

T.R.
HUMAN RIGHTS AND EQUALITY INSTITUTION OF TÜRKİYE
1st CHAMBER DECISION

Application Number : 2021/377
Meeting Date/Number : 7.10.2021/1
Decision No : 2021/253
Applicant : M. K. (T.R. I.D.: ...)
Applicant's Attorney : --
Address : --
Addressee Institution/Person : Ministry of Culture and Tourism
The Addressee's Address : --

I.SUBJECT OF THE APPLICATION

1.The application is related to the allegation of discrimination by not ensuring accessibility in the exercise of the right to participate in cultural life.

II. EXAMINATION PROCESS

2.The following was stated by applicant in his petition:

a.As a visually impaired individual, it is necessary to transfer printed works to electronic media to access printed resources, many difficulties are encountered when transferring printed works to electronic media, and with Law No. 6279 on Compilation of Reproduced Intellectual and Artistic Works, which was put into force in 2012 to eliminate this disadvantageous situation by the Legislator, it was stated that publishing houses will transmit electronic copies of the works to the National Library and the National Library will make these works available to the visually impaired individuals,

b.In his application for requesting information on the subject through CİMER; he requested information on the implementation of the Law aforementioned, and that the reasons stated in the response letter issued by the Department of Librarianship Standards Department that all printed works are not made available to the visually impaired in the electronic environment to protect copyrights are unreasonable, and that many institutions already offer electronic copies of printed works to the visually impaired by the relevant Law,

c.The addressee's failure to make electronic copies of the printed works specified in the relevant provision of the aforementioned Law available to the visually impaired violates the right to protect and improve the corporeal and spiritual existence protected by the Constitution, the freedom of science and the arts, the right to education and training, the obligations imposed on States Parties under Article 9 on "Accessibility", Article 21 on "Freedom of Expression and Opinion and Access to Information" and Article 30 on "Participation in Cultural Life, Recreation, Leisure and Sports " of the United Nations Convention on the Rights of Persons with Disabilities, to which our country is a party, must be fulfilled,

d.In this respect, he requests that the electronic copies shared by the publishers be immediately made available to the visually impaired, that the calendar foresaw for the provision of the service be shared, and that all requests for any works be fulfilled until the service is implemented, and that if the addressee does not have sufficient means to fulfill the work requests, he requests that he be provided with the necessary and reasonable support to access the works.

3.The following was stated by the addressee in its opinion in writing:

a.Regarding the submission of an electronic copy of certain intellectual and artistic works to the National Library to be made available to the visually impaired, Article 8/1/ğ of the Law on Compilation of Reproduced Intellectual and Artistic Works dated 22/2/2012 and

numbered 6279 states that *"A copy of the works specified in subparagraphs (a), (b), (g) and (ğ) of Article 4 shall be sent to the National Library to be made available to the visually impaired in order to be put into service in accordance with the additional article 11 of the Law on Intellectual and Artistic Works dated 5/12/1951 and numbered 5846."* that the National Library EYDeS (Electronic Publication Compilation System) digital platform was activated in 2018 to compile electronic publications and electronic copies of printed publications after the completion of the sub-legislation works in this direction and the completion of the software and system infrastructure works that enable the secure compilation of works in commercial circulation that continue to be copyrighted,

b.Compilation taxpayers almost never upload electronic copies of works to the system, and a significant portion of compilation taxpayers avoid uploading works to the system due to the fear of copyright infringement, The Turkish Publishers Association and Turkish Publishers and Distributors Association filed a lawsuit in the 10th Division of the Council of State against the "Directive on the Procedures and Principles of Compilation of Electronic Publications of the National Library Presidency", which constitutes the basis for the digitalization of electronic resources to be compiled to be made available to the visually impaired, and this lawsuit is ongoing, that there are ongoing efforts to increase the number of works uploaded by the taxpayers of compilation in the system and to create an electronic archive of works to be made available to the visually impaired, and that negotiations are being held with publishing houses that are taxpayers of compilation,

c.Currently, visually impaired individuals are provided with an electronic copy of the works in the system free of charge upon request, but remote access to these works cannot be provided due to problems arising from copyright law, in addition, with the "Talking Library" service, audio book service is provided to the visually impaired and a physical or electronic copy of the works is provided to the visually impaired upon request,

d.In response to the application made by the applicant to CİMER; electronic publications are protected by the Law No. 5846 on Intellectual and Artistic Works, for this reason, studies to make the works under copyright protection available to the visually impaired without causing any violation of rights within the scope of this law are being carried out, and upon completion of the works, the necessary security measures will be taken and electronic works will be made available to the visually impaired.

4.The following was stated in opinion in writing of the applicant against the opinion in writing of the addressee:

a.The addressee's justification stating that publishing houses do not upload works to the National Library Electronic Publication Compilation System is an inaccurate explanation, and that the addressee is obliged by the Law No. 6279 on Compilation of Reproduced Intellectual and Artistic Works to compile electronic copies of the works and make them available to the visually impaired,

b.It is contrary to the principle of equality that the addressee expects visually impaired individuals to benefit from a limited number of works in the "Talking Library" application while offering a large number of books to the service of people who are not visually impaired, and that the addressee Administration's justification of its failure to fulfill the duty imposed on it by the Law with the protection of copyrights has no legal basis and is inaccurate,

c.Stating that an electronic copy of the printed works will be sent to the visually impaired upon request is not a reasonable approach, that the visually impaired can access the electronic copies of the works through a difficult process, and that this situation does not comply with the principle of reasonable accommodation regulated by the UN Convention on the Rights of Persons with Disabilities, to which our country is a party,

d.In addressee's written statement on that the works in the National Library Electronic Publication Compilation System can be benefited from is not a reasonable approach since the

system cannot be accessed by the citizens and therefore they cannot have information about the works in the system.

III. RELEVANT LEGISLATION

5. Article 5 of the United Nations Convention on the Rights of Persons with Disabilities titled "Equality and Non-Discrimination" states as follows:

"(1) States Parties recognize that all persons are equal before and under the law and are entitled without any discrimination to the equal protection and equal benefit of the law.

(2) States Parties shall prohibit all discrimination on the basis of disability and guarantee to persons with disabilities equal and effective legal protection against discrimination on all grounds.

(3) In order to promote equality and eliminate discrimination, States Parties shall take all appropriate steps to ensure that reasonable accommodation is provided.

(4) Specific measures which are necessary to accelerate or achieve de facto equality of persons with disabilities shall not be considered discrimination under the terms of the present Convention."

6. Article 9 of the Convention, entitled "Accessibility", states as follows:

"(1) To enable persons with disabilities to live independently and participate fully in all aspects of life, States Parties shall take appropriate measures to ensure to persons with disabilities access, on an equal basis with others, to the physical environment, to transportation, to information and communications, including information and communications technologies and systems, and to other facilities and services open or provided to the public, both in urban and in rural areas. These measures, which shall include the identification and elimination of obstacles and barriers to accessibility, shall apply to, inter alia:

(...)

b) information, communications and other services, including electronic services and emergency services.

(2) States Parties shall also take appropriate measures: (...)

f) Promote other appropriate forms of assistance and support to persons with disabilities to ensure their access to information;

g) To promote access for persons with disabilities to new information and communications technologies and systems, including the Internet;

h) To promote the design, development, production and distribution of accessible information and communications technologies and systems at an early stage, so that these technologies and systems become accessible at minimum cost."

7. Article 21 of the Convention entitled "Freedom of expression and opinion, and access to information" states as follows: *"States Parties shall take all appropriate measures to ensure that persons with disabilities can exercise the right to freedom of expression and opinion, including the freedom to seek, receive and impart information and ideas on an equal basis with others and through all forms of communication of their choice, as defined in article 2 of the present Convention, (...)"*

8. Article 30 of the aforementioned Convention, entitled "Participation in cultural life, recreation, leisure and sport", states as follows:

"States Parties recognize the right of persons with disabilities to take part on an equal basis with others in cultural life, and shall take all appropriate measures to ensure that persons with disabilities:

a) Enjoy access to cultural materials in accessible formats;

(..)

(2) States Parties shall take appropriate measures to enable persons with disabilities to have the opportunity to develop and utilize their creative, artistic and intellectual potential, not

only for their own benefit, but also for the enrichment of society.

(3) *States Parties shall take all appropriate steps, in accordance with international law, to ensure that laws protecting intellectual property rights do not constitute an unreasonable or discriminatory barrier to access by persons with disabilities to cultural materials.*

(4) *Persons with disabilities shall be entitled, on an equal basis with others, to recognition and support of their specific cultural and linguistic identity, including sign languages and deaf culture.*

(...)”

9. Article 10 of the Constitution, entitled "Equality before the law", states as follows: *"Everyone is equal before the law without distinction as to language, race, color, gender, political opinion, philosophical belief, religion and sect, or any such grounds.*

(...)”

10. According to Article 17 entitled "Personal inviolability, corporeal and spiritual existence of the individual"; *"Everyone has the right to life and the right to protect and improve his/her corporeal and spiritual existence".*

11. According to Article 27 entitled "Freedom of science and the arts ", *"Everyone has the right to study and teach, express, and disseminate science and the arts, and to carry out research in these fields freely".*

12. Pursuant to Article 3 of the Law No. 6701 on the Human Rights and Equality Institution of Türkiye titled "Principle of equality and prohibition of discrimination"; *"(1) All are equal in the exercise of legally recognized rights and freedoms. (2) It is prohibited under this Law to discriminate against persons based on the grounds of sex, race, colour, language, religion, belief, sect, philosophical or political opinion, ethnical origin, wealth, birth, marital status, health status, disability and age. (3) Where the principle of non-discrimination is violated, relevant competent and responsible public institutions and agencies and public professional organizations with public institution status shall take necessary actions with a view to putting an end to the violation, remedying its consequences, preventing its repetition and ensuring the launch of administrative and judicial proceedings into it. (4) Natural persons and legal persons created under private law who bear responsibility in respect of non-discrimination shall take necessary measures for detection of discrimination, elimination thereof and ensuring equality in respect of matters falling under their mandate."*

13. According to subparagraph (d) of Article 2 of the Law No. 6701 titled "Definitions", *"Direct Discrimination: Any kind of different treatment that prevents or makes difficult, on grounds of discrimination cited in this Law, the exercise of legally recognized rights and freedoms by a natural person or legal person in an equal manner as compared to comparable persons"*.

14. According to Article 5 of Law No. 6701 titled "Scope of non-discrimination", *"(1) Public institutions and agencies, professional bodies with public institution status, natural persons and legal persons established under private law providing services of education and training, judiciary, law enforcement, health, transportation, communication, social security, social services, social assistance, sports, accommodation, culture, tourism and similar services shall not discriminate, in respect of their activities, against persons who use or have applied to use or wishing to be informed of such services. This provision also covers access to buildings and spaces where public services are provided."*

15. Article 9, paragraph 1, subparagraph (g) of the Law states that the Institution is in charge of *"Inquiring into, examining, taking a final decision on and monitoring the violations of non-discrimination principle – ex officio or upon an application"*.

16. Article 21 of the aforementioned Law titled "Burden of Proof" states as follows: *"(1) In applications filed at the Institution exclusively on the basis of an alleged violation of non-discrimination, if the applicant exhibits the presence of strong signs and presumptive facts*

relating to the veracity of his/her allegation, then the other party shall be required to prove the non-violation of the non-discrimination and principle of equal treatment.”

IV. THE BOARD’S ASSESSMENT AND JUSTIFICATION

17.1st paragraph of Article 17 of the Law No. 6701 on the Human Rights and Equality Institution of Türkiye titled "Applications" states that *“Each and every natural person and legal person who claim to have suffered from violations of non-discrimination can apply to the Institution.”* Pursuant to the second paragraph of the same article *“Before applying to the Institution, those concerned shall demand that the relevant party remedy the practise they allege as contrary to the law. In cases where such demands are turned down or are not replied within thirty days, then they may apply to the Institution. However, where it is likely that damages arise which are irremediable or difficult to remedy, the Institution may accept applications without seeking such condition.”* the applicant shall demand that the relevant party to remedy the practice before applying to the Institution.

18.The application relates to accessibility. Accessibility is one of the fundamental principles on which both the United Nations Convention on the Rights of Persons with Disabilities and the Law No. 5378 on Persons with Disabilities are based. According to subparagraph (f) of Article 3 titled "Definitions" of the Law on Persons with Disabilities; *“In the implementation of this Law, accessibility refers to the safe and independent accessibility and availability of buildings, open spaces, transportation, and information services, and information and communication technology by persons with disabilities”.*

19.The Committee on the Rights of Persons with Disabilities, the supervisory body of the United Nations Convention on the Rights of Persons with Disabilities, makes the following statement regarding accessibility in its General Comment No.2:

“Accessibility is related to groups, whereas reasonable accommodation is related to individuals. This means that the duty to provide accessibility is an ex ante duty. States parties therefore have the duty to provide accessibility before receiving an individual request to enter or use a place or service. States parties need to set accessibility standards, which must be adopted in consultation with organizations of persons with disabilities, and they need to be specified for service-providers, builders and other relevant stakeholders. Accessibility standards must be broad and standardized.”(Committee on the Rights of Persons with Disabilities General Comment No. 2, para. 25)

20.Ensuring accessibility for persons with disabilities is a recognized obligation. For this reason, public institutions and organizations should consider the principle of accessibility while performing their duties. The condition of application to the relevant party in the second paragraph of Article 17 of Law No. 6701 was not sought in this application since the application is related to accessibility.

21.As stated in Article 17 of the Constitution, everyone has the right to improve his/her corporeal and spiritual existence. In this respect, access to printed works is vital for disabled individuals to improve their material and spiritual existence. In this context, accessibility needs to be established in all areas of life in order for persons with disabilities to exercise their rights equally with all individuals. Those responsible for the implementation of equality are obliged to take the necessary measures. The obligation to ensure accessibility and reasonable accommodation is important to ensure that persons with disabilities have equal opportunities to enjoy fundamental rights and freedoms.

22.The obligation to make reasonable accommodation refers to the implementation of necessary arrangements by those under an obligation, such as employers, providers of goods and services, and public authorities, to remove barriers for persons with disabilities. The most appropriate solution should be implemented by taking into account the individual characteristics of the persons concerned and the circumstances of the current situation.

23.Accessibility is one of the most important principles in terms of enabling people with

disabilities to live in society under equal conditions with other individuals, facilitating their full and effective participation in society, and ensuring that they can move independently to the maximum extent possible. Not ensuring accessibility for persons with disabilities prevents them from enjoying rights and services on equal terms with other individuals (Decision No. 2020/182 of the Human Rights and Equality Board of Türkiye, para.46).

24. Accessibility is a concept related to groups, whereas reasonable accommodation is a concept related to individuals. No application or request is required for the establishment of accessibility, however, the necessity of a request is required for the obligation of a reasonable accommodation to be in question. Whereas it is possible for those who are under an obligation to make reasonable accommodations, to avoid liability on the grounds that the obligation imposes a disproportionate or heavy burden on them, it is not possible for those who are under an obligation in terms of accessibility to avoid liability by claiming that the obligation constitutes a disproportionate or heavy burden.

25. In the case in question, the applicant did not make an individual request to the addressee administration for access to printed works on an equal basis with other individuals. He demands the fulfillment of the duty assigned to the administration by the relevant legislation to make all printed works available to the visually impaired, in other words, to ensure accessibility. The addressee administration should proactively make all printed works available to the visually impaired without any request. This practice should be evaluated within the scope of direct discrimination since the fact that all printed works are not equally available for visually impaired individuals as they are for non-visually impaired individuals is a different treatment based on disability, which is one of the grounds of discrimination specified in Article 3 of Law No. 6701. Direct discrimination is defined in subparagraph (d) of Article 2 titled "Definitions" of Law No. 6701 as *"Any kind of different treatment that prevents or makes difficult, on grounds of discrimination cited in this Law, the exercise of legally recognized rights and freedoms by a natural person or legal person in an equal manner as compared to comparable persons"*. According to the ECHR, for it to be direct discrimination, *"a difference in treatment of persons in analogous, or relevantly similar situations"* and *"based on an identifiable characteristic, or 'status' "* (Carson and others v. the United Kingdom, Para.61).

26. The applicant claims that, as a visually impaired person, he is unable to fully and effectively benefit from printed sources, despite the existence of legislation regulating the transfer of these sources to electronic environment in order to access them. For equal participation of persons with disabilities in cultural and social life, it is necessary to eliminate barriers to access to necessary materials and communication. Accordingly, in this specific case, in order for visually impaired individuals to access printed works, they must be made available in electronic environment in an appropriate manner.

27. According to Article 3 of the Marrakesh Agreement on Facilitating Access to Published Works for Persons Who are Blind, Visually Impaired or Otherwise Impaired in the Reading of Printed Materials, which has been ratified by Türkiye, beneficiaries are persons who have a visual impairment, whose vision cannot be improved to give them a visual function substantially equivalent to that of persons without visual impairment or disability, and who cannot hold or turn a book or keep their eyes fixed or focused for an acceptable period for reading due to physical disability. In this context, visually impaired individuals, acting as beneficiaries, should be enabled to access formats accessible to all kinds of written works of literature and art made available to the public per Article 4/1(a) of the aforementioned Agreement.

28. Article 8/1/ğ of the Law No. 6279 on Compilation of Reproduced Intellectual and Artistic Works, which entered into force in 2012, states that an electronic copy of the works shall be sent to the National Library to be made available to the visually impaired. The addressee administration is obliged by this provision to provide access to printed works for the visually

impaired. Stating that the EYDeS platform was established in 2018 to realize this obligation, the addressee administration is obliged to provide all printed works offered to individuals without disabilities to visually impaired individuals through the aforementioned platform without a request. In this regard, it is necessary to finalize the systematic work as soon as possible and to ensure the successful implementation of this service by completing the work related to the compilation taxpayers who are obliged to upload an electronic copy of the works to the system.

29. Article 4 of the Law No. 6279 on Compilation of Reproduced Intellectual and Artistic Works reads as follows:

"(1) All kinds of works printed or reproduced within the borders of the Republic of Türkiye, as specified below, shall be included in the scope of this Law: a) Separately published works such as books, braille books, booklets, encyclopedias, albums, atlases, and sheet music, either alone or as part of a set or series. (b) Periodicals such as newspapers, magazines, yearbooks, bulletins, calendars. c) Graphic works such as posters, postcards, engravings, reproductions, printed photographs ...". Article 6 of the aforementioned Law states as follows: "(1) The taxpayers of compilation are: a) For the works specified in subparagraphs (a), (b) and (c) of Article 4, the real or legal person publisher, or in the absence of a publisher, the publishing house or printing house ...". According to these regulations, the compilation taxpayer for the printed works mentioned in the concrete case is the publisher, and in the absence of a publisher, the publishing house or printing house. Compilation taxpayers are also required to send a copy of the printed works to the addressee administration to be made available to the visually impaired.

30. Article 11 of the Law No. 5846 on Intellectual and Artistic Works is regulated as follows: *"It is permitted to reproduce or lend scientific and literary works in writing including school books that have been made public or published, without obtaining the permissions prescribed by this Law and without any commercial purpose in the form of cassettes, CDs, Braille alphabet, and similar formats by a person with disability for his/her own use or by another person acting on behalf of him in a single copy, or by educational institutions, foundations, associations, and the like providing services for the benefit of the people with disability in the quantity required, provided that no such copies have already been produced for the use of people with disability. Such copies may in no way be sold, put into commercial use and used and allowed to be used for other than their intended purpose. Furthermore, it is compulsory to show information relating to rightholders and indicate the purpose of reproduction on the copies."*

31. The addressee administration stated that the compilation taxpayers did not upload a complete copy of the printed works to the system, and therefore not all printed works could be made available to visually impaired individuals. This reason cannot be accepted as a justified reason for the addressee administration. Because in this specific case, accessibility of visually impaired individuals to printed works could not be fully ensured. In its General Comment No. 2, the Committee on the Rights of Persons with Disabilities stated that *"The obligation to ensure accessibility is unconditional, meaning that the entity obliged to provide accessibility cannot excuse its failure to do so by referring to its obligation to provide access to persons with disabilities"*. In the case of the obligation to make reasonable regulations, the obligation may be discharged if the regulation in question imposes an excessive or disproportionate burden on the administration, while no reason will be accepted as a justifiable excuse by the addressee administration for the enforcement of accessibility, as in this specific case.

32. Refraining compilation taxpayers from uploading works to the EYDeS platform out of concern that their copyrights will be infringed will not reduce or eliminate the responsibility of the addressee administration. The relevant legislation obliges the relevant administration to compile and organize the aforementioned works and make them available to the visually

impaired. Under Article 10 of Law No. 6279, an administrative fine will be imposed by the highest local administrative authority on the compilation taxpayer who fails to fulfill its responsibilities under the Law. Article 18 of the Regulation on Compilation of Reproduced Intellectual and Artistic Works states that the National Library Presidency may notify the local authority competent to impose administrative fines regarding the administrative sanction in question. If necessary, the addressee administration should exercise this authority and ensure that the taxpayers fulfill their responsibilities.

33. The accessibility of visually impaired individuals to works without the need for the assistance of others is one of the conditions required to ensure accessibility. Considering the small number of works it contains and the difficulty of accessing these works for visually impaired individuals, the "Talking Library" service, providing audiobook service, which is mentioned in the written opinion of the addressee administration, leads to the conclusion that accessibility is not ensured. On the other hand, it is important to make an arrangement suitable for the use of the visually impaired to know the works in the EYDeS system to be able to enjoy the full benefit of this service.

34. In its General Comment No. 2, the Committee on the Rights of Persons with Disabilities stated: "*Without access to information and communication, enjoyment of freedom of thought and expression and many other basic rights and freedoms for persons with disabilities may be seriously undermined and restricted. Article 9, paragraph 2 (f) to (g), of the Convention therefore provide that States parties should promote live assistance and intermediaries, including guides, readers and professional sign language interpreters (para. 2 (e)), promote other appropriate forms of assistance and support to persons with disabilities to ensure their access to information, and promote access for persons with disabilities to new information and communications technologies and systems, including the Internet, through the application of mandatory accessibility standards. Information and communication should be available in easy-to-read formats and augmentative and alternative modes and methods to persons with disabilities who use such formats, modes and methods.*" (para.21).

35. The addressee administration, in its written opinion and the response written to CİMER, stated that not all works could be made available to the visually impaired on the EYDeS platform because the preparations for making the works available to the visually impaired were in progress and that security measures were being taken for the works with ongoing copyright protection. It was also stated that the works within the EYDeS platform are made available to visually impaired individuals upon request, but not all works are available in the system.

36. In order for persons with disabilities to participate in the cultural and social life on an equal basis with other individuals, they need equal access to information and communication compared to persons without disabilities. In this concrete case, it has been observed that the access of visually impaired individuals to the EYDeS platform, where electronic copies of the works are made available by the National Library, is not fully achieved. Accessibility should be ensured as soon as possible so that persons with disabilities can equally exercise their right to access. Delayed accessibility will also result in incomplete accessibility.

37. In the context of the whole file, it has been concluded that the applicant's inability to access the works he wanted, like non-disabled individuals, constitutes direct discrimination on the grounds of disability.

38. Regarding Article 3 of Law No. 6701; the relevant part of Article 3 of Law No. 6701 on the Human Rights and Equality Institution of Türkiye is as follows: "*Where the principle of non-discrimination is violated, relevant competent and responsible public institutions and agencies and public professional organizations with public institution status shall take necessary actions with a view to putting an end to the violation, remedying its consequences, preventing its repetition and ensuring the launch of administrative and judicial proceedings*

into it.” Discriminatory treatment in terms of the enjoyment of legally recognized rights and freedoms must be remedied by the addressee in the face of the clear provision of the Law. The basic rule for remedying the consequences of a violation is to ensure that the pre-violation situation is restored. In order to achieve this, first of all, the ongoing violation must be prevented, the decision or action causing the violation must be eliminated, material and moral damages, if any, must be compensated, and the necessary measures must be taken. Since violation of these obligations entails additional liability, it is a legal obligation for the addressee to take measures to remedy the consequences of the violation.

39. In Terms of Application for Legal Remedies; the relevant sections of Law No. 6701 are as follows:

Administrative sanctions

Article 25- (1) In case of violation of non-discrimination principle, an administrative fine ranging from one thousand Turkish lira to fifteen thousand Turkish lira⁶ depending on the gravity of the effects and consequences of such violation, financial situation of the perpetrator and aggravating effect of the multiple discrimination, shall be imposed on the relevant public institutions and agencies, professional organizations with public institution status, natural persons and legal persons established under private law responsible for the violation.

6) Cases not covered by this Law shall be governed by the provisions of the Law on Misdemeanours dated 30/3/2005 and No 5326 in relation to administrative sanctions.

40. Pursuant to Article 125 of the Constitution, the Board's decisions are subject to judicial review. Although Law No. 6701 does not explicitly specify the legal remedies that may be applied against the Board's decisions, there is no dispute that all decisions of the Board, other than the decisions on violation of the prohibition of discrimination, fall within the jurisdiction of the administrative judiciary.

41. The Human Rights and Equality Board of Türkiye which independently fulfills and exercises its duties and powers assigned by Law No. 6701 and other legislation under its responsibility, is the decision-making body of the Institution and establishes administrative action in the field of administrative law. The decision on violation of the prohibition of discrimination is one of them. The aforementioned Law states that *"In case of violation of the prohibition of discrimination, ... an administrative fine shall be imposed."* Although the Board has discretionary power to determine the amount of the fine within the lower and upper limits and to convert it into alternative sanctions, it does not have the authority not to impose administrative sanctions in case of violation of the prohibition of discrimination. Therefore, the administrative sanction decision is not separate, but a consequence of the decision on the violation of the prohibition of discrimination.

42. Even if the administrative sanction imposed by the Board is considered an separate decision, it still remains within the jurisdiction of the administrative jurisdiction pursuant to the provision in paragraph 8 of Article 27 of the Law on Misdemeanours stating that *"If decisions falling within the jurisdiction of the administrative jurisdiction have also been made about the same person within the scope of the transaction in which the administrative sanction decision was issued, the claims of illegality regarding the administrative sanction decision shall be heard at the administrative jurisdiction together with the request for the annulment of this transaction."*

V. DECISION

On 07.10.2021, it was UNANIMOUSLY decided as follows:

1. There is A VIOLATION OF THE PROHIBITION OF DISCRIMINATION against the applicant in exercising his right to participate in cultural life by not ensuring accessibility,
2. AN ADMINISTRATIVE FINE of 10.000 TRY shall be imposed on the addressee,
3. Notification of the decision to the parties and ANNOUNCEMENT to the PUBLIC,
4. Against the decision, an application can be made to the Ankara Administrative Court



within 60 days from the date of notification.

Att. Harun MERTOĞLU
Board Member

Dilek ERTÜRK
Board Member

Muhammet Ecevit CARTİ
Board Member

Saffet BALIN
Board Member

Ünal SADE
Board Member