

VICTIMISATION

Victimisation can be defined as encountering negative behavior or being treated differently as a result of a complaint made by a person on the grounds of discrimination or the judicial process s/he initiated or facing similar treatment as a result of supporting a person who has made a complaint about discrimination or initiated a judicial process.¹

Pursuant to Article 9 titled “Victimisation” of the Council Directive 2000/43/EC of 29 June 2000 on Implementing the Principle of Equal Treatment Between Persons Irrespective of Racial or Ethnic Origin **Member States shall introduce into their national legal systems such measures as are necessary to protect individuals from any adverse treatment or adverse consequence as a reaction to a complaint or to proceedings aimed at enforcing compliance with the principle of equal treatment.**²

Also Article 10 titled “Victimisation” of the Council Directive 2004/113/EC of 13 December 2004 on Implementing the Principle of Equal Treatment Between Men and Women in the Access to and Supply of Goods and Services has the regulation **Member States shall introduce into their national legal systems such measures as are necessary to protect persons from any adverse treatment or adverse consequence as a reaction to a complaint or to legal proceedings aimed at enforcing compliance with the principle of equal treatment.**³

Pursuant to the Article 24 of the Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the Implementation of the Principle of Equal Opportunities and Equal Treatment of Men and Women in Matters of Employment and Occupation “Member States shall introduce into their national legal systems such measures as are necessary to protect employees, including those who are employees' representatives provided for by national laws and/or practices, against dismissal or other adverse treatment by the employer as a reaction to a complaint within the undertaking or to any legal proceedings aimed at enforcing compliance with the principle of equal treatment.”⁴

The concept of victimisation, which came to the fore with the European Union law, has also found a response in the European Court of Human Rights (ECHR). [In the Case of Fogarty v. United Kingdom](#), the Court showed that it accepted the prohibition of victimisation as an addendum to the rights guaranteed in the European Convention on Human Rights by referring to the provisions on victimisation in the UK Sex Discrimination Act.⁵

Examples of victimisation in the workplace

- ▶ An employer giving a warning to someone for being a witness to a complaint of race discrimination made by a work colleague.
- ▶ Being denied a promotion or being moved to a position with lower responsibility after helping a colleague make a discrimination complaint
- ▶ Dismissal from employment or being refused further contract work after making a complaint of sexual harassment.⁶

1 Ulaş Karan, *Eşitlik İlkesi ve Ayrımcılık Yasağı*, On İki Levha Yayıncılık, 2017, s.282.

2 <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32000L0043>

3 <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:373:0037:0043:en:PDF>

4 https://eige.europa.eu/sites/default/files/ep_council_eu_directive_2006-54-ec.pdf

5 Kevin Kitching, *Non-Discrimination in International Law: A Handbook for Practitioners (Interights)*, 2005, s.95. ; AIHM, *Fogarty v. Birleşik Krallık*, B. No. 37112/97, 21/11/2001.

6 <https://www.humanrights.vic.gov.au/for-individuals/victimisation/>

The prohibition of victimization is a natural extension of the prohibition of discrimination, and the concept of victimization has taken its place in national legislation as well as European Union law.

Pursuant to Article 4 of the Turkish Human Rights and Equality Institution Law No. 6701, published in the Official Gazette dated 20/04/2016 and numbered 29690, titled **Types of Discrimination**: “(1) Types of discrimination falling into the scope of this Law are as follows: a) Segregation b) Instruction to discriminate and implementing such instructions c) Multiple discrimination ç) Direct discrimination d) Indirect discrimination e) Mobbing f) Failure to make reasonable accommodations g) Harassment ğ) Discrimination based on an assumed ground (2) Unfavourable treatments sustained by persons who launch administrative or judicial proceedings or take part in such proceedings in order to ensure the respect of the principle of equal treatment and prevent discrimination as well as by representatives of such persons on account of such proceedings also constitute a discrimination.”

In the second paragraph of Article 4 of the Law No. 6701; it is ruled that the negative treatment of persons and their representatives who initiate or participate in administrative or judicial processes in order to comply with the principle of equal treatment or to prevent discrimination, will constitute discrimination, and victimisation has been included among the types of discrimination.

Victimisation comes to the fore after the result of the violation of the prohibition of discrimination. With the prohibition of victimisation, it is ensured that the victims of discrimination due to the application made regarding the violation of the prohibition of discrimination, and the third parties who support the victims of discrimination by giving testimony or providing evidence to prove the practice causing discrimination, will not face negative behavior or consequences.⁷ In this respect, not only the person who has been discriminated against, but also those who provide evidence or testify about the complaint process initiated by the discriminated person should be protected from victimisation.⁸

As well as situations such as dismissal of an employee who complains about a treatment that violates the prohibition of discrimination, not increasing her/his wage or aggravating working conditions can be described as victimisation. In a lawsuit filed on the grounds that a person is exposed to mobbing due to his/her marital status in the workplace, after a colleague's testimony is applied against the employer, the employer's exposure to negative treatment due to his/her testimony can also be considered within the scope of victimisation.

A regulation that can be considered⁹ to be related to the prohibition of victimisation is also included in the Labor Law No. 4857. Pursuant to subparagraph c of the second paragraph of Article 18 of the Law No. 4857, titled **Justification of termination with a valid reason**: “In particular, the following matters do not constitute a valid cause for termination: (...) c) To apply to administrative or judicial authorities against the employer in order to follow up their rights or fulfill their obligations arising from the legislation or contract, or to participate in the process initiated in this regard. (...)” In the light of this regulation, if the employee complains to the Ministry of Labor or testifies against the employer, the employee's employment contract cannot be terminated for valid cause, and it will be possible to prevent the employee from being victimized as a result of exercising his rights.¹⁰ It should be noted that the scope of application of the aforementioned regulation in the Law No. 4857 is limited to workers who have been working for more than six months with an indefinite term employment contract in a workplace employing 30 or more people.¹¹

7 Mürvet Ece Büyükkçalık, *Dolaylı Ayrımcılık Yasağı, On İki Levha Yayıncılık, 2021, s.378.*

8 İdil Işıl Gül ve Ulaş Karan, *Ayrımcılık Yasağı Eğitim Rehberi, İstanbul Bilgi Üniversitesi Yayınları, 2011, s.14.*

9 Büyükkçalık, s.378.

10 Eda Manav, “2000/43, 2000/78, 2006/54 Sayılı Ab Direktifleri Çerçevesinde İş Hukukunda Ayrımcılıkla Mücadele ve Türkiye’deki Uygulamalar”, *Dokuz Eylül Üniversitesi Hukuk Fakültesi Dergisi, Cilt: 15, Özel Sayı, 2013, s.771.*

11 Karan, s.318. ; Büyükkçalık, s.378.

In the case-law of the Court of Cassation, it has been ruled that the termination of the employee's employment contract is invalid in accordance with the normative regulation, upon the use of the constitutional complaint right to the relevant institution for certain legal regulations that are within the scope of the employee's legal rights and that the employer must implement.¹²

Human Right and Equality Institution of Türkiye (HREIT) is in charge and authorized to inquiring into, examining, taking a final decision on and monitoring the violations of non-discrimination principle – ex officio or upon an application Anyone who claims to have suffered from victimisation, which is accepted as a type of discrimination within the scope of Law No. 6701, has the right to apply to the Institution.

Within the scope of Law No. 6701; in case it is determined that a person has been victimized, taking into account the severity of the effects and consequences of this violation, the economic status of the perpetrator and the aggravating effect of multiple discrimination, administrative fines are imposed on public institutions and organizations, public professional organisations real persons and private law legal entities that are responsible for the violation.

In an application made to our Institution within the scope of victimisation, the applicant claimed that: While s/he was being held in the penitentiary institution, the directors of the institution put pressure on the prisoners from K...District, including the applicant, because of the problems they had with a prisoner from K...District before. They subjected the prisoners in question to arbitrary disciplinary penalties by slandering them. They changed the applicant's ward, imposed arbitrary deprivations on their basic needs. They sent all prisoners from K...District to closed penitentiary institution and prisoners from K...District were not employed in work dormitories. This situation constituted discriminatory treatment against prisoners from K...District on the basis of race. S/he was subjected to disciplinary punishment after her/his application to our Institution.

HREIT Board, in its decision numbered 2019/54 and dated 10.09.2019 decided that the disciplinary investigation initiated against the applicant only on the grounds of his application to our Institution and the punishment imposed as a result of this investigation resulted from an administrative process initiated by the applicant in order to comply with the principle of equal treatment or prevent discrimination, **and constitute the basis for victimisation, thus violating the prohibition of discrimination.**

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