

APPLICATION

The Subject Matter of the Case

The Applicant, who is divorced and lives with her child, claims that she has suffered from an act of discrimination towards herself due to her marital status while looking for a residence to rent in Eskişehir.

Assessment

1. Direct discrimination, according to the Law No. 6701 on the Human Rights and Equality Institution of Turkey, is defined as follows: *“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.”*

2. The range of fields, in which different treatment can occur, is also regulated with the Paragraph (1) of the Article 5 of the Law No. 6701, under the title of “Scope of Non-Discrimination”, as follows: *“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.”*

3. The Addressee 2 and the Addressee 3, who were the real persons providing service for renting, denied that they had discriminated against applicant due to her marital status. In the present case, the applicant had claims against the landlords, the Addressee 2 and the Addressee 3, yet she was not able to support her claims accordingly. During the meeting with the Applicant, the Applicant was confused about which residence belonged to which landlord between two Addressees; afterwards, she stated that the reason why she had confused the landlords and residences of the landlords was actually the long time period passed since the application. Thus, both in the application documents and face to face conversations, the applicant failed to provide any evidence or any sign, which went beyond being abstract claims and which enabled sharing of burden of proof about discrimination that had been made by the landlords due to her marital status. As there was no sound evidence that may result in lack of reasonable suspicion, there was no consideration in favor of the violation of prohibition of discrimination by the Addressees.

4. The statuses of the Addressees, subject to the claims about residence that the applicant tried to rent via real estate agency, are different. In the present case, the Addressee 4, who was the landlord, accepted that he had given the instructions to the Addressee 1 about non-renting policy towards non-married persons for any of his apartments in his residences; and the Addressee 1 accepted that he had implemented those instructions for the resident, the subject matter of this case, and all other residences of the afore-mentioned landlord.

5. Direct discrimination occurs when there is a harming or less favorable treatment towards one person or a group on the basis of discrimination prohibited by law. In the present case, there was a discriminative attitude towards applicant owing to applicant’s divorced/single

status without presenting any other justification. The reason behind the Addressee 4's instructions not to rent single persons any of his residences is the belief that married couples live in a better manner compared to single occupants as well as it is a better way in terms of widely accepted moral grounds, which is less likely to disturb their neighbors. Therefore, there is no legitimacy in the purpose of not renting the residence to the applicant, due to lack of an objective ground behind these assumptions.

6. Instruction to discriminate is defined within the scope of Law No. 6701 as follows: *"An instruction given by a person to other persons authorized to act on his behalf or account or by a public officer to other persons to discriminate"*. Implementing such instructions is also among the types of discrimination under the Article 4 of the afore-mentioned Law. It is clearly stated in the Article 683 of Turkish Civil Code that owner of a property is entitled to use, benefit and dispose of such property in whatever way he wishes -- albeit within the boundaries of the order of laws. Therefore, it is also clear that this right is not limitless. The discrimination based on "marital status" is included in the Article 3 of the Law No. 6701 on the Human Rights and Equality Institution of Turkey and is prohibited by the same article. Furthermore, Turkey is party to many human rights conventions that prohibit discrimination. Thus, discrimination is not only at the center of Turkish national law but also at the center of international human rights law. And; therefore, it is concluded that the Addressee 4, who was landlord, violated the prohibition of discrimination, as he acted beyond the limitations of legal order in terms of his ownership entitlements as the landlord.

7. In the present case, although both the real estate agent and the landlord stated that real estate agent had been implementing the given instructions, implementing such instructions towards discrimination is also prohibited within the scope of above-mentioned Law No. 6701. Therefore, it has no effect on the conclusion of implementation of instructions for discrimination by Addressee 1 to justify his action. Because, this action of not renting the residence to the applicant is a joint action of the Addressee 4 as an instructor and the Addressee 1 as an implementer.

Decision

Within the framework of the legislation and the reasons explained above, on 27.06.2018, the Board unanimously;

1. *Dismisses* the application, because the application is considered as unsubstantiated for the landlords-the Addressee 2 and the Addressee 3, in accordance with the Article 72 of the Procedures and Principles Regarding the Implementation of the Law on the Human Rights and Equality Institution of Turkey;
2. *Holds* that THERE HAS BEEN A VIOLATION of "prohibition of discrimination", which is guaranteed by the Article 3 of the Law no. 6701, in terms of the landlord-the Addressee 4; and that the Addressee 4 shall pay ADMINISTRATIVE FINE of 2,000 (two thousand) TL in total;

3. *Holds* that THERE HAS BEEN A VIOLATION of “prohibition of discrimination”, which is guaranteed by the Article 3 of the Law no. 6701, in terms of the real estate agent-the Addressee 1; and that the Addressee 1 shall pay ADMINISTRATIVE FINE of 1,000 (one thousand) TL in total.

EX OFFICIO EXAMINATION

The Subject Matter of Ex Officio Examination

1. In a job advertisement website, there was a statement in capital letters to hire accounting finance personnel, as follows: “WOMAN, (MALE OR HEADSCARFED APPLICANTS’ CVs WILL NOT BE TAKEN INTO CONSIDERATION. WE WOULD LIKE TO EMPHASIZE THIS ISSUE STRONGLY.”
2. Following the reactions from public, the advertising company issued a press statement, titled as “Discrimination Cannot Be Tolerated”, which announced that the advertisement had been sabotaged and the personnel, who was responsible for the advertisement, had been fired. The advertiser company also made an announcement on social media (Twitter), stating that the advertisement was released automatically and without any check on the content, and it was removed afterwards.
3. The advertisement, which appeared in social media and press and which caused serious reactions in public, became a part of the Institution’s agenda as well. The advertisement was considered as discrimination based on gender and belief at first sight. Thus, the Institution reached a conclusion in favor of the necessity of ex officio examination, and decided as such.

Assessment

1. In the present case, the statement of “WOMAN, (MALE OR HEADSCARFED APPLICANTS’ CVs WILL NOT BE TAKEN INTO CONSIDERATION. WE WOULD LIKE TO EMPHASIZE THIS ISSUE STRONGLY” has been released as an application criteria in the job advertisement; therefore, it is clear that the Paragraph (a) of the Article 6 of the Law No. 6701 “...shall not discriminate against an employee or a person applying to be employed, a person acquiring practical work experience at an undertaking or a person applying for this purpose or against a person wishing to receive information on the undertaking or the work for the purpose of working or acquiring practical work experience there in any stage of the work including getting information, application, section criteria...” has been violated.
2. Within the job advertisement, the expression of “HEADSCARFED APPLICANTS’ CVs WILL NOT BE TAKEN INTO CONSIDERATION.” is a restrictive criterion against freedom of religion and conscience, which is accepted as one of the indispensable elements of a democratic state and is pointed out in the Article 2 of the Constitution of the Republic of Turkey.

3. In the present case, advertisement's expression of male applicants as a certain gender as well as women applicants with headscarf will not be taken into consideration is evaluated as a violation of the prohibition of discrimination on the grounds of direct discrimination.
4. Institution has reached the conclusion that aforementioned advertisement has been seen on the website for twenty days from June 4, 2018 and June 24, 2018; that the advertisement was not checked or removed for all these twenty days; that it is likely to exist applicants who ignored the job or hesitated to send their CVs due to discriminative statements; and that there is negligence of the addressees in the discriminative expressions and the period of time until the advertisement's removal as well as checking and examination of the content.
5. As the present case, which is the subject matter to this ex officio examination, is evaluated in accordance with the relevant legislation, the Institution has reached a conclusion that there has been a violation of the prohibition of discrimination based on gender and belief within the scope of the Article 14 of ECHR, the Article 10 of the Constitution of the Republic of Turkey and the Article 3 of the Law No. 6701.

Decision

Within the framework of the legislation and the reasons explained above, on 15.10.2018, the Board unanimously;

1. *Holds* that THERE HAS BEEN A VIOLATION, by the advertising company and advertiser website that released the job advertisement, of the "PROHIBITION OF DISCRIMINATION", which is guaranteed by the Article 3 of the Law No. 6701;
2. *Holds* that the advertising company shall pay ADMINISTRATIVE FINE of 3,000.00-TL (Three Thousand Turkish Liras) in total, and the advertiser website shall pay ADMINISTRATIVE FINE of 1,000.00-TL (One Thousand Turkish Liras) in total.