



# HREIT

HUMAN RIGHTS AND EQUALITY INSTITUTION  
OF TÜRKİYE



## DISCRIMINATION

## ON THE BASIS OF BIRTH





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# **DISCRIMINATION ON THE BASIS OF BIRTH**

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



- Article 10 of the Constitution of the Republic of Türkiye regulates the “principle of equality before the law” as follows: *“Everyone is equal before the law without distinction as to language, race, colour, sex, political opinion, philosophical belief, religion and sect, or any such grounds.”*
- Article 2 of the Universal Declaration of Human Rights states: *“Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”*
- Article 14 of the European Convention on Human Rights provides as follows: *“The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”*
- Article 2 of the United Nations (UN) International Covenant on Civil and Political Rights stipulates “non-discrimination” as follows: *“ Each State*

*Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”*

- Article 2 of the UN Convention on the Rights of the Child is regulated as follows: *“States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child’s or his or her parent’s or legal guardian’s race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status. (...)”*
- Article 2 of the UN International Covenant on Economic, Social and Cultural Rights (ICESCR) states: *“The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”*
- Paragraph three of Article 10 of the ICESCR reads as follows: *“Special measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination for reasons of parentage or other conditions. (...)”*



- Article 5 of the UN Convention on the Rights of Persons with Disabilities (UNCRPD) entitled “Equality and non-discrimination” stipulates that 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, in its General Comment No. 6 on Non-Discrimination and Equality, adopted by the United Nations Committee on the Rights of Persons with Disabilities at its 19th session on February 14 and March 9, 2018, the basis of birth is specifically mentioned among the possible grounds taken into account by “protection against discrimination on all grounds”.
- European Convention on the Legal Status of Children born out of Wedlock also imposes an obligation on the Member States to eliminate discriminatory treatment of children born out of wedlock. Article 6 of the Convention includes the provision *“The father and mother of a child born out of wedlock shall have the same obligation to maintain the child as if it were born in wedlock. Where a legal obligation to maintain a child born in wedlock falls on certain members of the family of the father or mother, this obligation shall also apply for the benefit of a child born out of wedlock.”* Article 9 states *“A child born out of wedlock shall have the same right of succession in the estate of its father and its mother and of a member of its father’s or mother’s family, as if it had been born in wedlock.”*, and Article 10 *“The marriage between the father and mother of a child born out of wedlock shall confer on the child the legal status of a child born in wedlock.”*
- Paragraph two of Article 3 of the Law No. 6701 on the Human Rights and Equality Institution of Türkiye, titled “Principle of Equality and Non-Discrimination”, unequivocally prohibits discrimination on the basis of birth as stated in *“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.”*
- The grounds of discrimination covered by Law No. 6701 are as follows:
  - Segregation,
  - Instruction to discriminate and implementing such instructions,
  - Multiple discrimination,
  - Direct Discrimination

- Indirect Discrimination,
- Mobbing,
- Failure to make reasonable accommodation.,
- Harassment,
- Discrimination Based on an Assumed Ground,
- Unfavourable treatments due to judicial proceedings in order to ensure the respect of the principle of equal treatment and prevent discrimination.



- Any different treatment that prevents or makes it difficult for a person to enjoy legally recognized rights and freedoms on an equal basis with others in a comparable situation, on grounds relating to his or her birth, constitutes **direct discrimination on the basis of birth**.
- Putting a person in a disadvantageous position that cannot be objectively justified in terms of benefiting from legally recognized rights and freedoms in connection with birth as a result of all seemingly non-discriminatory actions, transactions and practices constitutes **indirect discrimination on the basis of birth**.

- Upon review of Article 3 of Law No. 6701 regulating the grounds of discrimination and its justification, it is seen that there is no limiting phrase on the scope of the ground of “birth”. In this regard, it is evaluated that discrimination on the basis of birth would refer to discriminatory treatment based on being born out of wedlock or adopted, the reasons arising from a person’s social status or situation within the framework of facts such as the neighborhood, region, place of birth or other aspects related to birth. The European Court of Human Rights (ECHR) has stated that if it is the mother or father who is treated differently depending on whether the child is born out of wedlock, this would also violate the prohibition of discrimination on the basis of birth. *(ECHR, Case of Sommerfeld v. Germany, Application Number: 31871/96, Date of the Decision: 8/7/2003)*

### DID YOU KNOW?

- ✓ *The Centre for Equal Opportunities and Opposition to Racism, a Belgian member of the European Network of National Human Rights Institutions, has defined discrimination on the grounds of birth as “discriminatory treatment of one or both parents or children on the grounds of certain characteristics” and has recognized “A student is not given a holiday job in a company because he has no relatives already working in that company” and “a job applicant is not taken on because her name is linked to a well-known murderer” as discrimination on the grounds of birth. (Source: <https://www.unia.be/en/grounds-of-discrimination/other-criteria-of-discrimination#Birth>)*





## In which areas is protection applied?

- Within the scope of Law No. 6701, public institutions and organizations, professional organizations with public institution status, real persons, private legal entities and those authorized by them are prohibited from subjecting individuals or groups to discriminatory treatment on the basis of birth;
  - In the provision of services such as education and training, judiciary, law enforcement, health, transportation, communication, social security, social services, social assistance, sports, accommodation, culture, tourism, and the like;
  - In access to areas and buildings where public services are provided;
  - In the relevant processes (leasing, purchasing, determining the terms of the lease agreement, renewal or termination of the lease agreement, transfer) while making movable and immovable assets available to the public;
  - In becoming a member of associations, foundations, trade unions, political parties, and professional organizations, except for the exceptions specified in their relevant legislation or by-laws, being elected to their bodies, benefiting from membership opportunities, termination of membership, and participating in and benefiting from their activities;
  - In processes related to employment and self-employment.

## Responsibilities

- In the event of a violation of the prohibition of discrimination, **public institutions and organizations and professional organizations with public institution status** that have duties and authorities on the subject are obliged to take the necessary measures to end the violation, to eliminate its consequences, to prevent its recurrence, and to ensure judicial and administrative follow-up.
- **Real persons and private legal persons** which are responsible for the application of the prohibition of discrimination shall take adequate measures to identify and eliminate the discrimination and ensure equality on the subjects within their scope of authority.

## Application or Ex-officio Enquiry

- The Human Rights and Equality Institution of Türkiye (HREIT) is authorized and tasked with ex officio or upon application to examine, investigate, decide and monitor the results of violations of the prohibition of discrimination.
- Anyone claiming to have suffered a violation of the prohibition of discrimination on the basis of birth may apply to the Institution.
- Under Law No. 6701, if it is determined that a person has been subjected to discrimination on the basis of birth, an administrative fine shall be imposed on public institutions and organizations, professional organizations with public institution status, real persons and private legal entities 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. Pursuant to the rate published in the Official Gazette dated 27/11/2021 and numbered 31672, the lower limit of the administrative fine in the first paragraph of Article 25 of Law No. 6701 has been redetermined as TRY 2,673.61 and the upper limit as TRY 40,179.00 for the year 2022.
- It is obligatory to submit the information and documents requested by the Institution by stating its justification regarding the subject of examination and research within the time limit. Administrative fines shall also be imposed on public institutions and organizations, professional organizations with public institution status, real persons and private



legal entities that fail to comply with the said obligation and warning within the specified period without a justified reason. Pursuant to the rate published in the Official Gazette dated 27/11/2021 and numbered 31672, the lower limit of the administrative fine in the third paragraph of Article 25 of Law No. 6701 has been redetermined as TRY 1,334.76 and the upper limit as TRY 5,352.36 for the year 2022.

## DID YOU KNOW?

✓ *According to General Comment No. 20 of the Committee on Economic, Social and Cultural Rights on Non-discrimination in economic, social and cultural rights (art. 2, para. 2, of the International Covenant on Economic, Social and Cultural Rights), the bases of "birth", "social origin" and "property" are interconnected. However, while the ground of birth may refer to a person's status, such as being born out of wedlock or adopted, the prohibited ground of birth also includes "descent", especially on the basis of caste and analogous systems of inherited status. (Source: <http://ihop.org.tr/wp-content/uploads/2007/12/ESKHKGY20.pdf> )*

## What are the Examples of Discrimination on the Basis of Birth?

- A person born out of wedlock receives a smaller share of their parents' inheritance than their siblings born in wedlock,
- Rejection of a person's job application, even if they meet all the requirements, simply because they were born in a place perceived negatively by the community,
- The condition to purchase an immovable property is that the purchaser must have been born in the village where the immovable property is located,
- School administrators refusing to enroll a child in school on the grounds that they have been adopted.
- In caste-affected communities, some heavy laborers are chosen exclusively from the lower caste.

## Exceptions

- In our country, the Law No. 6701, which contains the most comprehensive provisions in the context of non-discrimination, also regulates the cases in which the claim of discrimination cannot be asserted, 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.

## DID YOU KNOW?

- √ *In the report on “Minorities and discrimination based on caste and analogous systems of inherited status” prepared by the United Nations Special Rapporteur on Minority Issues, Rita Izsák, and submitted to the United Nations Human Rights Council and adopted at its 31st session on January 28, 2016, the following points were made:*
- √ *The term “caste” refers to a strict hierarchical social system that is often based on the notions of purity and pollution. Individuals placed at the bottom of the system may face exclusion and discrimination in a wide range of areas.*
- √ *Caste status is inherited by birth and follows the individual until death, determines and is confined to certain occupations. People from lower caste strata are considered untouchable from the belief that contact with individuals from lower caste is “polluting”; Inter-caste interactions (the practice of eating together, marriage, etc.) are limited and in some cases de facto prohibited. Those who violate these prohibitions and their communities are often severely punished.*
- √ *Estimates indicate that over 250 million people suffer from caste-based discrimination worldwide. Though the highest numbers of affected communities are concentrated in South Asia, particularly India and Nepal, discrimination on the grounds of caste can be found in other geographical regions including in Africa, the Middle East and the Pacific region.*
- √ *It also leads to extreme exclusion and dehumanization of caste-affected communities, who are often among the most disadvantaged populations, experience the worst socioeconomic conditions and are deprived of or severely restricted in the enjoyment of their civil, political, economic, social and cultural rights. (Source: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/013/73/PDF/G1601373.pdf?OpenElement> )*

## Are There Any Precedents on the Violation of the Prohibition of Discrimination on the Basis of Birth?

ECHR has decisions where a violation of the prohibition of discrimination on the basis of birth has been found. These decisions were mainly rendered in response to applications by persons who had been treated differently on the grounds of birth out of wedlock.

➤ **ECHR, Inze v. Austria Decision, Application Number: 8695/79, Date of the Decision: 28/10/1987**

It was held that the fact that the applicant, whose mother had died intestate and who had been born out of wedlock, was not legally heir to his mother's farm, on which he had worked until the age of 23, and that his younger half-brother had inherited the whole farm, violated Article 14 of the Convention on non-discrimination and Article 1 of Additional Protocol on the protection of property.

➤ **ECHR, Mazurek v. France Judgment, Application Number: 34406/97, Date of the Decision: 1/2/2000**

The Court considered that the applicant, who was born out of wedlock, was entitled to a maximum of one-quarter of his mother's inheritance under national law, a practice arising from the fact that he was born out of wedlock and held that there had been a violation of Article 1 of Additional Protocol in conjunction with Article 14 of the Convention.

➤ **ECHR, Camp and Bourimi v. Netherlands Decision, Application Number: 28369/95, Date of the Decision: 3/10/2000**

The first applicant's partner, who died before he could recognize his child born out of wedlock according to national law, was evicted from the house where they lived because the deceased had died intestate, and although the second applicant child acquired legal family ties with his father 2 years after his birth, he could not share in his father's inheritance because this decision was not retroactive. The Court ruled that there had been a violation of Article 14 of

the Convention taken in conjunction with Article 8 on the right to respect for private and family life in respect of the second applicant, a child born out of wedlock, is excluded from inheritance.



➤ **ECHR, Sommerfeld v. Germany Decision, Application Number: 31871/96, Date of the Decision: 8/7/2003**

The applicant, who is the father of a child born out of wedlock, filed a lawsuit at the local court to establish the right to see his child after the mother forbade him to see his child, and his lawsuit was rejected by the court on the grounds that the child's unwillingness to see his father and other expert opinions and the best interests of the child.

The ECHR ruled that there was no violation of Article 8 of the Convention since the best interests of the child were taken into consideration in the decision of the local court, but in the present case, while the right to visit was taken as a basis for divorced fathers, the introduction of more severe and different criteria for the fathers of children born out of wedlock constituted a violation of Article 14 in conjunction with Article 8 of the Convention. The Court concluded that very strong reasons must be shown for different treatment on the basis of birth in or out of wedlock to be compatible with the ECHR, and that the same applies to the different treatment of the father of a child born out of wedlock compared to the father of a child born out of a marital relationship, whereas there was no such reason in the present case.



➤ **ECHR, Pla and Puncernau v. Andora Decision, Application Number: 69498/01, Date of the Decision: 13/7/2004**

In the case at hand, the first applicant, the adopted child, was deprived of inheritance and the second applicant, the mother, lost her lifetime usufruct right over the family property by interpreting the condition in the will of the testator that “*the heir must be born out of a legitimate and canonical marriage*” to apply only to his biological children. The ECHR ruled that there was a violation of Articles 8 and 14 of the Convention, considering that the second applicant and the testator had a legitimate and canonical marriage, that there was no provision in the will that adopted children would be disinherited, and that the judicial disinheritance of the adopted child was clearly in breach of the prohibition of discrimination.





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 | 0 312 422 78 00

 | 0 312 422 78 99

 | Yüksel Cad. No: 23  
Kızılay / Ankara