18505, 16 June 2021 (access to housing benefit based on marital status); *Burcu Reis*, Application No. 2016/5824, 28 December 2021 (a female worker working in a private company does not benefit from nursery facilities unlike other female workers).

⁴⁴³ Court of Cassation, case search (*Karar Arama*), available at: <https://karararama.yargitay.gov.tr/YargitayBilgiBankasiIstemciWeb/>.

⁴⁴⁴ Council of State, case search (*Karar Arama*), available at: <https://karararama.danistay.gov.tr/>.

⁴⁴⁵ Council of State, 12th Chamber, E. 2018/10177, K. 2021/988, 25 February 2021.

⁴⁴⁶ Constitutional Court, E. 2021/1, K. 2021/32, 29 April 2021.

Relevant discrimination ground(s): Sexual orientation

Name of the court: Council of State

Date of decision: 25 February 2021

Name of the parties: N/A

Reference number: E. 2018/10177, K. 2021/988

Link: <https://karararama.danistay.gov.tr/getDokuman?id=673845700&arananKelime=10177>

Brief summary: Dismissal of a male attendant working in the Ministry of Education for having sexual intercourse with a male was considered to be a breach of Article 20 of the Constitution and Article 8 of the European Convention on Human Rights (right to respect for private and family life). Therefore, the disciplinary sanction was invalidated by the Council of State.⁴⁴⁷

In 2021, no cases were brought by Roma or Travellers in Turkey.

⁴⁴⁷ Council of State, 12th Chamber, E. 2018/10177, K. 2021/988, 25 February 2021.

ANNEX 1: MAIN TRANSPOSITION AND ANTI-DISCRIMINATION LEGISLATION

Country: Turkey
Date: 1 January 2022

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/Administrative 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; shifting burden of proof

Title of the law: Labour Law (No. 4857)

Abbreviation: N/A

Date of adoption: 22 May 2003

Latest amendments: 28 July 2020

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 denomination 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 shifting burden of proof

Title of the law: Law on Persons with Disabilities (No. 5378)

Abbreviation: N/A

Date of adoption: 1 July 2005

Latest amendments: 28 July 2021

Entry into force: 7 July 2005

Web link: <http://www.mevzuat.gov.tr/MevzuatMetin/1.5.5378.pdf>

Grounds covered: Disability

Civil/Administrative law

Material scope: Public and private employment

Principal content: Direct discrimination, indirect discrimination, multiple 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: 17 April 2020

Entry into force: 24 June 1973

Web link: <http://www.mevzuat.gov.tr/MevzuatMetin/1.5.1739.pdf>

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

Administrative 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: 30 November 2021

Entry into force: 2 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 denomination

Administrative 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: 1 January 2022

Instrument	Date of signature	Date of ratification	Derogations/ reservations relevant to equality and non-discrimination	Right of individual petition accepted?	Can this instrument be directly relied upon in domestic courts by individuals?
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	In theory yes, but courts are reluctant to accept
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	No	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

Instrument	Date of signature	Date of ratification	Derogations/ reservations relevant to equality and non-discrimination	Right of individual petition accepted?	Can this instrument be directly relied upon in domestic courts by individuals?
Convention on the Rights of the Child	14.09.1990	4.04.1995	Articles 29 and 30	Yes	In theory yes, but courts are reluctant to accept
Convention on the Rights of Persons with Disabilities	30.03.2007	28.09.2009	None	Yes	In theory yes, but courts are reluctant to accept

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