



HREIT

HUMAN RIGHTS AND EQUALITY INSTITUTION OF TÜRKİYE



MARITAL STATUS

DISCRIMINATION



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**DISCRIMINATION
BASED ON
MARITAL STATUS**

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Discrimination against people based on their marital status is prohibited under Law No. 6701 on the Human Rights and Equality Institution of Türkiye.

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- General Comment No. 20 of the Committee on Economic, Social, and Cultural Rights states that marital status may be addressed in cases such as whether the person is married, has been married under a particular legal regime, or is divorced or widowed.
- Discrimination based on marital status may be accompanied by other forms of discrimination, such as discrimination based on parental status, pregnancy, or sex.
- The following types of discrimination fall within the scope of Law No. 6701:
 - Segregation,
 - Instruction to discriminate and implementing such instructions,
 - Multiple discrimination,
 - Direct discrimination,
 - Indirect Discrimination,
 - Mobbing,
 - Failure to make reasonable accommodations,
 - Harassment,
 - Discrimination based on an assumed ground,
 - Unfavourable treatment due to the legal procedure for compliance with the principle of equal treatment and prevention of discrimination.

- Any difference in treatment that prevents or impedes a person from enjoying the rights and freedoms recognized by law in the same way as persons in a comparable situation constitutes direct discrimination based on marital status.
- Discrimination against a person concerning the enjoyment of rights and freedoms recognized by law in connection with his or her marital status by all kinds of apparently non-discriminatory acts, events, and practices constitutes indirect discrimination based on marital status, which cannot be objectively justified.



In which areas is protection applied?

- Under Law No. 6701, it is prohibited to discriminate against people based on their marital status in the following areas. Public institutions and agencies, professional bodies with public institution status, natural persons, legal persons under private law, and their agents:
 - In the provision of services in the areas of education and training, justice, law enforcement, health, transport, communications, social security, social services, social assistance, sports, housing, culture, tourism, and the like;
 - Access to publicly accessible areas and buildings;
 - In the relevant procedures (lease, purchase, determination of lease terms, renewal or termination of the lease, transfer) in the public presentation of movable and immovable property;

- Membership in associations, foundations, trade unions, political parties, and professional organizations, with the exceptions, stipulated in the relevant laws or bylaws, election to their bodies, taking advantage of membership opportunities, termination of membership, and participation in and use of their activities;
- No discrimination in employment and self-employment.

Responsibilities

- In case of violation of the prohibition of discrimination, public bodies and organizations that have duties and powers in this regard, as well as professional bodies with public institution status, are obliged to take the necessary measures to terminate the violation, eliminate its consequences, prevent its recurrence and ensure its legal and administrative prosecution.
- Real and private law legal entities responsible for the prohibition of discrimination must take the necessary measures to detect and eliminate discrimination and ensure equality in matters within their competence.

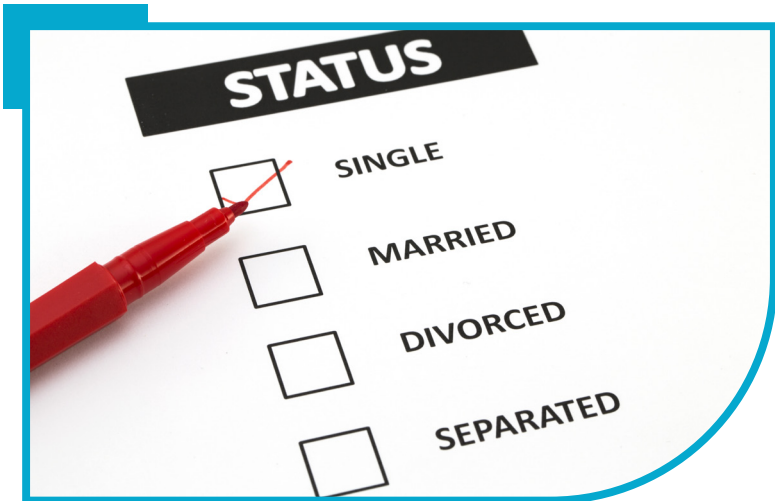
Application or ex officio inquiry

- The Human Rights and Equality Institution of Türkiye is competent and empowered to inquiry, examine, take a final decision and monitor the consequences of violations of the prohibition of discrimination ex officio or upon an application.
- Anyone who claims to have violated the prohibition of discrimination on the grounds of marital status may apply to the institution.



- If it is detected that a person has been discriminated against based on his/her marital status within the framework of Law No. 6701, an administrative fines shall be imposed on the relevant public institutions and agencies, professional organizations with public institution status, natural persons and legal persons under private law responsible for the violation, depending on the gravity of the effects and consequences of such violation, financial situation of the perpetrator and aggravating effect of the multiple discrimination.
- The information and documents on the examination and research requested by the institution shall be submitted in due time, stating the reason. Administrative fines shall also be imposed on public institutions and agencies, professional organizations with public institution status, real persons, and legal entities under private law which, despite reminders, fail to comply with the aforementioned obligation without a valid reason.

What are the examples of discrimination on the ground of marital status?



- The rejection of job applications or hiring or promotion in more disadvantaged positions because a person is single or widowed.
- The situation where married persons are prevented or hindered from accessing a service or opportunity because of their marital status without a reasonable and objective reason.
- The landlord does not want an unmarried person living in his house and therefore does not rent to them.



- A dance class that single students can only attend.
- After a health insurance company discloses the marital status of a customer after marriage, the insurance company requires the signature of the customer's spouse for financial transactions.

Exceptions

- It is also recognized that in some cases, the situation of married and unmarried couples is not the same. The ECtHR notes that in its decision "Şerife Yiğit v. Turkey," it has already established that marriage provides a special status and certain special rights for those who marry in Article 12 of the Convention. According to the Court, in principle, the protection of marriage can constitute an important and legitimate justification for the different treatment of married and unmarried couples. Marriage is characterized by a body of rights and obligations that clearly distinguish it from the situation of a man and a woman living together. Therefore, states have the discretion to differentiate between married and unmarried couples in social and fiscal policy areas, such as taxes, pensions, and social security.



- Law No. 6701 also regulates instances where a claim of discrimination cannot be made and these exceptions are listed as follows:
 - Different treatment which is fit for purpose and proportional and necessitated by imperative professional requirements in employment and self-employment..
 - Cases making it imperative to employ a certain sex.
 - Determining and applying age limits during admission into work and employment due to the necessities of the service, different treatment based on age provided that it is necessary and proportional.
 - Special measures and protective measures pertaining to children and persons who have to be kept at a certain place.
 - Employment at a religious establishment of persons who are members of that religion for the purpose of religious service or delivering training and education on that religion.
 - Requirement of certain conditions and qualifications related to persons wishing to join associations, foundations, trade unions, political parties and professional organizations based on purposes, principles and values mentioned in their relevant legislation and statutes.
 - Different treatment which is intended for eliminating inequalities and which is necessary, fit for purpose and proportional.
 - Different treatment towards non-citizens arising from conditions pertaining to their entry into and residence in the country and from their legal status.

Are there any exemplary decisions regarding violating the prohibition of discrimination based on marital status?

Discrimination based on marital status is most common in employment or renting an apartment. In this context, there are decisions in which the Constitutional Court of the Republic of Türkiye and the HREIT have found that the prohibition of discrimination was violated because an apartment was not rented due to marital status.

Constitutional Court, Nuriye Arpa Decision, App. No. 2018/18505, 16.06.2021

The Constitutional Court ruled that it violates the prohibition of discrimination concerning the right to property if those affected by the dam project in Batman Hasankeyf do not benefit from housing subsidies because they do not have the “qualification as a family.”

In the reasoning of the decision, which states that the state bodies and the administration are obliged to act under the principle of equality before the law in all operations, it is recalled that the first article of Protocol No. 1 of the European Convention on Human Rights (ECHR) is entitled "Protection of property." Article 14 of the ECHR also states that rights and freedoms must be guaranteed without discrimination.

The decision of the HREIT of 27.06.2018 with the number 2018/69.



In the application that is the subject of the decision, the applicant, who is separated from her husband and lives with her child, claimed that she was discriminated against based on her marital status when she tried to rent a house. In the case, the addressee of the landlord admitted that he instructed the real estate agent not to rent an apartment in the house to single people, and the addressed agent admitted that he followed this instruction in the house that is the subject of the complaint and in the other houses of the landlord. The HREIT found that the applicant was discriminated against only because he is divorced/single, without giving any other reason.

Based on the assumptions in question, which lacked an objective basis, the HREIT found that it was impossible to speak about the legality of the goal that was to be achieved by not awarding the house to the applicant. For this reason, it was decided that the landlord and the real estate agent, who violated the discriminatory instruction of the landlord, who cannot be said to have exercised his authority over the house he owns within the limits of the legal system, violated the prohibition of discrimination, and imposed an administrative fine of 2000 TL against the landlord and 1000 TL against the real estate agent.

The decision of the HREIT dated 05.03.2019 with the number 2019/15.

The statement of claim that was the subject of the decision argued that the plaintiff's decision at a meeting of the housing administration, which

stated that “students and single people without a family will not be hired into an apartment,” was a violation of the prohibition of discrimination.


In the decision concluding that the prohibition of discrimination was violated, such a decision was made on the assumption that a family married to each other would show a more attentive attitude during their time as tenants and would not disturb the families living in other apartments in terms of generally accepted moral values, it has been emphasized that there is a lack of objective and reasonable basis in comparison with a single person, and based on this assumption, it is not possible to speak of the legality of the objective to be achieved by not awarding apartments to students and single persons who do not have a family in the apartment.



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Kızılay / Ankara