REPORT ON MEASURES TO COMBAT DISCRIMINATION
Directives 2000/43/EC and 2000/78/EC

COUNTRY REPORT 2013

TURKEY

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State of affairs up to 1st January 2014

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INTRODUCTION

0.1 The national legal system

Explain briefly the key aspects of the national legal system that are essential to understanding the legal framework on discrimination. For example, in federal systems, it would be necessary to outline how legal competence for anti-discrimination law is distributed among different levels of government.

Turkey does not have an anti-discrimination law. There are however anti-discrimination clauses in the constitution and various criminal, administrative and civil laws, which provide protection on varying grounds. Article 10 of the Turkish Constitution provides a non-exhaustive list of protected grounds, allows positive measures for the elderly and for persons with disabilities and entrusts the state with the task of ensuring equality between men and women.

Most notable among the laws which have anti-discrimination clauses is the Law on Persons with Disabilities, which could be considered an anti-discrimination law. However, the law prohibits discrimination solely on the ground of disability and has a limited material scope. The Labour Law also has several anti-discrimination clauses, but again with a material scope limited to employment relations.

Turkey is a unitary state with a continental legal system. It adheres to the principle of the hierarchy of laws, whereby the constitution is the supreme law of the land. Legislative power is vested in the Turkish Grand National Assembly and this power cannot be delegated. Regulations which put forth in detail the ways in which laws are to be implemented are adopted by the government. The executive also issues internal decrees addressed to public institutions. Laws and regulations are published in the Official Gazette. Circulars on the hand are not systematically published and can selectively be accessible on the relevant ministry's website based on the discretion of the latter. Otherwise, access to circulars by citizens and lawyers are not possible, unless obtained through personal connections.

The competence to review the constitutionality of laws and of decrees having the force of law is vested with the Constitutional Court. The Court exercises this power either upon an annulment action brought by the president, the parliamentary groups of the governing party or the main opposition party, or a minimum of one-fifth of members of the parliament; or upon referral from a lower court. The Court's mandate is limited to reviewing the compatibility of the law in question with the principle of "equality before the law" enshrined in art. 10 of the Constitution.

According to art. 90 of the Constitution, international treaties which are duly ratified have the force of law[1] If the language of the treaty provision is self-executing, it is directly applicable. In case of a conflict between provisions of domestic laws and international treaties on fundamental rights and freedoms duly put into effect, the provisions of international agreements shall prevail. Appeal cannot be made to the Constitutional Court claiming the unconstitutionality of international treaties. Turkey is a party to a considerable number of international treaties containing provisions on anti-discrimination and equal treatment, though with significant reservations and declarations. Turkey's policy concerning international human rights conventions is ratification with reservations and declarations to provisions which would extend the scope of minority protection (for an overview, see Annex 2: Table of International Instruments). This is the case, for example, with the UN Convention on the Rights of the Child where Turkey has inserted a reservation with respect to Articles 17, 29 and 30 of the Convention which concern the linguistic, cultural and religious rights of minority children and the rights of their parents to give their children an education in accordance with their cultural identity and language. When it comes to human rights conventions which do not entail provisions specifically concerning minorities, Turkey does not insert such reservations, as in the case of the UN Convention on Persons with Disabilities.

Disputes arising from private law and criminal law, including discrimination cases are decided by the civil and criminal courts. The judgments given by these first instance courts are reviewed by the Court of Cassation. Administrative cases are decided by the administrative courts, tax courts and regional administrative courts. The Council of State is the high court. However, the Council of State deals with some cases prescribed by law as a first instance court.

While court decisions and judgments are in principle open to public, only some of the judgments and decisions of the Court of Cassation and the Council of State are published through a selection which does not rest on any objective criteria. Some of the decisions and judgments of the Court of Cassation and the Council of State are published in the respective legal journals published by these courts based on the selection of the editors. Independent legal journals also selectively publish decisions and judgments they obtain directly from the high courts. The Legal Publishing House runs a website and issues a legal journal both of which publish decisions and judgments it deems to be innovative, solution-oriented and principled.[2] A third source is the judges and prosecutors of high courts, who "publish in their books 'interesting' decisions and judgments which they had set aside in order to increase the sales of their books".[3] A professor of constitutional law summarized "the 'secret criterion' known to practitioners" as follows. "The presidents of chambers of Court of Cassation

[1] In order for an international treaty to be duly ratified, first the Parliament has to adopt a law approving the ratification of the treaty, then the Committee of Ministers must issue a decree of ratification.
[2] Opinion expressed through e-mail by Mehmet Uçum, a lawyer who is among the directors of Legal Publishing House (http://www.legal.com.tr/).
[3] *Id.*

and the Council of State purposefully prevent the publication of potentially interesting decisions and either use these at later stages in books they publish or privately share them with publishers they reach an agreement with, turning these decisions into 'commercial commodities.' Decisions published at their own legal journals are those that have no practical use but further existing judicial interpretation or precedence. Important decisions that introduce a change in the case law are published commercially."[4]

The Constitutional Court's judgments concerning the dissolution of political parties and the constitutionality of laws and decrees are published in the Official Gazette, as required under the Constitution. The Court's judgments in cases brought before it by individuals under the constitutional complaint mechanism which entered into force in September 2012 will be selectively published. The selection criteria are laid out in the Constitutional Court's revised by-laws, which were published in the Official Gazette on 12 July 2012.[5] Accordingly, judgments on the merits and those admissibility decisions which "carry importance as a matter of principle" will be published on the website of the Court.[6] Pilot judgments and precedent setting judgments "which are important as a matter of principle" will be published in the Official Gazette.[7] On 17 September 2013, the Constitutional Court published its first judgments in cases brought by individuals.[8] As of 22 January 2014, none of the judgments published on the Court's website or in the Official Gazette was given in a discrimination case or involved a finding of discrimination. The cases mostly concerned unfair and/or prolonged trials, property rights and violations of the right to life.The first time a judgment based on an individual petition was published in the Official Gazette was on 30 October 2013.[9]

0.2 Overview/State of implementation

List below the points where national law is in breach of the Directives or whether there are gaps in the transposition/implementation process, including issues where uncertainty remains and/or judicial interpretation is required. This paragraph should provide a concise summary, which may take the form of a bullet point list. Further explanation of the reasons supporting your analysis can be provided later in the report.

[4] Opinion expressed through e-mail by Ozan Erözden, associate professor of constitutional law, Yıldız Technical University.
[5] By-Laws of the Constitutional Court, based on Law on Establishment and Rules of Procedures of the Constitutional Court, no. 6216, 30 March 2011, Official Gazette, no. 28351, 12 July 2012.
[6] *Id*., art. 81(4).
[7] Id., art. 81(5).
[8] The Court published a number of judgments it had issued between 17 September and 19 December 2013: http://www.anayasa.gov.tr/Kararlar/BireyselBasvuru/index.html [last accessed 22 January 2014].
[9] Official Gazette, no. 28806, 30 October 2013.

This section is also an opportunity to raise any important considerations regarding the implementation and enforcement of the Directives that have not been mentioned elsewhere in the report.
This could also be used to give an overview of the way (if at all) national law has given rise to complaints or changes, including possibly a reference to the number of complaints, whether instances of indirect discrimination have been found by judges, and if so, for which grounds, etc.

Please bear in mind that this report is focused on issues closely related to the implementation of the Directives. General information on discrimination in the domestic society (such as immigration law issues) are not appropriate for inclusion in this report.

Please ensure that you review the existing text and remove items where national law has changed and is no longer in breach.

Structure of anti-discrimination law in Turkey

- Turkey is not a member of the European Union (EU). Consequently, the EU's Directives have not yet been transposed to Turkish Law.
- Turkey does not have an anti-discrimination law. Nearly five years since its preparation in March 2009, the draft Law on Combating Discrimination and Establishing an Equality Body has still not been adopted. On 30 September 2013, as part of the democratization package announced by the Prime Minister, the government stated its intent to adopt the law.
- The constitutional basis of legal framework on equality and anti-discrimination rests in Article 10 of the 1982 Constitution, which provides an open-ended list of enumerated protected grounds. An amendment made to this clause in 2010 allows positive measures to be adopted for the elderly and persons with disabilities and to ensure equality between men and women.
- There are anti-discrimination provisions in a number of criminal, administrative and civil laws. These provisions put forth non-exhaustive protected grounds, which vary significantly.
- The Law on Persons with Disabilities could be considered an anti-discrimination law which, however, affords protection solely on the ground of disability and whose material scope is limited to the services covered by the law. The Labour Law has several anti-discrimination clauses whose material scope is limited to employment and does not extend to recruitment.
- Ethnicity, age and sexual orientation are not enumerated in any of the laws or in the constitution. Therefore, the applicability of anti-discrimination clauses in the constitution and various laws to discrimination on these grounds is an uncertainty.

Protected grounds

Discrimination on all grounds enumerated in the EU Directives is not expressly covered under Turkish national law; ethnicity, age and sexual orientation are not explicitly mentioned in the constitution or any of the relevant laws. On the other hand, the lists of enumerated grounds set forth in the constitution and various laws are open-ended, which suggests that, in theory, courts are able to bring expansive and liberal interpretations of equality clauses. However, grounds explicitly enumerated in the constitution and various laws differ from each other. For a comprehensive list of grounds enumerated in the constitution and various laws, see sections 1.a. and 2.1.

The initial text of the anti-discrimination draft law contained a non-exhaustive list of grounds, including "gender, race, colour, language, religion, belief, ethnicity, sexual identity, philosophical and political opinion, social status, marital status, health, disability and age." However, the government subsequently revised the draft law and removed from this list 'sexual identity', which had been "stated by drafters to encompass gender identity and sexual orientation."[10] This amendment, which was done quietly after the initial draft was submitted to public discussion, has been protested by civil society groups, in particular the LGBT movement.[11] The revised draft law was published on the website of the Ministry of Interior.[12]

The exclusion of sexual orientation from prohibited grounds of discrimination did not change during the constitution making process. In August 2013, the Constitutional Reconciliation Commission of the Turkish Parliament tasked with drafting a new constitution concluded its deliberations over the equality and non-discrimination clause. The commission failed to reach an agreement over the proposal made by two opposition parties (the main opposition RPP (RPP) and the pro-Kurdish Peace and Democracy Party (PDP)) to include sexual orientation among the prohibited grounds of discrimination in the equality clause of the new constitution. The representatives of the governing Justice and Development Party (JDP) and the opposition Nationalist Action Party (NAP) opposed the proposal. A consensus was reached to include the prohibition of discrimination on the basis of "sexual orientation and sexual identity" in the explanatory text of the non-discrimination clause. LGBT groups released a statement in protest of the Commission's decision, pointing out that the consensus text to be included in the explanatory text will not have a legal enforcement power. On 30 September 2013, the Prime Minister announced a "democratization package" containing a number of administrative and legislative measures concerning a range of issues concerning minority rights, religious freedom and fundamental rights. As part of this package, the Prime Minister announced envisioned legislative changes to

[10] Amnesty International (2011), "*Not an Illness nor a Crime": Lesbian, Gay, Bisexual and Transgender People in Turkey Demand Equality,* p. 10.
[11] "Press Release from LGBT Organizations in Turkey," 2 February 2011, available at http://ilga-europe.org/home/guide/country_by_country/turkey/press_release_from_lgbt_organizations_in_turkey [last accessed 28 February 2014].
[12] http://www.icisleri.gov.tr/default.icisleri_2.aspx?id=5692 [last accessed 22 January 2014].

increase penalties for hate crimes and to set up an anti-discrimination and equality council. Sexual orientation, ethnicity and age were excluded from the protected grounds against both hate crimes and discrimination. The government's persistent exclusion of the LGBT individuals from the scope of planned anti-discrimination legislation was once again criticized by human rights organizations and LGBT groups. According to media reports, the government started preparing draft laws to put into effect these announced changes. However there is not yet publicly available information about the content of these drafts.[13]

Scope of protection

The material scope of the Directives is not reflected in the Turkish legislation. Protection from discrimination in the employment context only applies after the employment relationship is established. There are no specific laws governing anti-discrimination in other realms of public life or prohibition of ethnic and racial discrimination in all walks of life.

The draft law on anti-discrimination, on the other hand, has a wide material scope that covers the provision of services in the spheres of education, judiciary, law enforcement, health, transportation, communication, social services, social security, social aid, sports, accommodation, culture and tourism. Its scope also extends to participation in public life including the right to elect and be elected, access to buildings where public services are provided and freedom of association. The prohibition of discrimination binds both public and private persons.

Definitions

Discrimination is not defined in Turkish law. With the exception of disability, none of the protected grounds are defined, whereas the definition of disability is not in accordance with the EU Directive or the relevant international instruments. Furthermore, in reference to "person with disability", the constitution, laws, official documents and government offices use the rather pejorative term *özürlü* (which means handicapped, defective, deficient) rather than the neutral term of *engelli* (which literally means disabled). The government announced in December 2012 its plans to replace the pejorative references to persons with disabilities with the word *engelli* in nearly 100 different laws, including the Law on Persons with Disabilities, the name of which will also change. Also in December 2012, the four parties in the parliament agreed to present a constitutional amendment in order to replace the term *özürlü* with that of *engelli* in the text of the constitution.[14] However, no progress has been made in this regard and the constitution retains the pejorative term. The government did however live up to its commitment of a comprehensive revision of the

[13] The law putting into effect many of the legislative amendments announced in the Democratization Package was adopted on 2 March 2014.
[14] Nilay Vardar, "Sakat, Özürlü, Engelli?", *Bianet*, 6 December 2012, available at http://www.bianet.org/bianet/ayrimcilik/142630-sakat-ozurlu-engelli [last accessed 22 January 2014].

legal framework. On 25 April 2013, the Parliament adopted the draft bill prepared by the Ministry of Family and Social Policies, replacing the terms *özürlü, sakat* (crippled, defective) and *çürük* (rotten, unfit) with that of *engelli* in a total of 96 laws and decrees with the force of law, including the Civil Law, the anti-Terror Law, the Law on Civil Servants, the Law on Social Services, the Law on Persons with Disabilities, the Penal Law, the Law on Social Insurance and General Health Insurance and various laws concerning the families of martyrs, war veterans and retired members of the military.[15]

The definition of persons with disabilities in the draft law on anti-discrimination, on the other hand, is in accordance with the definition in the UN Convention on the Rights of Persons with Disabilities (see below). However, the draft law is not a part of the Turkish law yet. It is important to note, however, that even after the government announced its decision to abandon the use of *özürlü,* the word has not (yet) been deleted from the text of the draft law on anti-discrimination.

While not yet part of the Turkish legal system due to its non-adoption, the draft law on anti-discrimination contains definitions of a number of key concepts. These are: direct discrimination, indirect discrimination, harassment, segregation, victimization, instruction to discriminate, reasonable accommodation, hate speech, assumed discrimination, race, ethnicity, gender, disability and pregnancy. These definitions are by and large based on those in the EU equality directives. Before its removal by the government, 'sexual identity' was also defined in the draft law as "heterosexual, homosexual, bisexual, transsexual, transvestite and similar sexual identities."

Exceptions

Exceptions to prohibition of discrimination are not stipulated in Turkey's laws and positive actions are very limited. The constitutional amendments approved in a public referendum held in September 2010 allow the introduction of affirmative measures in favour of women (to ensure de facto equality between men and women) and positive discrimination for children, the elderly and persons with disabilities. The ways in which the revised Article 10 will be harmonized into the legal framework and will be implemented by national authorities and courts remain to be seen.

The draft law on anti-discrimination also allows positive measures which aim to achieve de facto equality. In addition, the draft law introduces the following exceptions to the ban on discrimination: 1) distinctive treatment which seeks to achieve bona fide occupational qualifications and which is appropriate, necessary and proportional to this aim; 2) distinctive treatment based on sex and age, provided it pursues a legitimate aim and is appropriate, necessary and proportional to this aim;

[15] Law on Making Amendments in Certain Laws and Decrees with the Force of Law with the Purpose of Changing References to Persons with Disabilities in Laws and Decrees with the Force of Law, no. 6462, 25 April 2013, Official Gazette, no.28636, 3 May 2013.

and 3) the exclusive admission of members of a particular religion to institutions providing services or education for that religion.

Sanctions

Sanctions are not explicitly mentioned in various laws containing anti-discrimination provisions, with the exception of the Penal Code, the Labour Law and to a certain extent the Law on Civil Servants. In most cases, general rules apply and these are not effective enough to eradicate discrimination.

The draft law on anti-discrimination considers positive measures adopted to ensure de facto equality to be legitimate exceptions and stipulates criminal and administrative sanctions in cases of discrimination.

Institutional framework

Turkey does not have an equality body specialized on anti-discrimination. While the government announced on 30 September 2013 that there are preparations to establish an anti-discrimination and equality council, no concrete step has yet been taken in this direction.

Since 2012, Turkey has a national human rights institution. The Law on the Human Rights Institution of Turkey was adopted by the Turkish Parliament on 21 June 2012 and published in the Official Gazette on 30 June 2012.[16] The Institution replaced the Human Rights Presidency of the Prime Ministry, which was thereby abolished. The Institution directly reports to the Prime Ministry and has competence over protecting human rights, preventing human rights violations, fighting against torture and mal treatment, receiving and processing claims, and providing education and conducting research on human rights. Fighting against discrimination is not explicitly stated among the competences outlined in Article 4 of the law. The Institution has the mandate to receive individual complaints from both real and legal persons. The 11 members of the Institution do not have tenure. Other than the chairperson and the vice-chairperson, the remaining members are not entitled to a salary but a nominal honorarium per meeting. The selection and appointment of the members was completed in September 2012. However, one and a half years after the adoption of the law establishing the Institution, the executive regulation laying out the terms and conditions of filing a petition with the Institution as well as other operational issues is yet to be adopted by the government. Moreover, no application has been made to the International Coordinating Committee for National Human Rights Institutions to accredit the Institution on the basis of the Paris Principles.

In the meantime, after a few months of delay, the Institution became operational in

[16] Law on the Human Rights Institution of Turkey, no. 6332, 21 June 2012, Official Gazette, no. 28339, 30 June 2012.

January 2013. It held its first session on 23 January, where a chairperson and a vice-chairperson were elected from among its members. In 2013, the Institution met on a bi-monthly basis, having held 23 meetings in the course of the year. These meetings are retrospectively announced on the website of the Institution, indicating the date of the meeting and a brief statement that the Institution has discussed current issues. The minutes are not published. In addition to its regular meetings, the Institution organized a conference on the occasion of the World Human Rights Day, visited Turkish human rights organizations and convened meetings with government ministers. As of the end of 2013, the Institution released one report based on a special fact finding mission on mass burials in a province of Turkey. The Institution has not yet released a report on discrimination issues or a decision based on an individual complaint.[17]

The European Commission and the UN Human Rights Committee both expressed concerns about the independence of the newly established Human Rights Institution of Turkey. The European Commission noted that "the law does not fully comply with the UN Paris Principles, in particular as regards the independence of the proposed body" and criticized the parliament's failure to discuss the draft law with stakeholders before its adoption.[18] The UN Human Rights Committee, likewise, stated that the appointment of the members of the Institution by the Prime Minister's office "jeopardized the independence of the Institution from the Executive Power" in violation of the Paris Principles. The Committee called on Turkey to amend the law establishing the Institution to guarantee its organic and financial independence.[19]

In the meantime, the Human Rights Institution of Turkey, on its own initiative, prepared a proposal containing a number of changes to its founding law of June 2012. The proposal published on the website of the Institution puts forth dozens of amendments to the Law on the Human Rights Institution of Turkey as well as a few on the Law on Civil Servants. The explanatory note to the proposal states the purpose of the proposed changes to be the strengthening the capacity and mandate of the Institution through elevating its administrative status from general directorate to undersecretariat and the achievement of compliance with the UN Paris Principles by enhancing the administrative independence and functional autonomy of the Institution.[20] The Institution proposes, among others, that it submits its annual reports to the Turkish Parliament (in the current law, the recipient authority is not identified), that it has a say in the election of its members by nominating to the Cabinet of Ministers candidates for three of the seven members in order to strengthen the

[17] Information about the activities and reports of the Institution can be accessed at: http://www.tihk.gov.tr/ [last accessed 22 January 2014].
[18] European Commission, *Turkey Progress Report 2012*, p. 19.
[19] UN Human Rights Committee, Concluding Observations on the Initial Report of Turkey Adopted by the Committee at its 106th Session (15 October-2 November 2012), CCPR/C/TUR/CO/1, 13 November 2012, para. 7 (hereafter "UN Human Rights Committee Report").
[20] The explanatory note and the proposal can be accessed at: http://www.tihk.gov.tr/tr/mevzuat/mevzuat-calismalari [last accessed 22 January 2014].

Institution's independence from the executive (currently all seven are appointed directly by the Cabinet), that the limited criminal immunity provided for the members of the Institution is extended to provide protection against all kinds of searches and seizures during the performance of their duties and that such protection is also extended to all administrative and professional personnel working for the Institution (the current law only provides limited criminal immunity which only applies in case of an allegation of the commission of crime), that the Institution's functional autonomy and independence is ensured by entrusting it with the power to make decisions over its administrative structure, employment strategies and self-management (the current law states that the Cabinet of Ministers makes the decisions over the administration and management of the Institution), that the Institution is granted standing to join in all kinds of cases that it deems necessary, and that the Institution is granted the power to hire experts and take witness testimonies.

Also as of June 2012, Turkey has an ombudsman institution. The Law on the Ombudsman Institution was adopted on 14 June 2012.[21] The original law (no. 5548) adopted by the Turkish Parliament on 28 September 2006 had not entered into force due initially to a presidential veto, which had been overcome by the Parliament through re-adoption of the law without amendments, and later to an annulment by the Constitutional Court. On 25 December 2008, the Constitutional Court had held that the law was in violation of the constitution. This has prompted the government to add in the constitutional reform package presented to a national referendum on 12 September 2010 a clause amending Article 74 of the Constitution for the establishment of an Ombudsman Institution. Following the public approval of the constitutional reform package, a series of harmonizing laws were adopted, including the Law on the Ombudsman Institution.

The Ombudsman Institution 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 rule of law. The Institution can do so only upon complaints and lacks the mandate to make inquiries on its own initiative. The following falls outside the mandate of the Institution: 1) The decisions, actions and orders the Turkish President takes, adopts or gives on his own initiative; 2) actions concerning the use of the legislative power; 3) decisions based on the use of the judicial power; and 4) the activities of the Turkish Armed Forces, which are of military nature. The Institution has a Chief Ombudsperson and a maximum of five Ombudspersons, a secretary general and staff, and a separate budget. The Institution has the mandate to establish branches wherever it deems necessary. The Ombudspersons are elected by the parliament on the basis of qualified majority (two thirds of the votes). Where the requisite majority is not achieved in the first third rounds of voting, in the fourth, he or she is elected by simple majority. The Ombudspersons are elected for a term of four years, which is renewable for another

[21] Law on the Ombudsman Institution, no. 6328, 14 June 2012, Official Gazette, no. 28338, 29 June 2012.

term at most. To be eligible for the Ombudsperson position, candidates must, inter alia, not be member to a political party and have a minimum ten years of experience in civil society, public service, international organizations or the private sector. Past affiliations with political parties does not disqualify candidates from running. The Parliament may decide to dismiss an ombudsperson where it concludes that s/he does not meet the selection criteria.

It took a considerable time for the Institution to start operating. The Chief Ombudsman and five Ombudspersons were elected by the Turkish Parliament on 28 and 29 November 2012. The Ombudspersons were elected with simple majority at the fourth round of voting, due to the inability of any of the candidates to receive two-thirds majority during the first three rounds. All but one of the five Ombudspersons are men. The election of the Ombudspersons received strong protests from the opposition parties, the human rights community, civil society and the media. Most of the reactions centred around the Chief Ombudsman, Mehmet Nihat Ömeroğlu, a former judge of the High Court of Appeals. What has made the choice of Ömeroğlu controversial was his approval, as a member of the Assembly of Criminal Chambers of the High Court of Appeals, of the judgment of a lower court in one of Turkey's most notorious freedom of expression cases. The judgment was issued against Hrant Dink, a prominent Armenian journalist and intellectual, who was convicted of "insulting Turkishness" under Article 301 of the Turkish Penal Code for writing about the Armenian genocide. The suspended sentence of six months issued against Dink was approved by the Assembly of the Criminal Chambers of the High Court of Appeals despite a favourable expert opinion, the objection of the Chief Prosecutor of the High Court of Appeals and six dissenting opinions. Based on this judgment, Dink was portrayed in the national media as an enemy of the Turks and was turned into an object of hatred and animosity for Turkish nationals, culminating in his assassination in January 2008 by a young nationalist. In its 2010 judgment against Turkey, the European Court of Human Rights (ECtHR) held that the decision of the High Court of Appeals threw Dink into the midst of a fatal attack. The revelation of Ömeroğlu as one of the judges who voted in favour of Dink's conviction sparked protests from Dink's lawyers and family, the human rights community, the opposition parties and the media, who called on Ömeroğlu to resign. The five Ombudspersons elected by the parliament also drew some protests on the ground that their past ties to the governing Justice and Development Party (JDP) render them ineligible for the position which requires impartiality and neutrality. Of the five ombudspersons, two are former members of the parliament from JDP, one is a founding member of JDP, another is among the authors of the party's statute and the fifth was the only dissenting judge who had opposed the conviction of current Prime Minister Erdoğan who was sentenced to imprisonment for reciting a poem in the late 1990s.

The executive regulation implementing the Ombudsman's law was adopted on 28 March 2013.[22] The regulation explicitly entrusted the Ombudsman's Office with the mandate to prevent discrimination, a mandate not explicitly conferred under the law.[23] On 29 March 2013, the Institution started to receive complaints in person, online and through e-mail and fax. The Ombudsman's Office released its first annual activity report for the year 2013.[24] According to the report, during the year 2013, the Office received 7,638 complaints. Of these, 263 are in the field of "human rights", 87 in the field of "rights of the disabled", 32 in the field of "woman and child's rights", 1,203 in the field of "education, youth and sports", 158 in the field of "health" and 46 in the field of "social services." There is no distinct category on anti-discrimination. 6,097 of the 7,638 complaints were processed as of 31 December 2013. 329 complaints were found invalid, 2,240 were found to be inadmissible for being outside the scope of the Ombudsman's mandate, 2,155 were forwarded to the relevant administrative unit because the applicant had not exhausted the administrative remedies, 522 were joined with other similar petitions concerning the same alleged violation and 432 were found to be complaints against local administrations and hence outside the scope of the law. 307 complaints were found not to be necessary to address due to the death or withdrawal of the applicant, the remedying of the grievance by the relevant administration or the initiation of a lawsuit. Discrimination is not listed as a separate category. In response to a query, Office of the Ombudsman said that the software programme processing the petitions does not include discrimination as a category. The Ombudsman's Office made an assessment and reached a decision in 116 complaints, issuing a recommendation in 64, rejecting 37 and partially rejecting and partially issuing a recommendation in 11.[25]

Two of the published decisions concern discrimination. The first concerns a petition by a female employee of a provincial police department who had received a written warning from her employer for wearing the headscarf at work. The Ombudsman's Office accepted the petition prior to the exhaustion of administrative remedies, in light of the fact that the applicant's persistence to wear her headscarf despite the warning would result in the initiation of a disciplinary investigation and cause her irreparable harm. [26] The warning issued in April 2013 was based on an executive regulation which prohibited female civil servants from covering their heads at work.[27] Finding the ban in violation of a number of fundamental rights and freedoms, including the right to be free from discrimination, freedom of religion, freedom of expression and the right to work, the Ombudsman recommended the Ministry of Interior to annul the

[22] Regulation on the Procedure and Substance of the Implementation of the Law on Ombudsman Institution, Official Gazette, no. 28601, 28 March 2013.
[23] Ibid., Article 6.
[24] The link of the 2013 annual activity report, http://www.ombudsman.gov.tr/contents/files/pdf/faaliyet_rap.pdf [last accessed 27 May 2014].
[25] Select decisions are available at: http://www.ombudsman.gov.tr/content_detail-336-691-karar-ornekleri.html [last accessed 27 May 2014].
[26] Recommendation decision, no.2013/2, 20 September 2013, http://www.ombudsman.gov.tr/contents/files/2013-2.pdf [last accessed 27 May 2014].
[27] This ban was abolished on 8 October 2013. See section 3.2.2.

regulation in part or in full in order to enable female civil servants to cover their heads at work. The second concerned a petition filed by a doctor with disability who asked to benefit, based on his disability, from the provisional employment position provided at private health clinics for doctors above the age of 65 who had been forced to retire due to their age. The applicant raised, among others, the revised Article 10 of the Constitution which allows affirmative action for persons with disabilities, and Article 18 of the Law on Persons with Disabilities which gives persons with disabilities the right to equal treatment. The applicant also cited two executive circulars which protect the employment rights of persons with disabilities. The Ombudsman rejected the petition on the grounds that the purpose of the executive regulation allowing the employment of doctors above the age of 65 was not to protect the elderly (as claimed by the applicant) but to increase the quality of services and productivity at private health clinics. The Ombudsman's Office stated that the constitutional right to equal treatment does not suggest everyone should be bound by the same rules, but to the contrary allows separate rules based on legitimate purposes to govern separate people. The executive circulars cited by the applicant were found to be inapplicable since they concern the public sector. The Ombudsman's Office also took note of the fact that the applicant was already employed at a private hospital.[28]

Since 2000, human rights boards established at district and province levels also accept complaints from individuals and issue non-binding decisions. However, these bodies are not independent from the executive and are extremely under-utilized. Victims of discrimination in most cases resort to human rights organizations and individual attorneys for legal assistance. The proposals for legal amendments put forth by the Human Rights Institution of Turkey seek to enhance the effectiveness of these local human rights boards and at the same time to monitor their decisions. The draft legal changes propose entrusting the Human Rights Institution of Turkey with the power to review the decisions of the local human rights boards either on its own initiative or upon complaint.

The draft law on anti-discrimination foresees the establishment of an equality body.

State of implementation

The national law falls far short of the standards set forth in the EU *acquis* on equality and anti-discrimination.

- The grounds of anti-discrimination in the constitution and various laws do not include age, ethnicity and sexual orientation.
- Discrimination is not defined. With the exception of disability, none of the protected grounds is defined. The definition of disability is not in accordance

[28] Rejection decision, no. 2013/96,11 December 2013, http://www.ombudsman.gov.tr/contents/files/2013-96.pdf [last accessed 27 May 2014].

with the UN Convention on the Rights of Persons with Disabilities or the jurisprudence of the European Court of Justice.

- The scope of the duty to provide reasonable accommodation is more limited than the Framework Directive. 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 instruction to discriminate.
- Burden of proof shifts only in limited situations, falling short of the rules governing burden of proof under the EU directives.
- Prohibition of victimization does not cover all areas.
- The material scope of the Directives is not reflected in the Turkish legislation. The Labour Law is only applicable after the employment relationship is established and does not govern the pre-employment phase.
- While the concept of indirect discrimination has entered into legislation very recently, it remains undefined.
- There does not exist a difference between the justifications of direct and indirect discrimination.
- Harassment is not defined in the laws.
- Exceptions to prohibition of discrimination are not stipulated.
- Positive actions are very limited.
- Sanctions are not explicitly mentioned in various laws containing anti discrimination provisions. Where they are mentioned, they are not dissuasive. Violation of criminal offenses are punishable with short prison sentences which are often transferable to small fines.
- National law does not prohibit instructions to discriminate and there is no case-law on the issue. However, art. 10 of the Law on Civil Servants prohibits chiefs of civil servants to give orders to civil servants in violation of the law.
- Turkish law does not explicitly recognize the standing of non-governmental organizations to bring claims in support of victims of discrimination, with the exception of trade unions, consumer protection associations and associations working for the protection and preservation of the environment, culture and history. Also, in criminal cases, any legal entity which can demonstrate harm is de jure entitled to be granted standing. However, court practice varies.
- There does not exist a specialized body for the promotion of equal treatment and prohibition of discrimination.
- The mandates of the national and local human rights bodies and the Ombudsman Institution do not explicitly refer to the protection from discrimination.

While courts are tasked with enforcing the anti-discrimination provisions in the constitution and various laws, the judiciary fulfils this mandate in extremely rare cases. In general, judges and prosecutors tend to have an authoritarian mind-set with very little concern for upholding human rights principles and strong ideological partiality towards the state and its officers. The fact that judges and prosecutors are not trained in anti-discrimination is an aggravating factor.

Public authorities, including security personnel, are protected against accountability through a juridical shield of impunity.

The legislature and the executive engage in minimal legislative and policy efforts to the extent that they are necessary to fulfill the EU's accession criteria. The external EU pressure however, proves insufficient in forcing authorities to enact an effective legal framework, evident in the non-enactment of the draft law on anti-discrimination.

Individuals rarely bring discrimination cases before the courts. This is related not only to the low levels of societal awareness on anti-discrimination and distrust in the courts but also the lack of sufficient knowledge and skills on anti-discrimination law among attorneys.

The constitutional reform package approved by a national referendum held on 12 September 2010 recognized, for the first time, the right to file a constitutional complaint. The implementing legislation, which laid down the procedures of the constitutional complaint mechanism, was adopted on 30 March 2011 and entered into force on 3 April 2011.[29] The procedures of the constitutional compliant mechanism were laid down in the revised by-laws of the Turkish Constitutional Court, published on 12 July 2012.[30]

The scope of the constitutional complaint is limited to those rights and liberties protected under the constitution which fall within the scope of the European Convention on Human Rights (ECHR) and its additional protocols which Turkey is a party to. Individuals can file a complaint for the infringement of any of these rights by public authorities. Filling a constitutional complaint is not free of charge; petitioners must pay 150 NTL (around 64 Euros). Individuals may apply directly or through a lawyer. While non-Turkish nationals can also petition the Constitutional Court, they cannot do so on the basis of those rights that are only granted to Turkish citizens. The applications must be filed in the official language, namely Turkish. The assessment of the complaints is subject to a two-tiered process: admissibility and review on the merits. Inadmissibility decisions are final; individuals whose complaint is found inadmissible reserve their right to petition the European Court of Human Rights (ECtHR). The review on the merits is be carried out by two sections, each composed of eight judges. Where the Constitutional Court finds a violation, it can order retrial (where the violation stems from a court decision) or the payment of compensation to the applicant where there is no need for a retrial.

Individuals are required to file within 30 days after the exhaustion of domestic judicial remedies or the occurrence of the alleged human rights violation where there are no remedies available. The Constitutional Court started to receive applications on 23

[29] Law on the Establishment and Adjudication Procedures of the Constitutional Court (in Turkish), no. 6126, Official Gazette, no. 27894, 3 April 2011.
[30] By-Laws of the Constitutional Court, based on Law on Establishment and Rules of Procedures of the Constitutional Court, no. 6216, 30 March 2011, Official Gazette, no. 28351, 12 July 2012.

September 2012 to review judgments and administrative acts that have become final after this date. Between 24 September and 31 December 2012, the Court received 1,342 valid complaints which raised a total of 1,536 claims (each petition raising multiple human rights claims). Of these, 74 concerned the right to "equality before law."[31] In 2013, the Court received 9,897 valid applications which raised a total of 22,892 claims (each petition raising multiple human rights claims). Of these, 2,838 concerned the right to "equality before the law."[32] No breakdown is available on the discrimination grounds these petitions are based on. On 17 September 2013, the Constitutional Court published its first judgments in cases brought by individuals.[33] As of 22 January 2014, none of the judgments published on the Court's website or in the Official Gazette was given in a discrimination case or involved a finding of discrimination. The cases mostly concerned unfair and/or prolonged trials, property rights and violations of the right to life.

0.3 Case-law

*Provide a list of any important case-law in **2012** within the national legal system relating to the application and interpretation of the Directives. (The **older case-law mentioned in the previous report should be moved to Annex 3)**. Please ensure a follow-up of previous cases if these are going to higher courts. This should take the following format:*

Name of the court
Date of decision
Name of the parties
Reference number (or place where the case is reported).
Address of the webpage (if the decision is available electronically)
Brief summary of the key points of law and of the actual facts (no more than several sentences).
➔Please use this section not only to update, complete or develop last year's report, but also to include information on important and relevant case law falling under both anti-discrimination Directives (Please note that you may include case-law going beyond discrimination in the employment field for grounds other than racial and ethnic origin)

Please describe trends and patterns in cases brought by Roma and Travellers, and provide figures – if available.

[31] Statistics published on the Constitutional Court's website, http://www.anayasa.gov.tr/files/bireysel_basvuru/2012_istatistik/haklaragore.pdf [last accessed 26 January 2014].
[32] http://www.anayasa.gov.tr/files/bireyselBasvuru/2013_istatistikler.pdf [last accessed 24 January 2014].
[33] The Court published a number of judgments it had issued between 17 September and 19 December 2013: http://www.anayasa.gov.tr/Kararlar/BireyselBasvuru/index.html [last accessed 22 January 2014].

Judgments of the European Court of Human Rights

Name of the court: European Court of Human Rights
Date of decision: 22 January 2013
Name of the parties: Şükran Aydın and Others v. Turkey
Reference number: 49197/06, 23196/07, 50242/08, 60912/08 and 14871/09
Address of the webpage:
http://hudoc.echr.coe.int/sites/eng/Pages/search.aspx#{"documentcollectionid":["COMMITTEE","DECISIONS","COMMUNICATEDCASES","CLIN","ADVISORYOPINIONS","REPORTS","RESOLUTIONS"],"itemid":["001-116031"]} [last accessed 24 January 2014]
Brief summary: Five Kurdish politicians who had been sentenced to imprisonment by various courts in Turkey for having spoken Kurdish to their constituents during their political activities and campaigns had petitioned the ECtHR, claiming that their right to free speech and non-discrimination protected under Articles 10 and 14 of the Convention were violated. The domestic courts had based their decisions on Law no. 298 on the fundamental provisions governing elections and voter registration, which banned the use of any language other than Turkish (the official language) in election campaigning. The ECtHR joined the applications of the five applicants and issued a joint judgment on 22 January 2013. The Court pointed out that Section 58 of Law no. 298 on the Fundamental Principles of Elections at the material time contained a blanket prohibition, an absolute ban, which deprived domestic courts of their power to exercise judicial scrutiny. Furthermore, the law imposed criminal sanctions ranging from six months to one year prison and payment of a fine. Accepting, in principle, that states are entitled to regulate the use of languages during election campaigns, the Court noted however that a total prohibition on the use of unofficial languages coupled with criminal sanctions is not compatible with freedom of expression. The Court underlined that the language used by the applicants, namely Kurdish, constituted their own mother tongue as well as the mother tongue of the population which they addressed, where many persons, notably the elderly and women, did not understand Turkish.

Judgments of the Constitutional Court and other high courts

Name of the court: Constitutional Court
Date of decision: 12 January 2012
Date and number of Official Gazette: 5 July 2012, no. 28344
Date of entry into force: 5 January 2013
Name of the parties: N/A
Reference number: E: 2011/62; K: 2012/2
Address of the webpage:
http://www.resmigazete.gov.tr/main.aspx?home=http://www.resmigazete.gov.tr/eskiler/2012/07/20120705.htm&main=http://www.resmigazete.gov.tr/eskiler/2012/07/20120705.htm
Brief summary: In January 2011, a Kurdish politician from the pro-Kurdish PDP had made a speech in the Kurdish language in front of the party's district representation

in Özalp, which belongs to the eastern province of Van. Following a brief speech, the politician, who was the head of the Özalp district branch of PDP, changed the Turkish name plate in front of the building with a bilingual one in Turkish and Kurdish. Thereupon, a criminal case was launched against the politician under Article 117 of the Law on Political Parties (no. 2820) for having violated Article 81(1)(c) of the same law, which prohibited political parties' oral or written use of languages other than Turkish in their congresses, campaigns, meetings, communications, signs, brochures etc. According to Article 117, "those who commit acts prohibited under Section 4 of the law", which contains 19 articles including Article 81, must be sentenced to imprisonment of minimum 6 months. The local court where the case was brought made a reference to the Constitutional Court on the ground that Article 117 of the Law on Political Parties was unconstitutional. The local court asked the Constitutional Court to review the constitutionality of Article 117 of the Law on Political Parties on the basis of five articles of the Constitution, including the equality clause. In its decision on 12 January 2012, the Constitutional Court repealed Article 117 of the Law on Political Parties. The Court reasoned that the object of the bans laid out in Section 4 of the Law on Political Parties, in Articles 78 through 96, are political parties, which are legal entities. The prosecution of individuals for the violation of acts prohibited for political parties was in violation of the principle of legality of crimes and punishments, as laid out in Article 38 of the Constitution. It was unclear to whom or to what the phrase "those who commit acts prohibited" in Article 117 of the law referred to and therefore the law did not fulfil the criteria of foreseeability and certainty required by the constitutional principle of legality. The prosecution of an individual for having a violated a ban imposed on political parties was not constitutional. Therefore, the Court, in a majority opinion, repealed Article 117 based on Article 38 of the Constitution. The Court limited its review to Article 38 of the Constitution and did not address the compatibility of the Law on Political Parties with the remaining four articles of the Constitution, including the equality clause (Article 10) and the clause concerning the limitations of fundamental rights and freedoms (Article 13). The Court did not address the nature of the prohibitions contained in the Law on Political Parties, including the ban on the use of minority languages by political parties. For reasons of administrative efficiency, the Court ruled that the decision would take effect six months after its publication in the Official Gazette. The decision was published on 5 July 2012 and entered into effect on 5 January 2013.

Name of the court: 8th Chamber of the Court of Cassation
Date of decision: 2013 (exact date unknown since judgment is not accessible)
Name of the parties: N/A
Reference number: E: 2010/3682, K: 2013/997
Brief summary: The Eight Chamber of the Court of Cassation held that after the revision of their content in accordance with the ECtHR's 2007 judgment in the case of *Hasan and Eylem Zengin v. Turkey*, the mandatory courses on religious education and morality instructed in secondary schools do not constitute religious instruction. The Court overturned the decision of an administrative court in the province of Samsun which had found these classes to be in violation of the ECHR and exempted the student applicant from the course (In its 2007 judgment, the ECtHR held that the

textbooks used in these classes gave disproportionate weight to teaching Islam in relation to the other religious and philosophical beliefs and failed to meet objectivity and pluralism required by the need to respect the convictions of parents. For more on the ECtHR judgment, see Annex 3: Previous Case Law).

Name of the court: 12th Circuit of the Council of State
Date of decision: pending
Name of the parties: Mesut Bektaş v. General Directorate of Social Services and Children Protection Agency
Reference number: E.2009/5309
Address of the webpage: N/A
Brief summary: The applicant is a social worker with disability. He chose to take the general exam, instead of the special exam for persons with disabilities, for national civil service recruitment. Having passed, he applied to work in the Artvin provincial branch of the Prime Ministry's General Directorate of Social Services and Children Protection Agency. However, he was not appointed to his post on the ground that he should have taken – and passed- the special exam instead of the general one. The applicant filed a case at the administrative court, which reversed the decision of the employer. However, upon a reversal by the 12th Circuit of the Council of State (E.2006/1098 and K.2008/5603), the lower court changed its decision and held that there was no discrimination (E.2009/350 K.2009/485). The applicant appealed. The case is pending before the 12th Circuit of the Council of State.

In an earlier decision, in 2006, the 12th Circuit had issued the following judgment: "It is in line with the law not to appoint the plaintiff to the post that he was placed, since he has taken the general exam. Since his employment should be through quota for the persons with disabilities ... he should have taken and passed the special exam designed for the persons with disabilities." Council of the State 12th Chamber, E. 2006/2864, K. 2006/4487, Date of the judgment: 8/11/2006 (www.danistay.gov.tr).

Judgments of lower courts

Name of the court: Third Penal Court of Diyarbakır
Date of decision: 18 January 2013
Name of the parties: N/A
Reference number: 2012/495 (not yet final; admissibility)
Address of the webpage: N/A
Brief summary: A homosexual teenager was killed by members of his family for having 'brought shame' to the family due to his sexual orientation. The father and uncles of the victim are being tried at a heavy penal court in Diyarbakır. During the third hearing which took place on 18 January 2013, the Third Penal Court of Diyarbakır accepted the request of the Social Policies, Gender Identity and Sexual Orientation Studies Association (*Sosyal Poltikalar, Cinsiyet Kimliği ve Cinsel Yönelim Çalışmaları Derneği-SPoD*), a national LGBT organization, to act on behalf of the victim. SPoD based its request on the fact that the victim was killed because of his sexual orientation and in the name of 'honour,' and was therefore the object of hate

crime, though the latter is not defined under national law in Turkey. Pointing out that the purpose of its founding was to fight against violence and discrimination against LGBT individuals, SPoD asked to be allowed to intervene in this case. The defendants' lawyers objected on the ground that for an association to be granted legal standing, such association ought to have "suffered harm from the crime" and that in this case SPoD could not demonstrate such a harm. However, in a unanimous decision, the court accepted SPoD's request to follow and intervene in the case. The court did not give any reasoning for this decision.

Name of the court: Üsküdar 1st Heavy Penal Court
Date of decision: 25 January 2013
Name of the parties: N/A
Reference number: 2009/166 (not yet final; admissibility)
Address of the webpage: N/A
Brief summary: During the 12th hearing of a criminal case concerning the honour killing of a homosexual man by members of his family, the court rejected the application of the Social Policies, Gender Identity and Sexual Orientation Studies Association (*Sosyal Poltikalar, Cinsiyet Kimliği ve Cinsel Yönelim Çalışmaları Derneği-SPoD*), a national LGBT organization, to act on behalf of the victim. SPoD based its request on the fact that the victim was killed because of his sexual orientation and in the name of 'honour,' was therefore the object of hate crime, though the latter is not defined under national law in Turkey. Pointing out that the purpose of its founding was to fight against violence and discrimination against LGBT individuals, SPoD asked to be allowed to intervene in this case. The court rejected SPoD's request to intervene on the ground that the association did not suffer direct harm from the crimes committed.

Name of the court: 16th Civil Court of First Instance in Ankara
Date of decision: January 2013 (the exact date unknown since the decision is not accessible)
Name of the parties: N/A
Reference number: N/A
Address of the webpage: N/A
Brief summary: In a decision released in January 2013, the 16th Civil Court of First Instance in Ankara repeated its earlier decision of 2011 where it had ruled in favour of an Alevi association's construction of a "cem house", the place of worship where individuals belonging to the Alevi minority perform their religious duties. With this decision, the court thus went against the 25 July 2012 judgment of the Seventh Civil Chamber of the Turkish Court of Cassation, which had overturned the local court's 2011 decision.

The case had started on 24 November 2011, when the Ankara Chief Prosecutor's Office, upon the application of the Ankara Governorship, had filed a suit for the dissolution of the Çankaya Cemevi Construction Association whose charter refers to cem houses as Alevi houses of worship and aims to build cem houses. In asking for the court to shut down the association, the prosecutor had argued that Alevism is not

a religion and cem houses are not places of worship. The lower court had ruled in favour of the association on the ground that Alevis had for centuries accepted and used cem houses as places of worships and that the association's charter is not against the laws or the principle of laicism guaranteed under Article 2 of the Constitution. The court had cited the European Court of Human Rights' judgment in February 2010 in the case of Sinan Işık v. Turkey where the Strasbourg court had found that the mandatory indication of religion in official identity cards to be a violation of Article 9 of the European Convention related to freedom of thought, conscience and religion. That case was brought to Strasbourg by an Alevi individual whose request for the identification of his religion as "Alevi" instead of "Islam" was rejected by national authorities on the ground that Alevis were a sub-group of Islam and therefore the word Islam on ID cards correctly referred to the applicant's religious identity.

On 25 July 2012, on appeal by the government, the Seventh Civil Chamber of the Turkish Court of Cassation had overruled the lower court's decision on the ground that no place other than a mosque or a masjid could be recognized as a house of worship in the verdict that it passed through a majority vote. The high court based its decision on Article 1 of the Law on the Abolition of Religious Lodges, Shrines and Some Religious Titles dated 1925, which states that only "mosques or masjids" approved by the Directorate of Religious Affairs (*Diyanet İşleri Başkanlığı- Diyanet*) can be classified as legitimate places of worship. The court also noted that under Law no. 633 on the establishment and powers of *Diyanet*, it is in the exclusive power of *Diyanet* to establish mosques and masjids. The case was sent back to the lower court.

The 16th Civil Court of First Instance in Ankara gave its much awaited second judgment in January 2013 and confirmed its earlier decision of 2011. In its reasoning, the lower court cited Article 90 of the Turkish Constitution which states that in cases of conflict between national laws and duly ratified international treaties, the terms of the latter applies. Referring to freedom of religion protected under Article 9 of the European Convention on Human Rights and to the principle of laicism guaranteed under Article 2 of the Turkish Constitution, the court held that the equal treatment of religions and denominations can only be possible with state neutrality and the lack of any reference to a specific law or denomination in laws.

Due to the conflict between the lower court and the Seventh Civil Chamber of the Turkish Court of Cassation, the case is now before the Legal Council of the Court of Cassation, which will have the final say. The final judgment will be precedent-setting.

Name of the court: Bakırköy 4th Heavy Penal Court
Date of decision: 13 February 2013
Name of the parties: N/A
Reference number: 2012/74 (not yet final; admissibility)
Address of the webpage: N/A

Brief summary: In a criminal case concerning the killing of a trans woman, the court rejected the application of the Social Policies, Gender Identity and Sexual Orientation Studies Association (*Sosyal Poltikalar, Cinsiyet Kimliği ve Cinsel Yönelim Çalışmaları Derneği-SPoD*), a national LGBT organization, to act on behalf of the victim. SPoD based its request on the fact that the victim was killed because of her sexual orientation and was therefore the object of hate crime, though the latter is not defined under national law in Turkey. Pointing out that the purpose of its founding was to fight against violence and discrimination against LGBT individuals, SPoD asked to be allowed to intervene in this case. The court rejected SPoD's request to intervene on the ground that the association did not suffer direct harm from the crimes committed.

Name of the court: 13th Administrative Court of Ankara
Date of decision: 18 June 2013
Name of the parties: N/A
Reference number: 20127/1746 E., 2013/952 K
Address of the webpage: http://suryanikadim.org/haber.aspx?h=111 (partially available at the website of an NGO)
Brief summary: In a case filed by the Beyoglu Syriac Mother Mary Church Foundation in Istanbul against the Ministry of National Education, the court held that the Syriac community in Turkey was entitled to the minority rights granted to Turkey's non-Muslim communities under the Treaty of Lausanne. The case concerned the rejection by the Ministry of a request filed by the Syriac Church to open a kindergarten in the church premises to, in addition to provide day care, teach Syriac children their mother tongue. The Ministry's rejection was based on the reasoning that the Syriac people were "among the founding people's of Turkey and not a minority" and that they were not entitled to open their own educational institutions since they did not have minority status under Lausanne. In its reasoning, the Court noted that the relevant Articles 37-44 of Lausanne did not make a reference to any specific minority group but rather granted minority status to "Turkish citizens belonging to non-Muslim minorities." This classification included the Syriacs, held the Court, who were entitled all the minority rights under Lausanne, including the right to open their own schools. Against established state practice, the Ministry did not file an appeal with the higher court and therefore the decision became effective in August 2013.

Name of the court: A civil court in Istanbul[34]
Date of decision: 26 August 2013
Name of the parties: N/A
Reference number: 2013/406
Address of the webpage: N/A
Brief summary: A lower court in Istanbul banned access to Grindr.com, a social network website popular among homosexuals, in Turkey. The court decision is

[34] Courts in Turkey selectively publish their decisions based on subjective and unknown criteria. Most decisions are never published. In this case, since the inflicted party is a foreign based website which was not represented by a lawyer, it may not be possible to reach the decision.

unavailable and the legal ground for the decision has not been disclosed. Users who tried to enter the website in Turkey saw a legal notice indicating that the website has been closed by the decision of a civil court in Istanbul dated 26 August 2013 and numbered 2013/406. Lawyers representing LGBT groups assume that the court based its decision on "the protection of public morality."[35] Upon a query by the press, the Deputy President of the Telecommunications Communications Presidency said they were not informed of the reasoning for the court decision and denied that the government specifically targets LGBT websites.

Name of the court: 2nd Chamber of the Civil Court of First Instance in Istanbul
Date of decision: pending
Name of the parties: N/A
Reference number:
Address of the webpage: N/A
Brief summary: In a highly publicized case covered extensively by the mainstream media, a football referee filed a civil case against the Turkish Football Federation, claiming to have been discriminated on the basis of his sexual orientation. He was dismissed by the Federation on the ground that he was not fit for being a referee, despite his 14 years of experience as one. The Federation based its dismissal decision on its regulation which states that "individuals who are exempt from military service due to health reasons are not eligible for being a referee." The applicant, however, was not exempted from military service due to a health problem, but for being 'unfit' for the service due to his sexual orientation. The plaintiff also claimed that the Federation (and the Turkish Armed Forces) disclosed his sexual orientation to the public by leaking to the press the information that he is homosexual.

The hearing held on 19 February 2013 resulted in the postponement of the case until the submission of the expert's report concerning the eligibility of the applicant, as a homosexual man, to continue his profession as a referee. The next hearing was held on 21 March 2013, where the court deliberated the expert opinion, which stated that the applicant's sexual orientation is not, and cannot, be an obstacle to his profession. The case was postponed to 10 October 2013, until when the court has asked the Turkish Football Federation to submit information about the amount of pecuniary compensation the applicant is entitled to receive. The Federation failed to submit the information in the hearings in October, November and December 2013. The next and eleventh hearing is due on 4 March 2014. The Court decided to initiate legal proceedings against the Federation if it insists on not cooperating until then.

[35] Public morality is frequently invoked by authorities in restricting the LGBT individuals' exercise of their fundamental rights. The authorization of the dissolution of associations on grounds of "public morality" under the Civil Code has been frequently resorted to by prosecutors against LGBT associations. The legal basis of bans on access to websites is the Internet Law (no. 5651) of 2007, which authorizes the banning of access to websites where there are sufficient reasons for a suspicion that one of eight catalog crimes enumerated in Article 8 is committed. Prostitution is listed among these crimes.

The applicant had also filed a petition with the provincial human rights board of Istanbul, claiming that his rights to equality and non-discrimination, employment and privacy under the Turkish Constitution and the European Convention on Human Rights were violated. He also claimed that the Federation leaked to the press the health report issued by the Turkish Armed Forces and unduly disclosed to the public his sexual orientation. In a unanimous decision on 24 September 2012, the Board decided that the applicant had been subject to a wide range of human rights violations due to having lost his employment, being dismissed from the profession which prevented him from working as a referee ever again, having received death threats and being subject to negative media reports.[36] The Board found that the applicant's rights to life, to equality and non-discrimination, to the protection of privacy and family life and to employment, protected under Articles 2, 8 and 14 of the European Convention and Articles 10, 20, 48 and 49 of the Turkish Constitution had been violated. The board lacks the power to impose sanctions on the Turkish Football Federation or the Turkish Armed Forces and its decision is non-binding.

[36] As conveyed to the applicant in a letter by the Legal Affairs Bureau of Istanbul Governorship, no. B.05.4.WK.4.34.01.00-521.0, 9 January of 2013.

1 GENERAL LEGAL FRAMEWORK

Constitutional provisions on protection against discrimination and the promotion of equality

a) Briefly specify the grounds covered (explicitly and implicitly) and the material scope of the relevant provisions. Do they apply to all areas covered by the Directives? Are they broader than the material scope of the Directives?

Art. 10 of the Constitution on "Equality before the Law" is found in the first part of the Constitution, titled "General Principles". In May 2010, the parliament adopted a constitutional reform package which also included significant amendments to this provision. Approved in a national referendum held on 12 September 2010, the revised Art. 10 of the Constitution reads:

> "All individuals are equal without any discrimination before the law, irrespective of language, race, colour, gender, political opinion, philosophical belief, religion and sect, or any such considerations.
>
> Men and women have equal rights. The State shall have the obligation to ensure that this equality exists in practice. Measures to be adopted for this purpose cannot be interpreted to be against the principle of equality.
>
> Measures to be adopted for children, elderly, persons with disabilities, widows and orphans of martyrs, ex-soldiers disabled in the war and veterans cannot be considered to be against the principle of equality.
>
> No privilege shall be granted to any individual, family, group or class.
>
> State organs and administrative authorities shall act in compliance with the principle of equality before the law in all their proceedings and in utilization of all forms of public services."

The first paragraph of art. 10 explicitly refers to philosophical belief, religion and sect. Thus, religion and belief are covered by art. 10. Even though "ethnic origin", "sexual orientation", "age" and "disability" are not expressly referred to in clause 1, the reference in the first paragraph to "any such considerations" clearly indicates that the list of grounds is not exhaustive. Furthermore, the addition in 2010 of the principle of positive discrimination on behalf of children, the elderly and persons with disabilities has the potential to compensate for the non-enumeration of these grounds in clause 1.

Art. 10 of the Constitution is not limited in its material scope. Thus, it can be said that the material scope of this constitutional provision is wider than the Directives.

Besides art. 10 which is the general equality provision of the Constitution, there are a number of other constitutional provisions which are relevant:

Right to education:

Art. 42, para. 1: "No one shall be deprived of the right of learning and education."

Art. 42, para. 7: "… The state shall take necessary measures to rehabilitate those in need of special education so as to render such people useful to society."

Art. 42, para. 9: "No language other than Turkish shall be taught as a mother tongue to Turkish citizens at any institutions of training or education. Foreign languages to be taught in institutions of training and education and the rules to be followed by schools conducting training and education in a foreign language shall be determined by law. The provisions of international treaties are reserved."

Right to work:

Art. 18, para. 1: "No one shall be forced to work. Forced labour is prohibited."

Art. 48, para. 1: "Everyone has the freedom to work and conclude contracts in the field of his/her choice. Establishment of private enterprises is free."

Art. 49: "Everyone has the right and duty to work.

The State shall take the necessary measures to raise the standard of living of workers, and to protect workers and the unemployed in order to improve the general conditions of labour, to promote labour, to create suitable economic conditions for prevention of unemployment and to secure labour peace."

Art. 50, paras. 1 and 2: "No one shall be required to perform work unsuited to his/her age, gender, and capacity.

Minors, women and persons with physical or mental disabilities, shall enjoy special protection with regard to working conditions."

The scope of the reference to "persons with … mental disabilities" is not clear from the text of art. 50, para. 2. There is no case-law specific to the interpretation of this reference either. However, in a recent judgment, the Constitutional Court interpreted this provision to cover all persons with disabilities.[37] It can be inferred from this interpretation that, reference to "mental disabilities" covers both intellectual disabilities and psycho-social disabilities.

[37] See Constitutional Court Judgment E. 2006/101, K. 2008/126 (19.06.2008).

Art. 70: “Every Turk has the right to enter public service.
No criteria other than the qualifications for the office concerned shall be taken into consideration for recruitment into public service.”

Right to Establish and Join Unions

The constitutional reforms approved in a national referendum on September 12th, 2010 removed a significant restriction on the right to join unions. The package repealed clause 4 of Article 51, which had stipulated that “membership in more than one labour union cannot be obtained at the same time and in the same work branch.”

Art. 51: “Employees and employers have the right to form labour unions, employers’ associations and higher organizations, without obtaining permission, and they also possess the right to become a member of a union and to freely withdraw from membership, in order to safeguard and develop their economic and social rights and the interests of their members in their labour relations. No one shall be forced to become a member of a union or to withdraw from membership.

The right to form a union shall be solely restricted by law for purposes of safeguarding national security and public order and preventing crime and protecting public health and public morals and the rights and freedoms of others.

The formalities, conditions and procedures to be applied in exercising the right to form union shall be prescribed by law.

The scope, exceptions and limits of the rights of civil servants who do not have a worker status are prescribed by law in line with the characteristics of their job.

The regulations, administration and functioning of labour unions and their higher bodies should not be inconsistent with the fundamental characteristics of the Republic and principles of democracy.”

Right to health

Article 56 of the Constitution grants “everyone” the right to health and to live in a clean environment.

Housing:

The constitution does not provide for a “right” to housing. Rather, it confers on the state the competence to undertake needs-based housing regulation.

Art. 57: “The state shall take measures to meet the need for housing within the framework of a plan which takes into account the characteristics of cities and environmental conditions and supports community housing projects.”

Right to Social Security:

Art. 60: “Everyone has the right to social security.

The state shall take the necessary measures and establish the organisation for the provision of social security.”

Persons Requiring Special Protection in the Field of Social Security

Art. 61, paras. 1, 2 and 3: “The state shall protect the widows and orphans of those killed in war and in the line of duty, together with persons with disabilities and war veterans, and ensure that they enjoy a decent standard of living.

The state shall take measures to protect persons with disabilities and secure their integration into community life.

The aged shall be protected by the state. State assistance to the aged, and other rights and benefits shall be regulated by law.”

The provisions above indicate that age and disability found a place in the Constitution only in relation to situations where special protection needs to be afforded, but they are not considered adequately from an equality point of view. On the other hand, the above constitutional provisions written with a rather paternalistic approach need be read in the light of non-exhaustive nature of the prohibited grounds of discrimination as well as the principle of positive discrimination in Article 10 of the constitution. The constitutional endorsement of affirmative measures to ensure equality between men and women and to achieve the equality of children, elderly and persons with disabilities with the rest of society potentially provides a useful normative constitutional ground in cases to be brought by or on behalf of these groups. On the other hand, the absence of ethnic origin and sexual orientation among the enumerated grounds of anti-discrimination remains to be a cause of concern.

b) Are constitutional anti-discrimination provisions directly applicable?

In theory, yes, due to the well-established principle under constitutional law that laws cannot contradict with the fundamental rights and freedoms protected under the constitution, and where they do, the constitution applies. Therefore, in theory, Article 10 of the Constitution is directly applicable. However, in practice, national courts (including the high courts) and the administration follow a strict implementation of the laws, even where such laws are in contradiction with the constitution. While the Constitutional Court can directly apply Article 10, it can do so only within the framework of reviewing the constitutionality of legislation, which the Court can exercise in limited occasions (either upon an annulment action brought by the president, the parliamentary groups of the governing party or the main opposition party or a minimum of one-fifth of members of the parliament, or upon referral from a lower court). This situation, however, has changed since constitutional amendment

recognizing the right of individuals to bring a constitutional complaint entered into force in August 2012. Article 10 of the constitution is now directly applicable by the Constitutional Court in cases brought by individuals.

c) *In particular, where a constitutional equality clause exists, can it (also) be enforced against private actors (as opposed to the State)?*

Yes. While Article 10 imposes on the state the duty to provide *de facto* equality, it brings on private actors the obligation to comply with the principle of equal treatment and to refrain from discrimination. As for associations (including political parties, trade unions, associations, foundations), Article 10 imposes the duty to both provide equality in practice and not discriminate.

2 THE DEFINITION OF DISCRIMINATION

2.1 Grounds of unlawful discrimination

Which grounds of discrimination are explicitly prohibited in national law? All grounds covered by national law should be listed, including those not covered by the Directives.

Art. 10 of the Constitution prohibits discrimination based on language, race, colour, gender, political opinion, philosophical belief, religion and sect or any such considerations (material scope not limited).

Art. 3(2) of the Turkish Penal Code prohibits discrimination based on race, language, religion, sect, nationality, colour, gender, political and other opinions and thoughts, philosophical beliefs, national or social origin, birth, economic and other social status (material scope limited to the application of the Turkish Penal Code).

Art. 122 of the Turkish Penal Code prohibits discrimination based on language, race, colour, gender, disability, political ideas, philosophical beliefs, religion and sect , or any such considerations (material scope limited).

Art. 216 of the Turkish Penal Code criminalizes (1) incitement to enmity or hatred on grounds, inter alia, of race, religion or sectarian difference in an manner which may present a clear and imminent danger to public safety, (2) open denigration of a section of the population on grounds, inter alia, of race, religion or sectarian difference, and (3) open denigration of religious values of a part of the population.

Art. 5 (1) of the Labour Law prohibits discrimination based on language, race, gender, political opinion, philosophical belief, religion and sect or any such considerations (material scope limited).

Art. 5 (2) of the Labour Law prohibits discrimination between full-time and part-time employees and between employees working under fixed-term contracts (contracts made for a definite period) and open-ended contracts (contracts made for an indefinite period). Art. 12(1) also prohibits differential treatment against employees working under fixed-term contract and art. 13(2) against part-time employees (material scope limited).

Art. 5, paras. 3, 4 and 5 repeats prohibition of discrimination based on gender and pregnancy, in specific contexts (i.e. equal pay etc.) (material scope limited).

Art. 18, para. 3(a) (b) and (d) of the Labour Law prohibits the termination of employment relationship based on the employee's membership to or participation in the activities of a trade union, being the trade union representative in the work place, race, colour, gender, marital status, family obligations, pregnancy, birth, religion, political opinion or any such considerations (material scope limited).

Art. 4(a), 13, 14, 15 Law on Persons with Disabilities prohibit discrimination based on disability. The material scopes of arts. 13 (vocational rehabilitation), 14 (employment), and 15 (education) are limited. However, art. 4(a) lists "anti-discrimination" among the general principles to be applied in the implementation of the Law. Thus, the wording of art. 4(a) suggests that the material scope of the prohibition is limited to the services covered by the Law itself).

Art. 4 of the Basic Law on National Education prohibits discrimination based on language, race, gender and religion (material scope limited). Art. 7 lays down that education after compulsory primary education is open to all, based on their interest, capability and talent. Art. 8 of the same Law stipulates that equality of opportunities shall be provided to all, independent of their gender, and that the state shall adopt special measures for "children who need special education and protection."

Art. 7 of the Law on Civil Servants prohibit discrimination based on language, race, gender, political thought, philosophical belief, religion and sect (material scope limited).

Art. 25 (1) prohibit employers from considering the candidates' membership or non membership to a certain or any union as hiring criterion. Paragraphs (2) and (3) prohibit differential treatment and dismissal based on membership to a union and participation in union activities (material scope limited).

Art. 18 (1) (2) and (3) of the Law on Trade Unions of Public Servants prohibit discrimination based on membership to a union and participation in union activities (material scope limited).

Art. 68 of the Civil Code prohibits discrimination between members of associations based on language, race, colour, gender, religion and sect, family and class (material scope limited). Art. 101 (4) prohibits foundations to be established to support members of a certain race and religious community (material scope limited).

Art. 12 of the Law on Political Parties prohibits discrimination based on language, race, gender, religion, sect, family, class and profession (material scope limited to criteria for membership to political parties). Similarly, arts. 78, 82 and 83 of the same Law prohibit political parties to aim and carry out activities based on language, race, colour, gender, political opinion, philosophical belief, religion and sect.

Art. 5 of the Law on the Foundation and Broadcasting of Radio and Television Channels which lay down the principles of broadcasting stipulates that radio and television broadcasts are in principle in Turkish; however they can also be in languages which are used by Turkish citizens traditionally in their daily lives. According to art. 8(b), radio and television broadcasts shall not encourage hatred and or arouse feelings of hatred in society through making distinctions based on race, language, religion, sect and regional differences. Broadcasts cannot promote or encourage terrorism and present terror organizations as mighty or rightful. Art. 8(e)

prohibits broadcasts which insult individuals and make discrimination on the basis of race, colour, language, religion, nationality, disability, political and philosophical opinion, sect and similar reasons and encourage such insulting and discrimination. Article 8(ğ) bans broadcasts which exploits children, the weak and persons with disabilities and provokes violence against them (material scope limited).

Art. 4(d) of the Law on Social Services prohibits in the provision of social services discrimination based on class, race, language, religion, sect and regional differences (material scope limited).

Art. 2(1) of the Law on the Execution of Penalties and Security Measures prohibits discrimination in the implementation of the Law based on race, language, religion, denomination, nationality, colour, gender, birth, philosophical belief, ethnic and social origin, political and other opinion, economic power or other social status.

Art. 5 of the Regulation on Minimum Wage prohibits discrimination based on language, race, gender, political opinion, philosophical belief, religion, sect or any other considerations (material scope limited). Art. 7 of the same Regulation states that a differentiation shall be made regarding minimum wage, depending on whether the employee is below or above the age of 16.

Age, ethnicity and sexual orientation are not listed among the prohibited grounds in any of the legal provisions mentioned above and disability is mentioned explicitly only in the Turkish Penal Code and the Law on Persons with Disabilities. However, most of the lists are open ended. Furthermore, language or race could theoretically be interpreted by the courts to refer to ethnicity. One could also argue that the broad definition of race encompassing ethnicity in the International Convention on the Elimination of all Forms of Racial Discrimination which Turkey has ratified is directly applicable under Article 90 of the Turkish Constitution and thus extends protection to individuals against ethnicity based discrimination. However, in light of the high courts' reluctance to give direct effect to international human rights treaties, this remains to be seen.

So far, neither the Constitutional Court, nor any other court had a case before them where they had to decide whether disability, ethnicity, age or sexual orientation should be considered as "any such considerations". In a 2008 judgment the Court of Cassation said that art. 5 of the Labour Law prescribes an open ended prohibition of discrimination and should be interpreted as prohibiting discrimination based on sexual orientation (the term used by the Court is sexual preference) among other grounds.[38] It has to be mentioned that the case was not a sexual orientation discrimination case.

[38] See Ninth Civil Chamber of the Court of Cassation E. 2008/27309, K. 2008/22094 (25.07.2008).

2.1.1 Definition of the grounds of unlawful discrimination within the Directives

a) How does national law on discrimination define the following terms: (the expert can provide first a general explanation under a) and then has to provide an answer for each ground)

There is no national anti-discrimination law in Turkey; and various laws which prohibit discrimination do not provide a definition of any of these terms, with the exception of disability.

On the other hand, the draft anti-discrimination law, which awaits adoption by the parliament, does contain a comprehensive definition.

i) racial or ethnic origin,

Not defined in any law.

The draft anti-discrimination law puts forth the following definitions:

Race: "Any constructed category of persons based on cultural, social or biological characteristics."

Ethnic origin: "The identity originating from belonging to a community differentiating from others based on cultural, religious, linguistic, behavioural or similar characteristics."

ii) religion or belief,

Not defined in any law.

iii) disability. Is there a definition of disability at the national level and how does it compare with the concept adopted by the Court of Justice of the European Union in Joined Cases C-335/11 and C-337/11 Skouboe Werge and Ring, Paragraph 38, according to which the concept of 'disability' must be understood as: "a limitation which results in particular from physical, mental or psychological impairments which in interaction with various barriers may hinder the full and effective participation of the person concerned in professional life on an equal basis with other workers" (based on Article 1 UN Convention on the Rights of Persons with Disabilities)?

Art. 3(a) of the 2005 Law on Persons with Disabilities (no. 5378) puts forth the following definition of disability to be used as the implementing criterion for all purposes under the law, including the prohibition of discrimination against persons with disabilities and the determination of their eligibility for social benefits: "A disabled person is a person *who has difficulties in adapting* to the social life and in meeting

daily needs due to loss of physical, mental, psychological, sensory or social capabilities at various levels by birth or by any reason thereafter and who therefore needs protection, care, rehabilitation, consultancy and support services" (emphasis added). Thus, in defining disability, Turkey's legal framework emphasizes "the deficiencies, shortcomings and inadequacies of the individual with proportional and percentage values".[39] This definition not only portrays a person with a disability as incapable of adapting to social life due to his/her own shortcomings, but also one in need of protection rather than a right-bearing citizen. Furthermore, in limiting the rehabilitation need to persons with disabilities, the law "ignores the fact that rehabilitation is a social phenomenon" and that the "full and effective participation" of the individual to social life requires the state to take measures.[40] Art. 3(c), (d) and (e) categorize disability as mildly disabled, severely disabled and disabled in need of care, respectively. The last category is defined as someone who is severely disabled as documented by an official health report and who cannot take care of his/her needs on a daily basis. Evidently, Turkey's definition of disability is significantly different from the one adopted by the ECJ in the joined cases of *Skouboe Werge and Ring*. Art. 4(a) of the Law on Persons with Disabilities, which prohibits discrimination against "the disabled", without making a distinction between types or degrees of disability, and identifies the fight against discrimination as "the founding base of policies towards the disabled." The same provision tasks the state with the duty to "develop social policies against all forms of exploitation of the disabled and disability on the basis of the immunity of human pride and dignity."

In December 2012, the Turkish government announced a new initiative for the rewording of references to disability and persons with disabilities in all relevant laws and regulations in Turkey's national framework. The Minister of Family and Social Policies stated that the derogatory words "özürlü" (handicapped, defective), "sakat" (defective) and "çürük" (rotten, unfit) – used in health reports issued by military hospitals to assess fitness for military service- will be replaced with the term "engelli" (disabled) with the goal of making the legal framework in accordance with international standards.[41] The proposed amendments were finally made on 25 April 2013, when the Parliament adopted the draft bill prepared by the Ministry of Family and Social Policies, replacing the terms *özürlü, sakat* and *çürük* with that of *engelli* in a total of 96 laws and decrees with the force of law, including the Civil Law anti-Terror Law, Law on Civil Servants, Law on Social Services, Law on Persons with Disabilities, the Penal Law, Law on Social Insurance and General Health Insurance

[39] Arzu Şenyurt Akdağ *et al*.(2011),*Türkiye'de Engellilik Temelinde Ayrımcılığın İzlenmesi Raporu: 1 Ocak-30 Haziran 2010*, İstanbul Bilgi Üniversitesi, p. 13.
[40] *Id.*, p. 14.
[41] Press conference, 19 November 2012, http://www.ozurluveyasli.gov.tr/tr/html/7835/Kanunlardan-Sakat-Ozurlu-Curuk-Ifadeleri-Kaldiriliyor [last accessed 24 January 2014].

and various laws concerning the families of martyrs, war veterans and retired members of the military.[42]

The draft anti-discrimination law puts forth the following definition, which is in line with the UN Convention on the Rights of Persons with Disabilities and the European Court of Justice's judgment in the case of Skouboe Werge and Ring.

Disabled: Those who have long-term physical, mental, psychological or sensory impairments that hinder their full and effective participation in social life on an equal basis with others.

iv) age,

Not defined in any law or the draft anti-discrimination law.

v) sexual orientation

Not defined in any law.

While the initial text of the draft law on anti-discrimination did refer to and define 'sexual identity', all such references were removed by the government in 2011. The initial draft shared with the civil society defined 'sexual identity' as covering "heterosexual, homosexual, bisexual, transsexual, transvestite and similar sexual identities."

b) Where national law on discrimination does not define these grounds, how far have equivalent terms been used and interpreted elsewhere in national law? Is recital 17 of Directive 2000/78/EC reflected in the national anti-discrimination legislation?

i) racial or ethnic origin

While ethnicity is not defined under the national legal framework, an international treaty enumerates the list of ethnic groups that Turkey officially and exclusively recognizes as minorities. The 1923 Treaty of Lausanne signed in its final years by the Ottoman Empire has a number of provisions concerning the protection of minorities. Having lost the First World War, the Empire was compelled by the Western powers to grant minority status and ensuing legal protection to its non-Muslim minorities. Accordingly, non-Muslim subjects of the empire were granted minority status and several rights, including the right to equality and to be free from discrimination, the right to establish and manage their educational, social, religious and charitable institutions, the right to give and take mother tongue education in

[42] Law on Making Amendments in Certain Laws and Decrees with the Force of Law with the Purpose of Changing References to Persons with Disabilities in Laws and Decrees with the Force of Law, no. 6462, 25 April 2013, Official Gazette, no.28636, 3 May 2013.

private schools as well as a conditional right to limited public funding for such schools. The treaty does not contain a minority definition, but grants minority status to “non-Muslims.” In practice, however, the Republic of Turkey, founded a few months after the signing of the treaty, has since 1925 limited the protection of the treaty to Jews, Armenians and the Greek Orthodox , though none of these groups were specifically mentioned at Lausanne. Other non-Muslim groups, such as Syriacs, Christian Arabs and Chaldeans, who are also non-Muslim and therefore have de jure minority status under Lausanne, have been unlawfully denied their rights arising from this treaty. In 2013, a lower court has for the first time challenged Turkey’s official minority policy concerning the non-Muslim communities by holding that the Treaty of Lausanne granted minority status and rights to all non-Muslim citizens, without enumerating any specific group. The decision was given in a case brought by the Syriac community whose request for opening a kindergarten where children would also be taught their mother tongue was rejected by the Ministry of Education. Therefore, the court decision concerns this specific case. However, due to the broad reasoning of the court which concluded that all non-Muslim communities are entitled to minority rights under Lausanne, the decision will likely be used by other non-Muslim groups in challenging state policies (for more on the decision, see section 0.3).

To this day, Turkey’s official policy on minorities is limited to the individual and material scope of Lausanne, as evident in its reservations to the relevant provisions of international treaties which may give rise to new minority rights or minority rights to new groups. The logic behind this policy is to prevent minorities within the Muslim majority, such as the Kurds, from gaining the right to mother tongue education as well as to disable non-Muslim groups other than Jews, Armenians and Greek Orthodox to gain the limited rights that these three groups have been enjoying under Lausanne. Despite the advancements in international human rights regime since the 1920s and although Turkey is legally bound by all of the major human rights treaties which require the equal extension of minority rights to all ethnic and religious groups in Turkey, the state’s policies remain unchanged.

On the other hand, a series of legislative and constitutional reforms made in recent years granted ethnic minorities limited linguistic and cultural rights without extending them minority status. The government started to offer elective courses upon demand in selected minority languages (such as Kurdish and Caucasian) in secondary schools (for more information see section 3.2.8). As part of the democratization package declared on 30 September 2013, the government announced plans to allow private secondary education in selected minority languages (including Kurdish). As of 1 January 2014, no legislative initiative has yet been made to put this promise into effect.

ii) religion or belief (e.g. the interpretation of what is a ‘religion’ for the purposes of freedom of religion, or what is a "disability" sometimes defined only in social security legislation)?

Both civil registries and identity cards in Turkey indicate the religion of their holders. One of only three religions can be indicated in the ID cards: Christianity, Islam and Judaism. The religion of persons belonging to other religions is decided upon by the state, which, in the case of anyone who is not Christian or Jewish, results in persons being automatically classified as Muslim. Thus, members of religions other than Christianity or Judaism are officially considered to be Muslims. This is the case for individuals belonging to the Bahai faith. In a few situations where the applicants asked the registrar to change the indication from Islam to Bahaism, the issue came before the Court of Cassation. In all cases, the Court consulted the Directorate of Religious Affairs (*Diyanet İşleri Başkanlığı- Diyanet*). Basing its judgments on the expert opinion of the Directorate, the Court decided that Bahaism is not a religion, without any explanation as to how and on the basis of what criteria it defines religion. Consequently, the court ruled, the registrar was right to not to indicate the applicant's religion as Bahaism.[43]

Pursuant to a 'reform' introduced in 2006, all Turkish citizens, irrespective of religion or denomination, have the right to leave blank in their identification card the box indicating religion.[44] Thus, the choice now is between the indication of the religions recognized by the state (Muslim, Jewish or Christian) and leaving the box blank. Believers of other faiths, religions and denominations are still not recognized by the state. According to art. 35/2 of the new law, information in the religion box is registered or modified in accordance with a petition by the individual. Based on the request of the individual, the box reserved for the indication of religion can be left blank (at initial registration) or the information may be deleted at any time upon submission of a petition and payment of a small fee. The choice between leaving the box blank and being officially identified against one's true conviction or faith leaves many individuals in a dilemma. A blank box in official ID cards which are used on a daily basis in access to public services serves to 'out' religious minorities such as Alevis, Protestants and Syriacs, as well as atheists and agonistics and exposes them to discriminatory treatment. The European Commission reported "discriminatory practices or harassment by local officials of persons who converted from Islam to another religion and thereafter sought to amend their ID cards."[45] Furthermore, as far as Armenian, Greek Orthodox and Jewish parents are concerned, choosing not to identify their religion on ID cards can cause the rejection of their petitions for the exemption of their children from mandatory religion courses (see section 3.2.8).

Other than the definition of religion, and more specifically of Islam, another important issue is who is considered to be belonging to the Islamic faith, in other words who is considered to be Muslim, by the state. The official ID cards of persons belonging or

[43] See for example Tenth Civil Chamber of the Court of Cassation E. 1992/3226, K. 1995/4872 (25.10.1995); Third Civil Chamber of the Court of Cassation E. 1988/8776, K. 1988/9515 (11.11.1988); Sixth Civil Chamber of the Court of Cassation E. 1974/2007, K. 1974/2242 (07.05.1974).
[44] Nüfus Hizmetleri Kanunu (Law on Civil Registry Services), no. 5490, 25 April 2006, Official Gazette, no. 26153, 29 April 2006.
[45] European Commission, *Progress Report 2012*, p. 25.

assumed to be belonging to the Muslim faith indicate their religion to be “Islam”, without specifying the denomination within Islam that the person adheres to. In a country extremely divided along religious/denominational lines, the difference matters since individuals belonging to non-Sunni denominations of Islam feel unrepresented and discriminated by state policies protecting the rights and interests of individuals believing in the Sunni version of Islam. While vast majority of Muslims in Turkey belong to the Sunni-Hanefi denomination, there is a significant Alevi community and small Caferi and Nusayri communities who follow a different interpretation and practice of the Muslim faith than the Sunni majority. Just who these groups are and what their belief entails has become one of the most controversial issues in Turkey.

Requests by *Alevi*s to change the indication on the identity card from Islam to *Alevi* are being declined by the courts and all *Alevi*s are registered as Muslims. The issue was brought before the European Court of Human Rights. In its judgment in the case of *Sinan Işık v. Turkey* dated 2 February 2010 decided that the indication of religion on the identity card, even where it is no longer obligatory since 2006, is a breach of art. 9 of the Convention. The Court held that the new regulation obliged individuals to apply to the authorities in writing for the deletion of religion in their ID cards and disclosed the religious or personal convictions of individuals who chose to have the religion box to be left blank. The Court found this to be in violation of the negative aspect of Article 9, namely the freedom not to manifest one’s religion or belief. Though the judgment is binding on all national authorities in Turkey under Article 90 of the Constitution, it remains unimplemented (for details of the judgment, see Annex 3).

Few individuals ‘dare’ to leave the religion section blank for fear of discrimination (particularly minorities belonging to religious groups such as Alevis, Protestants and Bahais who are not officially recognized by the state and who would risk being ‘outed’ by removing the term Islam from their IDs) or for fear of losing rights associated with official religious minority status (such as the right of Armenians, Greeks and Jews to have their children be exempted from mandatory religion courses by providing official proof of their religion). For more on exemption from mandatory religion courses, see section 3.2.8.

A further discriminatory treatment on the basis of definition of religion concerns the status of places of worship belonging to non-recognized religious minorities in Turkey. By extension of the state’s limitation of the definition of minority to Armenians, Greek Orthodox and Jews, the places of worship of other religious or denominational minorities, such as Alevis, Protestants and Jehovah’s Witnesses, are not recognized under the law. Consequently, these groups face extreme difficulties in building new places of worship due to the refusal of authorities to grant construction permits.

The Protestant community faces extreme difficulties in issuing permits for constructing new churches or having their churches be officially recognized as places of worships. Despite an amendment in the Zoning Law no. 3194 in 2003 which

replaced the word “mosque” by the word “place of worship”, municipalities continue to arbitrarily refuse to issue construction permits to non-recognized religious minorities and practice “by local authorities differs from province to province”.[46] While a Protestant church was officially opened in June 2011 in the eastern province of Van, “there has been no construction or designation of a plot for a new Protestant church or a Jehovah's Witness Kingdom Hall”.[47] Where Protestant associations resort to the alternative strategy of using apartments or floors as churches, they are often blocked by local authorities. On 23 December 2011, municipality officials at a district of Istanbul sealed the floor that a Protestant association rented on grounds that the latter lacked license.[48] Courts, too, are adamant in preventing officially non-recognized religious minorities from opening their places of worship. In 2011, a court in the southern province of Mersin ordered the closure of a Kingdom Hall on grounds of the violation of the Zoning Law. The case has been taken to the ECtHR.[49] As of the end of 2013, there are two cases pending before the ECtHR regarding the Kingdom Halls.[50] A rare positive development in this regard took place in 2013, when the Istanbul Metropolitan Municipality responded favourably to the request of the Istanbul Syriac Orthodox Church for a land for the construction of a church.[51] This is yet another example of inconsistent government practice concerning the accommodation of the freedom of religion and other right demands by non-Muslim communities who are not officially recognized as minority by the state.

On the other hand, non-Muslim groups granted minority status cannot fully exercise their rights arising from the Treaty of Lausanne. There are legal restrictions on the training of clergy, which cause shortage in clergymen and make the exercise of freedom of religion very difficult. The Greek Orthodox community is in particularly difficult situation due to the fact that the Halki Greek Ortohodox seminary, which was shut down by the Turkish state in 1972, remains closed. There are only a handful of eligible candidates to succeed the ailing current Patriarch and all of these potential successors are of a late age. In the absence of a seminary to train future clergy, the community faces the credible threat of not having a patriarch one day. While the current government has announced on several occasions that legal preparations are being made for the reopening of the seminary, there has been no progress.

In the case of Alevis, once again, the expert opinion of *Diyanet* on the definition of Islam and the Muslim faith plays a critical role in the acts and policies of national authorities. Based on *Diyanet*’s opinion that Alevis are Muslims and the sole place of worship for Muslims is mosques, authorities reject to grant permit for the construction

[46] European Commission, *Turkey Progress Report 2011*, p. 30.
[47] *Id.*
[48] Association of Protestant Churches, *Report on Human Rights Violations of 2011*, 16 January 2012, https://docs.google.com/viewer?url=http://protestankiliseler.com/data/2011_Rights_Violations_Report.pdf [last accessed 26 January 2014].
[49] European Commission, *Turkey Progress Report 2011*, p. 30.
[50] European Commission, *Turkey Progress Report 2013*, p. 56.
[51] European Commission, *Turkey Progress Report 2013*, p. 61.

of cemevis. On 10 July 2012, the speaker of the Turkish Parliament Cemil Çiçek rejected a proposal by a member of the parliament for the opening at the parliament of a cemevi. Çiçek cited Article 136 of the Constitution referring to *Diyanet* and Law no. 633 on the Establishment and Duties of *Diyanet*, which entrust the institution with the duty to "administer affairs relating to prayer and morality, enlighten society on religion and manage places of worship." Çiçek noted that according to *Diyanet*, "Alevism is not a separate belief but 'a formation within Islam, a richness of Islam which has emerged over historical processes' and Islam's places of worship are mosques." Hüseyin Aygün, the deputy who had made the request, brought a suit at a court against the Presidency of the Parliament. Soon after Çiçek's decision, on 25 July 2012, the Court of Cassation released a much awaited judgment concerning cemevis. Overturning a local court decision allowing an Alevi association to build cemevis, the high court held that no place other than a mosque or a masjid could be recognized as a house of worship in Islam and that it is in the exclusive power of *Diyanet* to establish mosques and masjids. The case was sent back to the lower court, which, in a decision released in January 2013, insisted in its earlier decision and ruled in favour of the association. Due to the conflict between the lower court and the Court of Cassation, the case is now before the Legal Council of the Court of Cassation, which will have the final say (for details of the judgment, see section 0.3).

According to a report released by the Norwegian Helsinki Committee, as of June 2013, there were 598 cem houses belonging to the Alevis, 50 churches belonging to the Protestants and 22 buildings belonging to the Jehovah's Witnesses which are used as places of worship without official status.[52]

iii) Disability

Until the adoption of prohibition of discrimination on the ground of disability by the Law on Persons with Disabilities in 2005, the legal framework addressed disability only in the context of social benefits and social aid. Various laws and regulations providing disability related benefits and positive measures have their own definition of and/or criteria for disability. Since a comprehensive listing of various definitions and criteria in various laws and regulations governing social benefits is beyond the scope of this report, below are only a few examples.

The definition found in art. 3 (c) of the Law on Social Services is identical to the definition found in the Law on Persons with Disabilities.

In order to be eligible for disability benefits, the individual must receive a disability report from special health boards established pursuant to the "Regulation on the

[52] Norwegian Helsinki Committee Freedom of Belief Initiative, The Right to Freedom of Religion or Belief in Turkey: Monitoring Report January-June 2013, Istanbul, Turkey, January 2014, available at http://nhc.no/filestore/Publikasjoner/Rapporter/2013/Report_3_13_eng_web.pdf [last accessed 26 January 2014].

Criteria and Classification of Disability and Health Board Reports to be given to the Disabled," most recently revised in 2013 without substantial changes.[53] As indicated by its name, the regulation puts forth the criteria for the classification of persons with disabilities into various categories based on the percentage of their disability, which determine his/her eligibility to receive special social services provided by the state. Making special social services to be provided by the state conditional on the degree of disability which is calculated through a technical process and on the basis of mathematical formulations not only "ignores the special circumstances of the individual"[54] but also shows that the Turkish state is far from adopting a rights-based perspective on disability.

Disability can also be defined in a negative aspect in disqualifying individuals from certain professions. For example according to article 8 paragraph (g) of the Law on Judges and Prosecutors (no. 2802), in order to be appointed as a candidate judge or prosecutor, a person "should not have any physical or mental illness or disability that would prevent the person from carrying out his/her responsibilities as a judge or a prosecutor continuously in every part of the country; or any disabilities which cause limitations in controlling the movements of the organs; speech different than it is accustomed and would be found odd by people". Similarly, Article 74 of the Law on the Union of Chambers and Commodity Exchanges of Turkey (no. 5174) states that to be eligible to hold the position of the general secretary of the chambers and commodity exchanges, an individual "shall not have a physical or mental illness, or physical disability that shall prevent him performing his duties continuously." Sometimes, although the relevant law does not exclude persons with disabilities from entering to a certain profession, public institutions can apply the rules in an exclusionary and discriminatory fashion. A case in point is the Ministry of Education which, in its informative website on professions, introduced for the diplomatic profession an eligibility requirement not contained in any of the relevant laws.[55] The website stated that to be a diplomat, an individual shall "not have a physical disability."[56]

Furthermore, in reference to "person with disability", the constitution, laws, official documents and government offices use the rather pejorative term *özürlü* (which means handicapped, defective, deficient) rather than the neutral term of *engelli* (which literally means disabled). The government announced in December 2012 its plans to replace the pejorative references to persons with disabilities with the word *engelli* in nearly 100 different laws, including the Law on Persons with Disabilities, the name of which will also change. The four parties in the parliament agreed to present

[53] Regulation on the Criteria and Classification of Disability and Health Board Reports to be given to the Disabled, Official Gazette, no. 28603, 30 March 2013.
[54] Arzu Şenyurt Akdağ *et al.,* p. 14.
[55] Eşit Haklar için İzleme Derneği, *Türkiye'de Engellilere Yönelik Ayrımcılık ve Hak İhlalleri*: *2011 İzleme Raporu,* p. 44, http://www.esithaklar.org/wp-content/uploads/2012/06/ESHID-EngelliRaporu2011.pdf [last accessed 24 February 2014].
[56] Id.

a constitutional amendment in order to replace the term *özürlü* with that of *engelli* in the text of the constitution.[57] However, no progress has been made on this issue partly because the constitution making process has come to a halt in 2013. On the other hand, the government finally introduced to the Parliament a draft bill to revise and reword all references to disability in Turkish legislation. The law adopted on 25 April 2013 replaced the terms *özürlü, sakat* (crippled, defective) and *çürük* (rotten, unfit) with that of *engelli* in a total of 96 laws and decrees with the force of law, including the Civil Law anti-Terror Law, Law on Civil Servants, Law on Social Services, Law on Persons with Disabilities, the Penal Law, Law on Social Insurance and General Health Insurance and various laws concerning the families of martyrs, war veterans and retired members of the military.[58]

iv) Age

Not defined.

v) sexual orientation

There is no reference to sexual orientation in the constitutional and legal framework. Consequently, it is not defined. The national legal framework, on its face, completely ignores sexual orientation, as evident also in the absence of any provision criminalizing homosexual, bisexual or transsexual conduct. However, there is widespread and systematic discrimination against LGBT individuals stemming from either the blatantly discriminatory texts of the laws and regulations and/or their discriminatory interpretation and application by the judiciary.

The principal way in which laws are applied in a discriminatory way against LGBT individuals is through the judicial interpretation of terms such as “morality”, “indecent behaviour” and “dishonourable behaviour.” Article 125 of the Law on Civil Servants allows the dismissal of public servants engaged in “immoral and dishonourable conduct.”

[57] Nilay Vardar, “Sakat, Özürlü, Engelli?”, *Bianet*, 6 December 2012, http://www.bianet.org/bianet/ayrimcilik/142630-sakat-ozurlu-engelli [last accessed 26 January 2014].
[58] Law on Making Amendments in Certain Laws and Decrees with the Force of Law with the Purpose of Changing References to Persons with Disabilities in Laws and Decrees with the Force of Law, no. 6462, 25 April 2013, Official Gazette, no.28636, 3 May 2013.

This term undefined in the law has been interpreted by the courts to cover homosexual conduct, as a result of which the dismissal from public service of LGBT employees has been upheld by the judiciary.[59] Most of these incidents are not brought before the courts. In many cases, victims are afraid of the reaction of their families, friends and colleagues. Besides, victims are worried about media attention, which leads to their further victimization.[60]

There are similar provisions allowing dismissal from employment in various laws and regulations, which are not possible to list in an exhaustive manner in this report. Examples can be found in the Military Penal Code, Law on Military Judges, Law on Military Court of Cassation, Law on Lawyers, Law on Judges and Prosecutors, Regulation on Health Ability of the Turkish Armed Forces and Regulation on the Selection of Candidates for Military Judges.[61] On 31 January 2013, a new discriminatory provision was added to this list.. The Law on the Disciplinary Issues of the Turkish Armed Forces, submitted to by the Ministry of Defence in December 2012, was adopted by the Turkish Parliament despite protests of the LGBT groups.[62] Article 20 of the law enumerates homosexuality among the violations of disciplinary rules which 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. It is common knowledge in Turkey that the term "unnatural intercourse" refers to anal intercourse and hence homosexual relationship. There are several cases of dismissal of homosexual men

[59] In a report released in 2011, Amnesty International reported on two cases of sexual orientation discrimination where "gay men in public sector employment have been dismissed from their jobs for the explicit reason that they are gay." Amnesty International (2011), "*Not an Illness nor a Crime"...,* p. 23. In one case, on 20 April 2004, the High Discipline Board of the Ministry of Interior dismissed a police officer upon oral evidence that the latter engaged in anal sex with another man. The decision was upheld by the Council of State on the basis of Article 125 of the Law on Civil Servants, which provides dismissal of persons who were found "to act in an immoral and dishonourable way which is not compatible with the position of a civil servant". The other case concerned the dismissal by the High Discipline Board of the Ministry of Education of a teacher for having engaged in "homosexual relationship." This dismissal, too, was upheld by the court. While the courts decisions in these two cases are not publicly available, Amnesty International reported to have seen the official court documents. *Id.* Another monitoring report also reported on the same two cases as well as the case of a public employee working at Revenue Administration Department of the Ministry of Finance, who was relocated on the basis of his sexual orientation. The victims asked the authors of the monitoring report to keep their identities and other details of the cases confidential.

[60] Opinion expressed by Fırat Söyle and Yasemin Öz, both of whom are leading lawyers in the area of sexual orientation discrimination cases. For an overview of case law concerning dismissal of LGBT individuals from civil service, see Yasemin Öz, *Study on Homophobia, Transphobia and Discrimination on Grounds of Sexual Orientation and Gender Identity, Legal Report: Turkey*, the Danish Institute for Human Rights, p. 19, ("hereafter Legal Report: Turkey") available at http://www.coe.int/t/commissioner/source/lgbt/turkeylegal_e.pdf [last accessed 24 February 2014].

[61] For a more detailed list of these laws and regulations as well as their relevant provisions, see Umut Güner *et al*. (2011), *Türkiye'de Cinsel Yönelim veya Cinsiyet Kimliği Temelinde Ayrımcılığın İzlenmesi Raporu,* İstanbul Bilgi Üniversitesi, p. 27-28.

[62] Law on the Disciplinary Issues of the Turkish Armed Forces, 31 January 2013, Official Gazette, no. 28561, 16 February 2013.

from public service[63] or the military[64] upon oral evidence of their engagement of anal sex with other men.

The authorization of the dissolution of associations on grounds of "public morality" under the Civil Code has been frequently resorted to by prosecutors against LGBT associations. In many cases, the courts ruled against the associations, as in the case of the confiscation by court order of all copies of a magazine published by Kaos GL on the grounds that its content was obscene and against public morality. The case is pending before the ECtHR.[65] In rare cases where courts ruled against the dissolution of LGBT associations, the reasoning reflected a homophobic mentality which associates homosexuality with morality. For example, in overturning in 2008 a lower court's decision to dissolve Lambdaistanbul, the Court of Cassation based its decision on the fact that the association did not pursue the goal of "encouraging others to being a LGBT." The Court reasoned as follows: "the fact which is deemed to be immoral by the society at large is not to be lesbian, gay, bisexual, transvestite or transsexual and the use of these words, but for these individuals to promote and to encourage with their life styles others" to be a LGBT[66] (for more on the case, see Annex 3: Previous Case Law). This reasoning was criticized by the association's lawyers.[67]

c) *Are there any restrictions related to the scope of 'age' as a protected ground (e.g. a minimum age below which the anti-discrimination law does not apply)?*

Age discrimination is not explicitly prohibited in Turkish law. Consequently it is not possible to speak about restrictions. However, art. 10 of the Constitution and art. 5 of the Labour Law prohibit discrimination based on an open-ended list of grounds. Art. 5 of the Labour Law does not only prohibit discrimination, but also requires the employers to treat all employees equally in general. As the rule is not explicitly laid down, it is not possible to speak about restrictions. Consequently, judicial interpretation is needed.

2.1.2 Multiple discrimination

a) *Please describe any legal rules (or plans for the adoption of rules) or case law (and its outcome) in the field of anti-discrimination which deal with situations of multiple discrimination. This includes the way the equality body (or bodies) are tackling cross-grounds or multiple grounds discrimination.*

[63] For examples, see footnote 56.
[64] For examples of dismissal of homosexual personnel from the Turkish Armed Forces and the jurisprudence of military courts upholding this practice, see p. Umut Güner *et al*. (2011), *Türkiye'de Cinsel Yönelim veya Cinsiyet Kimliği ...,* 28-29.
[65] Amnesty International (2011), "*Not an Illness nor a Crime"...,* p. 10. ECtHR, *Kaos GL vs. Turkey,* Application no. 4982/07, Admissibility decision 19 June 2009.
[66] 7th Chamber of the Court of Cassation, 2008/4109 E, 2008/5196 K, 25 November 2008.
[67] "Dava Bitti: Kapatılmadı!", *KaosGL*, 30 April 2009, http://www.kaosgl.com/sayfa.php?id=2797 [last accessed 24 February 2014].

Would, in your view, national or European legislation dealing with multiple discrimination be necessary in order to facilitate the adjudication of such cases?

There is no legislation or case-law which deals with situations of multiple discrimination. National legislation dealing with multiple discrimination would be necessary and beneficial in facilitating the adjudication of such cases.

The draft law on anti-discrimination does not mention multiple discrimination. Only in the definitions of "segregation" and "institutional discrimination" reference is made to segregation/institutional discrimination based on one or more grounds enumerated under the draft law (namely, sex, race, colour, language, religion, belief, ethnicity, sexual identity, philosophical and political opinion, social status, marital status, health, disability, age and the like).

b) *How have multiple discrimination cases involving one of Art. 19 TFEU grounds and gender been adjudicated by the courts (regarding the burden of proof and the award of potential higher damages)? Have these cases been treated under one single ground or as multiple discrimination cases?*

The number of discrimination cases is very small in Turkey. And the existing case-law suggests that so far discrimination claims were not based on multiple grounds, but on one ground only.

2.1.3 Assumed and associated discrimination

a) *Does national law (including case law) prohibit discrimination based on perception or assumption of what a person is? (e.g. where a person is discriminated against because another person assumes that he/she is a Muslim or has a certain sexual orientation, even though that turns out to be an incorrect perception or assumption).*

National law does not prohibit discrimination based on perception or assumption and there is no relevant case-law.

However, the draft of law on anti-discrimination defines (art. 2(1)(i)) and prohibits discrimination based on perception (art. 3(8)(g)).

b) *Does national law (including case law) prohibit discrimination based on association with persons with particular characteristics (e.g. association with persons of a particular ethnic group or the primary carer of a disabled person)? If so, how? Is national law in line with the judgment in Case C-303/06 Coleman v Attridge Law and Steve Law?*

National law provides a very limited prohibition of discrimination based on association. According to art. 24 of the Labour Law, if the employer tells words that harm the honour and good name of the worker or one of the members of his/her

family, behaves in such manner or attempts sexual harassment against the worker; teases or intimidates the worker or one of the members of his/her family or encourages, provokes and drives the worker or one of his/her family members to act unlawfully or commits an offense requiring conviction against the worker or one of his/her family members or makes grave attributions or accusations harming the worker's honour and dignity against the worker and if the required measures are not taken although the worker becomes subject to sexual harassment at the workplace by another worker or third persons, the worker has the right to terminate the labour contract before the expiry of the contract period or without waiting for the notification period. The worker might choose not to. In any case, the worker has the right to bring persons responsible for such acts before criminal and civil courts.

The issue did not come before the courts.

The draft Law on Combating Discrimination and Establishment of an Equality Council does not prohibit or even mention discrimination based on association.

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

a) How is direct discrimination defined in national law? Please indicate whether the definition complies with those given in the directives.

Direct discrimination is prohibited in several laws. The Labour Law, the Penal Code, the Law on Persons with Disabilities, the Basic Law on National Education, the Law on Civil Servants have provisions prohibiting direct discrimination on varying grounds. For example, Article 5(3) of the Labour Law prohibits employers from making direct or indirect differential treatment against employees on the grounds of gender and pregnancy (for the grounds protected under the remaining laws, see table below). Yet, none of these laws define direct discrimination.

In their application of the Constitution's equality clause (Article 10), the Constitutional Court and other courts have developed the elements of discrimination. According to the Constitutional Court:

> "The principle of equality, which is among the fundamental principles of law is enshrined in art. 10 of the Constitution. Equality before the law applies to persons whose legal status is the same. This principle aims 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 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 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 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 with 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 with the principle of equality".[68]

Article 2(1)(a) of the draft law on anti-discrimination defines direct discrimination as "any differential treatment, based on one of the grounds enumerated in this law, which prevents or obstructs any natural or legal entity or group from the enjoyment of rights and freedoms on equal footing with others in comparable situation."

b) Are discriminatory statements or discriminatory job vacancy announcements capable of constituting direct discrimination in national law? (as in Case C-54/07 Firma Feryn).

Discriminatory job vacancy announcements as well as discriminatory statements are capable of constituting direct discrimination under national law, though the grounds for bringing legal action are very limited. In the absence of an anti-discrimination law and the limited material scope of Article 5 of the Labour Law (which is only applicable *after* an employment relationship is established between the employee and the employer), Art. 122 of the Turkish Penal Code provides the only possible ground for legal action for discriminatory job vacancy announcements. While Article 216 provides legal basis for the prosecution of discriminatory statements, ethnicity and language are not enumerated among the non- exhaustive grounds. While ECRI recommended the inclusion of ethnicity and language among the enumerated grounds under Article 216, the Turkish Government stated that there was no need for such an amendment.[69] On the other hand, while the list of protected grounds in the anti-discrimination provisions of the Labour Law and the Turkish Penal Code are non-exhaustive, the fact that sexual orientation, age and ethnicity are not expressly stated creates legal uncertainty in a country where the judiciary is already unwilling to enforce these provisions even where discrimination on enumerated grounds is concerned.

The enforcement of Article 122 against discriminatory job vacancy announcements requires a strong will on the part of the judiciary, which is often lacking in Turkey. As noted by the European Commission against Racism and Intolerance (ECRI), there is

[68] Constitutional Court, E. 2008/95, K. 2010/18, 28.01.2010, Official Gazette, no. 27565, 28.04.2010.
[69] European Commission against Racism and Intolerance (ECRI), *Report on Turkey (fourth monitoring cycle),* CRI 2011 (5), adopted on 10 December 2010, pp. 14-20.

"little statistical information" concerning the application of Article 122 and according to the information provided by national authorities, as of December 2010, "only two cases have been brought" on the basis of this article and "the proceedings have not yet been concluded."[70]

In theory, prosecutors have the competence to bring criminal charges against these employers on grounds of Article 122 of the Turkish Penal Code. In practice, however, the author is not aware of any example where the prosecutors launched criminal cases on their own initiative. Even where the victim of discrimination or NGOs representing victims made complaints, prosecutors have been extremely unwilling to enforce Article 122. It is noteworthy that in a few cases where individuals called on the prosecutors to enforce Article 122, employers accused of discrimination were public offices.

Discriminatory job vacancy announcements

Of the incidents about which information is available to the public, many concern direct discrimination against individuals with disabilities in the public employment context.

Many of the publicly known discriminatory job vacancy announcements have been made by public institutions, particularly in the context of university entrance examinations and public service recruitment examinations. For example, in 2009, an announcement by the "Executive Board of the Foreign Secondary Schools Entrance Exam" (*Yabancı Ortaöğretim Okulları Sınav Yürütme Kurulu*) was made on the web-site of the Ministry of National Education. The announcement read: "We cannot provide education to students in need of special education and to students who have physical disabilities. As those students will not be able to register to our schools, they will not be allowed to take the "Private Foreign Secondary Schools Entrance Exam" which will take place on 31 May 2009."

More recent examples of discriminatory job vacancies were announced by the Social Security Agency and the Ministry of Finance with regards to the eligibility criteria for public service recruitment.[71]

[70] ECRI, *Report on Turkey*, p. 16.

[71] Arzu Şenyurt Akdağ *et al*., p. 26-27. Both announcements introduced additional employment criteria for individuals who passed the national public service recruitment exam (and thus were eligible for employment). The information released on the website of the Social Security Agency required candidates of public service jobs who successfully passed the 2010 public service recruitment exam to declare that "they do not have 40% or more disability in their physical, mental, psychological, emotional and social skills." The Ministry of Finance required applicants who also successfully passed the 2010 exam and wanted to join the ministry as lawyers to provide "written declaration that they did not have an obstacle that would prevent them from working and that they are healthy and would endure all kinds of climate and travel conditions."

In the 2009 University Entrance Exam Guidelines (*2009 Öğrenci Seçme ve Yerleştirme Sınavı Kılavuzu*), information was given about all university, faculty and departments. Istanbul Aydın University explicitly had warned candidates with disabilities, saying that "students with disabilities should not choose our University due to our lack of facilities to provide education to disabled students." Upon reactions by disability NGOs, it was accepted that the expression found in the Guidelines was inappropriate and against the law. However, although applications were made to the Prosecutor's Office claiming that there is a violation of art. 122 of the Turkish Penal Code, so far there is no prosecution.

Discriminatory statements

Public officials, including senior government officials, routinely make overtly discriminatory statements, particularly against LGBT individuals and non-Muslims. These statements not only go unpunished, even where NGOs file complaints with prosecutors under Articles 216 and 218, but also do not receive condemnation by other authorities. One of the most notorious statements was made by Aliye Kavaf, the former Minister of State responsible for Women and the Family, who in a press interview said the following: "I believe homosexuality is a biological disorder, an illness and should be treated".[72] While this statement received widespread coverage in the national media and was condemned by various NGOs, it "was not rejected by the government nor was an apology issued".[73] The Minister of Health, however, in response to reactions to Kavaf's discriminatory remarks, did state that "homosexuality is a difficult thing in Turkey and can be a ground for discrimination" though he also added that Turkish society cannot "accept" gay marriage.[74]

In recent years, high level government officials and public officials continued to engage in discriminatory statements and hate speech or publicly condone such speech. On 26 February 2012, the Minister of Interior İdris Naim Şahin made a speech at a rally organized in Istanbul to commemorate the victims of the 1992 killing of Azeri civilians by the Armenian army in Hocalı, Azerbaijan – an incident named 'genocide' by the rally organizers. The rally was an attempt to counter the Armenian diaspora's efforts for Turkey's recognition of the 1915 Armenian genocide. The minister addressed the 30,000 people gathered at the Hocalı rally where there were visible banners carrying racist remarks and propagating hate speech such as "you are all Armenians, you are all bastards," "bastards of Hrant [Dink, the Armenian journalist assassinated in 2007-DK] cannot scare us" "you are invaders, you are murderers, you are all Armenians."

[72] "Bakan Kavaf: 'Eşcinsellik bir Hastalık", *CNNTÜRK*, 7 March 2010, http://www.cnnturk.com/2010/turkiye/03/07/bakan.kavaf.escinsellik.bir.hastalik/566620.0/index.html [last accessed 24 February 2014].
[73] Amnesty International (2011), "*Not an Illness nor a Crime"...*, p. 9.
[74] "İki Bakanın arasına Eşcinseller Girdi," *Internethaber*, 10 March 2010, http://www.internethaber.com/iki-bakanin-arasina-escinseller-girdi-235796h.htm [last accessed 24 February 2014].

During a debate aired on TV on 2 April 2012, Melih Gökçek, the Metropolitan Mayor of Turkey's capital, gave a strong homophobic response to a question by a journalist. Asked when there will be a homosexual mayor in Turkey, Gökçek responded "Inshallah [hopefully] there won't be any gays in our Turkey and there shouldn't be." Gökçek was strongly protested by LGBT associations for having openly discriminated against homosexuals. No reaction was made by the government or officials from the ruling JDP, which Gökçek is a member of.

On 25 April 2012, during a live TV debate organized on the occasion of the anniversary of the 1915 Armenian genocide, Kemal Cicek, the Head of the Turkey Desk of Turkish History Institution, threatened the Armenian participant of the programme. Recalling the fate of the Armenians who were expelled from the Ottoman Empire in 1915, he warned Garo Paylan, a representative of the Armenian civil society in Turkey, that he might one day face the same destiny as his ancestors. The Turkish History Institution is a public institution founded by the constitution.

On 4 August 2012, during a live television interview, Prime Minister Recep Tayyip Erdoğan called the Karacaahment Cem House, one of the holiest shrines of the Alevi minority in Turkey, "a freak," pointing out that it was built without a building permit and remains unlicensed. In response to these remarks, the head of the Karacaahmet Culture Association pointed out that it is not possible to construct licensed cem houses since the authorities "do not regard them as [official] houses of worship and do not include them in zoning plans as a result." He added that nearly all of the 900 cem houses across Turkey operate without a license due to this policy.

Most recently, on 17 September 2013, speaking at the opening ceremony of a school for students with special needs, a member of the Parliament from the governing JDP made discriminatory statements against persons with disabilities. Referring to the Law on Persons with Disabilities adopted by the JDP government in 2005, MP Ziyaeddin Akbulut said "with this law, we treated the disabled like a human, like a man." Akbulut said in the past families were embarrassed of their children with disabilities, locked them up at home and "prayed to God for the death" of their disabled family members, whereas during the JDP rule they now pray for the opposite. Referring to the monthly cash payment the JDP government has introduced for families of persons with disabilities, the MP argued that his party has caused a "mentality change" because now families see persons with disabilities as "the fertility of their household" and take good care of them to be able to continue to get money from the state.

Where discriminatory statements are made by private individuals, again, courts show reluctance to enforce the Turkish Penal Code. Furthermore, such statements can often be supported by individuals and institutions of high standing. A defense lawyer in the high profile criminal case of Ergenekon concerning alleged coup attempts against the government stated, during the trial and as part of his "defense", that "the best Kurd is a dead Kurd." Not only have prosecutors failed to bring charges against

this statement but the Istanbul Bar Association interpreted this statement as "within the parameters of freedom of expression".[75]

In some cases, individuals who have made discriminatory or racist remarks are not only protected by public institutions or authorities from criminal liability but may also be rewarded. A recent example of this concerns Riza Kayaalp, a member of the Turkish national wrestling team who allegedly made racist remarks against individuals who participated in the anti-government protests in June 2013. Kayaalp was alleged to have posted on his Twitter account derogatory remarks against Greeks and Armenians, such as "You left the square to Armenians, God damn you chapulliers [looters]" and "the people of Armenia are celebrating their occupation of the Taksim square and their free insults against Turkey". In August 2013, upon complaints, the International Federation of Associated Wrestling Styles (FILA) suspended Kayaalp from wrestling tournaments for six months. The chairman of the Turkish Wrestling Federation appealed for the removal of the ban on the ground that there was no evidence that Kayaalp had posted the racist tweets, arguing instead that they were tweeted by a third party, and the Turkish wrestler was not given the opportunity to defend himself. However, according to news in Turkish media, the tweets were deleted after complaints were filed with FILA against the wrestler. Nonetheless, Kayaalp indirectly admitted that he had posted them when he said to the press that he was "misunderstood" and that he tweeted against people who were engaged in destructive acts. On August 14th, the Turkish Wrestling Federation President told the Associated Press that Kayaalp's ban has been temporarily removed and that he will take part in the world championships in Hungary in September. The President said the following about Kayaalp: "We will not have our kid wasted. We are behind him." Not only Kayaalp was not – and probably will not be – sanctioned, but soon after his racist remarks he was chosen as the flag holder athlete for Turkey in the opening ceremony of Mediterranean Games – an international Olympic event hosted by Turkey.

In rare cases, prosecutors brought charges against individuals and institutions for discriminatory statements or hate speech. In the only case concerning hate speech against LGBT individuals, the court acquitted the defendant on the basis of lack of evidence in April 2009. The case was brought against an individual who led a group of counter- demonstrators who attacked protestors at a LGBT rally in Bursa.[76] The first known court judgment against individuals engaged in hate speech was delivered in 2009. In a case launched by the prosecutor upon his own initiative, the court found the director of the Federation of Osmangazi Cultural Associations, a group based in the province of Eskişehir, to have violated Article 216(2) by staging a demonstration where he and other members carried banners that read "no Jew or Armenian can

[75] Seda Alp and Nejat Taştan, p. 73.
[76] Yasemin Öz, *Legal Report: Turkey*, pp. 33-36.

enter through this door; Dogs are allowed." The defendant was sentenced to five months imprisonment, which was changed to a fine and postponed.[77]

In 2008, upon a criminal complaint filed by the Progressive Lawyers Association, a prosecutor in the western province of Izmir issued an indictment against the Social Pan-Turkist Budun Association (*Türkçü Toplumcu Budun Derneği*), an ultra-nationalist organisation. The organisation was charged with having violated Article 216 of the Penal Code for having issued, as part of a campaign initiated in May 2006, leaflets reading: "Dear Turkish women and men! Make another child for Turkishness, because you are being marginalized compared to the betrayers, pickpockets, drug dealers, who are spreading. We are the Social Pan-Turkist Budun People who can give the deserved reply to the Kurdish and Gypsy gangs and bigots." This was the first time when Article 216, which prohibits incitement to racial hatred and enmity, was invoked in connection with hate speech against the Roma in Turkey.[78] Following the last hearing held on 13 December 2012, the 9th Criminal Court of First Instance in İzmir gave its judgment in the case, finding that the Association did not violate Article 216. Citing the case law of the ECtHR, the Court reasoned that the statements in the leaflets did not target the Kurds and the Roma, but rather target individuals and groups who have a high tendency to commit crimes, incluing gangs. The remarks constituted criticism and were therefore protected by freedom of expression.[79]

On 28 February 2012, a number of human rights NGOs and anti-discrimination groups filed a number of complaints against individuals engaged in hate speech, including Kemal Cicek, the Minister of Interior Şahin, and the organizers of the Hocalı meeting for their discriminatory statements and acts discussed above. The prosecutor declined the complaint against the Minister, but initiated an investigation against the rally organizers. In December 2012, a court sentenced six individuals to five months imprisonment each for inciting people to hatred and enmity by having held banners carrying racist slogans against Armenians.[80] The sentences were converted to fines. On 29 November 2012, DurDe! filed a criminal complaint against the president of the Association for the Fight against Unsubstantiated Armenian Claims who published the full addresses and telephone numbers of Armenian

[77] "Mahkeme, ırkçılığı tescilledi: 5 ay hapis", *Radikal*, 27 May 2009, http://www.radikal.com.tr/radikal.aspx?atype=radikaldetayv3&articleid=937890&categoryid=77 [last accessed 24 February 2014].
[78] Commissioner for Human Rights, *Human Rights of Roma and Travellers in Europe*, Council of Europe, February 2012, pp. 48-49.
[79] İsmail Saymaz, "Kürt nüfusu durdurulsun demek eleştiri sayıldı", *Radikal,* 1 February 2013, http://www.radikal.com.tr/Radikal.aspx?aType=RadikalDetayV3&ArticleID=1119555&CategoryID=77 [last accessed 24 February 2014].
[80] *CNN Türk*, "Ermenilere yönelik 'ırkçı pankart' taşıyanlara ceza", 26 December 2012. http://www.cnnturk.com/2012/turkiye/12/26/ermenilere.yonelik.irkci.pankart.tasiyanlara.ceza/690193.0/index.html [last accessed 24 February 2014].

schools and foundations in Turkey. The criminal investigation launched by the prosecutor continues.[81]

In sum, discriminatory statements against minorities are routinely made by senior government and public officials as well as individuals. While these incidents receive media coverage and limited public reaction, neither do authorities condemn such statements and/or issue apologies nor do the courts systematically and uniformly enforce the law.

c) *Does the law permit justification of direct discrimination generally, or in relation to particular grounds? If so, what test must be satisfied to justify direct discrimination? (See also 4.7.1 below).*

The legislation neither defines direct discrimination, nor lays down permissible justifications. But the Constitutional Court has adopted a test which it applies in all cases:

> "If the rule which is claimed to be in contradiction with 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, the "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 with the principle of equality."[82]

Article 7 of the draft law on anti-discrimination contains a general exemption clause for all kinds of discrimination. Accordingly:

1) If differential treatment targets a legitimate aim such as eradicating inequalities or achieving qualifications required for the occupation and is suitable, necessary and proportionate for achieving such aim, it shall not be deemed to be discrimination;
2) Differential treatment based on gender and age shall not constitute discrimination where it has a legitimate aim and is suitable, necessary and proportionate for achieving such aim;
3) The exclusive acceptance to institutions which provide education and teaching or religious services geared towards a particular religion of persons belonging to such religion does not constitute discrimination.

[81] Investigation no: 2012/15880. For news report about the complaint, see *Radikal*, "Ermenileri hedef gösteren derneğe suç duyurusu", 29 November 2012. http://www.radikal.com.tr/turkiye/ermenileri_hedef_gosteren_dernege_suc_duyurusu-1109924 [last accessed 24 February 2014].
[82] Constitutional Court, E. 2008/95, K. 2010/18, 28.01.2010, Official Gazette, no. 27565, 28.04.2010.

d) In relation to age discrimination, if the definition is based on 'less favourable treatment' does the law specify how a comparison is to be made?

The legislation does not define age discrimination. Consequently, judicial interpretation is needed.

2.2.1 Situation Testing

a) Does national law clearly permit or prohibit the use of 'situation testing'? If so, how is this defined and what are the procedural conditions for admissibility of such evidence in court? For what discrimination grounds is situation testing permitted? If not all grounds are included, what are the reasons given for this limitation? If the law is silent please indicate.

National law is silent on situation testing. There seems to be a consensus on the inadequacy of this method with respect to public authorities, as making false statements to public authorities constitutes a crime. Otherwise, as the law is silent on the issue, consideration of evidence obtained through situation testing is left to the discretion of the judge.

b) Outline how situation testing is used in practice and by whom (e.g. NGOs, equality body, etc.).

Situation testing is not a practice used in Turkey. Anti-discrimination NGOs are either not knowledgeable about the method[83] or do not believe in its effectiveness in the Turkish context where LGBT associations do not dare to use this method due to the risk of violence and the ideological stance of the law enforcement and the judiciary.[84] An anti-discrimination lawyer representing a leading LGBT association stated that in the only incident he knows – and was a part of- where situation testing was used, a group of transgender individuals were thrown out of a bar. The management justified the act on the ground that "women with headscarf and people with uniforms were also not allowed."[85]

c) Is there any reluctance to use situation testing as evidence in court (e.g. ethical or methodology issues)? In this respect, does evolution in other countries influence your national law (European strategic litigation issue)?

As national law is silent on situation testing and this method is not known in general, it has not been used before courts.

[83] Upon query, a lawyer representing one of the leading LGBT associations stated that she is not familiar with situation testing method. Email correspondence with Yasemin Öz, 23 April 2013.
[84] Email correspondence with Murat Köylü, an anti-discrimination lawyer representing a LGBT association, 22 April 2013.
[85] Id.

There is no public discussion on situation testing in Turkey. It is also a method not yet known or used by NGOs combatting discrimination.

d) Outline important case law within the national legal system on this issue.

There is no case-law on this issue.

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

a) How is indirect discrimination defined in national law on discrimination? Please indicate whether the definition complies with those given in the directives.

Turkey does not have a national law on discrimination. While there is reference to indirect discrimination in the Labour Law, the concept is not defined.

The draft anti-discrimination law defines indirect discrimination as follows: "A real or legal person or a group being put in a disadvantageous situation in exercising his/her rights and liberties on the grounds prohibited under this law in such a way that cannot be objectively justified as a result of any action, procedure or practice of real and legal persons which do not appear discriminatory. In order for an action, procedure or practice to be objectively justified, it must have a legitimate aim and be proportionate."

b) What test must be satisfied to justify indirect discrimination? What are the legitimate aims that can be accepted by courts? Do the legitimate aims as accepted by courts have the same value as the general principle of equality, from a human rights perspective as prescribed in domestic law? What is considered as an appropriate and necessary measure to pursue a legitimate aim?

In Turkish law, the only explicit prohibition of indirect discrimination is found in art. 5(3) of the Labour Law. However, the mentioned paragraph does not define indirect discrimination. In fact it does not even use the term "indirect discrimination" but rather says "indirect treatment," which it prohibits only on the grounds of gender and pregnancy. According to the provision, except for biological reasons or reasons related to the nature of the job, the employer shall not make direct or indirect different treatment against an employee in making, implementing and ending an employment contract. Since the concept of indirect discrimination has entered into legislation only very recently and has not yet been defined, there is no case-law on the issue yet.

c) Is this compatible with the Directives?

The current situation is not compatible with the Directives, as indirect discrimination is prohibited only in a very limited fashion. The prohibition found in art. 5 (3) of the Labour Law neither covers all grounds, nor its material scope is comparable to the Directives.

d) In relation to age discrimination, does the law specify how a comparison is to be made?

As age discrimination is not explicitly prohibited in Turkish law, there is no specification on how the comparison is to be made.

e) Have differences in treatment based on language been perceived as potential indirect discrimination on the grounds of racial or ethnic origin?

The case-law suggests that, differences in treatment based on language are not considered as an issue of discrimination. In fact, the reverse situation is the case in Turkey, where courts find attempts by NGOs or municipalities to advocate the linguistic rights of minorities or provide multilingual services to ethnic/linguistic minorities to be unconstitutional on the basis of the equality provision of the constitution.

One significant example is the decision of the Eighth Division of the Council of State (22 May 2007) against the Sur Municipality, ordering the dissolution of the Council of the Municipality and the dismissal of Mayor Abdullah Demirbaş, on the basis of a resolution of the Council of the Municipality of Sur to issue information regarding the provision of certain public services in Kurdish, Armenian, Syriac, English, Arabic, as well as Turkish.[86] The state replaced the elected mayor of the Sur district with an appointed bureaucrat, the deputy governor of Diyarbakır, for two years until the next municipal elections. Demirbaş was re-elected as the Mayor of Sur district in the 2009 municipal elections.

Another example is the legal action taken against *Eğitim-Sen* (the largest teachers' union). On 25 May 2005 the Court of Cassation ruled that the statute of *Eğitim-Sen* was in breach of several provisions of the Constitution, as well as art. 20/1 of the Law on Trade Unions of Public Servants and decided for the dissolution of the Union. The basis of the decision was the union's advocacy of mother tongue education in its by-laws. The Court of Cassation ruled that this was in violation of articles 3 and 42 of the Constitution, which establish that the Turkish nation is an indivisible entity and that no language other than Turkish shall be taught as a mother tongue. In July 2005, the Union amended the relevant provision in its by-laws (and thus saved itself from being dissolved) and filed a petition with the ECtHR. In a unanimous judgment on 25

[86] For the English translation of the Council of State's decision, see the Bureau of the Congress of Local and Regional Authorities of the Council of Europe, *Local Democracy in Turkey: Situation in Sur/Diyarbakır (South-east Anatolia, Turkey)*, Report of the Congress Fact-Finding Mission to Turkey (8-10 August 2007), CG/BUR(14)29REV2, available at https://wcd.coe.int/ViewDoc.jsp?id=1183385&Site=Congress&BackColorInternet=e0cee1&BackColorIntranet=e0cee1&BackColorLogged=FFC679#P97_13371 [last accessed 24 February 2014]. For the Recommendation to Turkey on this matter, see the Congress of Local and Regional Authorities, *Local Democracy in Turkey,* Recommendation 229(2007), available at https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=1691602&SecMode=1&DocId=1167298&Usage=2 [last accessed 24 February 2014].

September 2012, the ECtHR found Turkey to have violated Articles 10 and 11 of the ECHR (for more on the case, see section 0.3).

In its comments on the Concluding Observations of the Committee on the Elimination of Racial Discrimination, the Turkish Government stated that the number of languages traditionally used in Turkey may reach hundreds, if not thousands and that "Turkey needs to observe non-discrimination principle in teaching all traditional languages other than Turkish. Any act in favour of one or two languages traditionally used can be interpreted as discrimination against other languages and their respective speakers".[87]

Until 2010, Turkish law criminalized the use of minority languages as part of political campaigns. Article 58 of Law no. 298 on the Fundamental Provisions Governing Elections and Voter Registration banned the use of any language other than Turkish (the official language) in election campaigning. The blanket prohibition in the law deprived domestic courts of their power to exercise judicial discretion and imposed criminal sanctions ranging from six months to one year and payment of a fine. The provision has frequently been used against Kurdish politicians running for local and general elections from the pro-Kurdish political parties, who addressed their constituencies in Kurdish in areas where many individuals in the local population, particularly women and the elderly, do not speak Turkish. As part of the 'Kurdish opening' launched by the government in 2009, this provision was amended on 8 April 2010. Pursuant to current Article 58, political parties and candidates "shall primarily use Turkish."[88] Meanwhile, a number of politicians who had been sentenced under the previous version of the law to imprisonment and a heavy fine for having campaigned in Kurdish during the local elections of 2004 and general elections of 2002 and 2007 filed a petition with the ECtHR. The Court deliberated on the five joined applications on 4 December 2012 and gave its decision on 22 January 2013. In the case of *Şükran Aydın and Others v. Turkey,* the ECtHR noted that Section 58 of Law no. 298 at the material time contained a blanket prohibition and held that a total prohibition on the use of unofficial languages coupled with criminal sanctions is not compatible with freedom of expression (for details of the case, see section 0.3). [89]

A further progressive development in 2012 was the Constitutional Court's judgment repealıng Article 117 of the Law on Political Parties, which made it a criminal offence for political parties to use languages other than Turkish in their congresses,

[87] Committee on the Elimination of Racial Discrimination, Reports Submitted by State Parties under Article 9 of the Convention, *Comments by the Government of Turkey on the Concluding Observations of the Committee on the Elimination of Racial Discrimination,* CERD/C/TUR/CO/3/Add.1, 30 March 2009, Comment no. 6, available at http://www.unhcr.org/refworld/publisher,CERD,CONCOBSCOMMENTS,TUR,49eefe2a2,0.html [last accessed 24 February 2014].
[88] Article 7 of the Law on the Amendment of the Law on the Fundamental Provisions Governing Elections and Voter Registration and the Law on the Election of Parliamentarians (Law no. 5980).
[89] ECtHR, *Şükran Aydın and Others v. Turkey,* Application nos. 49197/06, 23196/07, 50242/08, 60912/08 and 14871/09, 22 January 2013.

campaigns, meetings, communications, signs, brochures etc, punishable by prison sentence of minimum 6 months. The case was referred by a local court where a criminal case was launched against a Kurdish politician for having made a speech in Kurdish. The local court asked the Constitutional Court to review the constitutionality of Article 117 of the Law on Political Parties on the basis, inter alia, of the equality clause of the constitution. The Constitutional Court, however, restricted its review to the principle of legality and did not address the discriminatory nature of the ban on the use of minority languages by political parties. In a majority judgment delivered on 12 January 2012, the Constitutional Court reasoned that the object of the bans laid out in the Law on Political Parties is political parties, which are legal entities. The prosecution of individuals for the violation of acts prohibited for political parties was in violation of the principle of legality, as laid out in Article 38 of the Constitution. Thus, the Constitutional Court left intact the ban on the use of minority languages by political parties, and merely repealed the application of this ban on individuals. It is unclear, therefore, whether political parties will be penalized if/when their members speak Kurdish (and other minority languages) in party congresses. For reasons of administrative efficiency, the Court ruled that the decision would take effect six months after its publication in the Official Gazette. The decision was published on 5 July 2012 and entered into effect on 5 January 2013.

On 24 January 2013, the Turkish Parliament passed a law enabling defendants in criminal cases to use their mother tongue during oral defence in courts. Accordingly, defendants may make their oral defence in "another language [other than the official language of Turkish] they declare that they can better express themselves." The right is limited to the following phases of trials: during the reading of the indictment and in responding to the substantive allegations against the defendant. Defendants may choose an interpreter among the list of interpreters to be determined by the state and are required to bear the costs themselves.[90] The law entered into effect immediately, following its publication in the Official Gazette on 31 January 2013. [91]

The democratization package announced by the government on 30 September 2013 entails commitments to remove some of the hurdles before the use of unofficial languages by political candidates. Though not expressly stated by the Prime Minister in his remarks concerning the package, the envisioned legal amendments seemingly principally aim the execution of the ECtHR's judgment in the case of *Şükran Aydın and Others v. Turkey*. The Prime Minister announced that Article 58 of the Law on the Fundamental Principles of Elections will be amended to allow the use of other languages. Article 43 of the Law on Political Parties, which prohibits the political candidates' use of unofficial languages in the primaries, will also be amended. However, the Prime Minister did not mention Article 81(c) of the same law, which prohibits *political parties* from using unofficial languages in their election and other

[90] The law does not provide for translation into the sign language.
[91] Law on the Amendment of Criminal Procedure Law and the Law on the Execution of Sentences and Security Precautions, no. 6411, 24 January 2013, Official Gazette, no. 28545, 31 January 2013.

campaigns, meetings, congresses and written materials. Pending the promised legal amendments, the status of the ban on political parties remains unclear.

2.3.1 Statistical Evidence

a) Does national law permit the use of statistical evidence to establish indirect discrimination? If so, what are the conditions for it to be admissible in court?

Law on Civil Procedure (Law no. 1086), Law on Administrative Procedure (Law no. 2577) and Law on Criminal Procedure (Law no. 5271) do not contain specific provisions regarding statistical evidence. There is no case-law regarding the use of statistical evidence either. However, as a rule, every claim can be proved by all types of evidence (although there are exceptions). Consequently, the courts can consider statistical evidence besides other evidence.

b) Is the use of such evidence widespread? Is there any reluctance to use statistical data as evidence in court (e.g. ethical or methodology issues)? In this respect, does evolution in other countries influence your national law (European strategic litigation issue)?

Although use of statistical evidence is not prohibited by national law, it is not used by the courts.

c) Please illustrate the most important case law in this area.

There is no case law in this area.

d) Are there national rules which permit data collection? Please answer in respect to all five grounds. The aim of this question is to find out whether or not data collection is allowed for the purposes of litigation and positive action measures. Specifically, are statistical data used to design positive action measures? How are these data collected/ generated?

The constitutional amendments approved by a national referendum in 2010 introduced a new clause guaranteeing the constitutional protection of personal data. The third clause added to Article 20 reads:

> "Everyone has the right to request the protection of their personal data. This right encompasses the individual's right to be informed of personal data, to access such data, to request their correction or deletion, and to learn whether these are being used for their intended purpose. Personal data can only be recorded under circumstances prescribed by law or with the clear consent of the individual. The substantive and procedural matters concerning the protection of personal data are laid by law."

The said law which is necessary to put into effect the newly granted constitutional right to the protection of personal data has not yet been adopted, more than three years after the adoption of the constitutional amendment. The democratization package announced by the government on 30 September 2013 contains a commitment to adopt such a law, though no timeline has been given by the government on this issue.

Art. 135/1 of the Turkish Penal Code criminalizes recording of personal data unlawfully. The second paragraph of the same Code criminalizes the unlawful recording of political, philosophical or religious opinions of individuals or personal information relating to racial origins, ethical tendencies, sex lives, health conditions or connections to trade unions of individuals. Any person who violates this provision is liable to imprisonment for six months to three years. Although there is no clarification in the provision regarding what constitutes an "unlawful" recording, art. 26 stipulates that "no punishment shall be given to a person acting under the consent of a person relating to a right disposable by that person." Consequently, research to obtain such data shall not be punished if data is collected about individuals based on their consent.

In 2003, Turkey adopted its first law providing public access to data concerning the acts and policies of public institutions as well as public professional associations.[92] The law grants everyone the "right to information" and imposes on public bodies the corresponding duty to provide all kinds of information and documents within 15 days of the request. Certain information and documents enumerated in the law fall outside the scope of the law, including state secrets. There is insufficient public awareness about the law and public institutions do not respond to information requests on time and fully. It is quite common for public institutions not to respond to requests at all, to provide information other than the one requested or to deny access on grounds of an expansive interpretation of exceptions provided under the law.

While periodical censuses conducted by the government used to contain questions regarding ethnic origin, the 1965 census was the last one where individuals were asked about their mother tongue and ethnicity. Consequently, there is no longer publicly available official data on the ethnic background of individuals collected on the basis of their informed consent and the principle of confidentiality. To 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, the mentioned circular is not 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".[93] In its comments on the Concluding Observations of the

[92] Bilgi Edinme Hakkı Kanunu, no. 4982, 9 October 2003, Official Gazette, no. 25269, 24 October 2003.
[93] ECRI, *Report on Turkey*, p. 9.

Committee on the Elimination of Racial Discrimination, the Turkish Government has, while "acknowledging that disaggregated data on ethnicity may facilitate devising policies for special measure targeting a specific group," stated that "this is a sensitive issue, especially for those nations living in diverse multicultural societies for a long period of time".[94]

In its written replies 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, the Turkish Government stated that the Government does not collect, keep or use qualitative or quantitative data on ethnic backgrounds of its citizens.[95] However, in reality, various public bodies are reported to unlawfully collect data on the ethnic backgrounds of citizens. Such profiling appears to target, in particular, ethnic minorities such as the Kurds and the Roma. While it is not possible to put together an exhaustive list of official profiling of ethnic minorities, a few examples of such practices have been inadvertently made available to the public by public institutions engaged in such profiling. According to the monitoring report on ethnic and racial discrimination published by Bilgi University, the official website of the Konya Provincial Police Department contained information about the ethnic background of residents living in certain neighbourhoods within the borders of Konya. The information note stated that "families of kurdish[96] dissent who migrated from eastern provinces" resided in neighbourhoods located near the highways while "gypsies[97] resided in the neighbourhoods of yeni mahalle and mezbaha." While "it was observed that the public residing in areas that fell within [the] responsibility [of the Police Department] do not have a specific political-ideological aim and thought", the Police Department has ascertained that residents of certain other neighbourhoods were "people who came from the east and the southeast" who "committed crimes such as battery and theft".[98]

Thus, in practice, public authorities in Turkey do collect data on the ethnic and racial origin of citizens; however they do so not for the purpose of sharing such data with the public for its use in research and litigation. Rather, the state collects data for the

[94] Committee on the Elimination of Racial Discrimination, Reports Submitted by State Parties under Article 9 of the Convention, *Comments by the Government of Turkey on the Concluding Observations of the Committee on the Elimination of Racial Discrimination,* CERD/C/TUR/CO/3/Add.1, 30 March 2009, Comment no. 5, available at http://www.unhcr.org/refworld/publisher,CERD,CONCOBSCOMMENTS,TUR,49eefe2a2,0.html [last accessed 24 February 2014].

[95] 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/WrittenReplieTurkey74.pdf [last accessed 24 February 2014].

[96] Spelling mistake does not belong to the author.

[97] Spelling mistake does not belong to the author.

[98] Seda Alp and Nejat Taştan, p. 77, citing information available on 11 May 2010 on the website of the Köprübaşı Police Station of the Konya Police Department, which was no longer accessible at the time of the writing of this report.

purpose of profiling and policing ethnic minorities. Furthermore, despite clear legal obligations under a 2003 law on right to information, it fails to share such data with the public even where it is explicitly requested to do so.

In its fourth monitoring report on Turkey, published in 2011, ECRI issued a set of recommendations concerning the collection of data for the purposes of developing policies in favour of minorities. ECRI recommended the Turkish government to identify "ways of measuring the situation of minority groups in different fields of life … in compliance with relevant requirements on data protection and the protection of privacy" and to implement them "with due regard for the principles of confidentiality, informed consent and voluntary self-identification."

And yet, discriminatory data collection for the purpose of profiling and policing ethnic minorities continued in 2012. A news report in November 2012 revealed that the police and gendarmerie unlawfully collected and stored personal data about the residents of the Hozat district of the eastern province of Tunceli, which is predominantly populated by individuals of Kurdish origin and Alevi faith. The blacklisting of hundreds of people, including local political figures, started in the 1990s and continued until 2011, the criminal investigation launched by the prosecutor upon the news reports revealed. Among the data collected and stored by law enforcement officials were the ethnic origin, religion, denomination, political opinion and activities as well as basic demographic characteristics of the locals. The criminal investigation by the prosecutor as well as a parliamentary investigation continues.

A news report published on 1 August 2013 revealed not only that racial profiling of minorities is continuing but also how deeply rooted this discriminatory state practice is. The Armenian-Turkish weekly newspaper Agos published an official correspondence within the provincial representation of the Ministry of Education in Istanbul, which revealed that the population registry records contain a confidential "racial code." Accordingly, since the establishment of the Republic in 1923, the Turkish state profiles its citizens, giving them separate "racial codes". The news concerned the attempts of a parent who had converted from Islam to the Armenian Orthodox religion to register her child to an Armenian kindergarten, for which she needed to receive authorization from the Ministry of Education. Upon the parent's application, the provincial representation of the Ministry in Istanbul sent an official letter to its district branch, stating that the parent in question could only be given authorisation if her "confidential racial code" in her population registry record is 2, which is the racial code given to Armenian citizens.[99] The letter referred to the Law on Private Education Institutions, according to which, the right to receive mother tongue education granted to non-Muslim minorities under the Treaty of Lausanne can only be exercised by students belonging to the minority group affiliated with the

[99] 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/haber.php?seo=90-yildir-soy-kodu-ile-fislemisler&haberid=5479 [last accessed 24 February 2014].

school in question. On day the news was published, the Ministry of Education sent an official reply to Agos.[100] In reference to Articles 40-41 of the Treaty of Lausanne, which regulates "school registration" in minority schools, the Ministry stated that the information contained in old population registry records dating back to the Ottoman era is used to identify the racial background of "minority citizens" for the purpose of determining their eligibility to register their children to minority schools. According to a news report published by national daily Radikal on 2 August, not only Armenian 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. Based on an undisclosed source in the population registry services, there are racial codes for the Greek Orthodox, for Jews, for Syriacs and for "others".

The news stories prompted a member of the parliament (MP) from the main opposition party to submitting written queries to the parliament to the attention of Prime Minister Erdoğan. In his queries dated 2 August[101] and 6 August[102] 2013, MP Sezgin Tanrıkulu asked, inter alia, the intent behind the racial profiling of minorities, which minority groups are being profiled, why the racial codes are being considered "confidential" and whether there are other "confidential" policies and activities concerning non-Muslim and ethnic minorities, whether "race code" is being used by the government as a criterion for recruitment to civil service, which government ministries are engaged in racial profiling and how many citizens have so far been coded, whether the information contained in registries is used solely by the Ministry of Education or whether it is also accessed by the judiciary, the law enforcement authorities and the intelligence service, and what the legal basis of racial profiling is considering that the Lausanne Treaty does not have a provision concerning the coding of racial origin of non-Muslim minorities. The Prime Minister has not yet responded to the queries.

Data on persons with disabilities: General censuses conducted in 1985 and 2000 contained information on the quantitative dimension of disability in Turkey, though the data collected was deemed to be insufficient.[103] In 2002, the Presidency on Disabled People under the auspices of the Prime Ministry commissioned the State Statistical Institute a survey on persons with disabilities in Turkey.[104] The first statistical research on disability in Turkey, the study identified the number of persons with

[100] For the official reply of the Ministry of Education to Agos, see http://www.agos.com.tr/haber.php?seo=icisleri-bakanligi-soy-durumlari-milli-egitim-bakanligina-veriliyor&haberid=5487 [last accessed 24 February 2014].
[101] For the text of the MP's first written query to the Prime Minister, see http://www2.tbmm.gov.tr/d24/7/7-29686s.pdf [last accessed 24 February 2014].
[102] For the text of the MP's second written query to the Prime Minister, see http://www2.tbmm.gov.tr/d24/7/7-29694s.pdf [last accessed 24 February 2014].
[103] Arzu Şenyurt Akdağ *et al*., p. 13.
[104] For the results of the 2002 Disability Survey of Turkey, see İsmail Tufan and Özgür Arun (2006), *Türkiye Özürlüler Araştırması 2012 İkincil Analizi,* Sosyal ve Beşeri Bilimler Araştırma Grubu, Türkiye Bilimsel ve Teknik Araştırma Kurumu, available at: http://www.ozgurarun.com.tr/rap/TufanveArun_TOA.pdf [last accessed 1 July 2014].

disabilities in Turkey to be 8,431,937, which makes 12.29 per cent of the total population. This was the first and last official survey on disability in Turkey and 12 years later, government policies are still developed on the basis of the data generated by this study.

In 2010, the Ministry of Family and Social Policies and the Turkish Statistical Institution conducted a needs assessment survey, whose results were published under the title of the "Survey on Problems and Expectations of Disabled People" were released in 2011.[105] The survey was conducted with 280.014 persons with disabilities with "at least 20 per cent disability" who are recorded in the National Disabled People Database.

Disability data collection for the purposes of benefits in employment: The 2002 survey on disability in Turkey found that only 20 per cent of persons with disabilities were employed, while the ratio of employed women with disabilities is as low as 6,7 per cent (compared to 32,2 for men). The 2010 survey found that only 14.8 per cent of persons with disabilities with 20 per cent or more disability level were employed, putting the unemployment rate in this group as 85.7. According to the same survey, 6.3 per cent of the individuals surveyed were actively looking for a job.

The Prime Ministry's 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 disability of these individuals. The data includes information about vacancies available at each public institution which is legally obliged to fulfill an employment quota of 3 per cent.[106] In addition, the Turkish Statistical Institution releases annual data on the number of persons with disabilities employed in both the public and the private sector and the number of vacancies in both sectors which are legally obliged to fulfill employment quotas.[107]

2.4 Harassment (Article 2(3))

a) How is harassment defined in national law? Does this definition comply with those of the directives? Include reference to criminal offences of harassment insofar as these could be used to tackle discrimination falling within the scope of the Directives.

[105] Ministry of Family and Social Policies and Turkish Statistical Institute, Survey on Problems and Expectations of Disabled People 2010 , November 2011, available at http://www.eyh.gov.tr/upload/Node/8703/files/ozurlulerin_sorun_ve_beklentileri_arastirmasi_2010.pdf [last accessed 28 February 2014].
[106] http://www.dpb.gov.tr/tr-tr/istatistikler/engelli-personel-ve-omss-istatistikleri.
[107] http://www.tuik.gov.tr/Start.do.

Harassment is not defined in the laws. There does not exist a general prohibition of harassment under Turkish laws. Sexual harassment, while not defined, is the only kind of harassment explicitly prohibited in Turkish Law (art. 24 and 25 of the Labour Law and arts. 94 and 105 of the Turkish Penal Code). If harassment constitutes defamation as defined and prohibited by the Turkish Penal Code, then it will be punishable.

In addition, Article 417 of the Law on Obligations brings on employers the duty to protect his/her employees against psychological and sexual harassment. The grounds of psychological harassment are not specified. This is the only legal provision addressing psychological harassment, though it does not have an explicit prohibition.

According to art. 24 of the Labour Law, if the employer tells words that harm the honour and good name of the worker or one of the members of his/her family, behaves in such manner or attempts sexual harassment against the worker; teases or intimidates the worker or one of the members of his/her family or encourages, provokes and drives the worker or one of his/her family members to act unlawfully or commits an offense requiring conviction against the worker or one of his/her family members or makes grave attributions or accusations harming the worker's honour and dignity against the worker and if the required measures are not taken although the worker becomes subject to sexual harassment at the workplace by another worker or third persons, the worker has the right to terminate the labour contract before the expiry of the contract period or without waiting for the notification period. The worker might choose not to. In any case, the worker has the right to bring persons responsible for such acts before criminal and civil courts.

Although none of the forms of harassment other than sexual harassment are explicitly prohibited, it can be argued legally that harassment in general is a type of tort and is prohibited under art. 49 of the Law of Obligations.

The draft law on anti-discrimination defines harassment as “any unwanted conduct, including psychological and sexual, related to any of the grounds referred to in this Law, which takes place with the purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment, or considered by the person as such.”

b) Is harassment prohibited as a form of discrimination?

Harassment is not prohibited as a form of discrimination.

The draft law on anti-discrimination, however, does prohibit harassment as a form of discrimination.

c) Are there any additional sources on the concept of harassment (e.g. an official Code of Practice)?

There are no additional sources on the concept of harassment

d) What is the scope of liability for discrimination)? Specifically, can employers or service providers (in the case of racial or ethnic origin, but please also look at the other grounds of discrimination) e.g. landlords, schools, hospitals, be held liable for the actions of employees? Can they be held liable for actions of third parties (e.g. tenants, clients or customers)? Can the individual harasser or discriminator (e.g. co-worker or client) be held liable? Can trade unions or other trade/professional associations be held liable for actions of their members?

In criminal law, because of the principle of individuality of criminal responsibility, employers cannot be held liable for the discriminatory behaviour of their employees or third persons. However, this does not apply to civil liability. According to art. 55 of the Law on Obligations, employers are responsible for the wrongdoings of their employees. According to the same article, the employer has the right to have recourse against the employee.

Unless explicitly stipulated in the law, persons cannot be held liable for actions of third parties. Everyone is liable for their own actions. Thus, in principle only the individual harasser or discriminator can be held liable under criminal and civil law.

In order for civil servants to face prosecution, their superior's permission is required (Law no. 4483 on the Prosecution of Civil Servants and Other Public Employees and Article 129 of the Constitution). In other words, civil servants cannot be prosecuted for crimes unless their superior consents to prosecution.

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

2.5 Instructions to discriminate (Article 2(4))

a) *Does national law (including case law) prohibit instructions to discriminate? If yes, does it contain any specific provisions regarding the liability of legal persons for such actions?*

National law does not prohibit instructions to discriminate and there is no case-law on the issue. However, art. 10 of the Law on Civil Servants prohibits chiefs of civil servants to give orders to civil servants in violation of the law.

b) Does national law go beyond the Directives' requirement? (e.g. including incitement)

No.

c) *What is the scope of liability for discrimination? Specifically, can employers or service providers (in the case of racial or ethnic origin)(e.g. landlords, schools, hospitals) be held liable for the actions of employees giving instruction to discriminate? Can the individual who discriminated because s/he received such an instruction be held liable?*

Unless explicitly stipulated in the law, persons cannot be held liable for actions of third parties. Everyone is liable for their own actions. Thus, in principle only the individual harasser or discriminator can be held liable under criminal and civil law.

In the context of employment, employers have a limited civil liability for the harm caused by their employees. Because of the principle of individuality of criminal responsibility under criminal law, employers are not held liable for the discriminatory behaviour of their employees or third persons. However, this does not apply to civil liability. According to Article 66 of the revised Law on Obligations, employers are responsible for the harms caused to third parties by their employees in the course of undertaking the work tasks they have been given.[108] However, where it is proven that the employer showed the requisite care in hiring, giving work related instructions to and in supervising and monitoring the employee in question, the employer cannot be held legally responsible for the harms the employee has caused to third parties. According to the same article, the employer has the right to have recourse against the employee but the amount of the money he can claim is based on the level of responsibility the employee was found to have. Under Article 55 of the old Law on Obligations,[109] which was repealed and replaced by the new Law on Obligations adopted in 2011 and entered into force in 2012, the employer had responsibility for the harms caused by his employees while fulfilling their tasks. Article 55 of the now defunct law did not specifically refer to the harm caused to third parties.

In order for civil servants to face prosecution, their superior's permission is required (Law no. 4483 on the Prosecution of Civil Servants and Other Public Employees and Article 129 of the Constitution).

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

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

a) *How does national law implement the duty to provide reasonable accommodation for people with disabilities? In particular, specify when the duty*

[108] *Türk Borçlar Kanunu*, no. 6098, 11 January 2011, Official Gazette, no. 27836, 4 February 2011. The law entered into force on 1 July 2012.
[109] *Türk Borçlar Kanunu*, no. 818, 22 April 1926, Official Gazette, no. 359, 29 April 1926. Repealed by the revised Law on Obligations.

applies, the criteria for assessing the extent of the duty and any definition of 'reasonable'. For example, does national law define what would be a "disproportionate burden" for employers? Is the availability of financial assistance from the State to be taken into account in assessing whether there is a disproportionate burden?

The constitutional and the legal framework in Turkey do not refer explicitly to the concept of reasonable accommodation. However, there are various constitutional and legal provisions that could be interpreted to impose a duty of reasonable accommodation.

The revised Article 10 of the constitution provides for positive discrimination measures on behalf of persons with disabilities, without specifically enumerating the sectors or spheres of life where such measures shall be introduced. However, the constitution is silent on reasonable accommodation.

The United Nations Convention on the Rights of Persons with Disabilities identifies the denial of reasonable accommodation as discrimination. According to art. 90 of the Constitution, the Convention has the force of law. Thus, persons with disabilities could in theory rely on the Convention before national authorities and courts and claim that denial of reasonable accommodation should be considered as discrimination.

The material scope of the Convention is wider than the Directives. Consequently, depending mostly on the number and diversity of requests and applications, the Convention can become an important tool to widen the areas where reasonable accommodation is provided. However, in light of the fact that the concept of reasonable accommodation is largely unknown to judges, the success of such claims remains to be seen.

The Law on Persons with Disabilities aims at enabling the participation of persons with disabilities to society through taking the requisite measures for removing the barriers to their access to "health, education, rehabilitation, employment, care and social security".[110]

Law on Persons with Disabilities does not use the term "reasonable accommodation," but provides an obligation for the employer to make arrangements in the work place which will facilitate persons with disabilities to work in that work place and to provide supportive gadgets and aids. Art. 14(3) requires both public and private employers to take necessary measures to eliminate or alleviate the barriers and hardship faced by employees or job applicants with disabilities in employment processes and to make physical adjustments. In cases of denial of reasonable accommodation to persons

[110] Özürlüler ve Bazı Kanun ve Kanun Hükmünde Kararnamelerde Değişiklik Yapılması Hakkında Kanun, 1 July 2005, Official Gazette, no. 25868, 7 July 2005, Art. 1.

with disabilities, employers are fined by labour inspectors. However, the criteria used by labour inspectors are unknown. Denial of reasonable accommodation is not identified by labour inspectors as discrimination. They are only referred to as breaches of the legislation requiring the employer to take certain measures. Persons who request accommodations should apply to the employer and if their requests are denied, they can make an application to labour inspectors. Labour inspectors are responsible for monitoring the observance of the Labour Law by the employers. Neither the inspectors nor the labour courts can order the employer to provide reasonable accommodation.

A very limited duty of reasonable accommodation for employees with disability is also 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 the civil servant to carry out his/her duties. Noticeably, the limited duty of reasonable accommodation brought upon 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 as discrimination. In February 2011, a number of amendments were introduced in Articles 100 and 101 of the law. The provisions added to Article 100 of the law authorize the public sector employers to adapt the starting and ending of the 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. It is notable, however, that the amendments did not impose a *duty* to accommodate, rather than a power to do so and left the discretion to the employers. Thus, failure of employers to take such measures will not deemed to be discrimination. The amendment in Article 101 of the Law on Civil Servants, on the other hand, introduced a negative duty, whereby persons with disabilities working in the public sector cannot be forced to work in night shifts or night duty, unless s/he wants to do so.[111]

b) Please also specify if the definition of a disability for the purposes of claiming a reasonable accommodation is the same as for claiming protection from non-discrimination in general, i.e. is the personal scope of the national law different (more limited) in the context of reasonable accommodation than it is with regard to other elements of disability non-discrimination law.

Turkey does not have an anti-discrimination law. The constitutional provision on anti-discrimination and the anti-discrimination clauses in various laws do not define disability. The Law on Persons with Disabilities is the only law which defines disability and which introduces a duty of reasonable accommodation, though without naming it as such. Thus, the question of whether there is a discrepancy between the definition of disability for the purposes of claiming a reasonable accommodation is the same as

[111] 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, Official Gazette, no. 27857 (bis no.1), 25 February 2011.

for claiming protection from non-discrimination in general is not applicable in the Turkish context. As far as the Law on Persons with Disabilities is concerned, the two definitions are the same.

c) *Does national law provide for a duty to provide a reasonable accommodation for people with disabilities in areas outside employment? Does the definition of "disproportionate burden" in this context, as contained in legislation and developed in case law, differ in any way from the definition used with regard to employment?*

There is no constitutional or legal provision with an explicit reference to reasonable accommodation in areas outside employment either. However, the constitution and various laws require the introduction of special measures and positive discrimination on behalf of persons with disabilities.

The revised Article 10 of the constitution provides for positive discrimination measures on behalf of persons with disabilities, without specifically enumerating the sectors or spheres of life where such measures shall be introduced.

There are various laws that impose on the state to take the requisite measures to enable the access of persons with disabilities to public services in the areas of education, health and social services.

In the field of education, the legal framework in Turkey has a dual approach. The constitution and the laws governing education foresee students with disability to be segregated from the general student population and placed in special schools and requires the accommodation of their special needs. Article 42 of the Constitution implicitly refers to students with disability, entrusting 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 of 1973 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 states that children with disabilities shall be provided special education and teaching at the primary school level. Article 39 of Law on Vocational Education provides special vocational courses in order to prepare students with special needs to 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 of children with disabilities attending special education institutions.

In 1983, the Law on Children in Need of Special Education introduced the principle of mainstream education, namely the integration of students with disability with the general student population. Article 4 of this law on the one hand recognizes the right of children with disabilities to special education based on their needs, and on the other tasks the state with the duty to "take the requisite measures" to enable children with disabilities "whose conditions and characteristics are appropriate" to attend schools with "normal children".

Article 15 of the Law on Persons with Disabilities requires the provision of education to persons with disabilities on equal terms with the others and imposes on the authorities to provide students with disabilities with the tools and special course materials they need to further their education. The provision also imposes on the state the duty to develop "the Turkish sign language" for students with hearing impairment. While the Turkish Language Institution has developed the Turkish Sign Language Alphabet, the regulative framework of the Ministry of Education prohibits the use of this language in the education system.[112] Moreover, there does not yet exist expert staff to teach the use of the sign language. Under the current system, the acquisition of the ability to use the sign language takes at least 10 years.[113]

d) Does failure to meet the duty of reasonable accommodation count as discrimination? Is there a justification defence? How does this relate to the prohibition of direct and indirect discrimination? What is the potential sanction? (i.e.: fine)

The law on Persons with Disabilities does not prohibit denial of reasonable accommodation as a form of discrimination. However, the United Nations Convention on the Rights of Persons with Disabilities prohibits denial of reasonable accommodation as a form of discrimination. According to art. 90 of the Constitution, the Convention has the force of law.

e) Has national law (including case law) implemented the duty to provide reasonable accommodation in respect of any of the other grounds (e.g. religion)

i) race or ethnic origin

There is no national law (including case law) setting forth such an obligation

ii) religion or belief

There is no national law (including case law) setting forth such an obligation. There has however been a positive development in practice in 2012. In response to the petition of an Alevi parliamentarian for the accommodation of the Alevi Muharrem fast in restaurants within the premise of the national parliament, the Speaker of the Turkish Parliament authorized the serving of special food in accordance with the dietary restrictions of Alevi deputies during 15-27 November 2012. This was the first time ever a public office has accommodated Alevis during their fasting. The practice was repeated during the Muharrem fast in 2013.

iii) Age

[112] Arzu Şenyurt Akdağ *et al.*, p. 32.
[113] Id.

There is no national law (including case law) setting forth such an obligation

iv) sexual orientation

There is no national law (including case law) setting forth such an obligation.

f) Please specify whether this is within the employment field or in areas outside employment

i) race or ethnic origin

N/A.

ii) religion or belief

N/A.

iii) age

N/A.

iv) sexual orientation

N/A.

g) Is it common practice to provide for reasonable accommodation for other grounds than disability in the public or private sector?

No. To the contrary, as discussed in section 3.2.2., individuals' ethnic origin, religion, belief and sexual orientation often present an obstacle to their employment – where such traits are visibly noticeable as in the case of the headscarf or can easily be assumed based on the physical appearance and names of individuals- or cause their dismissal where the minority traits are revealed, discovered or reported.

h) Does national law clearly provide for the shift of the burden of proof, when claiming the right to reasonable accommodation?

There is no provision on this issue, consequently general rules apply.

i) Does national law require services available to the public, buildings and infrastructure to be designed and built in a disability-accessible way? If so, could and has a failure to comply with such legislation be relied upon in a discrimination case based on the legislation transposing Directive 2000/78?

Provisional Articles 2 and 3 of the Law on Persons with Disabilities (no. 5378) dated 2005 require the physical accessibility of all public buildings, public infrastructure and

public places as well as public and private transportation vehicles regulated by the municipalities within seven years after the law entered into force, namely 7 July 2012.

It is notable that the law does not extend the duty of accessibility to public services. In this sense, the material scope of the law is more limited than that of the UN Convention, which requires accessibility to both public places and public services. Furthermore, the Turkish law does not foresee any sanctions for failure to comply. The Prime Ministry issued a circular in 2006, calling on relevant authorities to develop short, medium and long term plans on the implementation of the law within the 7 years period.[114] In a statement issued in 2008, the Prime Ministry noted that the limited measures adopted so far failed short of the legal standards.[115] The Ministry of Family and Social Policies made attempts to raise the awareness of public authorities about their legal obligations. In December 2011, the Ministry demanded from the governorships of all 81 provinces information about the policies and practices of the public institutions within their mandate to comply with accessibility requirements. In 2012, the Ministry sent to the municipalities across the country a handbook on accessibility.[116]

The extremely poor awareness of public authorities on the rights of persons with disabilities, coupled with the lack of effective enforcement mechanisms and sanctions under Law no. 5378, result in an utter disregard of the legal obligations stipulated under the law. Even the new public buildings built after the entry into force of this law lack the minimum facilities to enable the access of persons with disabilities, preventing persons with disabilities from entering the public sphere.[117] After more than seven years since the entry to force of Law no. 5378, the government does not have statistics on the number of public buildings, infrastructure and facilities which are accessible for persons with disabilities.

Article 14 of the Municipality Law (Law no. 5393) of 2005 requires municipal services to be provided to persons with disabilities "through methods most suitable to their situation." However, this vague wording does not explicitly require municipal services to be accessible for persons with disabilities neither does it impose legal obligations on municipalities.

An amendment made on 30 May 1997 in the Zoning Law (no. 3194) constitutes the first time the notion of accessibility was introduced to Turkey's legal framework. The Additional Article 1 added with a decree with the force of law requires zoning plans and urban, social, technical infrastructure and buildings to be in compliance with the Turkish Standards Institute's standards "in order for the physical environment to be accessible and liveable for persons with disabilities." To put into effect this provision,

[114] Id., p. 50.
[115] Id.
[116] Sabancı University, *Engelsiz Türkiye için: Yolun Neresindeyiz,* March 2013, p. 22, available at http://www.eyh.gov.tr/upload/Node/23774/files/rapor_tamami.pdf [last accessed 25 February 2014].
[117] Eşit Haklar için İzleme Derneği, p. 18.

the Ministry of Public Works and Housing adopted an executive regulation in 1999, putting forth rules for the accessibility of residential houses, roads, public buildings, transportation vehicles, hotels, pedestrian ways etc for persons with disabilities. The Turkish Standards Institute has adopted various standards, such as those concerning wheelchairs (TS ISO 7176-7); public information symbols (TS 4802); lift installation (TS8237); public toilets (TS 8357); structural preventive and sign (pigtograph) design criteria on street, boulevard, square and roads for persons with disabilities and the elderly in urban areas (TS 12576); hearing aids (TS 8066 HD 450.3 S1); technical aids for persons with disabilities (TS EN 12182); rules on the adaptation of buildings where persons with disabilities reside (TS 9111); inner-city roads - railway transportation design rules (TS 12460); and railway vehicles– passenger coaches – adaptation of the coaches to the needs of wheelchair users (TS 12694). Unfortunately, the standards cannot be accessed free of charge.

Despite these legal requirements, neither the private nor the public sector has "made serious planning based on a calendar and with allocated resources concerning accessibility".[118] According to a report published by Sabancı University, 66,9 per cent of persons with disabilities in Turkey cannot access sidewalks, and 55-60 per cent cannot access pedestrian crossings, shopping centres, restaurants, public buildings, post offices and banks. The report states that a mere 0,44 percent of the GDP is allocated for persons with disabilities, 70 percent of which is cash transfer. According to 2002 official figures, around 12 percent of the population is made up of persons with disabilities.[119]

In cases brought before the courts regarding inaccessible services, environment and public transportation, the prosecutors and judges are reluctant to define these as discrimination. A rare positive example in this regard was a court judgment delivered in December 2012 against the High Board of Elections for its failure to make election facilities accessible for a person with disability who could not cast his vote in the general elections of June 2011. Though the plaintiff had registered his disability with the authorities long before the elections, his polling station was situated on the third floor of a building which did not have an elevator. The court awarded the plaintiff with 5,000 NTL (around 2,100 Euros).[120] In most cases, public and private entities are extremely dismissive in handling requests for accessibility. As far as private housing is concerned, tenants are in a particularly vulnerable position. An amendment made to the Apartment Ownership Law through the Law on Persons with Disabilities of 2005 imposes an obligation on private homeowners living in apartment buildings to accommodate the accessibility requests brought by a neighbour and a duty on the local government to enforce this obligation.[121] Where the accessibility request comes

[118] Arzu Şenyurt Akdağ *et al*., p. 50.
[119] Sabancı University, *Engelsiz Türkiye için*.
[120] "Engelli seçmen YSK'yı mahkum etti", Bianet, 4 December 2012, available at http://www.bianet.org/bianet/ayrimcilik/142560-engelli-secmen-yskyi-mahkum-etti [last accessed 25 February 2014].
[121] Sabancı University, *Engelsiz Türkiye için*, pp. 127-128.

from a tenant, this obligation does not apply. Though the aforementioned Additional Article 1 of the Zoning Law brings a general duty of accessibility, in practice private homeowners living in apartment buildings do not comply. A news article in 2013 is a case in point. The residents of an apartment building refused to allow the family of a small girl with a physical disability who used a wheelchair to build a ramp to make the main door of the building accessible. The municipal authorities whom the tenant family applied to for help agreed to construct a ramp only if the neighbours agreed.[122]

On 19 June 2012, days before the expiration of the grace period for accessibility set forth under the Law no. 5378, two members of the parliament from the governing JDP introduced a bill proposing to extend the deadline by three years, until 7 July 2015. The reason behind the requested extension was stated to be "the necessity to adopt requisite measures" for the implementation of the law. Introduced on 19 June 2012, just days before the expiration of the original deadline, the draft law was expeditiously adopted by the parliament on 4 July and sent to President Abdullah Gül for approval on 9 July 2012. Despite calls from disability organizations, the President expeditiously approved the law on 11 July.[123] Disability organizations, persons with disabilities and their families protested the law as unexpected and unfair, arguing that it sought to favour the municipalities which failed to fulfill their legal obligations for seven years. In response to protests, the Minister for Family and Social Policies Fatma Şahin stated that the government will establish a high council made up of academicians and civil society representatives to identify the measures that need to be adopted within one year in every city and every district in order to make public spaces and services accessible to persons with disabilities. She expressed the government's commitment to monitor the process and sanctions those that fail to abide by the law. To ensure compliance with accessibility requirements, the Ministry trained more than 6.000 administrators at the national and local level, including mayors and governors, and organized 15 regional meetings across Turkey. Administrators who fail to comply with the law would be fined starting from July 2013.[124]

A mechanism for monitoring and auditing the enforcement of the accessibility of goods and services was established through an executive regulation adopted on 20 July 2013, eight years after the adoption of the Law on Persons with Disabilities.[125] The regulation adopted by the Ministry of Family and Social Policies foresees the establishment of provincial commissions which will be presided in every province by the governor or his/her deputy and will be composed of six members. In addition to public servants who must be architects, engineers, urban planners, landscape

[122] Bianet, "Rampaya İzin Yok, Kızını Arabasıyla Taşı Diyorlar," 26 September 2013, available at http://www.bianet.org/bianet/toplum/150194-rampaya-izin-yok-kizini-arabasiyla-tasi-diyorlar [last accessed 25 February 2014].
[123] Bazı Kanun ve Kanun Hükmünde Kararnamelerde Değişiklik Yapılmasına Dair Kanun, no. 6353, 4 July 2012, Official Gazette, no. 28351, 12 July 2012.
[124] Ministry of Family and Social Policies website.
[125] Erişilebilirlik İzleme ve Denetleme Yönetmeliği, Official Gazette, no. 28713, 20 July 2013.

architects or construction technicians, there are two representatives of disability NGOs, who preferably have disabilities themselves. The commissions are tasked with the duty to enforce provisional Articles 2 and 3 of the law which require the physical accessibility of all public buildings; roads, sidewalks and pedestrian crossings; outdoor, sports, art and cultural facilities; private establishments providing public services (such as hotels, offices, shopping centres, entertainment facilities, swimming pools and parking lots); as well as public and private transportation vehicles regulated by the municipalities to be accessible for persons with disabilities. Effective immediately, the regulation tasks the commissions to issue administrative fines in cases of non-compliance. The fines are set to be in the range of 1,000-5,000 NTL (around 340-1,700 Euros) per each non-complying private facility (not to exceed a total of 50,000 NTL (17,000 Euros) per year for each legal or real private individual), and 5,000-25,000 NTL (1,700- 8,500 Euros) where the facility belongs to a public institution (not to exceed a total of 500,000 NTL, or 170,000 Euros) per year for each institution). The commission may decide to give the non-complying facility an additional grace period of two years until 7 July 2015 instead of issuing a fine. The funds to be collected will be channelled to the Ministry of Family and Social Policies to be used for accessibility projects. The regulation requires governors to establish the provincial commissions within one month (i.e. by 20 August 2013).

On 26-27 November 2013, the Ministry of Family and Social Policies organized a briefing meeting in Ankara for the purpose of informing and advising the members of the provincial commissions about their tasks, duties and responsibilities. Following up on this meeting, on 27 December 2013, the Ministry sent to the governorships of all 81 provinces the “accessibility monitoring and auditing plan for the year 2013-2014” in accordance with the terms of the executive regulation.[126] The plan, also uploaded on the Ministry’s website, provides the list of following buildings, open areas and mass transportation vehicles that need to be monitored and audited.

Buildings: public and private schools (from pre-school through high school levels), public and private health institutions, public and private universities, public and private university student dormitories, public and private banks, courts, provincial directorates of the Presidency of Social Security Institution, provincial directorates of the General Directorate of the Turkish Employment Agency, the main service buildings of municipalities and shopping malls.

Open areas: sidewalks and pedestrian crossings in main streets, avenues and boulevards in residential areas which are on mass transportation routes, bus and minibus stops used in inner-city mass transportation services, public toilets, open and closed parking lots.

[126] http://www.eyh.gov.tr/tr/26301/EID-Plani-Ust-Yazi-ve-EID-Plani-2013-2014 [last accessed 25 February 2014].

Mass transportation vehicles: busses, tramways and metro vehicles run by public agencies and real and legal private persons.

The Ministry also uploaded on its website application forms for citizens' complaints and assessment forms to be used by the commissions in their monitoring and auditing activities.[127]

j) Does national law contain a general duty to provide accessibility by anticipation for people with disabilities? If so, how is accessibility defined, in what fields (employment, social protection, goods and services, transport, housing, education, etc.) and who is covered by this obligation? On what grounds can a failure to provide accessibility be justified?

The Turkish national system is based on anticipation. The Law on Persons with Disabilities and the Municipality Law require all public buildings, public infrastructure and public places as well as public and private transportation provided by municipalities to be accessible to persons with disabilities. However, accessibility is not defined under the Turkish laws. Instead, there are set out standards for making infrastructure to be accessible for persons with disabilities. See section (i) generally for the definition of accessibility, and the fields and subjects of obligations.

Until 2013, disability could explicitly be stated as a ground for exclusion from access to social protection. A regulation issued in 1998 by the General Directorate on the Status Women put forth the criteria for admission to government-run women's shelters (named "guesthouses" by the government). According to Article 9 (d), (e) and (g) of this regulation, the following women were ineligible: women with "mental health problems", "women with mental disabilities", and women with physical disabilities who need care.[128] This regulation was repealed by a new regulation which came into effect on 5 January 2013 and which introduced the principle of non-discrimination in admission to shelters of all women (and their children) who are subject to or under the risk of being subject to violence. With regards to disability, admission criteria are slightly qualified. Women who have children with disabilities will be placed to private apartment flats, provided that they are not under a life threatening situation, and their rent and utility costs will be paid by the shelter. Women with intellectual or psychological disabilities will be placed to appropriate social service institutions. The regulation requires all shelters to be accessible for persons with disabilities.[129]

[127] http://www.eyh.gov.tr/tr/26255/Erisilebilirlik-Izleme-ve-Denetleme-Komisyonlari [last accessed 25 February 2014].
[128] Regulation on Women's Guesthouses under the Social Services and Child Protection Agency, Official Gazette, no. 23400, 12 July 1998.
[129] Regulation on the Opening and Management of Women's Guesthouse, Official Gazette, no. 28519, 5 January 2014.

k) Does national law require public services to also translate some or all of their documents in Braille? (i.e. Tax declarations, general information) Is translation in sign languages provided in some of the public services where needed? What is the practice?

There is no law which requires the translation of public services for the deaf and blind persons. There are however laws and regulations which provide the legal basis for the needs-based provision of translation services in sign languages.

Additional Article 8 added to the Law on Social Services in 2005 requires the availability at public offices of personnel to provide, where necessary, translation services for persons with hearing and vision impairments. The article also requires the opening of tutorial courses to teach public personnel the sign language. The executive regulation adopted in 2006 to implement this provision requires the hiring by each provincial representation of the General Directorate for Social Services and Child Protection of at least one personnel qualified as sign language translator.[130] As of December 2013, only 18 of the 81 provinces complied with this requirement.

For the standardization of sign language translation services, the Ministry of Family and Social Policies and the Ministry of National Education organized the first national examination to determine the personnel eligible to receive the official certificate of qualification. In 2013, 87 individuals were found to qualify as sign language translators and received the first group of certificates issued by the government.[131] At the award ceremony, the representative of the General Directorate for Social Services and Child Protection announced that 63 of these individuals would be hired to fill the vacant posts in the provincial representation of the Directorate

There is no legal provision concerning the translation of public documents to Braille language.

The practice on the issue is not systematic. While municipalities and government offices developed some projects in recent years to make their services accessible for the deaf and blind individuals, these non-systematic efforts are not representative of the practice nationwide.[132]

[130] Işaret Dili Tercümanlığı Hizmeti Verecek Personelin Yetiştirilmesi ile Çalışma Esasları Hakkında Yönetmelik, Official Gazette, no. 26264, 19.08.2006, Article 6.
[131] Announcement made through the website of the Ministry of Family and Social Policies, 19 December 2013, http://www.eyh.gov.tr/tr/26194/Resmi-Ilk-Isaret-Dili-Tercumanlarina-Sertifikalari-Verildi [last accessed 2 March 2014].
[132] The Ministry of Family and Social Policies website contains a list of projects by municipalities (http://www.eyh.gov.tr/tr/8556/BELEDIYELERE-AIT-PROJELER) and public institutions (http://www.eyh.gov.tr/tr/8555/KURUMLARA-AIT-PROJELER) [last accessed 2 March 2014].

l) Please explain briefly the existing national legislation concerning people with disabilities (beyond the simple prohibition of discrimination). Does national law provide for special rights for people with disabilities?

Before the adoption of the Law on Persons with Disabilities (Law No. 5378) in 2005, there was no law which exclusively dealt with the rights of persons with disabilities. Although this Law was intended to be comprehensive, many issues are still regulated by other legislation, i.e. Special Education Law, Social Insurance and General Health Insurance Law, Property Tax Law, Labour Law, Turkish Civil Code, Turkish Penal Code, etc. According to the list published on the web-site of the Turkish Disability Administration, there are 47 Laws, 4 Decrees; 4 Council of Ministers Decisions; 50 Regulations; 19 Directives and 8 Circulars on issues directly relevant to persons with disabilities.[133] However, this list is not exhaustive.

All of the above legislation provide for special rights for persons with disabilities, such as early retirement, tax reduction or exemption, special education support, cash benefits, disability quota both in private and public employment, rehabilitation, parking lots for persons with disabilities, sheltered employment, welfare homes etc.

2.7 Sheltered or semi-sheltered accommodation/employment

a) To what extent does national law make provision for sheltered or semi-sheltered accommodation/employment for workers with disabilities?

Turkish law does not make provision for semi-sheltered employment.

The concept of sheltered employment was introduced for the first time by the Law on Persons with Disabilities of 2005 has in art. 14. In May 2006 Regulation on Sheltered Workplaces was adopted. According to art. 4(1) of the Regulation, in order for a workplace to be considered as sheltered workplace, the number of employees should not be less than 30 if the workplace is within the borders of a metropolitan municipality, and not less than 15 if the workplace is outside the borders of a metropolitan municipality. 75% of the employees should be at least 40% impaired or 60% impaired (depending on the type of impairment). However, the Regulation made no reference to any state support such as tax reduction or exemption. Art. 30 of the Labour Law stipulates that social insurance premiums which should normally be paid by the employer will be covered by the state. This was the only support provided to the sheltered employment by the state.

The situation has changed in 2013 with the adoption of a new executive regulation on 26 November 2013.[134] Repealing the 2006 regulation, the new regulation introduces novelties to facilitate the establishment and development of sheltered workplaces.

[133] http://www.eyh.gov.tr/tr/8136/Ulusal-Mevzuat [last accessed 25 February 2014].
[134] Regulation on Sheltered Workplaces, Official Gazette, no. 28833.

The minimum number of employees to be hired in order to be certified as sheltered workplaces has been lowered to eight and a minimum ratio of employees with disabilities within the general workforce has been set as 75 percent. Based on the finding by a needs assessment project conducted by the Ministry in 2012 that the least preferred group of persons with disabilities by employers are those with intellectual and psychosocial disabilities, the regulation introduced a new eligibility requirement for employees provided by sheltered employment. Accordingly, the candidates must have at least 40 percent intellectual or psychosocial disability. The regulation requires the sheltered workplaces to be audited at least once a year by the Ministry of Family and Social Policies. Those employers found not to be abiding by one or more of the requirements set in the new regulation will be issued a written warning. In case of non-compliance within 30 days, their license will be cancelled.

On 17 December 2013, the Ministry of Family and Social Policies opened a call for applications as part of a new sheltered workplace support project. Prepared on the basis of the new regulation, the project sets aside financial assistance to sheltered workplaces hiring employees with intellectual and psychosocial disabilities. Employers whose bids will be accepted by the Ministry will receive financial assistance of up to 150,000 NTL to correspond to up to 60 percent of the capital they need to open a sheltered workplace. During the first year, the costs of employees with disabilities will be met by the government. Also during the first year, the government will subsidize up to 60 percent of the operational costs of the employers. The deadline for applications is 28 February 2014.

b) Would such activities be considered to constitute employment under national law- including for the purposes of application of the anti-discrimination law?

Such activities are considered as employment under national law.

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)

Are there residence or citizenship/nationality requirements for protection under the relevant national laws transposing the Directives?

There is no law transposing the Directives.

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

a) Does national law distinguish between natural persons and legal persons, either for purposes of protection against discrimination or liability for discrimination?

Turkey does not have an anti-discrimination law. Various laws have provisions on anti-discrimination, whose scope is limited to the areas/sectors which the laws govern. 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.

Civil Law does explicitly refer to the distinction between natural and legal persons. Article 48 of the Civil Law, whose Article 68 prohibits associations from discriminating among its members based on the enumerated grounds, 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 also entails an explicit reference to legal persons, exempting them from criminal liability. According to art. 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]

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 can be taken before the courts against the company.

[135] Security precautions are sometimes alternatives to typical criminal sanctions (imprisonment, fine etc), 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 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 license of the legal person is suspended, or certain property which are fruits of the crime are confiscated etc.

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

b) Is national law applicable to both private and public sector including public bodies?

Yes. The law does not make a distinction between public and private bodies.

3.1.3 Scope of liability

Are there any liability provisions other than those mentioned under harassment and instruction to discriminate? (e.g. employers, landlords, tenants, clients, customers, trade unions)

Unless explicitly stipulated in the law, persons cannot be held liable for actions of third parties. Everyone is liable for their own actions. Thus, in principle only the individual harasser or discriminator can be held liable under criminal and civil law. Criminal law expressly endorses the principle of individuality of criminal responsibility (Article 20(2)).

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

3.2 Material Scope

3.2.1 Employment, self-employment and occupation

Does national anti-discrimination legislation apply to all sectors of public and private employment and occupation, including contract work, self-employment, military service, holding statutory office? In case national anti-discrimination law does not do so, is discrimination in employment, self-employment and occupation dealt with in any other legislation?

Turkey does not have a national anti-discrimination law. There are various other laws that address discrimination in employment and occupation.

Art. 122 of the Turkish Penal Code prohibits discrimination in hiring on grounds of, *inter alia*, language, race, colour, gender, disability, political opinion, philosophical belief, religion and denomination. Limiting the protection to the hiring process, the Article is applicable only to the process before the employment relationship is established but not after the employment relationship is established (both in the public and private sectors). Although there is no case-law on this issue, it can be

argued that art. 122 of the Turkish Penal Code is applicable in all sectors, where the selection criteria or recruitment conditions are discriminatory.

According to art. 13 of the Law on Persons with Disabilities, persons with disabilities have the right to freely choose their profession. The most specific provision in the legislation which prohibits discrimination in the selection and recruitment conditions is art. 14. The provision prohibits discrimination "in any of the stages from the job selection, to application forms, selection processes, technical evaluation, suggested working periods and conditions". Although promotion is not explicitly mentioned, as the provision refers to "all stages," it might be interpreted to cover promotion.

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

In paragraphs 3.2.2 - 3.2.5, you should specify if each of the following areas is fully and expressly covered by national law for each of the grounds covered by the Directives.

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

Does national law on discrimination include access to employment, self-employment or occupation as described in the Directives? In case national anti-discrimination law does not do so, is discrimination regarding access to employment, self-employment and occupation dealt with in any other legislation?
Is the public sector dealt with differently to the private sector?

Turkey does not have a national anti-discrimination law. Discrimination regarding access to employment, self-employment and occupation are dealt with various laws which are sector specific (the Law on Civil Servants being specific for the public sector and the Labour Law for the private sector) and specific to certain professions. There is no umbrella legislation regulating self-employment and statutory office, but various laws on certain professions, which do not have provisions on discrimination. In such cases, the general constitutional provisions on anti-discrimination apply.

<u>General rules for recruitment of public servants</u>

According to art. 70 of the Constitution, "every Turk has 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."

According to art. 48 of the Law on Civil Servants, recruitment as a civil servant is subject to general and special conditions. General conditions are:

- To have Turkish citizenship;
- To be above 18 years old;
- To be at least a secondary school graduate;
- To not to be deprived of public rights;
- To not to have been punished for certain offences (offences against the constitutional system, offences against national defence, embezzlement etc.);
- To be exempt from military service; to have completed the military service or not to be called for military service at the time of the application;
- To not to have a mental illness which will prevent the person from fulfilling his/her duties permanently (subject to art. 58 on the employment of persons with disabilities as civil servants).

In addition to general conditions, special conditions are prescribed in the legislation of the relevant public offices. According to art. 3 (c) of the Law on Civil Servants, promotion is based on merits. However, special categories of public employees, such as academic personnel employed in universities are subject to special legislation.

There is no provision in the Law on Civil Servants which prohibits discrimination in the selection, recruitment or promotion of civil servants. The Law only prohibits discrimination by civil servants while carrying out their duties (Article 7). 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. For example, according to the Regulation on the Promotion of Civil Servants, objective criteria such as education, achievement in exams, working period, positive employment record shall be taken into account in the promotion of the civil servants.

Public employees are selected by the Public Employee Selection Exam. Those who pass the exam are subject to a trial period, prior their full appointment. Additional art. 3 of the “Regulation on the exams organized for those who will be appointed to public offices for the first time” stipulates that, unless explicitly laid down by special provisions in laws, by-laws and regulations, public institutions cannot require an age limit for those who will be placed through central exams.

Special rules for recruitment of civil servants for certain professions

Separate exams are held for recruitment of public employees to certain professions, such as judges and prosecutors. Persons who are qualified to take these exams are prescribed by laws.

The qualifications required to be appointed as a candidate judge or prosecutor are listed in art. 8 of the Law on Judges and Prosecutors. Among others, there are two

requirements relevant to the Directives. According to para. (g) candidates should "not have any physical and mental illness or disability that would prevent from the conduct of his/her duties as a judge or a prosecutor and in a continuous manner and in every part of the country; not have disabilities such as having difficulties in controlling the movements of the organs, speaking different than it is accustomed and which would be found odd by the surrounding". Currently, paragraph (b) requires candidates not to be older than 35 years old. However, this paragraph was repealed by the Constitutional Court on 14 February 2013 on the ground that it was in violation of article 91 of the Constitution, which prohibits issues pertaining to fundamental rights and liberties to be regulated by executive decrees with the force of law.[136] Paragraph b was inserted to Article 8 of Law no. 2802 through a decree with the force of law (no. 643) adopted by the Cabinet of Ministers on 3 June 2011. The Constitutional Court decided its judgment concerning the repeal of this paragraph to enter into force nine months after its publication in the Official Gazette. The judgment was published on 31 December 2013 and will thus enter into force on 30 September 2014.

In most cases, if not all, if a separate exam is organized for the selection, written exams are followed by interviews. There are no provisions which guarantee the objectivity of these interviews. There is no reference to the duty to provide reasonable accommodation either. Judges and prosecutors with at least one year experience in their current position and who have not been convicted by a final court judgment or who have not been subject to disciplinary measures are eligible for promotion.

Contract-based recruitment to public and private sector

The Labour Law applies only to persons working under a labour contract irrespective of whether they work in the public sector or the private sector. If the person is working in the public sector as a civil servant (memur), the Law on Civil Servants apply. Persons who work in the public sector under contracts are subject to special regulations.

According to art. 71 of the Labour Law, minimum age of employment is 15. However, children who have completed the full age of fourteen and have also completed their primary education, may be employed on light works that will not hinder their physical, mental and moral development, and for those who continue their education, in jobs that will not prevent their school attendance. There is no general upper age limit for employment. However, minimum and/or maximum age limits exist in access to certain professions, occupations and employment. For example, according to Article 8 (b) of the Law on Judges and Prosecutors (no. 2802), persons who are older than 35 years cannot be appointed as candidate judge or prosecutor. However, as stated earlier, in February 2013 the Constitutional Court repealed paragraph (b) containing this age restriction. The decision will enter into effect on 30 September 2014.

[136] Constitutional Court Judgment E. 2011/89, K. 2013/29 (14.02.2013).

Art. 5 of the Labour Law prohibits discrimination based on language, race, gender, political opinion, philosophical belief, religion and sect or any such considerations. Sexual orientation, disability, age and ethnic origin are not explicitly referred to. It, however, applies only after an employment relationship is established between the employee and the employer and is not applicable to the pre-employment stages such as job announcements and recruitment processes.

Sectors governed by special labour laws

Some sectors or group of persons are outside the scope and application of the Labour Law. Because of the special nature of the media and maritime sectors, the Turkish legislator had opted for special labour laws for these two sectors. Other exceptions to the application of the Labour Law are found in the Law itself, at art. 4. According to art. 4, the following are excluded from the application of the Labour Law:

1) Sea and air transport activities;
2) In establishments and enterprises employing fewer than 50 employees where agricultural and forestry work is carried out;
3) Any construction work related to agriculture which falls within the scope of family economy;
4) In works and handicrafts performed in the home without any outside help by members of the family or close relatives up to 3 rd degree (3 rd degree included);
5) Domestic services;
6) Apprentices;[137]
7) Sportsmen;
8) Those undergoing rehabilitation;
9) Establishments employing three or fewer employees and falling within the definition given in Article 2 of the Tradesmen and Small Handicrafts Act.

As Labour Law does not apply to the above, prohibition of discrimination prescribed in art. 5 of the Labour Law does not apply either.

Recruitment to the military

There are special laws regarding the employment and promotion of the military personnel and the civil personnel employed in Turkish Armed Forces.

A long list of laws and regulations within the separate realm of 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 engages in homosexual

[137] The phrase “without prejudice to the provisions on occupational health and safety“ in this clause has been repealed on 20 June 2012 by law numbered 6331.

conduct. The dismissal of gay soldiers from the military on the basis of this article has been upheld by the High Military Administrative Court.[138] Gay military personnel who are found to have engaged in homosexual conduct can be dismissed from graduate education, refrained from promotion to assistant professorship in the Military Medical Academy, and excluded from professional exams required for entry to various professions. On 31 January 2013, a new discriminatory law was adopted. The Law on the Disciplinary Issues of the Turkish Armed Forces, submitted to by the Ministry of Defence in December 2012, was adopted by the Turkish Parliament despite protests of the LGBT groups.[139] Article 20 of the law enumerates homosexuality among the violations of disciplinary rules which 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. It is common knowledge in Turkey that the term "unnatural intercourse" refers to anal intercourse and hence homosexual relationship. There are several cases of dismissal of homosexual men from public service or the military upon oral evidence of their engagement of anal sex with other men.[140]

Military regulations governing exemption from mandatory military service not only explicitly discriminate on the basis of sexual orientation, but also result in multiple discrimination against homosexual conscientious objectors, who refuse to serve in the military due to their political belief and/or conscience. A well-known example is Mehmet Tarhan, a leading conscientious objector and LGBT activist, who has been subjected to consecutive and multiple arrests, imprisonments and convictions as well as forced military recruitment for having refused to serve in the army. While military authorities attempted to force Tarhan to undergo physical examination to prove his homosexuality, they were unable to do so when he refused. A fugitive since March 2006 and convicted by a military court in October 2006,[141] Tarhan eventually petitioned the ECtHR. In a judgment delivered on 17 July 2012, the ECtHR held that Mr. Tarhan's rights under Article 3 (prohibition of inhuman or degrading treatment) and Article 9 (freedom of thought, conscience and religion) were violated due to the non-recognition of his right to conscientious objection and the criminal proceedings launched against him on that basis. However, the ECtHR judgment was restricted to Mr. Tarhan's political convictions as a conscientious objector and did not address his sexual orientation. Furthermore, the Court did not address the discrimination issues the case raised under Article 14 of the Convention (for more on this case, see section 0.3).

[138] High Military Administrative Court, E. 1998/888, K. 1999/482, 11.05.1999, available at http://www.msb.gov.tr/ayim/Ayim_karar_detay.asp?IDNO=1316&ctg=000002000002000001 [last accessed 26 Febrruary 2014].
[139] Law on the Disciplinary Issues of the Turkish Armed Forces, 31 January 2013, Official Gazette, no. 28561, 16 February 2013.
[140] See footnotes 60 and 61.
[141] Turkish Land Forces, 5th Infantry Training Brigade Commandership Military Court, E. 2006/772, K. 2006/871,10.10.2006.

In assessing eligibility for exemption, the regulation of the Turkish Armed Forces considers homosexuality as a psychosexual disorder and individuals having such 'condition' to be "unfit for military service." To be exempt from military service, gay men were routinely required to 'prove' their homosexuality by either going through a forced anal examination or providing photographic evidence of being engaged in passive anal sex.[142] In recent years, due to wide media coverage and international pressure, this practice seems to have been abandoned. Instead, authorities now subject individuals to psychological tests to test their homosexuality and, where they find the test results unconvincing, request a "family meeting," forcing individuals to make a choice between coming out to their families and military service. In cases where a family meeting does take place, authorities may still not be convinced, in which case they require the individual to be admitted to the psychiatry wards of military hospitals known as "the pink ward".[143] A referee who was expelled from his profession by the Turkish Football Federation when the "unfit for military service" report he had received was leaked, had spent a total of 22 days at three different hospitals which have such a ward before he was provided with the report (for more on this case, see section 0.3).[144] The process of psychological tests and family meetings typically last days and requires multiple visits to more than one military hospital.[145]

Self-employment and statutory office

According to art. 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 Law on Attorneys (Law No. 1136), Law on Pharmacists and Pharmacies (Law No. 6197), Law on Notaries (Law No. 1512) etc. There are no specific provisions in any of these laws on the prohibition of discrimination.

The constitutional and legal provisions enumerated above do not have aspects which constitute direct discrimination in the selection, recruitment and promotion of both public and private sector employees. However, there are also no specific provisions which comprehensively prohibit discrimination based on all of the grounds covered

[142] For examples, see Amnesty International (2011), "*Not an Illness nor a Crime"...*
[143] Elif İnce, " 'Pembe Tezkere'ye Koğuş İşkencesi", *Radikal*, 15 April 2012, http://www.radikal.com.tr/Radikal.aspx?aType=RadikalDetayV3&ArticleID=1084969&CategoryID=77 [last accessed 6 November 2012].
[144] *Id.* For more on the ill treatment homosexuals are subjected at military hospitals, see the website of LGBT news portal Kaos GL: http://www.kaosgl.org/sayfa.php?id=11810 [last accessed 6 November 2012].
[145] For a detailed self-account by a trans-gender individual of a six days process involving multiple visits to four different military hospitals, see http://www.kaosgl.org/sayfa.php?id=9147 [last accessed 6 November 2012].

by the Directives in access to employment, self-employment and occupation. In the absence of data and case-law, it is not possible to assess the current situation.[146] In situations where data exists -such as data regarding incompliance with the quota requirements for persons with disabilities-, they clearly indicate that discrimination exists (see below on quotas).

As in the headscarf ban at universities, which was at issue in the ECtHR's judgment in the Leyla Şahin case,[147] the headscarf ban in public or private service jobs does not have a constitutional or legal ground.[148] There does not exist any provision in the constitution or the above mentioned laws prohibiting the wearing of the headscarf in employment. And yet, there is widespread employment discrimination against headscarved women on the basis of a de facto ban precluding their employment in the public sector. The 'legal' basis of this ban is an executive regulation which was adopted in 1982, during the military regime.[149] The regulation requires female employees to have their "heads uncovered." Though neutral when taken at face value, this stipulation has been relied on by the state in refusing to hire headscarved women to the public sector as well as firing in mass numbers at certain moments of high political tension public service employees wearing the headscarf.[150] Although the same regulation prohibits female public service employees also from, inter alia, wearing sandals or long nails, it has been used systematically against headscarved women. The ban in the public sector has had a "spill over effect" and spread to the private sector over time.[151] The extra-legality of the headscarf ban creates significant uncertainty as to the presence and the limits of the ban and leads to arbitrary employment practices both at the public and private sectors.

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[146] According to the information provided by Turkish authorities in the State report submitted to the United Nations Committee on the Elimination of Racial Discrimination and in the replies to the list of issues, there have been no complaints concerning acts of racial discrimination during the reporting period. See UN Committee on the Elimination of Racial Discrimination (CERD), *Reports submitted by States parties under article 9 of the Convention : International Convention on the Elimination of all Forms of Racial Discrimination : 3rd periodic reports of States parties due in 2007: addendum: Turkey*, 13 February 2008, CERD/C/TUR/3, para. 211, available at: http://www.unhcr.org/refworld/docid/4885cfa60.html [last accessed 6 November 2012]. In its report to the Committee Turkey has stated that "the Business Inspection Board of the Ministry of Labour and Social Security is tasked with investigating allegations of discrimination in business relations. To date, the Board has not found any acts of discrimination, including racial discrimination, during its inspections." *Id.*, para. 145.

[147] ECtHR, *Leyla Şahin v. Turkey*, 29 June 2004.

[148] The ECtHR's judgment was limited to the headscarf ban at universities and did not address the ban in employment.

[149] Regulation Concerning the Attire of Personnel Working at Public Institution, Official Gazette, no. 17849, 25 October 1982.

[150] The dismissal of headscarved women from the public sector has not been a continuous or consistent policy. Rather, it was employed at extraordinary political periods in Turkey's history such as during the military regime of 1980-1983 and the period following the 'soft coup d'état' of February 28th, 1997. NGOs representing headscarved women claim that 5,000 headscarved women were dismissed and another 10,000 were forced to resign between 1998-2002. Dilek Cindoğlu (2010), *Başörtüsü Yasağı ve Ayrımcılık: Uzman Meslek Sahibi Başörtülü Kadınlar,* TESEV Publications, p. 35.

[151] *Id.*

In an unexpected judgment delivered on 5 November 2012, the 8th Chamber of the Council of State held that the headscarf ban does not apply to lawyers, who are not public servants though they provide a public service.[152] Delivered in a case brought by a female lawyer against the Union of Turkish Bar Associations, which declined to issue her a new professional ID card on the ground that she submitted a photograph with a headscarf, the judgment drew the boundaries of the ban – restricting it to the public sector. The decision had enabled lawyers wearing the headscarf to enter into court hearings for the first time in decades. Its implications for the private sector remain to be seen (for more on this case, see section 0.3).

Groundbreaking developments took place in 2013 with regard to the employment of headscarved women in the public sector. On 8 October 2013, the government amended the regulatory rules concerning the dress code in public offices, removing the headscarf ban imposed on select public service providers. Through an amendment made in Article 5(1)(a) of the Regulation on the Dress Code of Staff Working at Public Institutions, the requirement of 'uncovering the head' was removed from a long list of dress codes for female public servants.[153] An amendment made in Article 6 of the same regulation states that police, judges, prosecutors and the personnel of the Turkish Armed Forces are bound by the special rules laid out in the respective regulations of their institutions. This formulation excludes female judges, prosecutors, police officers and military personnel from the scope of the right to wear the headscarf in public offices.

On 31 October 2013, four members of the parliament (MP) from the governing JDP entered the Parliament wearing the headscarves, bringing an end to a de facto ban on female parliamentarians. The four parliamentarians had decided to cover their heads after they became pilgrims following their visits to Mecca, the holy site of Muslims. Following their return to Turkey, they participated in the first session of the parliament with their headscarves, bringing an end to a de facto ban on the headscarf in the Turkish Parliament. The four MPS were warmly greeted by the vast majority of the parliamentarians from the JDP, the NAP and the pro-Kurdish PDP. With the exception of subdued protests by a few MPs, the secularist RPP did not oppose the four MPs' entry into the parliament.

The warm welcome the female MPs with headscarves received in the parliament stood in sharp contrast to a similar incident in 1999, the last time a female parliamentarian had entered the parliament with a headscarf. The MP in question named Merve Kavakci was from the Islamist Virtue Party and, unlike the four MPs from JDP, was elected to office with her headscarf. However, Kavakci's entry to the parliament for the swearing-in ceremony was heavily protested by MPs from the other political parties, including the then Prime Minister, and she was forced to leave

[152] The unofficial text of the judgment is available at: http://www.istanbulgercegi.com/danistay-8-dairesinin-turbana-iliskin-kararinin-tam-metni-3143451.html *[last accessed 26 February 2014].*
[153] The Regulation on the Dress Code of Staff Working at Public Institutions, Official Gazette, no. 28789, 8 October 2013.

the chamber without taking her oath. Kavakci was subsequently stripped of her parliamentary seat as well as her Turkish citizenship on the ground that she had acquired dual American citizenship without informing the authorities. She was also banned from politics for five years following the closure of the Virtue Party by the Constitutional Court on the ground that it posed a threat to the secular order.

On a related development, on 15 November 2013, an anchorwoman wearing a headscarf presented the news at the Turkish Radio and Television (TRT). This has brought the de facto ban on journalists wearing the headscarf in public broadcasting, commencing a new era.

Another group which suffers employment discrimination through seemingly neutral hiring criteria is homosexual men. Many jobs in the public and private sector in Turkey require men to have fulfilled their military service duties upon proof of 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 an employment, both in the public and private sector. In 2011, a homosexual man filed a discrimination claim with the provincial human rights board of Istanbul against a private company which refused to hire him after having found out about his sexual orientation. While the applicant was initially verbally told that he was accepted for the job, the employer changed her mind when the applicant revealed, upon a query, that the ground of his exemption from military service was his sexual orientation.[154] Homosexual men who were able to hide their sexual orientation in the recruitment phase are always faced with the risk of losing their jobs if and when their employers are informed about health reports exempting them from military service. 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 disclosure of a health report issued by a military hospital certifying his "unfitness for military service" on the basis of his sexual orientation (for more on this case, see section 0.3).

The Roma in Turkey face an "extremely high" degree of structural unemployment and "face specific disadvantages and prejudices in employment related to their ethnicity."[155] Field research conducted by Roma associations put forth empirical evidence of employment discrimination against the Roma.[156]

[154] "Cinsel Yöneliminizden Dolayı İşe Alımınızı İptal Etmek Zorundayız", *KaosGL*, 15 June 2011, http://www.kaosgl.com/sayfa.php?id=7159 [last accessed 6 November 2012].
[155] European Roma Rights Centre and the Edirne Roma Association, 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 [last accessed 6 November 2012].
[156] Id., p. 18-20.

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

Does national law on discrimination include working conditions including pay and dismissals? In case national anti-discrimination law does not do so, is discrimination regarding working conditions dealt with in any other legislation?

In respect of occupational pensions, how does national law on discrimination ensure the prohibition of discrimination on all the grounds covered by Directive 2000/78 EC? NB: Case C-267/06 Maruko confirmed that occupational pensions constitute part of an employee's pay under Directive 2000/78 EC. In case national anti-discrimination law does not do so, is it dealt with in any other legislation?

Note that this can include contractual conditions of employment as well as the conditions in which work is, or is expected to be, carried out.

Turkey does not have a national law on discrimination. There is no umbrella legislation on the conditions of work and employment, including pay and dismissals.

The prohibition of discrimination prescribed in art. 122 of Turkish Penal Code is limited to recruitment and does not cover employment and working conditions. Different categories of employees are subject to different legislation.

According to art. 55 of the Constitution, wage is 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.

Art. 5 of the Labour Law prohibits discrimination in the employment relationship. Although discrimination in remuneration is prohibited expressly only in relation to gender, art. 5 should be interpreted to cover prohibitions of discrimination in pay, based on all grounds. The provision does not refer to ethnic origin, sexual orientation, disability or age explicitly. So far there is no case-law on the issue, which might give an opinion regarding the interpretation adopted by the courts.

Before the adoption of the Labour Law, women's organizations in Turkey lobbied for an anti-discrimination article, which would cover all types of discrimination and in all stages of employment. The outcome was positive for women. Art. 5 (2) prescribes that "except for biological reasons or reasons related to the nature of the job, the employer must not make any discrimination, either directly or indirectly, against an employee in the conclusion, conditions, execution and termination of the employment contract due to the employee's gender or maternity." However, a similar comprehensive prohibition is not found for any other grounds.

According to art. 18 of the Labour Law, the employer should have a valid reason for the termination of the contract. According to paragraph (d), race, colour, gender, marital status, family responsibilities, pregnancy, religion, political opinion, national

origin or social origin are not valid reasons. However, as mentioned earlier, the material scope of the Labour Law is limited.

Art.29 of the Labour Law prohibits and defines collective dismissals. Although prohibited grounds of discrimination are not mentioned explicitly, this provision should also be applicable when dismissals are based on prohibited grounds.

Civil servants are employed on a permanent basis. Thus unless a concrete reason for termination occurs, their position as a civil servant is secure. According to art. 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 in clause (g), according to which disgraceful and dishonourable acts which do not reconcile with the title of civil servant are causes for dismissal from the service. This clause is being used for the dismissal of homosexual civil servants. For example, a police officer was dismissed from the Turkish Police Force for having been 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.[157]

Art. 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 from the job selection, to application forms, selection process, technical evaluation, suggested working periods and conditions and they cannot be subjected to any differential treatment with respect to their disability which will be unfavourable for them.” This provision is clearer than most other legislation. Again pay is not explicitly mentioned, but as the provision prohibits all unfavourable differential treatment, it should also be interpreted to cover pay. Unfortunately, the reality is far from the ideal situation this provision aims for.

According to Article 39 of the Labour Law No. 4857, minimum limits of wages are determined every two years at the latest 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, which are covered or not by this Law. Surprisingly, the Regulation on Minimum Wages has an explicit provision prohibiting discrimination. According to art. 5 of the Regulation “without prejudice to art. 7, differentiation cannot be made on grounds of language, race, gender, political opinion, philosophical belief, language, sect and any such considerations in deciding the amount of minimum wage.” The list is identical to the list of prohibited grounds found in most other laws and regulations. In art. 7 of the Regulation, a distinction is made between workers older and workers at the age of 16. In 2013, the average gross monthly wage for workers older than 16 was 978,60

[157] Sosyal Politikalar, Cinsiyet Kimliği ve Cinsel Yönelim Çalışmaları Derneği (SPoD), *LGBT Davaları: AİHM, Yargıtay ve Danıştay İçtihatları,* November 2012, p. 68.

NTL (approximately 321 Euros); and for workers at the age of 16 and younger was 773,01 NTL (approximately 254 Euros).

Until recently, there were three different social security institutions for public employees, for the self-employed and for the workers. In 2006, all 3 systems were merged by Law on Social Insurance and General Health Insurance (Law No. 5510). In 2001, the Law on Individual Pension Savings and Investment System (Law No. 4632) was adopted to complement the state social security system on the basis of voluntary participation. There are no provisions in these laws on any of the prohibited grounds, except for disability. The provisions on disability are on positive measures, such as early retirement (art. 25 of the Law on Social Insurance and General Health Insurance (Law No. 5510).

Statistical data in the field of employment is collected by the Turkish Statistical Institute.[158] *Employment, Unemployment and Wage* data are collected. Data is disaggregated only on the basis of gender. Thus it is not possible to make an evaluation based on facts. But as a general observation, it can be stated that most vulnerable groups, such as Roma people, work in the informal sector and as a rule their earnings are less than the earnings of persons in the formal sector. Even though the quota system should in principle guarantee a minimum wage for persons with disabilities, the employment conditions and pay on paper is different from the actual situation.

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

Does national law on discrimination include access to guidance and training as defined and formulated in the directives? In case national anti-discrimination law does not do so, is discrimination regarding working conditions dealt with in any other legislation?

Note that there is an overlap between 'vocational training' and 'education'. For example, university courses have been treated as vocational training in the past by the Court of Justice. Other courses, especially those taken after leaving school, may fall into this category. Does national law on discrimination apply to vocational training outside the employment relationship, such as that provided by technical schools or universities, or such as adult lifelong learning courses? If not does any other legislation do so?

As there does not exist a national anti-discrimination law, evaluation can only be based on various laws and regulations on vocational guidance, training and education. Provision of vocational training and career counselling services are

[158] See www.turkstat.gov.tr.

among the responsibilities of *İŞKUR* (Turkish employment institution). İŞKUR organizes special training courses exclusively for persons with disabilities, which suffer from lack of mainstreaming. Furthermore, these courses do not offer a real choice since they are provided in very limited sectors. Lastly, when designing these courses market needs are not taken into consideration, resulting in the training of persons with disability in sectors where there is no shortage of employees.

In formal education institutions, students can attend vocational education after the completion of their primary school education. 9th and 10th grade students are given vocational education at school, and 11th grade students are given theoretical education at school for 2 days per week and practical training at workplaces for 3 days per week. Students who do not continue their vocational training at workplaces must complete, in order to graduate, 160 hours as interns at workplaces in three-year programmes or 300 hours in four-year programmes.

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

The general principles of vocational education are prescribed in the Law on Vocational Education (Law No. 3308). There are no specific provisions prohibiting discrimination. According to art. 10, in order to be an apprentice (*çırak)* the person has to be between 14 and 19. However, there are exceptions to the upper age limit. According to art. 13, workplaces falling within the scope of this Law can only employ apprentices (*çırak)* 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 art. 4 of the Labour Law and art. 13 of the Law on Vocational Education, Labour Law does not apply to those who work under apprenticeship contracts.[159]

As seen above, age limitations apply in apprenticeship. Otherwise, there are no other limitations based on prohibited grounds. However, there are also no specific provisions for protection against discrimination. Although along with *İŞKUR* municipalities also open vocational training courses, opportunities of vocational training for older persons is still very limited.

[159] The phrase “without prejudice to the provisions on occupational health and safety“ in this clause has been repealed on 20 June 2012 by law numbered 6331.

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

Does national law on discrimination include membership of, and involvement in workers or employers' organisations as defined and formulated in the directives? In case national anti-discrimination law does not do so, is it dealt with in any other legislation?

Turkey does not have an anti discrimination law. Various laws have provisions concerning membership to workers' or employers' organization. However these provisions are neither discriminatory nor do they explicitly prohibit discrimination on grounds listed in the Directives.

There are no discriminatory provisions in the Constitution regarding membership of or involvement in unions or professional organizations. However, there are no specific protections either. Instead, Article 51 of the Constitution protects the right of both employees and employers to form unions, associations and higher organizations (i.e. federations and confederations), join these organizations and freely withdraw from membership. No one shall be forced to join or withdraw from membership. Although prior permission is not needed to form these organizations, there are formalities. According to the same provision, the scope, exceptions and limits of the rights of civil servants who do not have a worker status are prescribed by law in line with the characteristics of their job. According to art. 129 of the Constitution, members of public professional organizations or their higher bodies shall not be subjected to disciplinary sanctions without being granted the right to defence. Disciplinary sanctions shall be subject to judicial review, with the exception of warnings and reprimands. Article 135 of the Constitution define Public Professional Organizations as follows: "Public professional organisations and their higher organisations are public corporate bodies established by law, with the objectives of meeting the common needs of the members of a given profession, to facilitate their professional activities, to ensure the development of the profession in keeping with common interests, to safeguard professional discipline and ethics in order to ensure integrity and trust in relations among its members and with the public; their organs shall be elected by secret ballot by their members in accordance with the procedure set forth in the law, and under judicial supervision."

According to art. 17 of the Law on Union and Collective Agreements (no. 6356) persons who are 15 or more can become members to workers' unions. There are no other provisions in the Law relevant to the prohibited grounds.

There are numerous laws regarding professional organizations, such as Turkish Medical Association, Bar Associations, Turkish Pharmacists' Association which are quasi-public bodies. Members of these professions are legally obliged to become members of these organizations in order to be able to practice their professions.

However, according to art. 135 of the Constitution, persons employed in public institutions or in state economic enterprises are not required to become members of professional organizations.

According to art. 122 of the Turkish Penal Code, anyone "who prevents a person from undertaking a regular economic activity shall be sentenced to imprisonment for a term of six months to one year or a judicial fine" on the grounds of language, race, colour, gender, disability, political opinion, philosophical belief, religion or sect. Ethnic origin, sexual orientation and age are not covered by the prohibition. Consequently, if an individual is prevented from registering to a professional organization based on race, disability or religion, then this provision might apply. However, there is no case-law.

In relation to paragraphs 3.2.6 – 3.2.10 you should focus on how discrimination based on racial or ethnic origin is covered by national law, but you should also mention if the law extends to other grounds.

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

Does national law on discrimination cover social protection, including social security and healthcare? In case national anti-discrimination law does not do so, is it dealt with in any other legislation?

In relation to religion or belief, age, disability and sexual orientation, does national law seek to rely on the exception in Article 3(3), Directive 2000/78?

Turkey does not have a national law on discrimination. There are constitutional provisions and a number of laws regulate the issues of social protection though they do not contain a prohibition of discrimination. According to Article 60 of the Constitution, "Everyone has the right to social security." Until recently, there were 3 different social security institutions for public employees, for the self-employed and for the workers. In 2006, all 3 systems were merged by Law on Social Insurance and General Health Insurance (Law No. 5510). In 2001, the Law on Individual Pension Savings and Investment System (Law No. 4632) was adopted to complement the state social security system on the basis of voluntary participation. There are no provisions in these laws on any of the prohibited grounds, except for disability. The provisions on disability are on positive measures, such as early retirement (art. 25 of the Law on Social Insurance and General Health Insurance (Law No. 5510).

Law on Social Insurance and General Health Insurance requires that, apart from the premiums paid, in order to receive health services contributions should also be paid. These contributions have become a barrier for poor sectors of the society. Although in certain cases these contributions are reimbursed, reimbursements proceed the payment of contributions, subject to the submission of requisite documents. Individuals with low income and education often may not know about the

reimbursement possibility and are not equipped with the resources to deal with bureaucracy.

In 2009 art. 68 of the Law on Social Insurance and General Health Insurance was amended by Law No. 5917. This amendment extended the health services which require contributions to cover inpatient treatments and orthesis and prosthesis. Although there is an upper limit to the contributions to be paid, this new amendment makes it harder for persons with disabilities to afford some of the health services.

Again, art. 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, since these services are provided by civil services, this prohibition also covers discrimination in the provision of social services.

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

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

Does national law on discrimination cover social advantages? In case national anti-discrimination law does not do so, is it dealt with in any other legislation?

This covers a broad category of benefits that may be provided by either public or private actors to people because of their employment or residence status, for example reduced rate train travel for large families, child birth grants, funeral grants and discounts on access to municipal leisure facilities. It may be difficult to give an exhaustive analysis of whether this category is fully covered in national law, but you should indicate whether national law explicitly addresses the category of 'social advantages' or if discrimination in this area is likely to be unlawful.

Social advantages are provided generally on the basis of income and old age. Irrespective of income, everyone above the age of 65 can use public transportation free of charge. Persons with disabilities can benefit from free or discounted public transportation provided by various municipalities. Both the central government and local governments give welfare benefits to poor individuals and families. Persons with disabilities and their families can under certain conditions benefit from cash benefits.

A government policy initiated in 2002 with the support of the World Bank provides conditional child grants to lower income families who do not have any social security coverage. Known as "conditional cash transfer", the programme provides monthly stipends per child at both pre-school and school aged. Payment is conditional to school enrolment for school aged children and regular health controls for pre-school children. The amounts range, based on the gender of the child (more for girls than

boys) and the level of schooling (more for secondary than elementary school).[160] Started as a pilot programme in six provinces, the policy was started to be implemented across the country in 2005.

Although the category of social advantages is not addressed by the national legislation from a discrimination point of view, provision of social advantages can be interpreted as a category of services and art. 122 of the Turkish Penal Code prohibits discrimination in the provision services available to 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. Still, judicial interpretation is required.

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

Does national law on discrimination cover education? In case national anti-discrimination law does not do so, is it dealt with in any other legislation?

This covers all aspects of education, including all types of schools. Please also consider cases and/ or patterns of segregation and discrimination in schools, affecting notably the Roma community and people with disabilities. If these cases and/ or patterns exist, please refer also to relevant legal/political discussions that may exist in your country on the issue.

Please briefly describe the general approach to education for children with disabilities in your country, and the extent to which mainstream education and segregated "special" education are favoured and supported.

Turkey does not have a national law on discrimination. Education and discrimination in education are covered by the constitution and numerous laws and regulations.

According to art. 42 of the Constitution "no one shall be deprived of the right of learning and education" and "primary education is compulsory for all citizens of both sexes and is free of charge in state schools". According to the same article "no language other than Turkish shall be taught as a mother tongue to Turkish citizens at any institution of training and education.

Education at various levels is covered by the following legislations: Law No. 222 on Primary Education; No. 1739 Basic Law on National Education; Law No. 3308 on Vocational Training; Higher Education Law No. 2547; Law No. 430 on Unification of Education; Law No. 4306 on Eight-year Compulsory and Uninterrupted Education; and Law No. 5580 on Private Education Institutions. Prohibition of discrimination in education, however, is only found in art. 4 of the Basic Law on National Education, where the only prohibited grounds are language, race, gender and religion.

[160] On average, the payments are 27 TL (11,5 Euro) per child.

In recent years, the government started to take minimal steps to educate pupils on anti-discrimination. As reported by ECRI, "an obligatory anti-discrimination class was taught to all pupils as their first class of the school year" at the start of the 2009-2010 school year.[161] The Ministry of Education also carried out a study to review all textbooks to eliminate discriminatory content, although "a subsequent study has highlighted the need for further progress in this field".[162]

From the perspective of discrimination against ethnic minority students, arguably the most significant development in 2013 was the removal of the nationalist oath that elementary school pupils were required to make every school day before the start of their classes. An executive regulation adopted on 8 October 2013 repealed Article 12 of the Regulation on Primary Education which had made the oath compulsory in primary schools.[163] Removed first in secondary schools in 2012, the oath was thus entirely abolished in the Turkish education system. Introduced in 1933 by the Ministry of Education of the time, the 'student oath' was mandatory for all primary and secondary students, including non-Muslim pupils in minority schools, until last year. Starting with the phrase "I am a Turk" and ending with "My existence shall be dedicated to the Turkish existence. How happy is the one who says 'I am a Turk!' ", the oath was perceived as discriminatory and assimilationist by Turkey's ethnic minorities.

The removal of the oath was universally welcomed as a much belated measure by all minorities and human rights groups. The only significant objections were voiced by the leaders of the main opposition RPP (whose single party regime had introduced the oath in the 1930s) and the opposition NAP, the largest right wing political party in Turkey. A group of parliamentarians from the main opposition RPP submitted a legal proposal to the parliament for the re-inclusion of the oath in the Law on National Education and its reintroduction in primary schools. They argue that the status of the oath is a political issue which requires societal consensus and should therefore be decided by a parliamentary vote rather than an executive decision.

Mandatory religion courses in primary and secondary education

Under Article 42 of the constitution, religion courses are mandatory in primary and secondary schools in Turkey. While all Christian and Jewish students are exempt from these classes pursuant to a 1990 decision of the Ministry of Education,[164] in practice, the exemption is – again- limited to the three non-Muslim groups that Turkey officially recognizes as minorities (Jews, Armenians and Greek Orthodox),

[161] ECRI report, p. 7.
[162] Id.
[163] Milli Eğitim Bakanlığı İlköğretim Kurumları Yönetmeliğinde Değişiklik Yapılmasına Dair Yönetmelik, Official Gazette, no. 28789, 8 October 2013.
[164] Ministry of Education, Religious Education General Directorate for Higher Education and Training Committee decision, 9 July 1990. Accordingly, non-Muslim students may be granted exemption upon submission proper documentation of their religious beliefs.

excluding other Christian groups such as Protestants and Syriacs. Furthermore, many school administrators are unaware of this decision and may arbitrarily refuse exemption petitions. In its 2013 Progress Report on Turkey, European Commission reported that the Ministry of Education instructed all schools to respond positively to exemption requests of non-Muslim parents, as a result of which "the number of complaints dropped."[165]

To be exempt from the religion course, Armenian, Greek Orthodox and Jewish students are required to submit a written petition signed by their parents and 'prove' their faith by producing official ID cards where their religion is indicated. This requirement based on a 1990 executive decision poses a contradiction with a law introduced by the parliament in 2006 which now allows Turkish citizens to leave – upon filing a petition and paying a small fee of around 7 NTL (2.4 Euros as of April 2014)- the religion section on their IDs blank.[166] For non-Muslim parents who want their children to be exempt from religion courses, exercising the right not to identify their religion on their identification cards is practically not an option. In fact, the petitions submitted for the exemption of their children by parents who had opted for leaving the religion section on their ID cards blank have been rejected.[167] A second issue with respect to exemption concerns the lack of adequate and rights based arrangements to accommodate those students who request to be exempt. Schools do not offer alternative classes for such students who instead have to spend idle time on school premises during the hours of religion courses.

The obligation to disclose religion or faith can also lead to the stigmatization of students, turning them into targets of discrimination and hatred. In Diyarbakır, in 2010, the teacher singled out a Protestant student who was present at the religion course, outing his religious identity by telling the rest of the class that he goes to church. The student was beaten by the teacher and several other students. The Ministry of Education opened an investigation upon an official complaint by the parents of the victim, but did not impose disciplinary measures for lack of evidence. In 2011, the student continued to be abused by teacher and other students and his parents' request for transfer to another school was turned down by the Ministry.[168] There are reports of Jehovah Witnesses and Christian students who face exclusion at school for requesting exemption.

[165] European Commission, *Turkey Progress Report 2013*, p.61.
[166] The ECtHR had, however, found this 'reform' to be inadequate to ensure the protection of freedom of religion. For the Court's 2010 judgment in the case of Sinan Işık v. Turkey, see Annex 3.
[167] Kerem Altıparmak, Hasan ve Eylem Zengin/Türkiye Kararının Uygulanması İzleme Raporu, AİHM Kararlarının Uygulanmasının İzlenmesi Projesi, İnsan Hakları Ortak Platformu (İHOP), Mart 2013, p. 10, citing a decision by Ankara First Administrative Court, E.2012/1133, K. 2012/2367, 11 October 2012.
[168] Association of Protestant Churches, p. 5.

For fear of stigmatization of their children, families refrain from filing complaints with the authorities.[169]

The minority group which has been most vocal and critical on mandatory religion classes has been the Alevis, who took the issue to the ECtHR and won a judgment ruling that the content of these classes did not meet the objectivity and pluralism criteria and violated Article 9 of the ECHR. The Court pointed out that the textbooks gave disproportionate weight to teaching Islam in relation to the other religious and philosophical beliefs, underscoring in this regard the absence of the Alevi faith and practice despite the large proportion of Alevis in Turkey. The ECtHR also addressed the exemption provided to non-Muslim students, finding the obligation of parents to disclose their identity and religion to be in violation of freedom of religion. Furthermore, the Court noted, the absence of a legal basis for the exemption leaves exemption decisions to the discretion of school administrators, leading to arbitrary rejections. However, the ECtHR did not find the religion classes to be in violation of the Convention as such. It was the mandatory nature and the content of these courses that the Court to be in violation of Article 9.

While the ECtHR did not prescribe a general measure to the Turkish government, the judgment made clear that authorities are obliged to unconditionally grant exemptions to all students, irrespective of their religion, denomination or belief. One can imply three kinds of general measures the judgment calls for: making the courses optional, completely revising the content of the courses from indoctrination of Islam to the teaching of different cultures, faiths and religions, or taking measures to ensure that parents and students are provided with exemption without having to disclose their faith.[170]

The Turkish Government opted for the second alternative and committed to the Committee of Ministers of the Council of Europe to revise the content of the courses in accordance with the ECtHR judgment. Towards that end, the Ministry of Education established a commission of experts tasked with the revision of textbooks to make their content more pluralistic and inclusive. The process of selection of the members of this commission, the names, mandate and output of these experts has never been disclosed to the public. The government on occasions stated to the media and reported to the Committee of Ministers[171] that the commission members included Alevi experts and representatives, though it has never disclosed the names of these individuals. In January 2012, however, in a written response to a query by a member of the parliament, the Minister of Education stated that the commission actually consisted of bureaucrats in the Ministry who, under the consultation of three experts,

[169] Norwegian Helsinki Committee, *The Right to Freedom of Religion or Belief in Turkey- Monitoring Report January-June 2013*, January 2014, p.45, available at http://inancozgurlugugirisimi.org/wp-content/uploads/2014/01/NHC-I%CC%87O%CC%88G-FoRB-Report-Eng.pdf [last accessed 26 February 2014].
[170] Altıparmak, İzleme Raporu, pp. 3-4.
[171] Id., p. 4.

assessed the opinions and demands expressed by Alevi organizations and representatives who participated in the workshops organized in 2009-2010 by the government as part of the 'Alevi opening' (for more on the Alevi opening, see section 8.1.). Based on these inputs, the commission revised the textbooks, which were formally adopted by the Ministry on 30 December 2010 and started to be used as the new course material during the 2011-2012 education year.[172]

The revisions drew protests from the Alevi organizations who claim that they were not consulted in this process, that the content of the textbooks has practically remained unchanged, indoctrinating the Sunni Islamic faith and practice, and that the information added on the Alevi faith was extremely inadequate. An expert evaluation of the new textbooks found that notwithstanding a few additions (including information about the Alevi-Bektashi and Caferi faiths within Islam) and editorial changes, the general content, values and concepts of the old books were preserved.[173] An analysis of the new textbooks show that the course continues to be a class teaching a particular religion rather than a class about different religions and therefore fails to fulfil the criteria of inclusiveness, impartiality and lack of indoctrination.[174] Alevi families went to courts, filing cases across the country to challenge the revised content of religion courses. At least one administrative court judgment was favourable. In early 2013, a court in the province of Samsun found the religion class to be in violation of the ECHR and exempted the student applicant from the course.[175] However, the judgment was overturned by the Eight Chamber of the Court of Cassation on the ground that the content of the course did not constitute religious instruction.[176]

Alevi organizations were not satisfied with the government measure on the ground that the mandatory nature of the courses was preserved. Pointing out that the schools now relied on the revised textbooks in rejecting Alevi parents' requests for the exemption of their children from mandatory religion courses, they demanded religion classes to be abolished altogether or at the very least to be made elective. The constitution making process was officially launched by the parliament in October 2011 raised the hopes and expectations of the Alevi community, Christian groups such as Syriacs and Protestants who had been denied minority status, as well as seculars, atheists and agnostics for the removal of the constitutional clause (Article 24) which makes religion courses compulsory. However, the four political parties

[172] The written response of the Strategic Development Presidency of the Ministry of Education, no. 337, 17 January 2012, Id., p. 8.
[173] Mine Yıldırım, 2011-2012 Öğretim Yılında Uygulanan Din Kültürü ve Ahlak Bilgisi Dersi Programına İlişkin bir Değerlendirme, Eğitim Reformu Girişimi, http://www.aihmiz.org.tr/aktarimlar/dosyalar/1349647350.pdf [last accessed 23 April 2012].
[174] Id., pp. 7-8.
[175] Sol Portal, "Mahkeme 'din dersi zorunlu olamaz' dedi", 16 February 2013, http://haber.sol.org.tr/devlet-ve-siyaset/mahkeme-din-dersi-zorunlu-olamaz-dedi-haberi-68276 [last accessed 26 February 2014].
[176] 8th Chamber of the Court of Cassation judgment, E. 2010/3682, K. 2013/997 (2013). Exact date unknown since the judgment is not accessible.

represented in the parliamentary commission tasked with drafting a new constitution could not reach an agreement on removing these courses or making them optional. The commission abolished itself in December 2013 citing the deadlock in the drafting process due to political divisions among the four parties.

At a time when there was an intense public and political debate on the teaching of religion at schools and amidst expectations for the abolishment of the religion classes altogether, the JDP government adopted an extremely controversial law. An 'education reform bill draft' introduced by the government and adopted by the parliament on 30 March 2012, with the support of the nationalist party, not only did not abolish the religion classes or make them elective, but introduced in secondary schools new elective courses on religion.[177] The two elective courses explicitly identified in the law are on Kor'an and the life of Prophet Mohammed, both concerning the Muslim faith.[178] While additional elective courses to be identified by the Ministry of Education can be opened in secondary schools, the law does not explicitly mention any other course. An executive circular subsequently adopted by the Ministry of Education on 31 August 2012, a few weeks before the opening of the new education year,[179] identified a number of further elective courses to be offered in secondary education. Among the list is a course called "Fundamental Religious Knowledge." Thus, the law increases from 2 to 8 the number of hours of religion courses students can potentially take. For an elective course to be opened in an academic year at any school, at least 10 students need to have submitted prior written application. Every student is obliged to take a minimum credit of elective courses, depending on the kind of school s/he is. The law introduces fundamental changes in primary and secondary education, extending compulsory education from eight to 12 years and reinstating the secondary stage of the imam-hatip vocational schools, effectively immediately in the 2012-2013 education year. And yet, the draft was introduced by the government overnight and without prior public debate and was hastily adopted by the parliament without deliberations with civil society, the education sector and parents.

The law caused great controversy and public debate in Turkey. Distrustful of the government's 'true intentions', various groups including the main opposition RPP and Alevi organizations accused the government of undermining secularism by allowing the teaching of Kor'an at schools and reinstating the secondary stage of imam hatip vocational schools. The draft bill was prepared and introduced upon the sole initiative of the government, without prior consultation with civil society, the educational sector and the opposition parties, and expeditiously enacted by the parliament despite strong protests from certain segments of society. RPP unsuccessfully appealed to

[177] Law no. 6287 on Amendments in Law on Primary Education and Certain other Laws, 30 March 2012, Official Gazette, no. 28261, 11 April 2012.
[178] Id., art. 9.
[179] Ministry of Education, Circular no. 2012/37, 31 August 2012, available at http://tegm.meb.gov.tr/meb_iys_dosyalar/2012_08/31022530_semeliders.pdf [last accessed 23 April 2013].

the Constitutional Court for the annulment of the law on the ground that it violated the constitutional principles of secularism and equality.

From the outset, religious minorities faced difficulties in the implementation of the new law. The availability of elective courses on religion, in addition to the mandatory religion course, has made life even more difficult for non-Muslim minorities. Where a non-Muslim student is granted exemption from the mandatory religion course, s/he may find himself/herself having to take an elective course on Islam, due to the obligation to fill minimum elective credits and the availability of elective courses on sufficient demand. In a case reported by the Protestant community, the daughter of the priest of the Protestant Church in the province of Diyarbakır was granted exemption from the mandatory religion course. However, since only three elective courses were opened in her school based on demand, she had to choose between the elective courses on Kor'an, Prophet Mohammed and Fundamental Religious Knowledge or lose one year for not being able to fill her credits. The provincial representation of the Ministry of Education offered to transfer the student to another school in Diyarbakır.[180] Upon the family's application, the Ministry of Education intervened and the school opened a special elective course for this student during the second semester of the school year.[181] This case shows how ill prepared the government was in changing the education system without foreseeing potential consequences and developing solutions.

A further related development in 2012 was the inclusion of the mandatory religion course among the courses that students are tested on in nationwide central exams for entrance into higher education. The Administration for the Selection and Placement of Students, the central body in charge of organizing university entrance examinations, decided to include 13 questions based on the mandatory religion courses in the national exam to be held in 2013. The decision was protested by non-Muslim communities on the ground that it will result in unequal treatment against minority children who are exempt from these courses. In February 2013, the Ministry of National Education declared that there will be alternative questions in the university entrance and secondary school final examinations for non-Muslim students.[182]

Up until the revision of the textbooks used in mandatory religion courses, the case law of the administrative courts on the issue of mandatory religion courses had been favourable to Alevis. Lower courts at several cities had ruled in favour of parents who brought cases for the exemption of their children from these classes and issued stay

[180] Association of Protestant Churches (Turkey), *2012 Human Rights Violations Report*, p. 6, http://www.iirf.eu/fileadmin/user_upload/PDFs/2012_Rights_Violations_Report.pdf [last accessed 23 April 2013].
[181] Norwegian Helsinki Committee, *The Right to Freedom of Religion or Belief in Turkey*, p. 44.
[182] European Commission, *Turkey Progress Report 2013*, p. 54.

of execution decisions.[183] On 28 December 2007, the Eighth Circuit of the Council of State issued a very important decision where it held that the content of these classes fails to meet the requirements of objectivity and pluralism and respect for the religious and philosophical opinions of parent (for more on the decision, see Annex 3).[184] The Court cited the ECtHR's 2007 judgment on the issue (see Annex 3). And yet, despite the judgments of the national courts and the ECtHR, Alevi children continued to be forced to take religion classes at primary and secondary level. Furthermore, the government's revision of the religious education textbooks with the goal of complying with the ECtHR's decision had a reverse effect on the jurisprudence of the Council of State. In a series of judgments starting from 2010, the Eight Circuit of the Council of State reversed its jurisprudence, solely based on expert opinions that the revisions introduced in the curricula of the religion courses had changed from these classes from religious education to the teaching of different religions and faiths, including the Alevi faith.[185] It is notable that the 8th Circuit found the initial revisions made in textbooks in 2007 to be sufficient, at a time when the government was reporting to the Committee of Ministers about its continuing efforts to make the curricula more pluralistic and inclusive.[186]

Thus, in current state of affairs, with the exception of Jewish, Greek Orthodox and Armenians, parents in Turkey who do not want their children to take mandatory religion courses have no legislative, judicial or political means for their struggle. Absent a constitutional amendment (or a new ECtHR decision which unequivocally calls for the abolishment of mandatory religion classes), the status quo will prevail.

Headscarf ban at universities

As in the case of public sector employment, there is no constitutional or legal basis of the headscarf ban at universities in Turkey. The ban was initiated with an executive circular adopted by the High Board of Education during the military regime in 1982, which prohibited female (public and private) university students from covering their heads. The ban has since been 'legalized' through the judgments of the Constitutional Court, despite the absence of any constitutional provision precluding

[183] For example, on 30 December 2005, the Fifth Administrative Court in Istanbul approved on the basis of freedom of religion and conscience a parent's petition for the exemption of his child from the religion course. "Zorunlu Din Dersi İstemeyen Yargıya Gitmeli," *Bianet*, 24 November 2006, http://www.bianet.org/bianet/insan-haklari/88237-zorunlu-din-dersi-istemeyen-yargiya-gitmeli [last accessed 6 November 2012]. A similar decision was issued in December 2010 by the Regional Administrative Court in İzmir, approving the decision of the 1st Administrative Court to the same effect. 17 December 2010, "Zorunlu Din Dersi yine Yargıdan Döndü," *Bianet,* 17 December 2010, http://www.bianet.org/bianet/egitim/126667-zorunlu-din-dersi-yine-mahkemeden-dondu [last accessed 6 November 2012].

[184] 8th Circuit of the Council of State, 28 December 2007, E. 2006/4107, K. 2007/7481, published at the court's website at E. 2006/4107, K. 2007/7481.

[185] 8th Circuit of the Council of State, 13 July 2010, E. 2009/10610, K. 2010/2413. For a critical and detailed analysis of this and subsequent similar judgments of the 8th Circuit as well as the impact of this new case law on lower courts, see Altıparmak, İzleme Raporu, pp. 13-16.

[186] Ibid.

the headscarf. After transition to the civilian rule in 1983, attempts by various governments to adopt legislative and constitutional amendments in order to bring an end to the ban have been precluded by the Constitutional Court. In 2008, the Court overturned a constitutional amendment adopted by the Parliament on the basis of the principle of secularism. The Constitutional Court also relied, in part, to the ECtHR's upholding of the headscarf ban at universities in Turkey in its judgment in the *Leyla Şahin* case.

Ever since its inception, the ban has been enforced in various different ways by different universities. While some universities strictly enforced the ban by not allowing headscarved student to enter the campus, others limited the scope of the ban to classrooms. The degree of enforcement also depended on the political climate in Turkey; while headscarved women were allowed to enter their universities during periods of 'normalcy', the same universities precluded access at 'extraordinary' times.

The latest attempt to bring an end to the ban was made through an executive measure. On 4 October 2010, the then new Director of the High Board Education issued a written statement prohibiting university administrations from dismissing from classrooms students on the basis of violations of disciplinary rules. While the statement did not explicitly mention the headscarf and looked as a general stipulation concerning all disciplinary measures, it was clear from the statements of authorities that the goal was to bring a (de facto) end to the headscarf ban. The outcome of this executive attempt to solve the problem is mixed. While there has been a significant improvement in headscarved women's ability to enter campuses and classrooms, there are reports that some universities continue to prevent access.[187] In general, however, universities are showing increasing flexibility on the issue, owing to the general political climate in Turkey and the relative normalization of state-religion relations.

Minority schools

According to art. 40 of the Lausanne Treaty of 1923, non-Muslim minorities shall have the right to establish at their own expense schools and other establishments for instruction and education, with the right to use their own language and to exercise their own religion. However, in practice, the Turkish government unlawfully restricted the scope of this right to the Greek Orthodox, Jewish and Armenian Orthodox minorities, excluding the remaining non-Muslim groups in violation of the terms of the Lausanne Treaty. In 2013, a court decision put an end to this state policy, at least as far as the Syriac minority is concerned. In a judgment dated 18 June 2013, an administrative court in Ankara held that the Syriac community is entitled to the

[187] According to a news report, Ankara University and Middle East Technical University continued the ban. "Başörtüsü Yasağı iki Üniversitede Sürüyor", *on5yirmi5*, 7 September 2011, http://www.on5yirmi5.com/genc/haber.58205/basortusu-yasagi-iki-universitede-suruyor.html [last accessed 6 November 2012].

minority rights granted under Lausanne, including the right to open their own schools. The case concerned an application by a Syriac foundation in Istanbul who had petitioned the Ministry of National Education for authorization to open a kindergarten. Upon being rejected, the foundation had gone to court (for more on the decision, see section 0.3).

The existing minority schools face serious and arbitrary limitations upon rights under the Treaty of Lausanne. The curriculum of mother tongue education provided in these schools which include Greek Orthodox, Armenian Orthodox, and Jewish instruction is strictly controlled and supervised by Turkey/ Ministry of National Education.[188] ECRI notes that "minority religious groups have difficulty in finding teachers or procuring a sufficient number of recent school textbooks. It would seem that the regulations governing these schools are particularly complex and make school management very difficult, to the extent of jeopardising the existence of some schools."

Until 2007, the teachers of 'Turkish culture' classes and the deputy principals of these minority schools were required to be "of Turkish origin" (read 'Muslim') appointed by the Ministry of National Education.[189] An amendment to the Law on Private Education Institutions in 2007 removed this restriction, enabling in theory the recruitment of minority teachers to these positions.[190] However, the implementing regulation had not yet been adopted and "the situation remains the same."[191] Minority schools do not have any say in the selection of these teachers, who are directly appointed by the Ministry of Education and are not subject to the supervision of the principal, who is a non-Muslim.

Pursuant to a ban introduced in the late 1970s, minority schools are not allowed to accept students from other non-Muslim groups. While the implementation of a rule restricting enrolment to pupils whose fathers are non-Muslim has recently been eased in practice, there is still a legal barrier to the enrolment of children of mixed marriages whose fathers are not members of the non-Muslim minority to which the school belongs. The practice still requires that one of the parents belong to the non-Muslim minority in question.[192]

[188] Such as "Regulation on Armenian Schools", "Regulation on Armenian High Schools and Middle Schools", "Regulation on Greek Minority Primary Schools".
[189] The law required teachers of Turkish culture classes and the deputy principal in schools opened by 'foreigners' to be 'of Turkic origin and a citizen of the Turkish Republic', Law on the Private Education Institutions, no. 625, 8 June 1965, Art. 24.
[190] Law on the Private Education Institutions, no. 5580, 8 February 2007, Official Gazette, no. 26434, 14 February 2007.
[191] Nurcan Kaya, *Forgotten or Assimilated? Minorities in the Education System of Turkey,* Minority Rights Group International, 2009, p. 17.
[192] Dilek Kurban, A Quest for Equality: Minorities in Turkey, Minority Rights Group International, 2007, p. 16.

The 2013-2014 education year commenced with a significant gain for the Greek Orthodox minority. The Ministry of Education issued a much-awaited authorization for the reopening of an elementary school which had been closed down by the state in 1964. The private Greek Orthodox elementary school in the İmroz (Gökçeada) island in the north western coast of Turkey reopened after 49 years. The official ceremony for the reopening of the school was attended by government officials and representatives of the Greek Orthodox community. A total of four students are enrolled in the school for the current education year. The school was shut down in the midst of the crisis between Turkey and Greece over Cyprus, when thousands of individuals were expelled from Turkey. As a result, thousands of Greek Orthodox inhabitants of the island (and of Istanbul) left Turkey. The population of the community on İmroz declined from around five thousand in the 1960s to 200 today. The Greek Orthodox community in Turkey and in the diaspora see the reopening of the school as an important incentive for return to the island.

Despite some improvements in recent years, the textbooks used in secondary education continue to have discriminatory content against non-Muslim minorities. This is the case, in particular, for history textbooks and their sections on the national liberation war and the establishment of the Turkish Republic. While the 10th grade history school textbook was amended in 2013 in response to complaints from the Syriac community,[193] discriminatory content about missionaries and minorities remain in not only school textbooks but also in Diyanet's five year plan for 2010-2014.[194]

Students belonging to ethnic and linguistic minorities within the Muslim majority

Turkey is home to dozens of ethnic and linguistic minorities who belong to the Muslim majority and differ from the ethnic Turkish majority on the basis of ethnicity and/or language. As stated earlier, these groups are not officially recognized as minorities and are denied the limited minority rights that the non-Muslims are granted under the Treaty of Lausanne. Soon after the establishment of the republic in 1923, the Turkish state started to pursue policies of denial, assimilation and Turkification policies towards these minorities. The group which was particularly targeted by the state was the Kurds, who differed from the remaining ethnic/linguistic minorities due to their large size, their geographical concentration and their strong ethnic, cultural and linguistic consciousness and were perceived by the state as a threat to national unity. The series of Kurdish revolts and uprisings to state oppression perpetuated this perception on the part of the state and the society. While the state was largely successful in linguistically and to a certain extent culturally assimilating most of the minorities such as the Laz, the Arabs and the Circassians, its attempts to Turkify the Kurds by and large failed. The emergence of the PKK and its armed struggle against the Turkish military further strengthened the Kurdish identity and consciousness. Particularly since the early 1990s, the Kurdish national movement represented by

[193] European Commission, European Commission, *Turkey Progress Report 2013*, p. 61.
[194] European Commission, *Turkey Progress Report 2013*, p. 62.

non-violent political parties and civil society organizations, which are ideologically close to the PKK, have been engaged in litigation, political campaigning and human rights advocacy to reverse the effects of the state's assimilation policies. A key component of their (and the PKK's) demands have been public education in Kurdish.

The initiation of the process of Turkey's accession to the EU in 1999 when it was declared a formal candidate for membership started a new phase in the Turkish state's approach to ethnic and linguistic minorities – and in its policies towards minorities in general. Successive progressive steps were taken by governments to bring an end to the assimilation of minorities and to gradually grant them limited linguistic rights, including the right to mother tongue education. The reforms in this area started in August 2002, before the JDP came to power, with allowing the opening of private courses to teach "different languages and dialects traditionally used by Turkish citizens in their daily lives." While a number of private courses were opened in the Kurdish region in 2003, they were all soon closed down due to lack of demand and the high financial cost, time and effort required to comply with stringent bureaucratic requirements. As part of the "Kurdish opening" it started in 2009, the JDP government has started to open Kurdish and Zazaki language and literature departments at select universities. As part of the education reform adopted by the JDP government in April 2012, on-demand elective courses in "living languages and dialects" were introduced in secondary schools.[195] These courses are offered for two hours per week at schools where a minimum of 10 students opt for them. During the academic year 2012-2013, a total of 28,587 students nationwide opted for these elective courses. While 9,714 did not express a demand for a certain language, the rest demanded classes in Kurdish and Caucasian languages. The latter group consists of students living in predominantly Kurdish and Caucasian populated provinces.[196]

The democratization package announced by the government on 30 September 2013 entails a commitment to grant the right of mother tongue education in private schools, the details of which will be laid down by law. The government's limitation of education in minority languages to private institutions was received with criticism by the pro-Kurdish movement across the political spectrum. Pointing out that the majority of Kurds in the region are very poor, critics find the privatisation of education in the mother tongue to be discriminatory in socio-economic terms. While pointing out that only the Turks are entitled to receive public education in their mother tongue, they find the denial of this right to the Kurds and other minority groups – who, as taxpayers, are entitled to comparable public services as the Turks – to constitute ethnic discrimination. Kurds are not the only group demanding public education in their languages. In recent years, groups such as the Laz and Caucasians have been increasingly vocal in demanding this right through organizing public rallies and

[195] Law no. 6287 on Amendments in Law on Primary Education and Certain other Laws, 30 March 2012, Official Gazette, no. 28261, 11 April 2012.
[196] "İşte 'Seçmeli Kürtçe'nin Türkiye Haritası", Hürriyet, 21 October 2013, available at http://www.hurriyet.com.tr/gundem/22534618.asp [last accessed 27 February 2014].

advocacy campaigns. There is however a constitutional barrier. Article 42 of the Constitution prohibits public education in a language other than Turkish, reserving the terms of the Treaty of Lausanne. Therefore, granting linguistic minorities the right to mother tongue education at public schools requires constitutional amendment. This has been one of the most contested issues among the four political parties in the Parliamentary Conciliation Committee tasked with drafting a new constitution. On the other hand, during the committee deliberations on this issue in August 2013, the JDP voted with the RPP and the NAP against the PDP's proposal for education in the mother tongue in public schools.

Students with disability

Until recently, Turkey's constitutional and legal framework endorsed the principle of segregation for the education of children with disabilities, which went against its commitments under international human rights norms.[197] This approach is clearly visible in Article 42 of the Constitution which 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 of 1973 which 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 which states that children with disabilities shall be provided special education and teaching at the primary school level, and Article 39 of Law on Vocational Education which provides special vocational courses in order to prepare students with special needs to professional life.

The principle of mainstream education, namely the integration of students with disability with the general student population, was introduced for the first time in 1983, with the adoption of the Law on Children in Need of Special Education.[198] Article 4 of this law on the one hand recognizes the right of children with disabilities to special education based on their needs, and on the other tasks the state with the duty to "take the requisite measures" to enable children with disabilities "whose conditions and characteristics are appropriate" to attend schools with "normal children". In 1988, the government issued a circular on the Education of Children with Special Needs through their Integration in Normal Classrooms, which put forth the conditions for the successful application of the principle of integration. The circular pus forth the goal of ensuring the participation of children with disabilities in and out of classroom activities and requires government experts to pay regular visits to schools which have students with disabilities among the student population and assist children with disabilities, teachers, administrators and parents through seminars.[199] In 1997, the government issued Decree with the Force of Law no. 573,

[197] Tohum Türkiye Otizm Erken Tanı ve Eğitim Vakfı ve Eğitim Reformu Girişimi, *Türkiye'de Kaynaştırma/Bütünleştirme Yoluyla Eğitimin Durumu*, Kaynaştırma/Bütünleştirmenin Etkinliğini Artırmak için Politika ve Uygulama Önerileri Projesi, 2011, p. 20.
[198] Id.
[199] Id.

which established the “Integration Implementation System”, emphasizing the individualized education of every child with disability based on his/her needs and through the use of appropriate techniques and tools.[200] The Law on Persons with Disabilities adopted in 2005 also endorses the principle of mainstream education. Article 15 recognizes the rights of children with disabilities to equal opportunity with other children and to have access to 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”, the article does not contain a prohibition of discrimination. Article 13 recognizes their right to choose their profession in accordance with their talents. The Regulation on Special Education Services of 2006 puts forth the rules and principles to be followed for the establishment of special education schools, but stresses that special education is the exception to the general rule of mainstream education.[201] The July 2012 amendments made in the Regulation on Special Education Services were largely terminological with very little potential positive impact in implementation.[202]

Thus, today, Turkey’s legal framework endorses integrated/mainstream education as the principle and special education as the exception.[203] Although the inclusion of students with disabilities to mainstream education is a positive step, for the time being implementation lags far behind the legal framework. First of all, mainstream education facilities, transportation to these schools, educative tools (charts, maps etc.) and other education materials are not accessible to most of the children with disabilities. Neither the teachers in mainstream education, nor students without disabilities and their families are trained. Consequently, students without disabilities tend to exclude students with disabilities; families of students without disabilities express their discomfort regarding the presence of students with disabilities in classrooms and the teachers lack the requisite training and skills to address these situtations.

Accessibility of public buildings is a widespread problem. The same is valid also for school buildings. All school buildings in Turkey are built based on a few different projects and these projects are not in compliance with the universal accessiblity standards. Although the Ministry of National Education has taken some steps, most school buildings are still inaccessible. In November 2009 the Ministry of National Education has published a circular which required action to be taken “to make all schools accessible.” No disciplinary or legal action is taken against persons who have shown neglect in this regard.

The problems about the full participation of students with disabilities in mainstream education is not limited to accessibility problems. Apart from a small number of teachers who are graduates of “special education” departments of education faculties

[200] Id.
[201] Id, pp. 21-23.
[202] Sabancı University, *Engelsiz Türkiye için*, p. 179.
[203] Id., p. 24.

who work in special education schools, teachers employed in mainstream education do not know anything about “inclusive education” or education of students with disabilities. Studies conducted in schools providing integrated education to student with disabilities show that the teachers feel very desperate and frustrated in addressing the problems they face in practice. According to a survey, 86,4 per cent of teachers working in integrated schools felt they lacked sufficient knowledge about mainstream education, 77,1 per cent said individualized education programmes were not being prepared for students with disabilities in their classrooms, and 70,9 per cent said they simply implement the standard curricula for these students.[204]

In response to these problems, the Ministry of Education conducted a number of trainings for teachers in mainstream education (a few hours to large groups of teachers). At the end of 2009, the Ministry of Education and the Anatolian University have signed a protocol. According to this protocol, teachers who are willing shall be able to attend a 3 months distance learning programme. After the completion of the programme, the candidates will take a test, and if they pass, they will be qualified as special education teachers. The Ministry of Education, in cooperation with civil society, executes pilot projects for the improvement of mainstream education. For example, in 2010, the Ministry’s provincial administration in Istanbul launched a pilot project in cooperation with a disability NGO and an NGO working on education. Conducted in three schools providing mainstream education in different parts of Istanbul, the project aims at improving the effectiveness of integrated education.[205] However, the scope of these efforts, significant as they are, remain very limited in comparison to the magnitude of the problem.

Students with disabilities also have difficulty in having access to support materials. Especially students with visual disabilities cannot have access to materials distributed in class, maps, globes, rulers and other materials used to facilitate learning.

Although statistics are available on the number of children with disabilities registered, there is no up to date data on the number or percentage of students with disabilities, who have successfully completed their primary education and have continued their education in secondary schools. The 2002 Disability Survey of Turkey provides the following statistics on the education levels of persons with disabilities: 34,5 per cent who are graduates of elementary school and primary education; 5,4 per cent with junior high school diploma; 6,9 per cent who are graduates of a high school or equivalent. The survey results show that the rate of illiteracy among persons with

[204] Tohum Türkiye Otizm Erken Tanı ve Eğitim Vakfı ve Eğitim Reformu Girişimi, *Türkiye’de Kaynaştırma/Bütünleştirme Yoluyla Eğitimin Durumu*, Kaynaştırma/Bütünleştirmenin Etkinliğini Artırmak için Politika ve Uygulama Önerileri Projesi, 2011, p. 29, citing Kargın, T. et al, Öğretmen, Yönetici ve Anne Babaların Kaynaştırma Uygulamalarına İlişkin Görüşlerinin Belirlenmesi, Özel Eğitim Dergisi, No: 4(2),2005, pp. 55-76.

[205] For the website of the project, see http://www.tohumotizm.org.tr/proje/kaynastirma-ve-butunlestirmenin-etkinligini-artirmak-ic-politika-ve-uygulama-onerileri.

disabilities (36,3 per cent) is three times as much as the general population level (12,9 per cent).[206]

Certainly, the laws, regulations and circulars adopted since 1983 which endorse the principle of mainstream education led to relative progress in the integration of children with disabilties in the education system. According to government statistics published in an NGO report, the number of students with disabilities in mainstream education was 10.156 in the 1997-1998 academic year.[207] After the the adoption of the "Integration Implementation System" in 1997, there has been a sharp increase in the number of students with disabilities receiving formal education. According to the Ministry of Education's annual report, during the academic year of 2012-2013, the total number of students with disability receiving integrated or special education is 252.025[208] (compared to 238.917 in 2011-2012 academic year[209] and 61.801 in 2009-2010).[210] Despite the sharp increase, particularly during the past two years, the numbers continue to be extremely low in comparison to the estimated number of children with disabilities at schooling age. In 2009-2010, the total number of children with disabilities in the age group 0-19 who received half or part time education at preschool, primary and secondary levels was 116.031, which fell far below the overall population of children with disabilities in that age group whose estimated number in 2010 was 1.105.630.[211]

Turkish legislation recognizes the right of students with disabilities to receive special education support they need because of their impairments. However, only 8 hours of individual special education support or 4 hours of group special education support monthly is covered by the State financially. This means 1 or 2 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.

[206] İsmail Tufan and Özgür Arun, p. 21.
[207] Tohum Türkiye Otizm Erken Tanı ve Eğitim Vakfı ve Eğitim Reformu Girişimi, *Türkiye'de Kaynaştırma/Bütünleştirme Yoluyla Eğitimin Durumu*, Kaynaştırma/Bütünleştirmenin Etkinliğini Artırmak için Politika ve Uygulama Önerileri Projesi, 2011, p. 26.
[208] Milli Eğitim Bakanlığı, Milli Eğitim İstatistikleri: Örgün Eğitim (2012-2013), p. 36, available at: http://sgb.meb.gov.tr/istatistik/meb_istatistikleri_orgun_egitim_2012_2013.pdf [last accessed 27 February 2014].
[209] Milli Eğitim Bakanlığı, Milli Eğitim İstatistikleri: Örgün Eğitim (2011-2012), p. 34, available at: http://sgb.meb.gov.tr/meb_iys_dosyalar/2012_12/06021046_meb_istatistikleri_orgun_egitim_2011_2012.pdf [last accessed 27 February 2014].
[210] Milli Eğitim Bakanlığı, Milli Eğitim İstatistikleri: Örgün Eğitim (2009-2010), p. 34, available at: http://sgb.meb.gov.tr/istatistik/meb_istatistikleri_orgun_egitim_2009_2010.pdf [last accessed 27 February 2014].
[211] Tohum Türkiye, *Türkiye'de Kaynaştırma/Bütünleştirme Yoluyla Eğitimin Durumu*, p. 26.

An additional problem is the underrepresentation of girls among the population of children with disabilities receiving education.[212] According to the State report submitted to the United Nations Committee on Economic, Social and Cultural Rights, in 2006-2007 academic year, the total number of students in "nursery classes within special education schools" was 503, only 187 of whom were female. The Ministry of National Education's annual report for the 2009-2010 academic year shows these numbers as 659 and 258, respectively.[213] The numbers were reported in the following years as follows: 890 and 374 in the 2011-2012 academic year,[214] 1006 and 442 in the 2012-2013 academic year.[215] Of the 252.025 students with disability enrolled in integrated or special education institutions in 2012-2013 academic year, the number of female students was 97.923.[216] The large difference between these figures not only show that female children with disabilities are lagging behind male children, but also that the State fails in the realization of compulsory education for all.

Finally, students with intellectual disabilities who are older than the compulsory education age have difficulties in finding a school to continue their education. As the capacity of schools for students with intellectual disabilities is very limited, students with intellectual disabilities are forced to leave when they reach the upper limit of the compulsory education age. This is a typical case of multiple discrimination.

Although discrimination based on disability in education is prohibited, as this prohibition is not internalized, even explicit direct discrimination cases go unnoticed by the authorities. Two concrete examples can be given from access to high education: In 2009, an announcement by the "Executive Board of the Foreign Secondary Schools Enterance Exam" (*Yabancı Ortaöğretim Okulları Sınav Yürütme Kurulu*) was made on the web-site of the Ministry of National Education. The announcement read: "We cannot provide education to students in need of special education and to students who have physical disabilities. As those students will not be able to register to our schools, they will not be allowed to take the "Private Foreign Secondary Secondary Schools Enterance Exam" which will take place on 31 May 2009." Similarly, in the 2009 University Entrance Exam Guidelines (*2009 Öğrenci Seçme ve Yerleştirme Sınavı Kılavuzu*), information was given about all university,

[212] No data exists on the proportion of ethnic or religious minority students among the students with disabilities receiving education. As part of its general policy, the Turkish state does not collect data on minorities.
[213] Milli Eğitim Bakanlığı, Milli Eğitim İstatistikleri: Örgün Eğitim (2009-2010), p. 34, available at: http://sgb.meb.gov.tr/istatistik/meb_istatistikleri_orgun_egitim_2009_2010.pdf [last accessed 27 February 2014].
[214] Milli Eğitim Bakanlığı, Milli Eğitim İstatistikleri: Örgün Eğitim (2011-2012), p. 34, available at: http://sgb.meb.gov.tr/meb_iys_dosyalar/2012_12/06021046_meb_istatistikleri_orgun_egitim_2011_2012.pdf [last accessed 27 February 2014].
[215] Milli Eğitim Bakanlığı, Milli Eğitim İstatistikleri: Örgün Eğitim (2012-2013), p. 36, available at: http://sgb.meb.gov.tr/istatistik/meb_istatistikleri_orgun_egitim_2012_2013.pdf [last accessed 27 February 2014].
[216] Milli Eğitim Bakanlığı, Milli Eğitim İstatistikleri: Örgün Eğitim (2012-2013), p. 36, available at: http://sgb.meb.gov.tr/istatistik/meb_istatistikleri_orgun_egitim_2012_2013.pdf [last accessed 27 February 2014].

faculty and departments. One University explicitly had warned candidates with disabilities, saying that "students with disabilities should not choose our University." Upon reactions by disability NGOs, it was accepted that the expression found in the Guidelines was inapporpriate and against the law. These two examples indicate that when relevant public authorities are publishing announcements on their web-sites or publishing Guidelines which are official documents, or carrying their other daily work, they do not pay attention whether their actions are discriminatory or not.

According to art. 15 of the Law on Persons with Disabilities of 2005, Turkish Official Sign Language shall be developed. However, seven years after the adoption of the Law, the process is still ongoing**.** There is no information on when the process will be finalized and education will be provided through sign-language. In addition to the absence of an offiical sign language, there are no coursebooks, dictionaries, educational or grammer books on sign language in Turkey. The only (unofficial) source on the Turkish sign language is a website prepared by an academic as part of a research project supported by Koç University.[217]

There is a scarcity of special education institutions in Turkey. The number of these schools and the number of students with disability enrolled in these schools are unknown. On 5 May 2012, in response to a parliamentary query, the Ministry of Education stated that there are 667 special education institutions within the mandate of the Ministry, 38 of which are fully physically accessible for students with disability.[218] That a mere 5.7 per cent of educational institutions specially established for students with disability are accessible for them speaks volume about the state's deliberate neglect of persons with disabilities and the absence of comprehensive planning and coherence in government policies.

Persons with disabilities who for various reasons did not attend school or persons who became disabled beyond school age have very limited education and rehabilitation opportunities. For example, for adults who have lost their sight, there are only 2 rehabilitation centres in Turkey (one in Ankara and other is in Istanbul) where they can learn how to move around independently and how to read *braille.* The total capacity of these centres is around 70 persons.

Public training centres under the Ministry of National Education provide vocational courses for persons with disabilities. However, instead of mainstreaming these courses, specific courses are organized for persons with disabilities in limited areas. So persons with disabilities are not free to choose the area they want to receive vocational training, but they have to make choices within limited options.

[217] http://turkisaretdili.ku.edu.tr/.
[218] Sabancı University, *Engelsiz Türkiye için*, p. 186.

Special situation of the Roma children

The greatest hurdle to the Roma's access to education is poverty. Due to their dire socio-economic 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. Textbooks and other course material, school uniforms and clothing are prohibitively expensive for the Roma, causing low schooling and high drop-out rates. According to a research conducted among Roma communities, high school is the highest level of schooling. Roma children face widespread discrimination and exclusion from their teachers and classmates, are seated separately from other children and often at the back of the classrooms. Roma parents who file complaints with school administrators do not receive a reply. Parents of non-Roma students often transfer their children to other schools, which result in de facto segregation. There have been reports of collective resignations of teachers from schools where majority of the student population becomes Roma as a result of the flight of other students. Some families displaced as a result of the demolition of their houses in gentrified neighbourhoods have reportedly been unable to enrol their children at schools on grounds that they no longer resided in these neighbourhoods. There have been government initiatives at the national and local level to meet the educational needs of Roma children. For example, in the province of Edirne, which hosts a significant Roma population, the British Council, the Ministry of Education and its provincial representation cooperated in a project which sought to improve the situation of the Roma children during the 2005-2006 school year.[219] However, these positive examples are the exception rather than the rule, as evident in the fact that the government's Roma opening has not produced any policy or strategy for enabling the Roma's equal access to education (on the Roma opening, see section 8.1.d).

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

Does national law on discrimination cover access to and supply of goods and services? In case national anti-discrimination law does not do so, is it dealt with in any other legislation?

a) Does the law distinguish between goods and services available to the public (e.g. in shops, restaurants, banks) and those only available privately (e.g. limited to members of a private association)? If so, explain the content of this distinction.

Turkey does not have a national law on discrimination. A limited number of laws address deal with the issue. The only prohibition is found in Article 122 of the Turkish

[219] Edirne Roman Derneği, European Roma Rights Centre, Helsinki Yurttaşlar Derneği, *Biz Buradayız! Türkiye'de Romanlar, Ayrımcı Uygulamalar ve Hak Mücadelesi*, 2008, pp. 92-95.

Penal Code, explicitly prohibits discrimination in the provision of services available to the public. However, it does not make a distinction between available to the public and those only available privately. With regards to goods, art. 122 only refers to foodstuff.

Art. 7 of the Law on Civil Servants prohibit discrimination by civil servants in the conduct of their duties. Thus, prohibition of discrimination in the provision of public services is implicitly covered by this provision.

In any case, equality before the law, stipulated in art. 10 of the Constitution should apply to all cases of discrimination regarding access to and supply of goods and services. However, such a general provision is not enough to satisfy the requirements of the Directive.

b) Does the law allow for differences in treatment on the grounds of age and disability in the provision of financial services? If so, does the law impose any limitations on how age or disability should be used in this context, e.g. does the assessment of risk have to be based on relevant and accurate actuarial or statistical data?

Art. 91 of the Regulation on the Law on Notaries stipulates that, notaries can ask for a health report if there is suspicion regarding the legal capacity of the person who requires the services of the notary. A similar rule applies to transactions at land registry offices. Although the registrars are not under an obligation to ask for a health report, they are recommended to ask questions in order to test the capacity of the individual who is a party to the transaction. In case the registrar is not convinced regarding the capacity of the person, a health report might be required. However, there is no legal basis for this. The practice is based on a general order issued by the General Directorate of Land Registry and Cadastre.[220]

Another limitation was found in art. 14 of the Law on Obligations and art. 73 of the Law on Notaries (Law no. 1512). According to these provisions, transactions and signatures of deaf or blind persons are not valid unless they are carried out in the presence of two witnesses. However, this requirement was annulled by the Law on Persons with Disabilities in 2005 (Law no. 5378). According to the amended art. 73, the proceedings shall be carried out in the presence of two witnesses, only if the person with disability requests. While a draft of the Law on Obligations introduced to the Turkish Parliament in 2009 had brought back the requirement of two witnesses for the validity of financial transactions, the final text of the law adopted in January 2011 does not include such a restriction. According to Article 15 of the law, blind persons cannot be bound by their signatures unless it is proven that they were

[220] TKGM 14 May 2003, 074/148-1568.

informed about the content of the text upon signature or unless the transaction has been properly approved.[221]

Information is not available regarding differences in treatment in banking and insurance sectors.

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

Does national law on discrimination cover housing? In case national anti-discrimination law does not do so, is it dealt with in any other legislation?

To which aspects of housing does the law apply? Are there any exceptions? Please also consider cases and patterns of housing segregation and discrimination against the Roma and other minorities or groups, and the extent to which the law requires or promotes the availability of housing which is accessible to people with disabilities and older people.

Turkey does not have a national law on discrimination. There are a number of laws which might have an impact on housing, such as the Law on Municipalities (Law no. 5393), Law on Metropolitan Municipalities (Law no. 5216), Law on Privatization Arrangements (law no. 4046), Coastal Law (Law no. 3621), Law on Housing Aid for Employed and Retired Public Servants and Workers (Law no. 3320), Mass Housing Law (Law no. 2985), Expropriation Law (Law no. 2942), Law on Prevention of Slums (Law no. 775), Decree Law on the Amendment of Certain Provisions in the Law on Prevention of Slums, Urban Renewal Law (Law no. 5366), etc. But 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. While a government programme titled Return to Village and Rehabilitation Project and in force since 1999 provides in kind aid to IDPs who wish to return to their homes, the assistance is insufficient for returnees to build back their houses and to restart their lives in villages.

[221] Türk Borçlar Kanunu, no. 6098, 11 January 2011, Official Gazette, no. 27836, 4 February 2011. The law entered into force on 1 July 2012.

There are also other obstacles to the return to villages, first and foremost the presence of landmines in rural areas, the continuation of the village guards system, the lack of sufficient economic means of living and the continuance of armed conflict in the Kurdish region. [222] While there is a compensation law enacted in 2004 to provide IDPs compensation for their pecuniary losses, the substance and implementation of the law suffer major setback such as the slow handling of applications, a high rate of rejections (around 30 per cent nationwide), low amounts of compensation and high evidentiary burden of proof.[223] Housing problems of Kurds are not limited to their status as internally displaced persons. Except for the predominantly Kurdish towns, cities and neighbourhoods, Kurds face difficulties in finding a house to rent.

The Urban Renewal Law of 2005 had a disparate impact on the Roma, as it gave impetus to a number of urban transformation projects, most of which resulted in massive destruction and dislocation of Roma neighbourhoods throughout Turkey.[224] In most, if not in all cases displaced Roma had to move to neighbourhoods where rent is several times higher than in their old neighbourhoods or to high rise buildings constructed by the Housing Development Administration of Turkey (*Toplu Konut İdaresi Başkanlığı- TOKİ*) in neighbourhoods which are outside city centres, which posed serious problems regarding access to employment. Many families could not afford increases in their rental payments and had to move out from their news apartments, to live with their relatives. Home owners had to sell their houses, but they could not afford to buy houses in other neighbourhoods.

Unquestionably, the most high profile and controversial of the urban transformation project was the one carried out by the government-run *Faith* Municipality in the historical Roma neighbourhood of *Sulukule*. The residents and civil society organizations filed a case at the Istanbul Administrative Court in December 2007 and

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[222] Dilek Kurban *et al.(2007), Coming to Terms with Forced Migration: Post-Displacement Restitution of Citizenship Rights in Turkey,* TESEV, http://www.tesev.org.tr/Upload/Publication/9327b591-52c8-4392-8dc2-821a2c1a764a/zgoc_yuzlesmek_ENG_kitap_24_10_08_pdf.pdf [last accessed 6 November 2012];
Kurdish Human Rights Project, Submission and List of Issues to be Taken up in Connection with the Consideration of Turkey's Initial Report Concerning the Rights Covered by Articles 1-15 of the International Covenant on Economic, Social and Cultural Rights, May 2010, available at: http://www2.ohchr.org/english/bodies/cescr/docs/ngos/KurdishHRP_Turkey_44.pdf [last accessed 6 November 2012].

[223] For the latest study on the implementation of the law in the province of Van, see Dilek Kurban and Mesut Yeğen (2012), *Adaletin Kıyısında: 'Zorunlu' Göç Sonrasında devlet ve Kürtler/ 5233 Sayılı Tazminat Yasası'nın bir Değerlendirmesi- Van Örneği*, TESEV; http://www.tesev.org.tr/Upload/Publication/0d2ecdeb-a40a-4c0a-b66c-d0d02c235542/12045TazminatRapor31_01_12.pdf [last accessed 6 November 2012] . See also, Kurban *et al., Coming to Terms.*

[224] European Roma Rights Centre and the Edirne Roma Association, Written Comments Concerning Turkey for Consideration by the United Nations Committee on the Elimination of Racial Discrimination at its 74th Session, http://www2.ohchr.org/english/bodies/cerd/docs/ngos/ERRC_Turkey_CERD74.pdf [last accessed 6 November 2012].

requested the suspension of the implementation of the project. While the Court was waiting for the response of the municipality (and did not issue preliminary injunction), more than 50 houses were demolished, two of which were officially registered cultural heritage sites. Eventually, despite appeals from the international community, "the neighbourhood was razed in 2009 to make way for middle-income housing, its inhabitants displaced far from the centre and some of them compelled into forced nomadism".[225] The demolishment of *Sulukule* and the ensuing resettlement "caused dislocation and disruption";[226] unable to afford life at TOKİ houses outside of the city centre, all but three of the families returned[227] back "to live in much poorer conditions".[228] The pending court case was finalized in June 2012. In three separate cases, an administrative court in Istanbul held unanimously against the Sulukule project for lack of public interest and ruled that the project must be cancelled. In the meantime, however, since the courts had not issued a preliminary injunction while the cases were pending, the project reached near completion. Mustafa Demir, the Mayor of Fatih Municipality declared that they will not abide by the court's judgment. Pointing out that the 95 percent of the construction of the houses and shops were completed, Demir expressed his conviction that the Council of State would overrule the judgment, which he argued was based on an erroneous interpretation of the law.[229]

On 12 December 2013, Amnesty International issued an urgent action on behalf of around 30 Roma families "living in shacks in precarious conditions" who are under the threat of forced eviction by municipal authorities who want to make way for road construction.[230] Drawing attention to the approaching winter, Amnesty called on the Turkish authorities to alleviate the living conditions of around 120 people, including 37 children, living on barren land in a remote area in the Pendik district of Istanbul. Two of the 37 children have disability and there are three elderly with serious medical problems. Amnesty reported that in mid 2013 some of the Roma families were informally told by the municipal police that their shacks would be demolished for road construction and that the houses of these few families were indeed demolished on at least two occasions in the summer of 2013. Pointing out that the group faced the risk of forced eviction, the organization called on the authorities to cancel any possible plans in that direction. The group has been living in conditions of extreme poverty since their forced eviction on 19 July 2006 from their homes in the district of Kucukbakkalkoy as part of a municipal urban regeneration project. They have been

[225] Commissioner for Human Rights, Human Rights of Roma and Travellers in Europe, Council of Europe, February 2012, p. 151.
[226] European Commission, *Turkey Progress Report 2011*, p. 40.
[227] Nilay Vardar, "Sulukule Gönüllüleri Romanlara Destek Oluyor," *Bianet*, 5 May 2011, http://bianet.org/bianet/toplum/129771-sulukule-gonulluleri-romanlara-destek-oluyor [last accessed 6 November 2012].
[228] European Commission, *Turkey Progress Report 2011*, p. 40.
[229] Nilay Vardar, "Yeni 'Sulukule' Yıkılmayacak", *Bianet*, 19 June 2013 http://www.bianet.org/bianet/bianet/139176-yeni-sulukule-yikilmayacak [last accessed 10 March 2013].
[230] Amnesty International, urgent action: "Children, Elderly at Risk of Forced Eviction, Turkey," EUR 44/030/2013, 12 December 2013, http://ua.amnesty.ch/urgent-actions/2013/12/331-13.

living on the vacant land in Pendik since early 2008 without access to basic municipal services such as electricity, clean water and basic sanitation, as well as health, education and employment. According to Amnesty, the group's requests to the municipality for access to clean water and alternative housing were left unanswered. In response to Amnesty's call for action and news reports, the authorities informed the Roma families that they will receive fuel for heating and cash assistance during the winter period. In addition, the mayor of Pendik stated that his municipality does not have any plans of eviction, but also noted that the area where the families live fall within the jurisdiction of the metropolitan municipality of Istanbul.[231]

In many recent instances, hate-driven lynch attempts targeting the Roma, the Kurds and the Alevis deprived them from their houses and living environment and turned them into displaced individuals. In all cases, the authorities failed to act effectively and promptly to protect the victims and in most cases asked them to leave the district or provincial borders "for their safety." Such an attack took place on 5 January 2010, when a crowd of more than 1,000 locals in the district of Selendi in the province of Manisa attacked the Roma residents. The crowd threw stones at and set on fire the houses of the Roma and set cars on fire, causing panic and disorder. Slogans such as "Get the Gypsies out" were chanted in the streets. The local police could not control the situation and sought reinforcements to assist. The pretext for the attack was a fight between a Roma man and the owner of a coffeehouse over the former's refusal to abide by the smoking ban on 31 September 2009. However, it has become clear after the incidents that the attack was planned, systematic and the outcome of long time tensions between the Roma and other residents of Selenli. Instead of providing the Roma families with protection, the Governor of Manisa forcefully relocated the victims to the district of Gördes and subsequently to the district of Salihli on the ground that local authorities would not be able to ensure their security in Selendi. The displaced Roma continue to live in exile in Salihli. Having lost their houses, furniture, businesses and savings, they live in economic hardship. After some delay, a criminal case was launched against the perpetrators. However, more than three years after the first hearing held on 16 December 2010, the court has not yet completed the testimonies of the victims and the defendants (see section 0.3. for details on the case).

Housing is a big problem for the LGBT individuals, especially for transgender persons. Many landowners decline to sell or rent houses to transgender individuals. Consequently, they can only rent apartments in select areas of big cities and 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, since the areas where transgender individuals live are publicly known, they face physical attacks which aim at their displacement.[232]

[231] Amnesty International, urgent action, "Roma Families to Receive Winter Aid," 18 December 2013: http://amnesty.org/en/library/asset/EUR44/032/2013/en/87e673aa-69fc-4b7e-8bb8-70e44099ba95/eur440322013en.pdf.
[232] Yasemin Öz, *Legal Report: Turkey*, p. 36.

Persons with disabilities and elderly persons have difficulties in finding physically accessible houses. If there is a family member with an intellectual or psycho-social disability in the household, it is hard for the family to find a house to rent. Even if they can find a house to rent, it is not exceptional that they are harassed through continuous complaints to various authorities because of noise, etc.

The Roma face discrimination in access to housing. Private individuals are reported to refuse housing to the Roma based on their identity.[233]

[233] European Roma Rights Centre and the Edirne Roma Association, 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 [last accessed 6 November 2012].

4 EXCEPTIONS

4.1 Genuine and determining occupational requirements (Article 4)

Does national law provide an exception for genuine and determining occupational requirements? If so, does this comply with Article 4 of Directive 2000/43 and Article 4(1) of Directive 2000/78?

Art. 30 (4) of the revised Labour Law stipulates that persons with disabilities cannot be employed in underground and underwater work.

According to art. 71 of the Labour Law, children under the age of 15 cannot be employed. However, children who have completed the age of 14 and have also completed their primary education may be employed in light works that will not hinder their physical, mental and moral development, and for those who continue their education, in jobs that will not prevent their school attendance. Persons between the ages of 15 and 18 can only be employed in certain jobs identified by the law.

4.2 Employers with an ethos based on religion or belief (Art. 4(2) Directive 2000/78)

a) *Does national law provide an exception for employers with an ethos based on religion or belief? If so, does this comply with Article 4(2) of Directive 2000/78?*

National law does not provide an exception for employers with an ethos based on religion or belief.

The draft law on discrimination provides an ethos based exception for employers which provide services, education or teaching on a particular religion, allowing exclusive admission to such religious or educational institutions members of the religion concerned. No similar ethos based exemption is provided for associations working for the preservation of environmental, historical and cultural heritage.

b) *Are there any specific provisions or case law in this area relating to conflicts between the rights of organisations with an ethos based on religion or belief and other rights to non-discrimination? (e.g. organisations with an ethos based on religion v. sexual orientation or other ground).*

There are neither specific provisions, nor case-law in this area.

c) *Are religious institutions permitted to select people (on the basis of their religion) to hire or to dismiss from a job when that job is in a state entity, or in an entity financed by the State (e.g. the Catholic church in Italy or Spain can select religious teachers in state schools)? What are the conditions for such selection? Is this possibility provided for by national law only, or international agreements with the Holy See, or a combination of both? Is there any case law on this?*

There are no such cases. Mandatory religion courses at primary and secondary schools are currently taught by graduates of special departments at faculties of education which were established for the sole purpose of training individuals to teach these classes. Pursuant to the strict interpretation of the principle of secularism in the Turkish constitutional order, neither religious groups nor *Diyanet* has a role in the selection or training of these teachers.

4.3 Armed forces and other specific occupations (Art. 3(4) and Recital 18 Directive 2000/78)

a) Does national law provide for an exception for the armed forces in relation to age or disability discrimination (Article 3(4), Directive 2000/78)?

Law on Persons with Disabilities prohibits discrimination on the grounds of disability in employment. However, the legislation on recruitment, appointment and promotion in the armed forces provides for exceptions. These exceptions do not apply to disability only but to all health problems in general. The major legislation is the Turkish Armed Forces Regulation. This 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.[234] Decisions regarding these persons depend on the health board reports of the Gülhane Military Medical Academy.[235] Health board reports are based on the "Regulation on the Criteria and Classification of Disability and Health Board Reports to be given to the Disabled," most recently revised in 2013.

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 art. 3 of the "Regulation on the exams organized for those who will be appointed to public offices for the first time",[236] unless explicitly laid down by special provisions in laws, by-laws and regulations, public institutions cannot require an age limit for those who will be placed through central exams. Indeed Law on the Personnel of the Turkish Armed Forces (Law No. 926) of 10 August 1967; Law on Commissioned and Non-commissioned Officers to be Recruited Under Contracts (Law No. 4678) of 21 June 2001 and Law on Expert Gendarmerie (Law No. 3466) of 04 June 1988 provide upper age limits. However, this is not to say that exceptions are provided only for the armed forces.

b) Are there any provisions or exceptions relating to employment in the police, prison or emergency services (Recital 18, Directive 2000/78)?

[234] Military service is obligatory in Turkey.
[235] Turkish Armed Forces Health Regulation, published in the Official Gazette on 24 November 1986.
[236] As amended in 2006. The original Regulation was published in the Official Gazette on 3 May 2002. Regulation was amended many times. The amendment regarding "age limits" was published in the Official Gazette on 4 March 2006.

There are maximum age limits for many professions, including police, prison and emergency services. According to Additional art. 24 of the Law on Police Organization (Law no. 3201), the maximum age limit is 27.

According to art. 29 of the Regulation on the Establishment, Duties and Functioning of Staff Training Centres for Prison and Detention Centres,[237] 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 and older than 30. However, as age discrimination is not prohibited explicitly in the legislation and as numerous laws stipulate age limits, it is not possible to say that limitations constitute exceptions.

Legislation regarding entry to certain professions, including police, prison and emergency services require the candidate to not to have a health problem, that would prevent the person from conducting his/her professional duties continuously.[238]

4.4 Nationality discrimination (Art. 3(2))

Both the Racial Equality Directive and the Employment Equality Directive include exceptions relating to difference of treatment based on nationality (Article 3(2) in both Directives).

a) How does national law treat nationality discrimination? Does this include stateless status?
What is the relationship between 'nationality' and 'race or ethnic origin', in particular in the context of indirect discrimination?
Is there overlap in case law between discrimination on grounds of nationality and ethnicity (i.e. where nationality discrimination may constitute ethnic discrimination as well?

There are a handful of legal provisions prohibiting nationality discrimination. Art. 3(2) of the Turkish Penal Code prohibits discrimination based on nationality. Art. 8(e) of the Law on the Foundation and Broadcasting of Radio and Television Channels prohibits broadcasts which make discrimination on the basis of nationality. Finally, Art. 2(1) of the Law on the Execution of Penalties and Security Measures prohibits discrimination based on nationality. However, the material scope of these bans is limited to areas where the relevant laws are applicable. Stateless status, on the other hand, is not a prohibited ground under Turkish law.

Certain professions, activities and opportunities are confined to Turkish citizens. For example, only Turkish citizens can work as civil servants, pharmacists, attorneys, etc.

[237] Published in the Official Gazette on 4 May 2004.
[238] See Additional art. 24 of the Law on Police Organization (Law no. 3201) and art. 29 of the Regulation on the Establishment, Duties and Functioning of Staff Training Centres for Prison and Detention Centres.

Until recently, some laws and especially regulations referred not only to Turkish citizens, but also individuals of Turkish descent. While many of these provisions were annulled in recent years, discriminatory references to race remain in various laws and regulations. Under Article 3 of the Settlement Law (Law no. 5543), only individuals "from the Turkish race and belonging to the Turkish culture" are admitted to Turkey as migrants. An executive regulation dated 23 February 2009 exempts "foreigners of Turkish race" who live in Turkey from the requirement to obtain work permit and allows them to become members to professional organizations. The case brought by the Chamber of Architects and Engineers of Turkey for the annulment of the execution was rejected by the Council of State (see section 0.3. for details of the case).

A similar favourable treatment exists in a regulation which exempts foreign students and trainees of Turkish descent from tuition in private education institutions and provides them with scholarship.[239]

b) Are there exceptions in anti-discrimination law that seek to rely on Article 3(2)?

4.5 Work-related family benefits (Recital 22 Directive 2000/78)

Some employers, both public and private, provide benefits to employees in respect of their partners. For example, an employer might provide employees with free or subsidised private health insurance, covering both the employees and their partners. Certain employers limit these benefits to the married partners (e.g. Case C-267/06 Maruko) or unmarried opposite-sex partners of employees. This question aims to establish how national law treats such practices. Please note: this question is focused on benefits provided by the employer. We are not looking for information on state social security arrangements.

a) Would it constitute unlawful discrimination in national law if an employer only provides benefits to those employees who are married?

Article 5 of the Labour Law provides an open-ended protection against discrimination. While marital status is not listed among the enumerated grounds in the provision, the non-exhaustive nature of the list suggests that employers are also prohibited from discriminating against their employees on the basis of their marital status. In practice, national courts interpret this article in a way that they do not deem all kinds of differential treatment among employees based on their marital status to constitute discrimination. Rather, courts apply an arbitrariness test to determine whether such differential treatment is discriminatory. For example, where employers provide benefits (such as an annual one salary bonus) exclusively to married employees whose spouses are unemployed (and does not provide the same benefit to single employees or married employees whose spouses are employed), this is not

[239] Published in the Official Gazette on 9 February 2009.

interpreted to constitute discrimination. Under Turkish law, while marriage is a legal status defined under Civil Law, in practice courts also recognize "living together" as a life style and grant rights to couples who live together, including those who are married by religious ceremony and lack civil marriage. Thus, employees who provide exclusive benefits to married employees with unemployed spouses are also required to extend these benefits to unmarried employees whose spouses are unemployed, so long as the latter submit proof of living together with their spouses (such as a document of residence). The employer's failure to do so would constitute an arbitrary distinction not justified on objective grounds. Where, however, the employer acts out of his moral, religious, philosophical convictions and categorically excludes all unmarried or divorced employees from benefits it provides to married employees, courts find this to be discriminatory.[240]

b) Would it constitute unlawful discrimination in national law if an employer only provides benefits to those employees with opposite-sex partners?

Article 5 of the Labour Law provides an open-ended protection against discrimination. While sexual orientation is not listed among the enumerated grounds in the provision, the non-exhaustive nature suggests that employers are also prohibited from discriminating between their homosexual and heterosexual employees. Therefore, in theory, yes, such an employer practice would constitute discrimination. However, the author is not aware of a court case where the issue was raised.

4.6 Health and safety (Art. 7(2) Directive 2000/78)

a) Are there exceptions in relation to disability and health and safety (Article 7(2), Directive 2000/78)?

Disability discrimination is prohibited explicitly only in a limited number of laws and the material scope of prohibition of disability discrimination is rather limited. Neither in the laws which prohibit disability discrimination, nor in other legislation, are there exceptions which are explicitly laid down.

However, there are certain restrictions regarding persons with disabilities which might be considered as exceptions in relation to health and safety. One of the most controversial restrictions was contained in art. 53/b(4) of the Road Traffic Regulation, which requited a special sign on the license plates of cars used by persons with disabilities. This provision was unsuccessfully challenged in 2009 before the Council of State by an applicant with disability. In September 2011, Article 53 was revised and the requirement for individuals with disabilities to have a special sign on their

[240] Opinion expressed through e-mail by Mehmet Uçum, a leading human rights lawyer specialized in employment law.

license plates was removed for new plates to be issued after the entry into force of the revised regulation on 9 September 2011.[241]

b) Are there exceptions relating to health and safety law in relation to other grounds, for example, ethnic origin or religion where there may be issues of dress or personal appearance (turbans, hair, beards, jewellery, etc.)?

There are no exceptions relating to health and safety law in relation to other prohibited grounds.

4.7 Exceptions related to discrimination on the ground of age (Art. 6 Directive 2000/78)

4.7.1 Direct discrimination

Please, indicate whether national law provides an exception for age? (Does the law allow for direct discrimination on the ground of age?)
Is it possible, generally, or in specified circumstances, to justify direct discrimination on the ground of age? If so, is the test compliant with the test in Article 6, Directive 2000/78, account being taken of the Court of Justice of the European Union in the Case C-144/04, Mangold and Case C-555/07 *Kucukdeveci?*

There is no provision in Turkish Law prohibiting age discrimination generally. Although prohibitions of discrimination stipulated in Article 10 of the Constitution and Article 5 of the Labour Law can be interpreted to cover age as a prohibited ground, judicial interpretation is needed.

Since there is no clear rule against age discrimination, one cannot speak about justifications either.

a) Does national law permit differences of treatment based on age for any activities within the material scope of Directive 2000/78?

Social advantages are provided generally on the basis of income and old age. Irrespective of income, everyone above the age of 65 can use public transportation free of charge. Persons with disabilities can benefit from free or discounted public transportation provided by various municipalities. Both the central government and local governments give welfare benefits to poor individuals and families. Persons with disabilities and their families can under certain conditions benefit from cash benefits.

A government policy initiated in 2002 with the support of the World Bank provides conditional child grants to lower income families who do not have any social security

[241] Karayolları Trafik Yönetmeliğinde Değişiklik Yapılmasına Dair Yönetmelik, Official Gazette, no. 28049, 9 September 2011.

coverage. Known as “conditional cash transfer”, the programme provides monthly stipends per child at both pre-school and school aged. Payment is conditional to school enrolment for school aged children and regular health controls for pre-school children. The amounts range, based on the gender of the child (more for girls than boys) and the level of schooling (more for secondary than elementary school).[242] Started as a pilot programme in six provinces, the policy was started to be implemented across the country in 2005.

b) Does national legislation allow occupational pension schemes to fix ages for admission to the scheme or entitlement to benefits, taking up the possibility provided for by article 6(2)?

There is no specific provision on this issue.

4.7.2 Special conditions for young people, older workers and persons with caring responsibilities

Are there any special conditions set by law for older or younger workers in order to promote their vocational integration, or for persons with caring responsibilities to ensure their protection? If so, please describe these.

The regulation adopted in 2006 regarding persons with disabilities who are in need of care, in art. 13/1(d) stipulates that relatives who assume caring responsibilities for persons with disabilities shall be paid a minimum wage by the state.

4.7.3 Minimum and maximum age requirements

Are there exceptions permitting minimum and/or maximum age requirements in relation to access to employment (notably in the public sector) and training?

According to art. 71 of the Labour Law, minimum working age is 16. However, this applies only to the private sector.

According to the art. 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.[243]

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 art. 3 of the “Regulation on the exams organized for those who will be appointed to

[242] On average, the payments are 27 TL (11,5 Euro) per child.
[243] Published in the Official Gazette on 9 August 2009.

public offices for the first time,"[244] unless explicitly laid down by special provisions in laws, by-laws and regulations, public institutions cannot require an age limit for those who will be placed through central exams. According to art. 48 of the Law on Civil Servants, in order to be recruited as a civil servant, the individual should not be below the age of 18. The regulation on the exams organized for those who will be appointed to public offices for the first time also refers to art. 48 of the Law on Civil Servants regarding recruitment conditions, including 18 years age limit. There are numerous special laws which stipulate minimum and/or maximum age requirements. For example, according to art. 8 of the Law on Judges and Prosecutors (Law no. 2802) the maximum entry age is 35.

Age limits also apply to training.

4.7.4 Retirement

In this question it is important to distinguish between pensionable age (the age set by the state, or by employers or by collective agreements, at which individuals become entitled to a state pension, as distinct from the age at which individuals actually retire from work), and mandatory retirement ages (which can be state-imposed, employer-imposed, imposed by an employee's employment contract or imposed by a collective agreement).

For these questions, please indicate whether the ages are different for women and men.

a) *Is there a state pension age, at which individuals must begin to collect their state pensions? Can this be deferred if an individual wishes to work longer, or can a person collect a pension and still work?*

There is a pension age stipulated in the Law on Social Insurance and Universal Health Insurance Law (Law no. 5510). Those who became insurance holders after the adoption of the Law shall be retired at the age of 58 (women) and 60 (men). According to the Law (art. 28), the retirement age will increase gradually and will reach 65 in 2048 both for men and women.

If the individual wishes to work after the retirement age, there is no legal barrier to doing so. If the individual wishes to continue working after the retirement age, the individual can still collect a pension. However, a special premium has to be paid.

The above mentioned does not apply to persons who wish to work in the public sector after retirement. According to Law no. 5335, individuals who work in the public sector after retirement cannot continue collecting a pension.

[244] As amended in 2006. The original Regulation was published in the Official Gazette on 3 May 2002. Regulation was amended many times. The amendment regarding "age limits" was published in the Official Gazette on 4 March 2006.

b) *Is there a normal age when people can begin to receive payments from occupational pension schemes and other employer-funded pension arrangements? Can payments from such occupational pension schemes be deferred if an individual wishes to work longer, or can an individual collect a pension and still work?*

The rules of various occupational pension schemes differ regarding age. However, if the individual wishes to continue to work longer, the individual can still collect a pension.

c) *Is there a state-imposed mandatory retirement age(s)? Please state whether this is generally applicable or only in respect of certain sectors, and if so please state which. Have there been recent changes in this respect or are any planned in the near future?*

There are state-imposed mandatory retirement ages for public employees. According to art. 40 of the Law no. 5434, the mandatory retirement age is 65. For university professors, the mandatory retirement age is 67 (this only applies to public universities). The mandatory retirement age for military personnel and the police varies depending on the rank.

d) *Does national law permit employers to set retirement ages (or ages at which the termination of an employment contract is possible) by contract, collective bargaining or unilaterally?*

Employers cannot set retirement ages lower than the state pension age. If there is agreement between the employee and the employer, the employee can continue working beyond state pension age.

e) *Does the law on protection against dismissal and other laws protecting employment rights apply to all workers irrespective of age, if they remain in employment, or are these rights lost on attaining pensionable age or another age (please specify)?*

The general protections against dismissal apply regardless of the age of the worker.

f) *Is your national legislation in line with the CJEU case law on age (in particular Cases C-229/08 Wolf, C-499/08 Andersen, C-144/04 Mangold and C-555/07 Kücüdevici C-87/06 Pascual García [2006], and cases C-411/05 Palacios de la Villa [2007], C-488/05 The Incorporated Trustees of the National Council on Ageing (Age Concern England) v. Secretary of State for Business, Enterprise and Regulatory Reform [2009], C-45/09, Rosenbladt [2010], C-250/09 Georgiev, C-159/10 Fuchs, C-447/09, Prigge [2011]) regarding compulsory retirement?*

No. There are no provisions in Turkish law providing protection from discrimination based on age.

4.7.5 Redundancy

a) Does national law permit age or seniority to be taken into account in selecting workers for redundancy?

Yes. One of the most established principles of the labour law is that, in the selection of the workers for redundancy, the employer should take into account the period the employee worked for the employer. The shorter the period of work, the bigger the risk of selection for redundancy.

b) If national law provides compensation for redundancy, is this affected by the age of the worker?

The national law provides compensation for redundancy. In determining this compensation, the duration of work is taken into account.

4.8 Public security, public order, criminal offences, protection of health, protection of the rights and freedoms of others (Article 2(5), Directive 2000/78)

Does national law include any exceptions that seek to rely on Article 2(5) of the Employment Equality Directive?

As the Directives have not been transposed and there is no comprehensive anti-discrimination legislation, it is not possible to speak about exceptions based on art. 2(5) of the Framework Employment Directive.

4.9 Any other exceptions

Please mention any other exceptions to the prohibition of discrimination (on any ground) provided in national law.

Provisions prohibiting discrimination are far from being detailed and the legislation does not provide any specific exceptions to the prohibition of discrimination. Although there are many laws providing different age limits in different areas, it is hard to interpret these as exceptions, as age discrimination is not explicitly prohibited.

5 POSITIVE ACTION (Article 5 Directive 2000/43, Article 7 Directive 2000/78)

a) What scope does national law provide for taking positive action in respect of racial or ethnic origin, religion or belief, disability, age or sexual orientation? Please refer to any important case law or relevant legal/political discussions on this topic.

While not explicitly stating it as such, the revised Article 10 of the Constitution approved by a national referendum in September 2010 introduced the principle of positive action to the Constitution. New Article 10 stipulates that, measures to be adopted to ensure equality between men and women as well as measures to be adopted for children, elderly, 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.

Although not named as positive action by the legislation, there are a number of laws and regulations stipulating positive measures in the areas of education, employment and a number of services (social insurance, transportation etc.), including employment quota for persons with disabilities.

The 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 some groups are more disadvantaged than others. In the past, demands by women's organizations for women's quota in political participation have been dismissed by the Prime Minister as against international practice.

b) Do measures for positive action exist in your country? Which are the most important? Please provide a list and short description of the measures adopted, classifying them into broad social policy measures, quotas, or preferential treatment narrowly tailored. Refer to measures taken in respect of all five grounds, and in particular refer to the measures related to disability and any quotas for access of people with disabilities to the labour market, any related to Roma and regarding minority rights-based measures.

In its initial reports to the United Nations Committee on Economic, Social and Cultural Rights and Committee on the Elimination of Racial Discrimination, Turkey has claimed that "there exists no distinction, exclusion, restriction or preference, be it in law or in administrative practices or in practical relationships, between persons or groups of persons, made on the basis of race, colour, gender, religion, political opinion, nationality or social origin, which would have the effect of nullifying or impairing the recognition, enjoyment or exercise of equality of opportunity or

treatment in employment or occupation".[245] Consequently, specific programmes targeting specific groups are very rare.

In its Concluding Observations regarding Turkey's initial report, Committee on the Elimination of Racial Discrimination had recommended Turkey to consider further amendments to the legislation to allow teaching of languages traditionally used in Turkey in the general public education system. In its comments on the Concluding Observations of the Committee on the Elimination of Racial Discrimination, the Turkish Government stated that the number of languages traditionally used in Turkey may reach hundreds, if not thousands and that "Turkey needs to observe non-discrimination principle in teaching all traditional languages other than Turkish. Any act in favour of one or two languages traditionally used can be interpreted as discrimination against other languages and their respective speakers".[246] Again, in reply to the Committee's criticism regarding lack of data on the ethnic composition of the population, Turkey has stated that the "Turkish Government does not collect, maintain or use either qualitative or quantitative data on ethnicity. Although acknowledging that disaggregated data on ethnicity may facilitate devising policies for special measures targeting a specific group, as is the case in some other countries, it is believed that this is a sensitive issue, especially for those nations living in diverse multicultural societies for a long period of time. Diversity has deep roots in Turkey. Hence, Turkey has rather focused on commonalities and common aspirations in the legislative and policy framework, rather than measuring differences and making policies thereon. Some historical events particularly in recent European history are also a reminder of dangers and threats involved in such practices".[247] These replies indicate that, Turkey considers some special measures as discrimination against other groups and some other measures as a threat to unity.

With regard to grounds covered by the 2000/43 and 2000/78, positive action is taken only for persons with disabilities and the elderly. There is a quota system in both private and public sector employment. According the Labour Law and the Law on Civil Servants, private and public sector employers are obliged to employ persons with disabilities respectively.

[245] UN Committee on the Elimination of Racial Discrimination (CERD), *Reports submitted by States parties under article 9 of the Convention : International Convention on the Elimination of all Forms of Racial Discrimination : 3rd periodic reports of States parties due in 2007: addendum: Turkey*, 13 February 2008, CERD/C/TUR/3, para. 142, available at: http://www.unhcr.org/refworld/docid/4885cfa60.html [last accessed 6 November 2012].
[246] Committee on the Elimination of Racial Discrimination, Reports Submitted by State Parties under Article 9 of the Convention, *Comments by the Government of Turkey on the Concluding Observations of the Committee on the Elimination of Racial Discrimination,* CERD/C/TUR/CO/3/Add.1, 30 March 2009, Comment no. 6, available at http://www.unhcr.org/refworld/publisher,CERD,CONCOBSCOMMENTS,TUR,49eefe2a2,0.html [last accessed 6 November 2012].
[247] *Id*., Comment no. 5.

The revised Article 53(1) of the Law on Civil Servants, as amended in February 2011, requires the quota for civil servants with disabilities working in public institutions to be 3%.

Under Article 30(1) of the Labour Law, the ratio of employees with disabilities to total number of employees must be 3% in private sector establishments and 4% in public enterprises. However, this quota obligation only applies to workplaces where 50 or more persons are employed. According to Article 30, if the employer has employed more persons with disabilities than the quota requires; or if an employer who is not under an obligation to do so has employed persons with disabilities; or if an employer has employed a person who is more than 80% disabled, than half of the insurance premiums which normally have to be paid by the employer shall be paid by the Treasury. According to Article 101, if the employers do not employ the necessary number of persons with disabilities, they are charged with a fine. Fines collected are used to fund vocational training projects targeting persons with disabilities. The fine is 1,700TL (556 Euros as of February 2014) per month for every person with disability who is not employed. The same article explicitly prescribes that public employers cannot be exempt from this fine.

The quota regime is favourable as it guarantees access to employment to a degree. However, in many, if not all cases, it is observed that the number of persons with disabilities employed in a workplace is equal to or below the number of persons they have to employ under the quota regime. In other words, the quota system is applied, as if it prescribes an upper limit for the employment of persons with disabilities. Another problem regarding the quota system is the lack of effective monitoring. Employers who are under a quota obligation employ the required number of persons with disabilities on paper and ask them not to come to work. In many cases the workplaces are not accessible or there is no accessible transportation to the work place. The quota system is also understood as an alternative to prohibition of discrimination. In other words, when employers comply with their quota obligations, they feel that they are not under an equal treatment obligation any more. The quota system enhances the perception of persons with disabilities as persons in need of help and protection.

In response to a query by a member of the parliament, the Minister of Employment and Social Security released the statistics on the performance of the private sector in complying with its quota obligations. Accordingly, as of the end of September 2011, of the 18.004 workplaces employing 50 or more individuals, 4.272 failed to fill their quota. Of the 3.417.745 employees working in these workplaces, 87.519 were persons with disabilities. Of the 4.272 non-complying employers, 156 were fined.[248] In August 2012, in response to another query by a member of the parliament, the Minister of Employment and Social Security gave the following statistics as of May

[248] Ministry of Employment and Social Security, response to a written query, 11 January 2012, http://www2.tbmm.gov.tr/d24/7/7-1220sgc.pdf [last accessed 6 November 2012].

2012. Of the 16.121 workplaces employing 50 or more individuals and thus required to employ persons with disabilities, 7.680 failed to fill their quota and the total amount of shortage was 22.248. The number of persons with disabilities working in these enterprises was 72.919. Employers failing to comply with the law were fined 1,700 NTL each. As of 11 July 2012, the total amount of administrative fines paid by the private sector was 60.089.271,79 NTL.[249]

Despite an increase in recent years, the employment rate of persons with disabilities in public sector remains low at less than 2 per cent of the total public sector employment.[250] According to the statistics of the Prime Ministry's State Personnel Presidency, as of early 2014, the number of persons with disabilities employed in the public sector was 32.877, while it should be 58.749 according to the quota. This shows that there are 25.872 vacant positions in the public sector reserved for persons with disabilities.[251] In early 2013, these numbers were 27.443, 54.865 and 27.422, respectively. It should be noted, however, that these numbers were 10.300, 51.419, and 41.119 in June 2009;[252] 14.329, 48.943, and 34.614 in January 2010;[253] and 20.829, 44.189 and 23.360 in August 2011, respectively.[254] Thus, there has been a significant increase in the number of individuals with disabilities employed in the public institutions in the past few years. The upward trend in the past few years had briefly stopped in 2011, when no recruitment of persons with disabilities was realized in the public sector. In response to a query of a member of the parliament, the Minister of Employment and Social Security said that this was due to the preparatory work carried out to hold centralized exams in 2012 for the recruitment of around 3,500 persons with disabilities.[255] There is also a disproportionate under representation of women among individuals with disabilities employed in the public sector. Of the 20.829 public servants with disabilities employed as of August 2011, only 4.232 were women.

The performance of select ministries in the fulfilment of their quota obligations is as follows. At the end of 2012, the required and actual numbers of employees with disabilities hired by selected ministries were as follows: the Ministry of Justice (2.345; 366), the Ministry of Interior (664; 243), the Ministry of Foreign Affairs (103; 22), the Ministry of Health (937; 898), the Ministry of Education (21.137; 8.465), the Ministry of Labour and Social Security (73; 7), the Ministry of Family and Social Policies (327; 278). As of February 2014, the comparable data was as follows: the Ministry of

[249] Ministry of Employment and Social Security, response to a written query, 17 August 2012, http://www2.tbmm.gov.tr/d24/7/7-9034c.pdf [last accessed 23 April 2013].
[250] European Commission, *Turkey Progress Report 2013*, p.58.
[251] http://www.dpb.gov.tr/F/Root/dosyalar/istatistikler/engelli_per_omss/subat2014/engel_geneldagilim.pdf [last accessed 27 February 2014].
[252] See earlier national report on Turkey authored by İdil Işık Gür, p. 50.
[253] Arzu Şenyurt Akdağ *et.al.*, p. 26.
[254] Ministry of Employment and Social Security, response to a written query, 28 March 2012, http://www2.tbmm.gov.tr/d24/7/7-4705c.pdf [last accessed 1 July 2014].
[255] *Ibid.*

Justice (2.349; 1.124), the Ministry of Interior (667; 653), the Ministry of Foreign Affairs (106; 26), the Ministry of Health (1216; 821), the Ministry of Education (26.515; 10.335), the Ministry of Labour and Social Security (74; 17), the Ministry of Family and Social Policies (395; 345).[256]

Until 2012, recruitment of persons with disabilities to public service was done on the basis of special exams held separately by each public institution which was under a legal obligation to set aside 3 per cent of their positions to persons with disabilities. This decentralized system had caused major problems in practice when public employers rejected to hire candidates who chose to take the general and centralized exam for public service recruitment instead of the special exams for candidates with disabilities. In 2006, this discriminatory practice was upheld by the Council of State (Danıştay): "It is in line with the law to not to appoint the plaintiff to the post that he was placed, since he has taken the general exam. Since his employment should be through quota for the persons with disabilities ... he should have taken and passed the special exam designed for the persons with disabilities".[257]

In response to these problems and to strengthen the enforcement of the 3 per cent quota in public service recruitment, the government amended Article 53 of the Law on Civil Servants on 13 February 2011.[258] The law introduced a new system for the recruitment of persons with disabilities to civil service based on a centralized exam. The exam will be organized centrally on the basis of a needs analysis to be made by the government based on the information to be provided on an annual basis by public offices regarding the number of persons with disabilities they need to hire to fill the 3 per cent quota. The implementing regulation of revised Article 53 was adopted on 3 October 2011.[259] The regulation puts forth the procedures of the centralized exam and the lottery to be held for the selection and placement to public service of successful candidates, the means of production of statistical information for monitoring the enforcement of Article 53, and the responsibilities of public institutions to ensure the accessibility of their offices for their employees with disability. The regulation requires the recruitment of persons with disabilities in accordance with their qualifications and professions.

The first centralized exam for the recruitment of persons with disabilities under the new law and regulation was held on 29 April 2012. There was a great confusion as to the number of employees with disabilities the public sector was required to employ in order to fill the 3 per cent quota. While the Minister for Family and Social Policies

[256] All the figures have been obtained over the years from the website of the Prime Ministry's State Personnel Presidency, which provides updated statistics regarding the employment of persons with disabilities in the public sector. Since the website does not keep statistics from previous years, the no longer up-to-date statistics cited in this report can no longer be reached on this website. http://www.dpb.gov.tr/tr-tr/istatistikler/engelli-personel-ve-omss-istatistikleri.

[257] 12th Circuit of the Council of State, 19 December 2008, 2006/1098 E, 2008/5603 K.

[258] Amended with Article 99 of law no. 6111.

[259] Regulation on Conditions for the Recruitment of Persons with Disabilities to Civil Service and the Procedures of the Central Exam, Official Gazette, no. 28073, 3 October 2011.

stated that the shortage of employees with disabilities in the public sector was 20,000, the Minister of Labour and Social Security announced the number as 3,512. The discrepancy between the two figures drew protests from disability organizations, which claimed that the actual number was 50,000 taking into consideration the newly established ministries. Amidst protests of disability organizations, the Ministry of Family and Social Policies announced that 3,512 was the number of individuals to be recruited initially and that more recruitments would follow. Of the 60,375 persons with disabilities who took the exam with great expectations,[260] only a total of 11,190 were placed to public service (5.264 in 2012 and 5.926 in 2013).[261] The Ministry of Family and Social Policies announced that 200 teachers among those who took the 2012 exam will be recruited by the Ministry of National Education in 2014. The applications will be received between 3 and 7 March 2014.

The Turkish Employment Organization provides vocational training to persons with disabilities; however these trainings are limited to handicraft, knitting, computer etc. There is no data needed to evaluate the effectiveness of these measures.

The Law on Persons with Disabilities (art. 14) (Law no. 5378) lays down the legal basis for sheltered workplaces. However, as State support is minimal, only a handful of workplaces exist. A study conducted with 13 workplaces considered to qualify as sheltered produced the following findings: the vast majority of the employees did not have social security coverage, 70 per cent of the employees were men, more than half of the employers were paying rent, and employers faced serious financial difficulties due to their inability to participate in public tenders.[262]

Persons with disabilities have the right to retire earlier than other individuals. Those who are 60-100% disabled can retire in 15 years, if they have paid premium for 3600 days. Those who are 50-59% disabled can retire in 18 years if they have paid premium for 4000 days and those who are 40-49% disabled can retire in 20 years, if they have paid premium for 4400 days.

Under Law no. 2022, persons with disabilities who do not have any income or who have an income which is below an amount designated every year shall be paid cash benefits. Persons who are in charge of care of a person with disability are also paid an allowance. There is also an income tax discount for persons with disabilities and for persons who are in charge of the care of a person with disability.

[260] "3500 Engelliye İş, 56500 Açıkta!", Bianet, 11 April 2012, http://www.bianet.org/bianet/bianet/137554-3500-engelliye-is-56500-acikta [last accessed 23 April 2013].
[261] Announcement made through the website of the Ministry of Family and Social Policies, 9 November 2013 http://www.eyh.gov.tr/tr/25581/Engelli-Kamu-Personeli-Secme-Sinavi-27-Nisan-2014-te-Yapilacak [last accessed 27 February 2014].
[262] Sabancı University, *Engelsiz Türkiye için*, p. 251.

Civil servants can be appointed to any place in Turkey. However, if there is a person with disability within the family who is in need of special education or rehabilitation, then the civil servant has to be appointed to a place where special education and rehabilitation services exist.

Article 35 of the Law on Persons with Disabilities provides that the state covers a portion of the costs of students with disabilities who are recommended by the special education assessment boards to attend special education and rehabilitation centres. General Directorate of Higher Education Credit and Hostels Institution gives priority to university students with disabilities in awarding scholarships.

Positive action with regard to age is taken for the elderly and for children. Persons who are 65 years old or older can get discounts in transportation, cultural activities etc. They have to be given priority in health institutions. Most municipalities issue cards for 65 or older for free transportation within the municipality. Under Law no. 2022 on social aid, individuals who are above the age of 65 and do not have any income can benefit from cash benefits. They can also benefit from health services free of charge. Similarly, children (below 18 years old) are covered by the General Health Insurance.

No positive action exists for the Roma in Turkey, even after the government launched the Roma initiative with the promise to enhance the employment, education and housing conditions for the Roma.

6 REMEDIES AND ENFORCEMENT

6.1 Judicial and/or administrative procedures (Article 7 Directive 2000/43, Article 9 Directive 2000/78)

In relation to each of the following questions please note whether there are different procedures for employment in the private and public sectors.

a) What procedures exist for enforcing the principle of equal treatment (judicial/ administrative/alternative dispute resolution such as mediation)?

There are no special bodies established to receive applications from victims of discrimination. Consequently, in cases of allegations of discrimination, the complainants have to follow general administrative and legal venues. If the victim seeks an amicable settlement instead of a court action, alternative dispute settlement methods offered in the Turkish legal system are very limited. Except in criminal courts, the litigants have to collect all the facts and evidence and they have to prove their case. As the procedure is quite complicated, it is extremely hard for anyone to pursue a case without the support of a lawyer.

Victims of discrimination can ask for the compensation of pecuniary damages, loss of earnings, or damages for pain and suffering, or all. 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.

The advantage of a court proceeding is that, this is the only procedure for the victims, where the victim may receive compensation. If the discriminatory act or action is an administrative in nature, before going to the court, the victim of discrimination has to request compensation from the administrative body responsible for the action.

Although there are advantages of bringing a case to the court, there are also disadvantages. First of all, taking a case to the court is costly. Legal aid is provided under very strict criteria. Cases are not decided before 1 or 2 years. Consequently, in many cases taking a case to the court does not solve the problem. For example, if a student is expelled from school on the basis of his/her ethnicity, or if the employment contract was terminated because the employer had thought that the employee was gay, a court decision given 2 years after the discriminatory act will have a limited effect. Similarly, administrative court cases filed by parents for the exemption of their children from mandatory religion courses last years, finalizing long after students complete their secondary school education.

In Turkey there are labour courts in every province which deal with employment related issues. In order to obtain a legal remedy, employment related discrimination claims (under art. 5 of the Labour Law) must be brought before a labour court. Upon appeal, employment related discrimination cases come before 9th Civil Chamber of

the Court of Cassation. The possible remedies for a termination of work agreement based on discrimination may be but not limited to an order to continue employment relationship, payment of lost income, compensation etc. It is important to mention that an existing labour relationship is a precondition for launching a labour law suit and those who face discrimination in the recruitment process cannot pursue such a way.

Judicial control of the acts and actions of administrative authorities are done 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 the 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 a full compensation. In cases of actions, the remedy is full compensation.

When discrimination arises from the acts of civil servants, those who face with discrimination may first make a complaint and subsequently file a case in administrative courts. These courts decide disputes arising from discriminatory acts of the governorships, district governorships, local administrative bodies and provincial administration of ministries and other public establishments and institutions concerning temporary appointment or disciplinary suspension of civil servants, their allowances, leaves and residence provided to them by the authorities. The applicant may ask for full compensation only, or a full compensation as well as the annulment of the act. The applicant can appeal to the Council of State.

In order for civil servants to face prosecution, their superior’s permission is required (Law no. 4483 on the Prosecution of Civil Servants and Other Public Employees and Article 129 of the Constitution). In other words, civil servants cannot be prosecuted for crimes unless their superior consents to prosecution. This is one of the major barriers before the victims of discrimination, as in many cases permission is not given.

The constitutional amendments approved by a national referendum in September 2010 granted individuals with the right to make a constitutional complaint to the Constitutional Court under certain conditions. The implementing legislation was adopted in March 2011, which laid down the procedures of the constitutional complaint mechanism. Accordingly, the right to file a constitutional complaint is limited to Turkish nationals, who are required to exhaust the national judicial remedies prior to filing a petition with the Constitutional Court. The scope of the complaint is limited to those rights and liberties protected under the constitution which fall within the scope of the European Convention on Human Rights (ECHR) and its additional protocols which Turkey is a party to. Individuals can file a complaint for the infringement of any of these rights by public authorities. Filling a

constitutional complaint is not free of charge. The assessment of the complaints will be subject to a two-tiered process: admissibility and substantive review. Individuals whose complaint is found inadmissible reserve their right to petition the European Court of Human Rights (ECtHR). Complaints must be filed within 30 days after the violation takes place or the judicial remedies are exhausted. The Constitutional Court started to receive complaints filed against judicial decisions and actions that have become final on 23 September 2012 (for details on the implementation of the mechanism, see section 0.2).

With regard to the sufficiency and the effectiveness of judicial protection available to all persons who consider themselves wronged by failure to apply the principle of equal treatment, the authorities state that Article 74 of the Constitution (right of petition), Article 7 of Law No. 3071 on the Right to Petition and Article 91 of the Labour Law No. 4857 are considered to be effective legal provisions providing judicial protection to victims of discrimination.

Along with these official channels for application, there are also “unofficial” means, particularly mediation, that deal with resolution of disputes in civil matters. Collective bargaining by trade unions, internal complaint procedures, administrative channels including referrals to the labour inspectors are also available for those who face discrimination. Turkey does not have an equality body, but the draft law on anti-discrimination foresees the establishment of one.

Another option for the victims of discrimination is to apply to human rights boards which are established in every province and districts, the Human Rights Inquiry Commission of Turkish Grand National Assembly and the newly established Human Rights Institution of Turkey. Established pursuant to the Law on the Human Rights Institution of Turkey of 21 June 2012, the Institution has a general mandate to protect human rights prevent violations, and does not have a specific competence to review discrimination claims. Both real and legal persons can file individual complaints with the Institution (for more on the Institution, see section 0.2). The human rights boards, the Institution and the parliamentary commission have the competence to inquire complaints of discrimination in employment. The decisions and reports of the Human Rights Institution, Human Rights Boards, Human Rights Inquiry Commission of the parliament and the Ombudsman Institution are not legally binding.

After the local remedies are exhausted, a person who considers that his fundamental rights as defined in the European Convention on Human Rights have been violated, may institute proceedings within six months before the European Court of Human Rights. Turkey is not a party to the First Optional Protocol to the Covenant on Civil and Political Rights of the United Nations. Consequently, it is not possible for individuals to make an individual complaint to the Human Rights Committee.

Art. 14(3) of the Law on Persons with Disabilities requires both public and private employers to take necessary measures to eliminate or alleviate the barriers and hardship faced in employment processes by employees or job applicants with

disabilities and to make physical adjustments. In cases of denial of reasonable accommodation to persons with disabilities, employers are fined by labour inspectors. Persons who request accommodations should apply to the employer and if their requests are denied, they can make an application to labour inspectors. Labour inspectors are responsible for monitoring the observance of the Labour Law by the employers. Neither the inspectors nor the labour courts can order the employer to provide reasonable accommodation.

A very limited obligation to provide reasonable accommodation is also found in art. 53 of the Law on Civil Servants. This article prescribes a duty limited to the provision of tools which would enable the civil servant to carry out his/her duties.

In case of a breach of the duty to provide reasonable accommodation in the private sector, the employee can go to the labour courts and in the public sector to the administrative courts.

There are also labour inspectors, insurance inspectors and school inspectors tasked under the Labour Law, the Social Security Institution Law and laws governing education respectively, with inspecting compliance. Inspection under the Consumer Protection Law is done by executive officials at the national and local level (governors and district governors). These inspectors have the powers to issue administrative and monetary fines where they identify violations of the respective laws. Labour and school inspectors have 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.

b) Are these binding or non-binding?

The Human Rights Institution of Turkey, the Human Rights Boards, and the Human Rights Inquiry Commission of Turkish Grand National Assembly can give a decision that describes the situation as a violation or non-violation of the right to equal treatment and these decisions are not enforceable and are not legally binding.

If an administrative organ concludes that there is discrimination and a fine is imposed, this decision can be challenged before the courts.

The decisions of the courts are binding by definition.

c) What is the time limit within which a procedure must be initiated?

The time limits depend on the type of application.

Time limits in administrative law: The time limit to repeal regulations and administrative decisions is 60 days after the day of promulgation of the regulation or notification of the decision to the concerned individuals. For compensation of damages which are the result of administrative action, applications should be

submitted within 1 year after the victim is informed and in any case within 5 years of the date of the action causing damage.[263] The appeals should be made in 30 days after the notification of lower courts' decisions.[264]

Time limits in civil law including labour law: Civil law suits for compensation of damages should be filed within 1 year of the victim being informed and in any case within 5 years after the date of the action causing damage for tort cases.[265] If the case relates to wages, the time limit is 5 years.[266] For all the other matters, the time limit is 10 years.[267] The appeals should be made within 8 days of the notification of lower courts' decisions.[268]

Time limits in criminal law: In Turkish criminal law, time limits are designated depending on the punishment. For offences resulting less than 5 years of punishment, the limit is 8 years. If the punishment is 5 to 20 years the limit is 15 years, if the punishment is more than 20 years, the limit is 20 years and finally for life time imprisonment it is 25 or 30 years depending on the type of life time imprisonment.[269] For some offences investigation and prosecution is bound to a complaint. Unless a complaint is brought within 6 months after the complainant becomes aware of the malicious act and the offender, an investigation or prosecution cannot proceed.[270]

d) Can a person bring a case after the employment relationship has ended?

A person can bring a case before the court after the employment relationship has ended, so long as s/he abides with the time limits. If the person has found out after the employment relationship has ended that he was discriminated against in the employment relationship or that the termination of the employment contract was discriminatory, the case can be brought before the court within respective time limits.

e) In relation to the procedures described, please indicate any costs or other barriers litigants will face (e.g. necessity to instruct a lawyer?) and any other factors that may act as deterrents to seeking redress (e.g. strict time limits, complex procedures, location of court or other relevant body).

The cost of filing an individual complaint with the Constitutional Court was increased to 206 NTL (67 Euros) for the year 2014. There is a strict time limit for filing petitions; they are required to be filed within 30 days after the exhaustion of domestic judicial

[263] Art. 7 of the Law on Administrative Procedure (Law no. 2577).
[264] Art. 46(2) of the Law on Administrative Procedure (Law no. 2577).
[265] Art. 60(1) and (2) of the Law of Obligations (Law no. 818).
[266] Art. 126 of the Law of Obligations (Law no. 818).
[267] Art.125 of the Law of Obligations (Law no. 818).
[268] Art. 8 of the Law of Labour Courts (Law no. 5521).
[269] Art. 66 of the Turkish Penal Code (Law no. 5237).
[270] Art. 73 of the Turkish Penal Code (Law no. 5237).

remedies or the occurrence of the alleged human rights violation where there are no remedies available.

Filing an application with the Ombudsman Institution is free of charge. Petitions are required to be filed within six months after the exhaustion of domestic remedies. In circumstances where delay causes irreparable damage, petitioners can apply without exhausting domestic remedies.

The terms and conditions of filing a petition with the Human Rights Institution of Turkey were supposed to be laid out in an executive regulation to be adopted by the government. However, one and a half years after the adoption of the Law on the Human Rights Institution of Turkey on 21 June 2012, the regulation is yet to be adopted.

f) Are there available statistics on the number of cases related to discrimination brought to justice? If so, please provide recent data.

There is a significant problem in Turkey concerning the collection and publication of data on discrimination cases. The Ministry of Justice does not collect data on the number of the cases brought before civil courts. Statistics are selectively published on criminal cases. According to 2008 statistics, 6 cases were brought before criminal courts claiming the violation of Article 122 of the Turkish Penal Code, which prohibits discrimination.[271] The most update publicly available statistics, as of July 2014, belongs to the year 2012. Accordingly, 14 new cases were opened under Article 122, in all of which suspects were accused of discrimination in the sale, transfer or rent of properties.[272] Also in 2012, out of the 12 cases which resulted in a judgment, only 1 resulted in conviction.[273] There is no aggregated 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. Of the 1,536 individual complaints filed with the Constitutional Court between 24 September 2012, when the Court started to accept petitions, and 31December 2012, 74 concerned the right to equality. In 2013, the Court received 9,897 valid applications which raised a total of 22,892 claims (each petition raising multiple human rights claims). Of these, 2,838 concerned the right to "equality before the law."[274] No breakdown is available on the discrimination grounds these petitions are based on.

[271] http://www.adlisicil.adalet.gov.tr/ISTATISTIKLER/1996/ac_cik/2008_4.pdf [last accessed 1 July 2014].
[272] http://www.adlisicil.adalet.gov.tr/ISTATISTIKLER/1996/2012-acilantck.pdf [last accessed 1 July 2014].
[273] http://www.adlisicil.adalet.gov.tr/ISTATISTIKLER/1996/2012-karartck.pdf [last accessed 1 July 2014].
[274] http://www.anayasa.gov.tr/files/bireyselBasvuru/2013_istatistikler.pdf [last accessed 24 January 2014].

In 2011, a total of 5,289 individuals applied to the Human Rights Presidency and the provincial and district level Human Rights Boards. Only 81 of these applications were related to claims of discrimination.[275] Following the Presidency's replacement by the Human Rights Institution of Turkey in 2012, the annual statistics about applications to national and provincial human rights bodies are no longer available.

g) Are discrimination cases registered as such by national courts? (by ground? Field?) Are these data available to the public?

No.

6.2 Legal standing and associations (Article 7(2) Directive 2000/43, Article 9(2) Directive 2000/78)

Please list the ways in which associations may engage in judicial or other procedures

a) Are associations entitled to act on behalf of victims of discrimination? (to represent a person, company, organisation in court)

Turkish law grants trade unions limited legal standing. According to Article 26(2) of the Law on Unions and Collective Agreements, trade unions have the right to initiate cases and to intervene in ongoing 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.

When it comes to discrimination cases, associations, organizations, trade unions or other legal entities with a legitimate interest do not have an explicit right to engage in judicial or administrative procedures on behalf of victims.

b) Are associations entitled to act in support of victims of discrimination? (to join already existing proceedings)

Article 237(1) of the Law on Criminal Procedure allows legal personalities "harmed by the crime" concerned in the case to join already existing proceedings launched by public prosecutors. Since the provision does not explicitly mention discrimination cases and puts forth a requirement of being harmed by the crime, the implementation of this provision in discrimination cases requires judicial interpretation.

There are two instances where NGOs are allowed limited legal standing under this provision. The first concerns a standing of general nature restricted to trade unions,

[275] Başbakanlık İnsan Hakları Başkanlığı, "2011 Yılı İnsan Hakları İhlal İddiası Başvurularına İlişkin Sayısal Veriler," İnsan Hakları Bülteni, No: 2012/1, Mart 2011, p. 4, available at: http://www.ihb.gov.tr/dosyagoster.ashx?id=278 [last accessed 10 March 2013].

consumer protection associations and associations working for the protection and preservation of the environment, culture and history. The second concerns standing in criminal cases for any legal entity which can demonstrate harm from the crime at issue.

c) *What types of entities are entitled under national law to act on behalf or in support of victims of discrimination? (please note that these may be any association, organisation, trade union, etc.).*

Court practice on the implementation of Article 237(1) varies, particularly with regard to the eligibility of LGBT organizations to intervene on behalf of victims in criminal cases concerning hate crimes. While in many cases courts reject such requests, recently there has been a few instances where courts accepted the LGBT organizations' requests for intervention (see section 0.2).

d) *What are the respective terms and conditions under national law for associations to engage in proceedings on behalf and in support of complainants? Please explain any difference in the way those two types of standing (on behalf/in support) are governed. In particular, is it necessary for these associations to be incorporated/registered? Are there any specific chartered aims an entity needs to have; are there any membership or permanency requirements (a set number of members or years of existence), or any other requirement (please specify)? If the law requires entities to prove "legitimate interest", what types of proof are needed? Are there legal presumptions of "legitimate interest"?*

Turkish law does not fully guarantee the right of associations, organizations or other legal entities with a legitimate interest to engage in judicial or administrative procedures in support of victims of discrimination. Exceptions are consumer protection associations and associations working for the protection and preservation of the environment, culture and history. Such associations must be duly incorporated/registered under Turkish law. There are no membership or permanency requirements imposed on associations which are granted standing, since this right is already very limited and granted under rare circumstances.

Consumer protection associations have standing to act on behalf of consumers where they can show the presence of "legitimate interests" of consumers to bring a case against unjust clauses in contracts signed between consumers and service providers or companies.

Consumer protection associations, chambers of commerce and industry, associations of artisans and stock markets have standing to bring cases on behalf of their unions against unjust competition.

Associations working for the preservation of environmental, historical and cultural heritage are accepted to have a legitimate interest in bringing cases against the

administration and seek preliminary injunctions from courts. To be able to do so, such associations must prove the existence of a legitimate, personal and current interest in the administrative action in question. The Court of Council has ruled that for an interest to be "personal", the administrative actions sought to be annulled need not directly target the applicant.

Trade unions are authorized by the Trade Unions Law to act as representatives of their members in legal proceedings. They have legal standing to represent their employer and employee members in legal disputes concerning their social security rights and their rights arising from employment contracts and working relations. However, although individuals can be represented by their unions before judicial organs, they cannot be represented by their unions before administrative organs.

As far as criminal law is concerned, associations cannot act on behalf of victims of discrimination neither can they file cases on their own initiative. However, they can call on prosecutors to act to prosecute perpetrators and they can intervene in criminal cases launched by the public prosecutors. For the latter case, the applicable legal standard is not legitimate interest but the requirement to demonstrate "harm by the crime," under Article 237(1) of the Law on Criminal Procedure. However, the elements of this concept have not been elaborated by the courts. Thus, this legal standard can be interpreted both widely and narrowly, depending on the discretion of the courts.

Turkish courts are notorious in the persistent way in which they deny requests by human rights organizations to intervene on behalf of or in support of victims of discrimination. The most high profile recent example of this phenomenon occurred in a criminal case against a number of police officers in Istanbul who were charged with torture and murder of an African immigrant named Festus Okey who was killed in police custody. Since the beginning of the case, the Association of Contemporary Lawyers – as well as hundreds of individual lawyers- have unsuccessfully attempted to intervene under Article 237(1) in the case on behalf of the deceased victim, who is not represented in the case by a lawyer. And yet, each time, the court has denied such requests on the ground that the association failed to demonstrate harm. On 13 December 2011, the lower court convicted one police officer to 4 years and 2 months of imprisonment. The case is currently pending before the Court of Cassation.

In recent years, LGBT organizations started to use Article 237(1) to be involved in criminal cases to act on behalf of victims of hate crime and honor killings. However, court practice concerning their eligibility has not been favorable so far. In a decision on 26 March 2012, a court in Izmir granted the request of 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 trans woman.[276] The court did not elaborate on the reasoning of this decision.

[276] İzmir 7th Heavy Penal Court, no. 2010/224, 26 March 2012.

The contradictory stance of lower courts continued in 2013. On 18 January 2013, a favourable decision was given by a criminal court in Diyarbakir, which accepted the request of the Social Policies, Gender Identity and Sexual Orientation Studies Association (*Sosyal Poltikalar, Cinsiyet Kimliği ve Cinsel Yönelim Çalışmaları Derneği-SPoD*), a national LGBT organization, to act on behalf of the victim in a case concerning a so-called 'honour killing' (for more details on the case, see section 0.2)

Soon after this decision, two different courts in Istanbul gave opposite decisions concerning the standing of LGBT groups. 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,[277] and on 13 February 2013, in a criminal case concerning the killing of a trans woman,[278] the courts rejected SPoD's request to intervene on the ground that the association did not suffer direct harm from the crimes committed in both cases.

e) *Where entities act on behalf or in support of victims, what form of authorization by a victim do they need? Are there any special provisions on victim consent in cases, where obtaining formal authorization is problematic, e.g. of minors or of persons under guardianship?*

In criminal cases, associations cannot act on behalf or in support of victims of discrimination; they can only call on the prosecutors to bring a criminal case. Therefore, they are not eligible to receive authorization from victims. However, they are – in theory- allowed to participate in criminal cases where they can demonstrate that they have suffered harm from the crime.

In some civil cases, there may be special circumstances where associations are required to obtain formal authorization from the parents of minors or guardians of victims who are under guardianship.

f) *Is action by all associations discretionary or do some associations have a legal duty to act under certain circumstances? Please describe.*

Under Law no. 2821, actions by trade unions are discretionary. The same applies to professional associations representing lawyers, doctors etc.

g) *What types of proceedings (civil, administrative, criminal, etc.) may associations engage in? If there are any differences in associations' standing in different types of proceedings, please specify.*

Since legal standing is granted to a few categories of associations in limited circumstances, there are no further restrictions on the type of proceedings

[277] Üsküdar 1st Heavy Penal Court, No. 2009/166, 25 January 2013.
[278] Bakırköy 4th Heavy Penal Court, no. 2012/74, 13 February 2013.

associations can bring. While associations are granted standing in civil cases in rare circumstances, they are not allowed to intervene in criminal cases on behalf of or in support of victims of discrimination.

h) What type of remedies may associations seek and obtain? If there are any differences in associations' standing in terms of remedies compared to actual victims, please specify.

Associations can seek the annulment of discriminatory laws, regulations and circulars. Where associations can show direct harm to themselves –such as a statement by a public official against the association which constitutes libel -, they can also claim compensation for non-pecuniary harm. In the latter case, individual members of the association can also open individual cases seeking compensation for emotional pain and suffering. There does not exist a legal provision setting the standards concerning the compensation amounts to be paid to associations and to actual victims; the issue is left to the discretion of the judge. According to established case law, compensation amounts can not be too high to cause unjust enrichment. Also, courts can tend to award higher compensation amounts to individuals than to associations due to the concrete nature of the harm individuals suffer. But again, there do not exist established rules on compensation amounts.[279]

i) Are there any special rules on the shifting burden of proof where associations are engaged in proceedings?

No. The evidentiary rules concerning burden of proof are already very difficult for victims of discrimination in a legal system which favours the state vis-à-vis the individual. Associations are not held to different standards.

*j) Does national law allow associations to act in the public interest on their own behalf, without a specific victim to support or represent (**actio popularis**)? Please describe in detail the applicable rules, including the types of associations having such standing, the conditions for them to meet, the types of proceedings they may use, the types of remedies they may seek, and any special rules concerning the shifting burden of proof.*

The new Law on Legal Procedure adopted on 12 January 2011 and entered into force on 1 October 2011 introduced the principle of *action popularis* into Turkish law.[280] Article 113 grants standing to associations and other legal entities to initiate a "group action" to protect their interests or the interests of their members or the sector they represent "for the determination of the rights of the related parties on their behalf, removal of the illegal situation or the prevention of any future breach of their

[279] Opinion expressed through e-mail by Mehmet Uçum, a leading human rights lawyer specialized in employment law.
[280] Hukuk Muhakemeleri Kanunu, no. 6100, 12 January 2011, Official Gazette, no. 27836, 4 February 2011.

rights." They can bring cases at administrative courts or courts of laws, depending on the party they sue. General rules concerning the shifting of the burden of proof apply.

*k) Does national law allow associations to act in the interest of more than one individual victim (**class action**) for claims arising from the same event? Please describe in detail the applicable rules, including the types of associations having such standing, the conditions for them to meet, the types of proceedings they may use, the types of remedies they may seek, and any special rules concerning the shifting burden of proof.*

Class actions are not possible at all.

6.3 Burden of proof (Article 8 Directive 2000/43, Article 10 Directive 2000/78)

Does national law require or permit a shift of the burden of proof from the complainant to the respondent? Identify the criteria applicable in the full range of existing procedures and concerning the different types of discrimination, as defined by the Directives (including harassment).

According to art. 5 of the Labour Law, with regard to a violation of the principle of equality, the burden of proof rests with the employee. However, if the employee puts forward a situation strongly suggesting the probability of such a violation, then the employer is obliged to prove that no such violation exists.

According to art. 20 of the Labour Law, in cases of the termination of the contract 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 such allegation. According to Article 18, the following cannot be valid reasons for the termination of employment relationship: race, colour, sex, civic status, family responsibilities, pregnancy, religion, political opinion and ethnic and social origin. However, under the same article, the obligation to justify dismissal is only binding on employers employing a minimum of 30 employees and only if the dismissed employee has a minimum of six months seniority. This results in the non-applicability of the reversal of burden of proof under Article 20 in around 80 per cent of the dismissal cases.[281]

Other related legislation (including the Law of Administrative Procedure) does not provide for shifting or sharing of the burden of proof. Law on Civil Servants does not contain a special provision on burden of proof, which means that general rules shall apply. Law of Persons with Disabilities does not contain a special burden of proof provision either. Consequently, apart from these two exceptions found in the Labour Law, the general rules apply.

[281] Levent Korkut, *Report on Measures to Combat Discrimination in the 13 Candidate Countries (VT/2002/47), Country Report Turkey,* May 2003, p. 35, available at http://www.humanconsultancy.com/project?pid=22 [last accessed 26 April 2013].

6.4 Victimisation (Article 9 Directive 2000/43, Article 11 Directive 2000/78)

What protection exists against victimisation? Does the protection against victimisation extend to people other than the complainant? (e.g. witnesses, or someone who helps the victim of discrimination to bring a complaint).

Turkish legislation does not provide a comprehensive protection against victimization. According to art. 18 of the Labour Law (Law no. 4857), application to administrative or judicial authorities against the employer with a view to seeking the rights arising from laws or the labour contract will not constitute a valid reason for the termination of the contract. This provision only protects the person making administrative or judicial applications, but not any other person who supports the applicant employee.

The other provision prohibiting victimization is found in the Regulation on Complaints and Applications of Civil Servants. According to art. 10 of the said 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. Art. 4 of the same Regulation prohibits collective complaints by civil servants.

6.5 Sanctions and remedies (Article 15 Directive 2000/43, Article 17 Directive 2000/78)

a) *What are the sanctions applicable where unlawful discrimination has occurred? Consider the different sanctions that may apply where the discrimination occurs in private or public employment, or in a field outside employment.*

If the employer violates art. 5 prohibiting discrimination, the employee may demand compensation up to his (her) four months' wages plus other claims of which he (she) has been deprived of. According to art. 99 of the Labour Law, in case of a violation of art. 5, employer shall also be subject to a fine.

According to art. 21 of the Labour Law, if the court or the arbitrator concludes that the termination is unjustified (among other reasons because the termination was based on discrimination), the employer must re-engage the employee in work within one month. If, upon the application of the employee, the employer does not re-engage him in work, compensation to be not less than the employee's four months' wages and not more than his eight months' wages shall be paid to the employee by the employer. In its judgment ruling the termination invalid, the court shall also designate the amount of compensation to be paid to the employee in case he is not re-engaged in work.

Individuals who violate the prohibition of discrimination stipulated in art. 122 of the Turkish Penal Code shall be sentenced to imprisonment for a term of six months to one year or be fined.

Art. 125 of the Law on Civil Servants prescribes that if civil servants discriminate on the grounds of language, race, gender, political opinion, philosophical belief, religion or sect in carrying out their duties, their promotion shall be suspended from 1 to 3 years.

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.

b) Is there any ceiling on the maximum amount of compensation that can be awarded?

Art. 5 and 21 of the Labour Law stipulates an upper limit for compensation that can be awarded. Although according to art. 5, the employee may demand other claims of which he (she) has been deprived of in addition to compensation up to his (her) four months' wages, these claims are limited to actual damage suffered. For example, if there was discrimination suffered regarding wages, only the wage difference can be claimed.

Except for the Labour Law, there are no specific provisions regarding compensation. Thus, general rules of Turkish law on compensation should apply, the major principle being the prohibition of unjust enrichment.

c) Is there any information available concerning:
- *i) the average amount of compensation awarded to victims?*
- *ii) the extent to which the available sanctions have been shown to be - or are likely to be - effective, proportionate and dissuasive, as required by the Directives?*

Information is not available regarding the average amount of compensation. The number of cases where discrimination is claimed is very small. The court decisions regarding most of these cases are not accessible. Consequently, it is not possible to provide any information regarding the amount of compensation, as well as the effectiveness of sanctions in general.

7 SPECIALISED BODIES, Body for the promotion of equal treatment (Article 13 Directive 2000/43)

When answering this question, if there is any data regarding the activities of the body (or bodies) for the promotion of equal treatment, include reference to this (keeping in mind the need to examine whether the race equality body is functioning properly). For example, annual reports, statistics on the number of complaints received in each year or the number of complainants assisted in bringing legal proceedings.

a) *Does a 'specialised body' or 'bodies' exist for the promotion of equal treatment irrespective of racial or ethnic origin? (Body/bodies that correspond to the requirements of Article 13. If the body you are mentioning is not the designated body according to the transposition process, please clearly indicate so).*

Currently, there is no specialized body established for the promotion of equal treatment. However, as of June 2012, Turkey now has a national human rights institution and an ombudsman institution.

Established by the Law on the Human Rights Institution of Turkey of 21 June 2012, the Institution has competence over protecting human rights, preventing human rights violations, fight against torture and mal treatment, receive and process claims, and provide education and conduct research on human rights. Fighting against discrimination is not explicitly stated among these competences outlined in Article 4 of the law. On the other hand, among the powers and duties of the Institution outlined in Article 7 is monitoring the implementation of the international conventions Turkey is a part of, including the UN Disability Convention. The Institution has the power and duty to provide input to state reports Turkey is required to submit to various treaty bodies and to participate in meetings where these reports are presented (for more on the Institution, see Section 0.2).

Established by the Law on the Ombudsman Institution of 14 June 2012, the Ombudsman Institution 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 rule of law. With the adoption of the executive regulation implementing the Ombudsman's law, the Institution started to receive complaints in March 2013 (for more on the Institution, see Section 0.2).

Since 2000, human rights boards established at district and province levels also accept complaints from individuals and issue non-binding decisions. However, these bodies are not independent from the executive and are extremely under-utilized. Victims of discrimination in most cases resort to human rights organizations and individual attorneys for legal assistance. At the national level, the Human Rights Inquiry Committee of the Turkish Grand National Assembly issues non-binding special investigation reports.

The draft law on anti-discrimination foresees the establishment of an equality body.

b) Describe briefly the status of this body (or bodies) including how its governing body is selected, its sources of funding and to whom it is accountable. Is the independence of the body/bodies stipulated in the law? If not, can the body/bodies be considered to be independent? Please explain why.

Not applicable.

c) Describe the competences of this body (or bodies), including a reference to whether it deals with other grounds of discrimination and/or wider human rights issues.

Not applicable.

d) Does it / do they have the competence to provide independent assistance to victims, conduct independent surveys and publish independent reports, and issue recommendations on discrimination issues?

Not applicable.

e) Are the tasks undertaken by the body/bodies independently (notably those listed in the Directive 2000/43; providing independent assistance to victims of discrimination in pursuing their complaints about discrimination, conducting independent surveys concerning discrimination and publishing independent reports).

Not applicable.

f) Does the body (or bodies) have legal standing to bring discrimination complaints or to intervene in legal cases concerning discrimination?

Not applicable.

g) Is / are the body / bodies a quasi-judicial institution? Please briefly describe how this functions. Are the decisions binding? Does the body /bodies have the power to impose sanctions? Is an appeal possible? To the body itself? To courts? Are the decisions well respected? (Please illustrate with examples/decisions).

Not applicable.

h) Does the body register the number of complaints and decisions? (by ground, field, type of discrimination, etc.?) Are these data available to the public?

Not applicable.

i) Does the body treat Roma and Travellers as a priority issue? If so, please summarise its approach relating to Roma and Travellers.

Not applicable.

8 IMPLEMENTATION ISSUES

8.1 Dissemination of information, dialogue with NGOs and between social partners

Describe briefly the action taken by the Member State

a) to disseminate 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 Government to disseminate information about legal protection against discrimination.

b) 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) and

The political culture in Turkey is one which excludes NGOs from the legislative processes. In recent rare cases where the NGOs are consulted and invited to provide their opinions and proposals on a pending legislation, their input is not (fully) taken into consideration in the drafting stage. One of the recent exceptions of this phenomenon is the preparation of the draft law on anti-discrimination, whose initial version was shared with universities and non-governmental organizations for their comments and contributions and was revised on the basis of their feedback. However, the government subsequently amended the agreed upon text and removed 'sexual identity' from the grounds of non-discrimination, which received protests from the LGBT movement as well as NGOs that had collaborated with the government.

In recent years, a number of meetings have been organized by the Government to discuss, identify and seek solutions to the legal, political and social problems of designated ethnic and religious minorities, i.e. Kurds, Alevis and Roma. The government dubiously named these initiatives "opening" (*açılım*), referring to its opening up to these groups or opening to public discussion their problems and demands through a consultation mechanism, and has never explained clearly what was intended. Furthermore, the government unilaterally decided on the object of these initiatives, disregarding calls from some other groups of the launch of similar projects for the solution of their problems.

The Kurdish, Alevi and Roma opinion leaders, civil society representatives and political leaders were invited to a series of group-specific closed workshops hosted and presided by a minister of state to communicate to the government the needs, problems and demands of these communities. Though these initiatives were welcomed by the Kurdish, Alevi and Roma communities and raised hopes and expectations for the development of policies, they have not so far produced structural reforms or government strategies to address the needs and demands voiced by these communities.

While the government published an official report on the outputs of the workshops held on the Alevi question and took some symbolic steps on the Roma (see section d below), the Kurdish initiative has not been formally brought to an end, although has practically halted due to the escalation of tensions between the government and the Kurdish armed movement. In late 2012, significant political developments signalled a shift in government policy on the Kurdish question. In December, the Prime Minister announced that the government re-initiated talks with the PKK's imprisoned leader Abdullah Öcalan for ending the armed conflict. Based on these talks – and the assurances he seems to have been given by the government -, on 21 March 2013, on the occasion of the Kurdish New Year Newroz, Öcalan sent a message to the Kurdish people, announcing that the era of armed insurrection against the Turkish state was over. In response to Öcalan's call, the PKK declared an indefinite ceasefire and started to withdraw its fighters beyond the Turkish borders. As conveyed to the media by the PKK's top military leaders and by the BDP delegation, which was acting as a messenger between Öcalan and the PKK leadership, Öcalan envisioned a three-stage peace process, starting with the PKK withdrawal, continuing with legal reforms granting the Kurds their full political and language rights, and ending with the reintegration of the soon-to-be-ex PKK combatants into normal life. The government responded to the PKK's moves by announcing on 30 September a democratization package which entailed a few legal and executive reforms concerning the Kurdish issue but which fell far below the PKK's and the BDP's expectations for structural changes in the penal laws to ensure the release of jailed Kurdish politicians and activists. As of early 2014, while the talks between Öcalan and the Turkish intelligence continue, the prospects for a final political settlement remain weak.

The government published the minutes of each of the seven workshops and two meetings held in the context of the Alevi opening, and issued a final report in 2010.[282] The report summarizes the issues raised and highlights the problems and demands Alevis expressed during the discussions. The final section puts forth a number of general recommendations for, among others, the eradication of discrimination against the Alevis, the redefinition of laicism, the constitutional protection of the Alevi identity, the adoption of legal reforms, the rethinking of the status and competences of *Diyanet* to ensure equal access of all religious and faith groups to government services, making the mandatory religion courses optional and redesigning their curriculum, the granting of legal status to cem houses, and the appropriation of the Madımak Hotel in Sivas (where 34 Alevi poets, writers and singers who were in town for an annual Alevi festival were burned alive by a mob who besieged the hotel after the Friday prayers) and the commemoration of victims at the lobby of this building.

The concrete steps taken by the government after the closure of the Alevi opening are as follows: The Ministry of National Education included information on the Alevi faith in the religious education textbooks, which started to be used during the 2011-2012 school year. Alevi associations protested this step on the ground that they were

[282] Türkiye Cumhuriyeti Devlet Bakanlığı, *Alevi Çalıştayları Nihai Rapor*, 2010, Ankara.

not consulted on the type of information included about their faith in the books and that the mandatory nature of the classes was preserved. Furthermore, elective courses on the Islam religion were introduced in secondary education pursuant to the education reform bill adopted by the parliament in March 2012. Madımak Hotel was expropriated but not turned into a museum, as Alevis had demanded. The bulletin board honouring the victims also included the names of the deceased perpetrators. Cem houses have not been granted legal status and no steps were taken to open the status, powers and competences of *Diyanet.*

On a positive note, in 2012, the Turkish Parliament responded positively to the petition of an Alevi parliamentarian for the accommodation of the Alevi Muharrem fast in parliament restaurants. Accordingly, during 15-27 November 2012, special food was served in parliament restaurants in accordance with the dietary restrictions of Alevi deputies. This was the first time ever a public office has accommodated Alevis during their fasting (in November 2011, a similar request by the same deputy had been rejected by the Speaker of the Parliament). In 2013, the accommodating practice was repeated by the Parliament.

The Alevi parliamentarians' requests for a place of worship did not receive a similar positive reply. On 10 July 2012, the speaker of the Parliament Cemil Çiçek rejected a proposal by a member of the parliament from the main opposition party for the opening at the parliament of a cem house. In denying the proposal, Çiçek cited Article 136 of the Constitution referring to *Diyanet* and Law no. 633 on the Establishment and Duties of *Diyanet*, which entrust *Diyanet* with the duty to "administer affairs relating to prayer and morality, enlighten society on religion and manage places of worship." On this basis, Çiçek concluded as follows: "According to the Directorate of Religious Affairs, Alevism is not a separate belief but 'a formation within Islam, a richness of Islam which has emerged over historical processes' and Islam's places of worship are mosques." Hüseyin Aygün, the RPP deputy from who had made the request issued a press release denouncing the decision which was taken on the basis of "*Diyanet*'s fatwa."Aygün brought a suit at a court against the Presidency of the Parliament.

With regard to the Kurdish question, the outputs of the 'opening' so fell far below the Kurds' demands for structural constitutional and legal reforms. On 1 January 2009, the state-owned Turkish Radio and Television (TRT) launched a new channel, TRT 6 (Şeş), which broadcasts exclusively in Kurdish. The initiative was criticized by the Kurdish political movement in that the channel lacked a legal basis, which they argued made its longitude subject to the political will of governments. Secondly, the government approved the establishment of Kurdish institutes and departments at public universities. The Mardin Artuklu University, located in the Kurdish region, had earlier applied for the establishment of a Kurdology Institute and an undergraduate programme in Kurdish Language and Literature. This petition was declined by the High Council of Education (Yüksek Öğrenim Kurulu- YÖK) in 2009. The university, supported by the Kurdish movement, persisted and YÖK eventually approved the establishment of the 'Institute of Living Languages' and the opening of a master's

programme on Kurdish Language and Culture within this institute. In 2011, YÖK approved the establishment at the same university of the Department of Kurdish Language and Literature, which started to provide the first undergraduate programme on Kurdish in Turkey. Similar undergraduate and graduate programmes were established since then at Dicle University in Diyarbakir, Bingöl University and Tunceli University. Third, in November 2009, the Ministry of Justice amended an executive regulation and lifted restriction on the speaking of Kurdish by inmates in prisons. Fourth, the blanket ban on the use of Kurdish in political campaigning was lifted through a law adopted on 8 April 2010 (see section 2.2.1.e). Fifth, measures were adopted to enable Kurds (and other select ethnic minorities) to learn their mother tongue in secondary schools. In 2012, as part of the education reform law which entered into force in April 2012 (see section 3.2.8), optional elective courses in "living languages and dialects" were introduced in secondary education. Elective courses in Kurdish and other minority languages identified by the government were started to be offered for two hours per week in the 2012-2013 academic year to students of fifth grade and above.

Positive yet limited developments continued in 2013. On 24 January 2013, the Turkish Parliament passed a law enabling defendants in criminal cases to use their mother tongue during oral defence in courts (for details of the law, see section 2.3). While the law does not explicitly refer to a language, the legislative intent behind its enactment is to allow the use of Kurdish in courts. The ban on the use of languages other than Turkish in courts had caused a major crisis in ongoing high profile group of cases where thousands of Kurdish politicians, human rights activists, journalists, academics and lawyers are being prosecuted for their alleged membership to the Kurdistan Communities Union (*Koma Ciwakên Kurdistan*- KCK), the alleged urban branch of the PKK which is declared by the Turkish state, the EU and many European governments as a terrorist organization. The KCK cases had come to a halt due to the courts' rejection of defendants' pleas to make their defences in Kurdish and the defendants' refusal to speak Turkish during the hearings. The use of Kurdish in courts is also among the principal demands of the Kurdish political movement, voiced in the parliament by the Peace and Democracy Party. The new law was enacted at a time when the government started a new peace initiative by re-opening talks with the PKK's jailed leader Abdullah Öcalan. Falling short of the Kurds' demands for the recognition of the right to use mother tongue in all stages of criminal proceedings and at the expense of the state, the law is widely interpreted as a 'good will gesture' by the government vis-à-vis the Kurds.

Finally, as part of the ongoing peace talks with Öcalan and in response to the latter's declaration of the end of armed struggle and the PKK's declaration of an indefinite ceasefire, the government is in the preparation of a number of legal and executive measures as part of the democratization package announced by the Prime Minister on 30 September 2013. The prospective measures concerning the Kurdish issue are as follows: the legalisation of the use of Kurdish in election campaigns, the lifting of the ban on the use of letters x, q and w (letters of the Kurdish alphabet which the Turkish one does not contain) in official documents, the loosening of the eligibility

criteria for public financing of political parties (by bringing down the minimum percentage of national votes a party is required to have received in the previous elections from 7 to 3 percent), changing the 10 per cent electoral threshold (by lowering it to 5 per cent and narrowing electoral constituencies to five seats, or removing it altogether in a single-member-district system); the re-adoption of the old names of villages, districts and provinces and the abolishment of the oath of allegiance to the Turkish nation that elementary school pupils were required to take every school day. The last measure was implemented immediately by a regulation adopted on 8 October. Although expected and perceived by the Kurdish movement and the Turkish society as the government's response to the PKK's ceasefire, the democratisation package does not make any explicit reference to Kurdish, as in previous reforms. While declaring "freedom to keyboards" through the legalisation of the use of the letters x, q and w as well as announcing that private education "in different languages and dialects" will be allowed, the Prime Minister refrained from explicitly referring to Kurds or Kurdish. Also in September 2013, the Anatolian news agency, the official news agency of Turkey, started broadcasting in Kurdish.

In terms of NGO participation to the legislative processes, the most significant progress has been the invitation of civil society (in addition to universities, political parties and experts) to the constitution making process. Launched in October 2011 with the establishment of an inter-party parliamentary commission tasked with drafting a new constitution, the constitutional process was, procedurally speaking, the most democratic and inclusive political process in Turkey. The parliamentary commission, made up of equal number of deputies from each of the four political parties represented at the parliament, invited all NGOs to send in their written proposals and drafts to the commission. The commission made a commitment to publish on its website the written texts sent by citizens and legal entities. In addition, select NGOs were invited to present their opinions and expectations from a new constitution. Among these were associations, foundations and political parties representing non-Muslim minorities, LGBT groups, conscientious objectors, the Kurds and Alevis. In a historical incident, the Greek Orthodox and Armenian Patriarchs also participated, upon invitation, to the deliberations of the commission. However, in a characteristic fashion of the political culture in Turkey which does not fully tolerate diversity, the commission removed from its website the opinions, proposals and drafts submitted by civil society and citizens, following the reaction caused by the publication of the proposals of a LGBT group and the Human Rights Association.[283] Furthermore, the 'sensitive' demands of minorities were rejected by the commission. The commission refused to include sexual orientation among the protected grounds of anti-discrimination, despite not only the specific demand of LGBT groups but also the persistent proposals of two of the opposition parties represented at the commission. It was the governing JDP and the opposition NAP

[283] Civil society inputs submitted to the parliamentary commission were subsequently published online by the Turkish Economic and Social Studies Foundation (TESEV). For these inputs and a comprehensive monitoring of the constitution making process, see TESEV project website: www.anayasaizleme.org.

which opposed the measure. At any rate, the constitution drafting process formally came to an end in December 2013 when the Commission abolished itself, citing the deadlock in the drafting process due to political divisions among the four parties.

In a rare demonstration of political will for cooperation with civil society, the Turkish government shared with NGOs representing persons with disabilities the draft of the first national report that Turkey will present to the UN Committee on the Rights of Persons with Disabilities. On 30 October 2013, the Ministry of Family and Social Policies announced that it had sent the draft to the relevant government agencies and NGOs representing persons with disabilities and asked their feedback by 11 November 2013. On 14 November, the Ministry organized an evaluation meeting to receive in person the opinions and assessments of the relevant NGOs on the draft national report. The Ministry representatives made a political commitment to prepare the final report in a transparent and participatory manner and on the basis of the civil society feedback.[284]

c) to promote dialogue between social partners to give effect to the principle of equal treatment within workplace practices, codes of practice, workforce monitoring (Article 11 Directive 2000/43 and Article 13 Directive 2000/78)

No specific action is taken in this regard.

d) to specifically address the situation of Roma and Travellers. Is there any specific body or organ appointed on the national level to address Roma issues?

On 10 December 2009, a Romani Workshop was organized and representatives from 5 Romani Federations and 80 Romani associations participated in the workshop. In March 2010 the Government organized a Romani gathering to meet with persons belonging to the Roma Community in Turkey. The meeting was attended by more than 10 thousand Roma and was more of a celebratory event. In his speech, the Prime Minister said that discrimination against Roma people is unacceptable and persons belonging to the Roma Community are first class citizens. The representatives of Roma associations expressed the Roma's expectations for employment, housing in a healthy environment, access to social programmes and benefits, high quality education for their children. They also demanded an end to discrimination, exclusion and stigmatization by society and the media.

The concrete steps taken by the government in the aftermath of this meeting were as follows: the amendment in January 2011 of a discriminatory clause in the Law on the Movement and Resident of Aliens which had authorized the Ministry of Interior to "expel stateless and non-Turkish gypsies and aliens that are not bound to the Turkish culture"; the announcement in March 2011 of the construction of nearly 9,000

[284] Announcement made through the website of the Ministry of Family and Social Policies, 14 November 2013, http://www.eyh.gov.tr/tr/25668/Engellilerin-Kazanimlari-Dunyayla-Paylasilacak [last accessed 1 March 2014].

housing units for the Roma by TOKİ; and the establishment in April 2011 of a Roma Research and Implementation Centre at Adnan Menderes University in the province of Aydın. The coordinating ministry in charge of the Romani workshop identified that the Roma are densely populated in 66 of the 81 provinces in Turkey.[285]

The involvement of TOKİ, which is associated with the destruction of Sulukule and other urban renewal projects in Roma neighbourhoods, in government solutions developed for alleviating the housing problems of the Roma has been protested on the ground that TOKİ's unaffordable houses outside city centres do not meet the Roma's demands for the development of the housing and living conditions in their historical neighbourhoods. Furthermore, the government's rejection of the Roma community's plea to participate in the 2005-2015 "Decade of Roma Inclusion" increased doubts about the political will behind the Roma opening. The European Commission noted that "the Roma opening has not led to a comprehensive strategy to address the problems of the Roma population, who still face social exclusion, marginalisation and discrimination in access to education and health services due to their lack of identity cards, and also to housing, employment and participation in public life".[286]

In 2012, in an effort to force the government to bring to life its initiative, more than 70 associations and six federations belonging to the Roma community came together to establish the Turkey Roma Rights Forum.[287] The Forum was established in November 2013.[288]

8.2 Compliance (Article 14 Directive 2000/43, Article 16 Directive 2000/78)

a) *Are there mechanisms to ensure that contracts, collective agreements, internal rules of undertakings and the rules governing independent occupations, professions, workers' associations or employers' associations do not conflict with the principle of equal treatment? These may include general principles of the national system, such as, for example, "lex specialis derogat legi generali (special rules prevail over general rules) and lex posteriori derogat legi priori (more recent rules prevail over less recent rules).*

Art. 5 of the Labour Law prohibiting discrimination applies to employment contracts. However, the Labour Law is not applicable in all areas or in all employment relationships. According to art. 5 of the Law on Collective Agreements, Strikes and Lock-Outs (Law no. 2822), collective agreements shall be in compliance with the

[285] İzmir Romanlar Sosyal Yardımlaşma ve Dayanışma Derneği, *Sorun Başlıkları Raporu*, available at: http://www.bianet.org/system/uploads/1/files/attachments/000/000/828/original/%C4%B0zmir_Romanlar_Derne%C4%9Fi_Roman_Raporu(1).pdf?1365000366 [last accessed 28 April 2013].
[286] European Commission, *Turkey Progress Report 2011*, p. 40.
[287] Bianet, " 'Açılım' için Romanlar Tek Çatıda", 19 November 2012.
[288] European Commission, *Turkey Progress Report 2013*, p. 62.

provisions of laws and by-laws. In any case, art. 10 of the Constitution provides a general provision which is binding on all persons.

b) Are any laws, regulations or rules that are contrary to the principle of equality still in force?

In recent years, most discriminatory legislation has been annulled. However, there are still provisions in a number of laws and regulations which are discriminatory or are interpreted in a discriminatory manner. However, it is hard to make an exhaustive list of discriminatory legislation.

One major example of the violation of the principle of equality is found in art. 42 of the Constitution. According to para. 9 of art. 42, "No language other than Turkish shall be taught as a mother tongue to Turkish citizens at any institutions of training or education." This provision constitutes discrimination against ethnic and linguistic minorities.

Under Article 3 of the Settlement Law (Law no. 5543), only individuals "from the Turkish race and belonging to the Turkish culture" are admitted to Turkey as migrants. Article 81 of the Law on Political Parties prohibits political parties from (a) claiming that "minorities exist… based on national, religious, confessional, racial or language differences", (b) "protecting, developing or disseminating language or cultures other than the Turkish language and culture" and (c) using languages other than Turkish in their party programmes, meetings, and written and visual propaganda materials.

Some provisions of the legislation are not discriminatory *per se.* However, they are interpreted and implemented in a discriminatory manner. For example according to article 8 paragraph (g) of the Law on Judges and Prosecutors, in order to be appointed as a candidate judge or prosecutor, a person "should not have any physical or mental illness or disability that would prevent the person from carrying out his/her responsibilities as a judge or a prosecutor continuously in every part of the country; or any disabilities which cause limitations in controlling the movements of the organs; speech different than it is accustomed and would be found odd by people". In practice, this provision leeds to the elimination of all candidates with disabilities.

Similarly, while there is no constitutional or legislative provision explicitly prohibiting the wearing of headscarf, an executive regulation adopted in 1982 by the military regime[289] requires female employees to have their "heads uncovered." Though neutral when taken at face value, this stipulation has been relied on by the state in refusing to hire headscarved women to the public sector as well as firing in mass

[289] Regulation Concerning the Attire of Personnel Working at Public Institution, Official Gazette, no. 17849, 25 October 1982.

numbers at certain moments of high political tension public service employees wearing the headscarf.[290] Although the same regulation prohibits female public service employees also from, inter alia, wearing sandals or long nails, it has been used systematically against headscarved women. The ban in the public sector has had a "spill over effect" and spread to the private sector over time.[291]

So far, no study has been carried out in order to identify the discriminatory legislation exhaustively

[290] The dismissal of headscarved women from the public sector has not been a continuous or consistent policy. Rather, it was employed at extraordinary political periods in Turkey's history such as during the military regime of 1980-1983 and the period following the 'soft coup d'état' of February 28th, 1997. NGOs representing headscarved women claim that 5,000 headscarved women were dismissed and another 10,000 were forced to resign between 1998-2002. Dilek Cindoğlu (2010), *Başörtüsü Yasağı ve Ayrımcılık: Uzman Meslek Sahibi Başörtülü Kadınlar,* TESEV Publications, p. 35.
[291] *Id.*

9 CO-ORDINATION AT NATIONAL LEVEL

Which government department/ other authority is/ are responsible for dealing with or co-ordinating issues regarding anti-discrimination on the grounds covered by this report?

Is there an anti-racism or anti-discrimination National Action Plan? If yes, please describe it briefly.

Currently there is no coordination body. According 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.[292] The task force was reported to include representatives from the Ministry of Justice, Ministry of 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. These efforts would be coordinated by the Secretariat General for EU Affairs.[293] No further information is available on this.

Turkey does not have an anti-racism or anti-discrimination National Action Plan. As far as persons with disabilities concerned, there exists on paper the Strategy Paper on Accessibility and the National Action Plan (SPANAP), which were adopted in November 2010 pursuant to a government decision which had declared 2010 the year of accessibility for persons with disabilities.[294] SPANAP is based on the premise that despite a number of laws and regulations adopted since the late 1990s, the central government and local municipalities failed to work in a holistic and systematic manner, rules concerning accessibility are being implemented in an inadequate and inaccurate fashion and much of the limited measures adopted to ensure accessibility are not usable. To remedy these problems, SPANAP aims at the following three goals: Revising the legislative framework, raising societal awareness and ensuring implementation.[295] And yet, as of the end of 2013, the implementation of SPANAP "remains limited."[296] While a Board on Monitoring and Evaluating the Rights of

[292] Republic of Turkey Prime Ministry Secretariat General for EU Affairs, Press Statement, Conclusions of the 20th Reform Monitoring Group Meeting, 9 April 2010, available at: http://www.abgs.gov.tr/files/Bas%C4%B1nMusavirlik/20.rig/20rig_press.pdf [last accessed 6 November 2012].
[293] Okan Müderrisoğlu, "Ayrımcılık için Özel Görev Gücü Kuruluyor", *Sabah*, 14 March 2010, http://www.sabah.com.tr/Gundem/2010/03/14/ayrimcilik_icin_ozel_gorev_gucu_kuruluyor [last accessed 6 November 2012].
[294] Official Gazette, no. 27757, 12 November 2010.
[295] Başbakanlık Özürlüler İdaresi Başkanlığı, Ulaşılabilirlik Stratejisi ve Ulusal Eylem Planı (2010-2011), available at http://www.ozida.gov.tr/ulasilabilirlik/Belgeler/3_CALISMALAR/ULASILABILIRLIK_STRATEJISI_VE_ULUSAL_EYLEM_PLANI/UlasilabilirlikUlusalEylemPlani.pdf [last accessed 26 April 2013].
[296] European Commission, *Turkey Progress Report 2013*, p. 58.

People with Disabilities was set up to comply with Turkey's obligations under the UN Convention on the Rights of Disabled Persons, a national monitoring mechanism as required by the Convention has not yet been established.[297]

Turkey does not have an official strategy on the Roma community. The European Commission reported that, to remedy this, the Ministry of Family and Social Policies, the Ministry of Labour and the Ministry of National Education worked on a National Strategic Action Plan and held consultations with the NGOs in April 2013.[298] Turkey is still not a party to the 2005-2015 International Decade of Roma Inclusion initiative.[299]

In 2013, the Ministry of Justice completed, in cooperation with the Council of Europe, the technical work for a Human Rights Action Plan with the goal of addressing the issues raised by the case law of the ECtHR.[300]

[297] Id.
[298] European Commission, *Turkey Progress Report 2013*, p. 62.
[299] Id.
[300] Id., p. 45

ANNEX

1. **Table of key national anti-discrimination legislation**
2. **Table of international instruments**
3. **Previous case-law**

ANNEX 1: TABLE OF KEY NATIONAL ANTI-DISCRIMINATION LEGISLATION

Please list below the main transposition and Anti-discrimination legislation at both Federal and federated/provincial level

Name of Country: Turkey **Date as of 31 December 2013**

Title of Legislation (including amending legislation)	Date of adoption: Day/month/ year	Date of entry in force from: Day/month/ year	Grounds covered	Civil/Administrative/ Criminal Law	Material Scope	Principal content
Title of the Law: Labour Law (no. 4857) Abbreviation: N/A Date of adoption: 22/05/2003 Latest amendments: 25/04/2013 (with law no. 6462) Entry into force: 10/06/2003 Webpage address: http://www.tbmm.gov.tr/kanunlar/k4857.html	22/05/2003	10/06/2003	Language, race, gender, political opinion, philosophical belief, religion and sect or any such considerations	Civil law	Employment (public and private)	Direct discrimination, indirect discrimination (gender and pregnancy based), (sexual) harassment, Victimisation (very limited)
Title of the Law: Turkish Penal Code (no. 5237) Abbreviation: N/A Date of adoption:	26/09/2004	01/06/2005	Language, race, colour, gender, disability, political opinion,	Criminal law	Access to services (could be interpreted to include	Direct discrimination, (sexual) harassment

26/09/2004 Latest amendments: 17/04/2013 (with law no. 6460) Entry into force: 01/06/2005 Webpage address: http://www.tbmm.gov.tr/develop/owa/kanunlar_sd.durumu?kanun_no=5237			philosophical belief, religion and sect, or any such considerations		education, social protection and social advantages); access to goods (limited to food stuffs); public and private employment..	
Title of the Law: Law on Persons with Disabilities (no. 5378) Abbreviation: N/A Date of adoption: 01/07/2005 Latest amendments: 25/04/2013 (with law no. 6462) Entry into force: 07/07/2005 Webpage address: http://www.tbmm.gov.tr/kanunlar/k5378.html	01/07/2005	07/07/2005	Disability	Civil and administrative law	Public and private employment	Direct discrimination, Reasonable accommodation
Title of the Law: Basic Law on National Education (no. 1739)	14/06/1973	24/06/1973	Language, race, gender, religion	Administrative law	Education	Direct discrimination

Abbreviation: N/A Date of adoption: 14/06/1973 Latest amendments: 30/03/2012 (with law no. 6287) Entry into force: 24/06/1973 Webpage address: http://www.mevzuat.gov.tr/MevzuatMetin/1.5.1739.pdf						
Title of the Law: Law on Civil Servants (no. 657) Abbreviation: N/A Date of adoption: 14/07/1965 Latest amendments: 14/11/2013 (with Constitutional Court judgment) Entry into force: 23/07/1965 Webpage address: http://www.mevzuat.gov.tr/MevzuatMetin/1.5.657.pdf	14/07/1965	23/07/1965	Language, race, gender, political thought, philosophical belief, religion and sect	Administrative law	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)	Direct discrimination

ANNEX 2: TABLE OF INTERNATIONAL INSTRUMENTS

Name of country: Turkey **Date: 31 December 2013**

Instrument	Date of signature (if not signed please indicate) Day/month/year	Date of ratification (if not ratified please indicate) Day/month/year	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)	04/11/1950	18/05/1954	No.	Yes.	Yes, particularly under the constitutional complaint mechanism
Protocol 12, ECHR	18/04/2001	Not ratified	N/A	No.	N/A
Revised European Social Charter	16/10/2004	27/06/2007	Article 4 (3), 7(5), 8, 15, 19, 20, 23, 27	Ratified collective complaints protocol? No.	No
International Covenant on Civil and Political Rights	15/08/2000	23/09/2003	Article 27	No.	In theory yes, but courts are reluctant to accept

Instrument	Date of signature (if not signed please indicate) Day/month/year	Date of ratification (if not ratified please indicate) Day/month/year	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?
Framework Convention for the Protection of National Minorities	Not signed	N/A	N/A	N/A	N/A
International Convention on Economic, Social and Cultural Rights	15/08/2000	23/09/2003	Article 13 (3) and (4)	N/A	In theory yes, but courts are reluctant to accept
Convention on the Elimination of All Forms of Racial Discrimination	13/10/1972	16/09/2002	No.	No.	In theory yes, but courts are reluctant to accept
Convention on the Elimination of Discrimination Against Women	14/10/1985	19/01/1986	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 (if not signed please indicate) Day/month/year	Date of ratification (if not ratified please indicate) Day/month/year	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	04/04/1995	Articles 29 and 30	N/A	In theory yes, but courts are reluctant to accept
Convention on the Rights of Persons with Disabilities	30/03/2007	28/09/2009	None.	No.	In theory yes, but courts are reluctant to accept

ANNEX 3: PREVIOUS CASE-LAW

Name of the court: European Court of Human Rights (Grand Chamber)
Date of decision: 15 March 2012
Name of the parties: Aksu v. Turkey
Reference number: 4149/04 and 41029/04
Address of the webpage:
http://hudoc.echr.coe.int/sites/eng/Pages/search.aspx#{%22fulltext%22:[%224149/04%20and%2041029/04%22],%22itemid%22:[%22001-109577%22]} [last accessed 6 November 2012]
Brief summary: The applicant is of Roma origin. He brought a case against the Ministry of Culture of Turkey for having published a book called "The Gypsies of Turkey" which, the applicant argued, contained derogatory, humiliating and insulting comments on the Roma. His request for the confiscation and banning of the book was rejected by the Ministry and his claim for compensation for non-pecuniary damages was rejected by national courts on the ground that the publication was based on academic research and did not constitute an insult to the applicant. The applicant did not appeal. The same applicant brought another civil case against the Language Association, an NGO, which published two dictionaries with identical comment with co-financing from the Ministry of Culture. He argued that the dictionaries had content which was discriminatory against the Roma. The national court dismissed the case on the ground that the dictionaries were based on scientific research. The applicant brought both cases to Strasbourg. In its judgment on 27 July 2010, the ECtHR had unanimously found that there was no violation of Article 14 in conjunction with Article 8. The applicant referred the case to the Grand Chamber, which limited its review to the right to privacy protected under Article 8. In a 16-1 judgment, the Grand Chamber noted that the applicant had not brought administrative proceedings against the Ministry, which co-financed the publication of the book, but against an NGO. In assessing whether the government complied with its positive obligation under Article 8 to protect the applicant's private life from interference by a third party (an NGO in this case), the ECtHR held that the dictionaries were not textbooks and were not distributed or recommended by the Ministry to schools. The Court held that the government did not overstep its margin of appreciation and did not violate article 8.

Name of the court: European Court of Human Rights (Grand Chamber)
Date of decision: 17 July 2012 (became final on 17 October 2012)
Name of the parties: Tarhan v. Turkey
Reference number: 9078/06
Brief summary: Mehmet Tarhan is a Turkish national who has refused to do mandatory military service on grounds of conscientious objection. Having refused to wear a uniform and obey military orders, he was held in custody in a military prison and was subjected to disciplinary penalties for refusing to shave his hair and beard. Since his desertion in March 2006, he has been a fugitive. The ECtHR held that Mr. Tarhan's rights under Article 3 (prohibition of inhuman or degrading treatment) and Article 9 (freedom of thought, conscience and religion) were violated due to the non-

recognition of his right to conscientious objection and the criminal proceedings launched against him on that basis. The Court noted that Turkey does not provide any alternative to mandatory military service for its citizens who refuse to perform such service on grounds of religion or conscience, nor does it have an effective and accessible procedure for determining the applicant's eligibility to benefit from conscientious objection. This judgment represents the first time where the ECtHR found a violation of Article 9 in the context of the non-recognition of conscientious objection in Turkey.

Name of the court: European Court of Human Rights
Date of decision: 25 September 2012
Name of the parties: Eğitim ve Bilim Emekçileri Sendikası v. Turkey
Reference number: 20641/05
Brief summary: The case was brought by Eğitim ve Bilim Emekçileri Sendikası ("Eğitim-Sen"), a trade union representing 167,000 employees in education and science. In 2001, the union had amended its by-laws by adding a clause "defending the right of all individuals in society to receive, with equality and freedom, a democratic, secular, scientific and cost-free education in their mother tongue." Thereupon, the Governor of Ankara had called upon the public prosecutor to bring an action for the dissolution of the union on the ground that its by-laws contravened Articles 3 and 42 of the Constitution, which prohibit education in any language other than Turkish. The Union had then re-amended the relevant clause such that it " defends the right of all individuals in society to receive education in their mother tongue and to benefit from the development of their culture." The prosecutor had discontinued the dissolution proceedings on the basis of the amendment and also of the ongoing public and political debate on mother tongue education in Turkey, pointing out that it was a political matter better left to the parliament. However, upon a complaint by the Chief of Staff, the Governor of Ankara had re-petitioned the prosecutor to initiate fresh dissolution proceedings. Despite a favourable judgment by the lower court on the basis of the ECtHR jurisprudence (which the court had insisted despite a reversal by the Court of Cassation), in a judgment on 22 May 2005, the combined divisions of the Court of Cassation had ordered the dissolution of the Union, unless the latter would remove from its by-laws the advocacy of mother tongue education. Thereupon, the Union amended the relevant clause as follows: "defends, in the context of human rights and fundamental freedoms, the right of all individuals in society to receive a democratic, secular, scientific and cost-free education," and immediately filed an application with the ECtHR. In a unanimous judgment on 25 September 2012, the ECtHR found Turkey to have violated Articles 10 and 11 of the ECHR. The Court emphasized that the mere advocacy in the Union's by laws of the right to mother tongue education was not incompatible with national security and did not represent a threat to public order. Noting that "the existence of minorities and different cultures in a country is a historical fact that a democratic society must tolerate, or even protect and support", the Court agreed with the public prosecutor who quashed the first dissolution proceeding on the basis of the ongoing public and political debate in Turkey. The Court noted that the authorities' decision that the Union's by-law was in contravention with the Constitution contrasted

the Turkish Legislature's 2002 decision to grant the right to open private courses for the teaching of languages and dialects other than Turkish.

Name of the court: European Court of Human Rights
Date of decision: 9 October 2012
Name of the parties: X v. Turkey
Reference number: 24626/09
Brief summary: The case concerned the punishment given to a homosexual inmate who was kept in solitary confinement for more than eight months after he had complained to the prison management of the harassment and threats he had been subject to by the other inmates. The inmate was kept in a 7 square meter cell which did not have a sink, was badly lit and lacked basic sanitary conditions. During his time there, the inmate was prevented from using the common facilities of the prison and therefore was deprived of human contact. The inmate claimed that these cells were used by the prison management to punish pedophiles or those convicted of rape and that he was punished solely on the basis of his sexual orientation. The ECtHR held that the treatment the inmate was subjected to amounted to inhuman or degrading treatment within the meaning of Article 3 of the ECHR. The Court also found Turkey to have violated Article 14 together with Article 3 on the basis that the sole reason was the applicant was completely isolated from prison life was his sexual orientation.

Name of the court: European Court of Human Rights
Date of decision: 2 February 2010
Name of the parties: Sinan Işık v. Turkey
Reference number: 21924/05
Address of the webpage:
http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-97087 [last accessed 6 November 2012]
Brief summary: The case was brought to Strasbourg by an Alevi individual whose request for the identification of his religion as "Alevi" instead of "Islam" was rejected by national authorities. The applicant took the issue to court in 2004, at a time when it was still obligatory for the religion of the holders to be indicated on the official identity cards issued by the state. The district court in Izmir dismissed the applicant's request on the basis of an opinion it sought from the Directorate of Religious Affairs (*Diyanet İşleri Başkanlığı- Diyanet*), a constitutionally endorsed public body regulating the state-religion affairs concerning Islam. Based on the opinion, the Court held that Alevis were a sub-group of Islam and therefore the word Islam on ID cards correctly referred to the applicant's religious identity. The Court of Cassation upheld the judgment. The ECtHR held the religion section in identity cards issued by the state in Turkey to be in violation of freedom of conscience and religion safeguarded under Article 9 of the ECHR. The court found the 2006 amendments introduced in the Law on the Civil Registry to be inadequate to fulfil Turkey's obligations under Article 9. Pursuant to the changes introduced in the law, it is no longer compulsory to indicate one's religion in ID cards and persons may file a written request to have that section be left blank or the content to be changed. The Court held that the new regulation

obliged individuals to apply to the authorities in writing for the deletion of religion in their ID cards and disclosed the religious or personal convictions of individuals who chose to have the religion box to be left blank. The Court found this to be in violation of the negative aspect of Article 9, namely the freedom not to manifest one's religion or belief. The ECtHR judgment waits to be implemented by national authorities.

Name of the court: European Court of Human Rights
Date of decision: 2 February 2010
Name of the parties: Kemal Taşkın and Others v. Turkey
Reference number: 30206/04, 37038/04, 43681/04, 45376/04, 12881/05, 28697/05, 32797/05 and 45609/05
Address of the webpage: http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=002-1127 [last accessed 6 November 2012]
Brief summary: The applicants were eight Turkish nationals of Kurdish origin. At the end of 2003 they each brought proceedings before the competent court seeking to have their Turkish first names changed to Kurdish names. Their requests were refused (or, at least, they were not allowed to spell the name in the way they wished) because the names they had chosen contained three letters commonly used in the Kurdish alphabet which are absent in the Turkish official alphabet. Relying on Article 8 (right to respect for private and family life) taken alone and in conjunction with Article 14 (prohibition of discrimination), they complained of the decisions refusing them permission. The Court found no violation of Article 8 or 14. The Grand Chamber rejected the applicants' requests for referral and thus the judgment has become final.

Name of the court: European Court of Human Rights
Date of decision: 9 January 2007
Name of the parties: Hasan and Eylem Zengin v. Turkey
Reference number: 1448/04
Address of the webpage: http://hudoc.echr.coe.int/sites/eng/Pages/search.aspx#{"docname":["\"Hasan and Eylem Zengin v. Turkey\""],"documentcollectionid":["COMMITTEE","DECISIONS","COMMUNICATEDCASES","CLIN","ADVISORYOPINIONS","REPORTS","RESOLUTIONS"],"itemid":["001-82580"]} [last accessed 6 November 2012]
Brief summary: The ECtHR found the mandatory religion courses taught in public and private primary and secondary schools to violate the right to education protected under Article 2 of Protocol No. 1 of the ECHR. The court found that the content of the course books taught in these classes failed to meet the objectives of objectivity and pluralism required by the need to respect the convictions of parents. The judgment waits to be implemented by national authorities.

Judgments of the Constitutional Court and other high courts

Name of the court: 8th Chamber of the Court of Cassation
Date of decision: 8 June 2012
Name of the parties: N/A
Reference number: E: 2010/8381, K. 2012/4640
Address of the webpage: N/A
Brief summary: The Court of Cassation overturned the decision of an administrative court in Sivas which had ruled that the Alevi applicant's children could not be forced to take mandatory religion courses. The lower court had given its decision upon its examination of the revised text books used in these courses, concluding that the information in the books was predominantly about Islam and that students were taught a particular religion. In overruling this judgment, the Court of Cassation held that courts were not equipped to make an authoritative assessment about the content of text books, which should be done by experts with pedagogical formation.

Name of the court: 7th Chamber of the Court of Cassation
Date of decision: 27 July 2012
Name of the parties: N/A
Reference number: E: 2012/262, K. 2012/3351
Address of the webpage: N/A
Brief summary: In a decision dated 25 July 2012, the Seventh Civil Chamber of the Turkish Court of Cassation overturned a historic local court decision and ruled against the Çankaya Cemevi Construction Association, which is engaged in the construction of "cem houses", places of worship where individuals belonging to the Alevi minority perform their religious duties. Alevis are a religious minority which differs from the Sunni majority in their interpretation and practice of Islam. On 24 November 2011, upon the application of the Ankara Governorship, the Ankara Chief Prosecutor's Office had filed a suit for the dissolution of the Çankaya Cemevi Construction Association. The Governorship had unsuccessfully appealed to the association to amend its charter which refers to cem houses as Alevi houses of worship and aims to build cem houses. In asking for the court to shut down the association, the prosecutor had argued that Alevism is not a religion and cem houses are not places of worship. The lower court had ruled in favour of the association on the ground that Alevis had for centuries accepted and used cem houses as places of worships and that the association's charter is not against the laws or the principle of laicism guaranteed under Article 2 of the Constitution.

In its reasoning, the lower court had cited the European Court of Human Rights' judgment in February 2010 in the case of *Sinan Işık v. Turkey* where the Strasbourg court had found that the mandatory indication of religion in official identity cards to be a violation of Article 9 of the European Convention related to freedom of thought, conscience and religion. That case was brought to Strasbourg by an Alevi individual whose request for the identification of his religion as "Alevi" instead of "Islam" was rejected by national authorities on the ground that Alevis were a sub-group of Islam

and therefore the word Islam on ID cards correctly referred to the applicant's religious identity.

In a majority vote, the Turkish Court of Cassation overruled the lower court's decision on the ground that no place other than a mosque or a masjid could be recognized as a house of worship in the verdict that it passed through a majority vote. The high court based its decision on Article 1 of the Law on the Abolition of Religious Lodges, Shrines and Some Religious Titles dated 1925, which states that only "mosques or masjids" approved by the Directorate of Religious Affairs (*Diyanet İşleri Başkanlığı-Diyanet*) can be classified as legitimate places of worship. The court also noted that under Law no. 633 on the establishment and powers of *Diyanet*, it is in the exclusive power of *Diyanet* to establish mosques and masjids. The case was sent back to the lower court. For the decision of the lower court released in 2013, see section 0.3.

Name of the court: The 8th Chamber of the Council of State
Date of decision: 5 November 2012
Name of the parties: N/A
Reference number: E: 2012/5257
Address of the webpage: http://www.istanbulgercegi.com/danistay-8-dairesinin-turbana-iliskin-kararinin-tam-metni-3143451.html (unofficial)
Brief summary: The case was brought by a female lawyer, who filed a motion for stay of execution against the Union of Turkish Bar Associations. The lawyer's application for the renewal of her professional ID card was rejected by the Union on the ground that she had submitted a photograph with a headscarf. The Union based its rejection to its regulations which required lawyers and intern lawyers to "conduct their duties bareheaded." The lawyer sought the revocation of the relevant article of the regulation on the grounds that it was in violation of the Turkish Constitution and the European Convention on Human Rights and precluded her right to employment. In a majority opinion, the Council of State noted that while they provide public services, lawyers are not public servants but self-employed professionals and therefore constitutional and legal rules regulating the attire of public servants do not apply to lawyers. Pointing out that the regulations of the Union of Turkish Bar Associations imposed on lawyers a restriction which does not exist in any of the laws or the constitution, the Council of State concluded that the relevant article of the regulations was in violation of the principle of hierarchy of legal norms and lacked legal validity. The Court held that the Union violated the applicant's freedom of religion and conscience and freedom of employment. The Council of State therefore removed the expression "bareheaded" from the relevant article of the regulation and stayed the execution of the Union's decision against the applicant.

Name of the court: Constitutional Court
Date of decision: 17 March 2011
Name of the parties:
Reference number: 2009/47E, 2011/51 K (published in Official Gazette No. 27992, dated 12 July 2011)
Address of the webpage:

http://www.resmigazete.gov.tr/eskiler/2011/07/20110713.htm (in Turkish) [last accessed 6 November 2012]
Brief summary: A Turkish national belonging to Syriac minority wanted to change his first and last names to Paulus Bartuma in the Syriac language. He unsuccessfully litigated in a district court in the province of Mardin, which referred the case to the Constitutional Court. The issue that was raised by the lower court was the constitutionality of Article 3 of the 1934 Law on Surnames which prohibits the use of surnames that, inter alia, belong to "foreign race and nation." The Constitutional Court rejected the applicant's appeal by a small margin of 9-8 and found Article 3 of the Law on Surnames to be compatible with the equality clause of the Constitution (art. 10). The majority stated that the restrictions on surnames introduced by the law aimed at "maintaining national unity among citizens" and fell within the discretionary powers of the legislative to limit the right to surnames on the basis of "public benefit and public order." The majority found these restrictions to be necessary for "the perception of national unity" and "the development of a language identity within national identity and language" among citizens. The majority found the rule to be compatible with the equal protection clause of the constitution since the restrictions applied "without distinction to everyone who want to acquire a new surname belonging to a foreign race and nation." The majority emphasized that its decision was in compliance with the relevant case law of the ECtHR which upheld legal restrictions on last names on the basis of public benefit.

Name of the court: Court of Cassation
Date of decision: 29 November 2011
Name of the parties: N/A
Reference number: 2009/19835 E, 2011/46440 K
Address of the webpage: N/A
Brief summary: The employee filed a discrimination case against her employer under Article 10 of the Constitution, Article 5 of the Labour Law and the ILO Conventions. She alleged that she was unlawfully dismissed from her job on the ground that she refused to accept the new (and lower) position she was offered when she returned to her job after having completed her maternity leave. She stated that her employer had, in her absence, given her position to another employee. The lower court rejected the claim that the applicant was discriminated on the basis of her gender and pregnancy, and held that the employer's decision rested on an organizational restructuring. On appeal, the Court of Cassation, based on the witness testimonies of former and current female employees of the same employer and on the statistics provided by the employer which showed a decline in the number of married female employees despite the increase in the overall number of female employees, found discrimination on the basis of gender and pregnancy.

Name of the court: Court of Cassation
Date of decision: 10 June 2010
Name of the parties: N/A
Reference number: 2009/11608 E, 2010/7005 K
Address of the webpage: N/A

Brief summary: In a defamation case brought by Kaos GL, an LGBT association, against a national newspaper, the Court of Cassation overturned the lower court judgment which had rejected applicant's demand for compensation. The high court found the respondent newspaper's publications characterizing Kaos GL as "sexually perverted and deviant" to be defamatory.

Name of the court: 7th Chamber of the Court of Cassation
Date of decision: 25 November 2008
Name of the parties: N/A
Reference number: 2008/4109 E, 2008/5196 K
Address of the webpage: N/A
Brief summary: The high court overturned the decision of a lower court in Istanbul which had ordered the closure of Lambdaistanbul, an LGBT association, on the basis of the provisions of the Civil Code allowing the dissolution of associations whose aims are incompatible with morality. The verdict of the Court of Cassation, however, warned that Lambdaistanbul can be closed in the future under the Law on Associations if it "acts in a way to encourage lesbian, gay, bisexual and transgender relationships." In other words, the "judgment states that what is deemed to be violating public morality is not to be lesbian, gay, bisexual and transgender or to use these words, but to act in a way to encourage others to be so".[301]

The decision of the Court of Cassation did not prevent prosecutors from bringing similar dissolution cases against LGBT associations, though administrative courts have so far followed the judgment and rejected the cases.

Name of the court: 8th Circuit of the Council of State
Date of decision: 28 December 2007
Reference number: E. 2006/4107, K. 2007/7481
Address of the webpage: http://www.danistay.gov.tr/
Brief summary: The Council of State ruled in favour of a parent who demanded the exemption of his child from mandatory religion course, finding the content of these classes against the law. The Court noted that the curriculum fails to meet the requirements of objectivity and pluralism and to respect the freedom of religion and conscience of parents. The Court based its reasoning on Article 24 of the Turkish Constitution and Article 9 of the ECHR guaranteeing freedom of religion and conscience as well as the right to education protected under Article 2 of Additional Protocol 1 of the ECHR. The Court cited the ECRI's 2005 report on Turkey and the ECtHR's January 2007 judgment in the case of Hasan and Eylem Zengin v. Turkey.

Name of the court: 10th Circuit of the Council of State
Name of the parties: The Chamber of Architects and Engineers of Turkey v. the government
Reference number: 2009/9270 K

[301] Amnesty International (2011), "*Not an Illness nor a Crime"...*, p. 47.

Address of the webpage: N/A
Brief summary: The Chamber of Architects and Engineers of Turkey brought a case for the stay of execution and annulment of an executive regulation dated 23 February 2009 which exempts "foreigners of Turkish race" who live in Turkey from the requirement to obtain work permit and allows them to become members of professional organizations. The Chamber argued that making a race based distinction among foreigners to exempt those of the Turkish race from requirements imposed on all other foreigners is unlawful. The Council of State rejected the request.[302]

Judgments of lower courts

Name of the court: 4th Administrative Court in Istanbul
Date of decision: June 2012
Name of the parties: N/A
Reference number: N/A
Address of the webpage: N/A
Brief summary: In three separate cases filed by the Istanbul Chamber of Architects, the Chamber of Urban Planners and the Association for the Development and Solidarity with the Roma Culture against a municipal urban renewal project in a Roma neighbourhood, the administrative court unanimously annulled the project on the basis of public interest. The cases were filed as early as 2008 following the initiation of the project based on a government decree and it took four years for the court to issue its judgment. Due to the delay in court proceedings and the court's rejection of motions for preliminary injunction pending a final ruling, the project reached near completion. The local government announced that it would finalize the project, as planned, and in the meantime appeal the decision to the higher court. At the time of the writing of this report, the legal situation remains unclear. The project has caused the displacement of the predominantly Roma and impoverished residents from their historical neighbourhood, causing it to be perceived by the Roma individuals and associations as a discriminatory policy.

Name of the court: Criminal Court of Uşak
Date of decision: pending
Name of the parties: criminal case launched by the prosecutor against 80 individuals
Reference number: N/A
Address of the webpage: N/A
Brief summary: A criminal case was opened against 80 individuals accused of having taken part in a mass attack of more than 1,000 people against the Roma community in the Selendi district of the province of Manisa. The defendants are alleged to have participated in the stoning and setting on fire of the houses of the

[302] Seda Alp and Nejat Taştan (2011), *Türkiye'de Irk veya Etnik Köken Temelinde Ayrımcılığın İzlenmesi Raporu: 1 Ocak-31 Temmuz 2010*, İstanbul Bilgi Üniversitesi, p. 22.

Roma residents on 5 January 2010. The incident had resulted in the forced relocation of the victims from Selendi and their resettlement in another district in Manisa. The defendants are accused of having participated in an unlawful demonstration, of causing damage to property and inciting others to hatred and animosity. The prosecution asked that the defendants be sentenced to imprisonment from 3 to 150 years. Victims' request for the defendants to also be charged with discrimination under Article 122 of the Penal Code was not accepted. The case is progressing extremely slowly. As of 1st January 2013, more than two years after the first hearing held on 16 December 2010, the court has not yet completed the testimonies of the victims and the defendants.

Name of the court: The 16th Civil Court of First Instance in Ankara
Date of decision: October 2011
Name of the parties: N/A
Brief summary: The lower court rejected the dissolution case filed by the Ankara Chief Prosecutor's Office against the Çankaya Cemevi Construction Association on the grounds that the organization's charter referred to Alevi cem houses as houses of worship.[303] The origin of the case dates back to 2008, when the Ministry of Interior, based on *Diyanet*'s opinion that "cem houses are not places of worship", informed the Ankara Governorship that Article 2 of the Association's charter should be repealed. When the Association failed to do so, the Governorship called on the prosecutor to file a case. In asking for the court to shut down the association, the prosecutor had argued that Alevism is not a religion and cem houses are not places of worship. The court ruled in favour of the association on the ground that Alevis had for centuries accepted and used cem houses as placed of worships and that the association's charter is not against the laws or the principle of laicism guaranteed under Article 2 of the Constitution. In its reasoning, the lower court had cited the European Court of Human Rights' judgment in February 2010 in the case of *Sinan Işık v. Turkey*. The prosecutor appealed to the Court of Cassation. In a decision dated 25 July 2012, the Seventh Civil Chamber of the Turkish Court of Cassation overturned the lower court's decision. For more on the high court's decision, see above.

Name of the court: 6th Civil Court of First Instance in Izmir
Date of decision: 30 April 2010
Name of the parties: N/A
Reference number: 2009/474 E
Brief summary: The Directory of Associations of Izmir had requested the court for the closure of *Siyah Pembe Üçgen* İzmir LGBTT Association by claiming that its charter contravened "public morality" and "Turkish family structure." The Court denied the plea on the ground that the LGBT individuals have the rights, as anybody else, to establish associations.

[303] Cem houses are place of worship where individuals belonging to the Alevi minority perform their religious duties. Alevis are a minority which differs from the Sunni majority in their interpretation and practice of Islam.

Name of the court: First Criminal Court of Peace of Beyoğlu
Date of decision: 5 May 2009
Name of the parties: N/A
Reference number: 2008/1680 E
Brief summary: In a criminal case brought against a bus driver, who refused to open the door of the bus to a woman who used a wheelchair, the Court found discrimination in the provision of transportation services on the ground of disability and held that art. 122 of the Turkish Penal Code was violated. The bus driver was sentenced to 6 months of imprisonment. The Court converted imprisonment to confiscation of the bus driver's driving license for 6 months and suspended his operating rights for 6 months. The victim took no civil action against the bus driver or the bus company.

Name of the court: 11th Heavy Penal Court in Ankara
Date of decision: 17 October 2008
Name of the parties: N/A
Reference number: 2007/250 E, 2008/246 K
Brief summary: The court sentenced to imprisonment four individuals who attacked a group of transvestites and transsexuals with the purpose of forcing them to move out of their houses in the Eryaman district of Ankara. The court held that the defendants "systematically and intensively offended the individuals living in their neighbourhood who characterise themselves as transsexuals" and acted with "bias" and "with a definite motive" to force the victims to leave their houses. This is the first court ruling concerning hate crimes against transgender women.