



# AYRIMCILIĞA KARŞI

## APPLICATION MECHANISMS FOR ANTI-DISCRIMINATION CASES



**TOHAV**  
Toplum ve Hukuk Araştırmaları Vakfı  
Foundation for Society and Legal Studies



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## **OUR RIGHTS AND DISCRIMINATION**

We, as human beings, are entitled to human rights including, inter alia, the right to live, to express one's opinions and to get a quality education, the right to a liveable house, the right not to be tortured, to have a job, to worship according to one's faith, to speak and write in one's mother tongue, and the right to a fair trial.

Human rights are universal and inherent to all born as a human being, i.e. everyone. No one, whatever their positions may be, has the right to deny or violate these rights. Every state has the primary duty to recognize these rights, to never violate them under any condition as well as to ensure that everyone enjoys these rights and freedoms.

There are human rights conventions proclaimed by international organizations, namely the United Nations (UN) and the Council of Europe. States have the obligation both to guarantee these rights in their constitutions and laws and to establish necessary institutions to protect human rights. Besides, several bodies are in place at the international level to protect human rights.

Discrimination is a total denial of a human right or an impediment to equal enjoyment of a right on the grounds of a personal trait such as sex, language or religion.

Human rights conventions state that in cases where equal conditions are not ensured for every person, those whose conditions are worse should particularly be supported and this duty falls on states. Conventions prohibit all forms of discrimination on the grounds of race, colour, religion, language, sex and gender identity, age, disability, political opinion, national or ethnical origin, property etc.

## What are the Conventions that protect us against discrimination?

Universal Declaration of Human Rights proclaimed in 1948 states in its Article 2 that everyone is entitled to all the rights set forth in the Declaration and prohibits discrimination. Discrimination is prohibited in all human rights convention. Furthermore, special conventions such as the Convention on the Elimination of All Forms of Discrimination against Women were prepared to protect specific groups that systematically face discrimination. Turkey is party to these conventions and the state is obligated to take all measures to ensure that everyone living in Turkey equally exercises human rights. Below is a list of some conventions that prohibit discrimination:

- Europe Convention on Human Rights
- International Convention on the Elimination of All Forms of Racial Discrimination
- International Covenant on Civil and Political Rights
- International Covenant on Economic, Social and Cultural Rights
- Convention on the Elimination of All Forms of Discrimination against Women
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
- Convention on the Rights of the Child
- International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families
- Convention on the Rights of Persons with Disabilities

### Universal Declaration of Human Rights

"Article 2 – 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. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty."

## How does Turkish Law Protect Us from Discrimination?

Turkish domestic law, primarily the Constitution, states that everyone has equal rights and provides protection for everyone against discrimination on any ground.

- Constitution (Article 10)
- Turkish Penal Code (Article 122)
- Labour Law (Article 5)
- Law on People with Disabilities (Article 4/A)
- Law on the Human Rights and Equality Institution of Turkey
- National Education Basic Law (Article 4 and 8)
- Civil Servants Law (Article 7)

In addition to these laws, domestic law includes several by-laws with provisions on non-discrimination.

### Did you know?

States have the obligation to fulfill and respect the rights of everyone without any distinction based on race, color, sex, language, religion, national or social origin, property, birth, political or other opinion and status.

## Types of Discrimination

International human rights instruments and domestic law define types of discrimination as follows:

### ➤ **Direct Discrimination**

For instance, if you are not allowed to rent a house on the grounds of your sex or race.

### ➤ **Indirect Discrimination**

For instance, if you stand trial for refusing to perform compulsory military service on account of your religion.

### ➤ **Associative Discrimination**

For instance, if you are discriminated against on the ground of the ethnical origin and faith of your spouse or when your bank account is blocked because your child faces trial.

### ➤ **Multiple Discrimination**

For instance, if you do not get a promotion at work on the ground that you have a disability and that you are a woman.

### ➤ **Harassment**

For instance, if your house or workplace is marked on the ground of your religion.

### ➤ **Victimisation**

For instance, if you are subjected to disciplinary action when you notify the school management that you have been discriminated against by a teacher.

## What to Do When you Are Discriminated Against?

If you think that you are impeded in the exercise of your rights or not treated equally and discriminated against on the grounds of sex, race, colour, language, religion, faith, sect, philosophical and political opinion, ethnical origin, wealth, birth, marital status, health, disability, age or any other status, take the following action:

- Note down the venue, date of the incident and details on the public or private institution involved.
- Note down the titles and if possible, the full names of person/persons who have discriminated against you.
- Keep, if any, relevant written documents (official correspondence, medical reports etc.).
- Get the full names and contact information of witnesses, if any, of the incident.
- Ask witnesses, if any, to testify.
- Keep any photographs, videos etc. of the incident.

Remember that there are national and international mechanisms in place where you can file a discrimination complaint to demand your rights and that you can contact us for legal support.

### Contact us

[www.ayrimcilgakarsi.org](http://www.ayrimcilgakarsi.org)  
[info@ayrimcilgakarsi.org](mailto:info@ayrimcilgakarsi.org)  
+90 (533) 658 76 14

Do not give up on your rights, if you face discrimination and apply to anti-discrimination mechanisms, this will also help prevent others from facing the same discrimination.

## Mechanisms to Apply to at the National Level

### ► You Can Apply to the Human Rights and Equality Institution of Turkey (HREI).

- You can submit a complaint/application on discrimination online, by hand-delivery or by post. If you submit an online application, you should also send it by mail to the Institution within 15 days.
- You can ask to be kept anonymous in your application.
- Your lawyer or legal representative may lodge an application on your behalf.
- You do not need to be a Turkish national to apply.
- You can lodge an application in a non-Turkish language however the Institution would only accept the application after determining that the facts of the case are rightful and reasonable.
- You do not need to pay a fee for applying.
- You can file an application from prisons or removal centres.
- You can apply to HREI through the offices of the governor or district governor.

### Contact Information for HREI

<b>Website</b>	: <a href="http://tihek.gov.tr">http://tihek.gov.tr</a>
<b>E-mail</b>	: <a href="mailto:baskanlik@tihek.gov.tr">baskanlik@tihek.gov.tr</a>
<b>Information on Applications</b>	: <a href="mailto:esitlik@tihek.gov.tr">esitlik@tihek.gov.tr</a>
<b>Address</b>	: Yüksel Cad. No: 23 06650, Kızılay-ANKARA

### ► You Can Apply to the Ombudsman Institution

- You can send your application by post or submit an online discrimination claim via e-application, e-state or by e-mail. If you submit an online application, you should also send it by post to the Institution within 15 days.
- You can ask to be kept anonymous in your application.
- Your lawyer or legal representative may lodge an application on your behalf.
- You do not need to be a Turkish national to apply.
- You do not need to pay a fee for applying.
- You can apply through the offices of the governor or district governor.
- If you indicate that you have a specific disability, the Institution is obligated to adopt all necessary measures.
- You can lodge an application on the violation of the rights of a child; a "violation of interests" is not a necessary condition for such applications.
- If you are a minor (younger than 18), you can send your application through the webpage [www.kdkcocuk.gov.tr](http://www.kdkcocuk.gov.tr)

### Contact Information for the Ombudsman Institution

<b>Phone</b>	: +90 312 465 22 00
<b>Fax</b>	: +90 312 465 22 65
<b>Website</b>	: <a href="https://www.ombudsman.gov.tr">https://www.ombudsman.gov.tr</a>
<b>E-mail</b>	: <a href="mailto:iletisim@ombudsman.gov.tr">iletisim@ombudsman.gov.tr</a>
<b>Address</b>	: Kavaklıdere Mah. Nevzat Tandoğan Cad. No.4 Çankaya/ANKARA

## Istanbul Office

**Phone** : +90 212 346 33 84-85  
**Fax** : +90 212 346 33 86  
**Address** : Halaskargazi Mahallesi Matbacı Osmanbey Sokak No: 46/B Şişli/İSTANBUL

### ► You Can File a Criminal Charge at Public Prosecutor's Offices and Bring a Lawsuit in Court.

- You can file a criminal charge for discrimination at a public prosecutor's office close to you.
- We recommend that you get legal assistance from an attorney for application processes and procedures at prosecutor's offices and courts.
- If you cannot afford to hire a lawyer, you can ask the bar association in your province for Legal Aid.

### ► You Can Lodge an Individual Application to the Constitutional Court

- All other higher judicial remedies must have been exhausted before you can apply to the Constitution Court with a discrimination claim.
- You can lodge an individual application within 30 days following a decision by the recent domestic authority to which you have already applied.
- You can send the individual application form and its attachments either directly by hand delivery or through the courts on duty or representation offices abroad.
- You can ask to be kept anonymous in your application.
- You can lodge an application from prison through the prison administration.
- You can lodge an individual application without an attorney.
- There is an application fee and you have to attach a proof of payment to your application. However, you can claim for legal aid and request to apply without any fee.

## Contact information for the Constitutional Court

**Website** : <http://www.anayasa.gov.tr>  
**Phone** : +90 312 463 73 00,  
**E-mail** : [bilgi@anayasa.gov.tr](mailto:bilgi@anayasa.gov.tr)  
**Address** : Ahlatlıbel Mahallesi İncek Şehit Savcı Mehmet Selim Kiraz Bulvarı No: 4 PK: 06805  
Çankaya / ANKARA

## How Can I Ask for Legal Aid?

If you cannot afford a lawyer and cannot ask for legal aid, you can contact us.

### Contact us

www.ayrimciligakarsi.org  
info@ayrimciligakarsi.org  
+90 (533) 658 76 14

The legislation, with an aim to strengthen access to freedom to demand one's rights, provides for two ways of getting legal aid.

### ➤ Legal Aid Requests made to Bar Associations

If you cannot financially afford an attorney, you can apply to the bar association in your province for legal aid. Legal aid provided by bar associations is limited to services by an attorney. It does not include trial expenses (court fees, expert fees etc.).

#### **What Documents Are Required to Apply to Bar Associations for Legal Aid?**

- Certificates of income and of residence issued by Muhtar (elected village/quarter head)
- A copy of identity card
- Copies of documents related to the case

### ➤ Legal Aid by Court Decision

Legal aid provided by a court decision is different from the legal aid provided by bar associations and is based on the Code of Civil Procedure. Articles 334 to 340 of the Law regulate the details of legal aid.

## **Legal Support available according to the Code of Criminal Procedure**

- If you declare that you are unable to afford a defence counsel (attorney), an attorney will be appointed for you upon your request.
- If you are a minor or deaf or mute or have a disability that impedes you from defending yourself, an attorney will be appointed for you without the requirement of a request.
- If you are under investigation and prosecution for charges punishable by imprisonment at the lower level of more than five years, an attorney will be appointed for you without the requirement of a request.

## **Cases where an interpreter is required**

- If you do not speak enough Turkish to express yourself or if you have a hearing impairment, your statement will be interpreted by an interpreter appointed by the prosecutor or court.
- If you have a disability, the essential points of the accusation and the defence will be interpreted to you during the trial.

## International Mechanisms You Can Apply to

If you would like to bring your claim of discrimination to international mechanisms, you can contact us.

### Contact us

www.ayrimciligakarsi.org  
info@ayrimciligakarsi.org  
+90 [533] 658 76 14

All domestic remedies must have been exhausted before you can apply to international mechanisms for a discrimination claim. Exhaustion of domestic remedies mean that there are not any more judicial mechanisms available for application under Turkish laws. Domestic remedies can be exhausted when:

- a verdict of non -prosecution is given regarding your case
- your applications are rejected (by a higher court)
- the evidence is not added to the casefile
- your objections are overruled (by a higher court)
- your objection to pre-trial detention is overruled.

- Individual Complaints to UN Human Rights Committee
- Complaints to UN Human Rights Council
- Individual Complaint to UN Committee on the Rights of Persons with Disabilities
- Individual Communication to UN Committee on the Elimination of Discrimination against Women
- Individual Communication to UN Committee Against Torture

## Individual application to the European Court of Human Rights

- Applications to the European Court of Human Rights must be lodged within 6 months after the final domestic decision. Applications lodged more than 6 months after the final domestic decision could be declared admissible by the Court.
- If the domestic law does not provide for a domestic remedy for the violation of your right, the 6-month deadline is not required.
- You do not have to pay a fee for applying.
- You should meticulously and completely fill every part of the application form available at ECHR webpage "<https://www.echr.coe.int/Pages/home.aspx?p=applicants/tur&c=>". You should attach a copy of any supporting document to the application form.
- The form should be printed and posted to the below address:

**Address:** The Registrar European Court of Human Rights Council of Europe F-67075  
Strasbourg cedex France

- You may fill in the application form in Turkish. However, if you fill it in in English or French, the official ECHR languages, it will reduce the time of application process.
- It is not compulsory to have an attorney represent you to lodge an individual application. However, the process would proceed more effectively if you had professional legal support for lodging an application.

**If you have a discrimination claim and would like to apply to the Europe Court of Human Rights, you can contact us via below websites and get professional legal support.**

www.ayrimciligakarsi.org  
info@ayrimciligakarsi.org  
+90 [533] 658 76 14



## ABOUT THE PROJECT

The Project titled "Supporting the Use of Grievance Mechanisms to Prevent Discrimination", supported by Hrant Dink Foundation Empowering CSOs Grant Program, is carried out by TOHAV Society and Legal Research Foundation and Association of Monitoring Equal Rights (AMER/ESHİD).

Although non-discrimination is provided for and protected in Turkish law, legal mechanisms, including national and international mechanisms, fail to sufficiently combat discrimination and implement non-discrimination law. In this regard, co-applicant institutions work together with civil society organizations, offer legal literacy trainings and accept individual applications to support anti-discrimination efforts and to ensure that anti-discrimination application mechanisms are efficiently used.

### **You Can Apply to TOHAV and AMER**

You can contact us by e-mail, phone or by post if your rights have been violated or if you have experienced discrimination. In addition to the basic legal support, we can support you in lodging an application to the Ombudsman Institution, HREI, Prosecutor's Offices, Courts and UN Committees and we can also apply to these mechanisms on your behalf if you give us authorization.

**Website** : [www.ayrimciligakarsi.org](http://www.ayrimciligakarsi.org)  
**E-mail** : [info@ayrimciligakarsi.org](mailto:info@ayrimciligakarsi.org)  
**Phone** : +90 (533) 658 76 14

#### **TOHAV**

**Phone** : 0 (212) 293 47 70-71  
**Fax** : 0 (212) 293 47 72  
**Website**: [www.tohav.org](http://www.tohav.org)  
**E-mail** : [tohavbilgi@gmail.com](mailto:tohavbilgi@gmail.com)  
**Address**: Kulođlu Mah. Turnacıbaşı Sk.  
No: 55/57 Kat: 3-4-5 Beyođlu/İSTANBUL

#### **ESHİD**

**Phone** : +90 212 293 63 77  
**Website** : [www.esithaklar.org](http://www.esithaklar.org)  
**E-mail** : [info@esithaklar.org](mailto:info@esithaklar.org)  
**Address** : Gümüşsuyu Mah. Ağçırağı Sk.  
Pamir Apt. No:7/1Beyođlu /İSTANBUL



Website: [www.ayrimciligakarsi.org](http://www.ayrimciligakarsi.org)

E-mail: [info@ayrimciligakarsi.org](mailto:info@ayrimciligakarsi.org)

Phone: +90 (533) 658 76 14



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