**INFORMATION NOTE**

**General Comment**

**no.6**

**on the rights of persons with disabilities to equality and non-discrimination**

As it is widely known, persons with disabilities are relatively more disadvantaged in terms of accessing and utilizing rights compared to the people without disabilities all around the world. The biases that still exist at societal level and discriminative attitudes mostly hinder persons with disabilities to exercise even their fundamental human rights on an equal basis with others. Thus rights based approach has gained a critical importance regarding persons with disabilities.

The measures for promoting and ensuring full and equal enjoyment of all human rights and fundamental freedoms by PwDs in Turkey have been set at the level of national policy. Pursuance of the issue of disability in all fields of policy under a rights based approach and ensuring participation of PwDs to decision making processes constitute the basis of disability policy in Turkey. Especially since the second half of 1990s, many significant institutional or legal arrangements have been actualized to promote the realization of human rights of PwDs.

Understanding of disability policy in Turkey was shaped by Turkish Disability Act No. 5378 of 2005 that can be defined as a framework law on disability. The aim of the Act is to take necessary measures to provide equal opportunity as other individuals for full and effective participation of PwDs into the society through promoting, protecting and ensuring the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and by strengthening respect for their inherent dignity.

Turkish Disability Act, in which the fundamental perspective concerning persons with disabilities is laid down, was amended on 06 February 2014. By these amendments the Act has been re-shaped according to the liabilities and perspective, provided by the Convention on the Rights of Persons with Disabilities (CRPD) and the principles of the CRPD have been more clearly emphasized. In this respect, by this amendment of the purpose of the Act the rights-based approach to disability was reinforced.

By these amendments, the principles of application of this Act have been set out to be as follows: respect for personal autonomy (privacy), including the liberty and independence of making one's own choices, which is the foundation of human dignity and independence, no disability-based discrimination, participation of PwDs in decision making and service providing processes, equality of opportunity, accessibility, prevention of abuse and exploitation, protection of family union, prevention of multi-directional discrimination to which girls and women with disabilities may be exposed, observing the superior benefit of children with disabilities, and taking the view of the Ministry of Family and Social Policies (ASPB) in drafting legislation on PwDs.

Definition of person with disability in the said Act has been amended to read “A person who has a physical, mental, intellectual or sensory impairments, at various levels, which in interaction with various barriers may hinder his full and effective participation in society on an equal basis with others.” In this way, instead of a medical perspective emphasizing the deficiencies and incapacities of the person with disability, a new approach has been reflected to this Act, which defines disability in conjunction with the social environment of the individual.

Apart from that, in view of protecting and improving the rights of persons with disabilities, definitions of some basic concepts, such as disability based discrimination, accessibility, reasonable accommodation have been included in the Act and thus for the first time took place in the statute.

Within the scope of the amendments made in 2014, in the Turkish Disability Act, a separate anti-discrimination article was introduced, prohibition of discrimination was emphasized, and with the purpose of securing equality, it was stipulated that the necessary measures are taken to ensure reasonable accommodation for PwDs.

Article 10 of the Constitution provides that 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. With an amendment made in this article in 2004, it was provided that men and women have equal rights and state is responsible for ensuring this equality. As per an amendment made in the Constitution in 2010, the measures to be taken to ensure this equality exist in practice shall not be considered as violation of the principle of equality. Besides, the amendment of 2010 also guaranteed that measures to be taken for children, the elderly, disabled people, widows and orphans of martyrs as well as for the invalid and veterans shall not be considered as violation of the principle of equality.

In addition, Article 122 of the Turkish Criminal Code states that " Any person who makes discrimination between individuals because of their racial, lingual, national, colour, disability, religious, sexual, political, philosophical belief or opinion, or for being supporters of different sects and therefore a) Prevents sale, transfer of movable or immovable property, or performance of a service, b) Prevents from benefiting from a public service, c) bounds employment or unemployment of a person to above listed reasons, d) Prevents a person to perform an ordinary economic activity, is prosecuted for hate crime from one year to three years."

Convention on the Rights of Persons with Disabilities that promotes full and equal enjoyment of all human rights and fundamental freedoms by all PwDs was signed by Turkey in 2007 on the same date opened for signature by UN and ratified in 2009. Being an international agreement duly put into effect as per Article 90 of the Turkish Constitution, the CRPD - like all other conventions on human rights - has the same force with the Constitution in the hierarchy of norms. Within this scope, the CRPD not only forms a basis for all legal and administrative arrangements, but also constitutes a principle of law to which independent Turkish courts can directly refer. A second instrument – the Optional Protocol, which takes place in the annex of the Convention and which is subject to a separate signature and adoption process was signed in 2009 and ratified in 2015.

CRPD is the main reference for all activities of the General Directorate of Persons with Disabilities and the Elderly (EYHGM) affiliated with the ASPB that has been the focal point of the Republic of Turkey on disability issues since 2011 provided by Article 33 of the CRPD. As the focal point it carries out various activities in order to promote and ensure implementation of the CRPD in cooperation with relevant ministries, public institutions, civil society organizations (CSOs) - particularly the ones representing persons with disabilities and academies. Within this context, it tries to mainstream disability into all policy areas and practices in parallel with various awareness raising activities aimed at different target groups.

Moreover, to promote the implementation and monitoring of the CRPD, Monitoring and Evaluation Board on the Rights of PwDs was established in line with Prime Ministry Circular No. 2013/8. As civil society has an important role to play in the policy making process, it was envisaged that the board would be consisted of high level representatives of the related and responsible public institutions and representatives of disability CSOs and human rights institutions. The board has the tasks of carrying out administrative and legal work regarding protection, enhancement and usage of the rights of PwD, making recommendations on the possible measures to be taken, drafting and approving strategies and plans of action and ensuring cooperation and coordination among institutions. Through this Board PwDs can directly involve in decision-making processes that directly concern them.

Established in Turkey in 2012, the Human Rights Institution and The Ombudsman Institution of Turkey are deemed as important steps in fighting against discrimination. The fundamental duties of these structures established for independent monitoring include "disability rights". National Human Rights and Equality Institution was restructured and strengthened by Law No 6701 of 6/4/2016 with the purposes of ensuring protection and development of human rights on the basis of human dignity including the rights of persons with disabilities, securing the right of equal treatment of persons, preventing discrimination against all persons in benefiting from legally recognized rights and freedoms, carrying out relevant activities in accordance with these principles, effectively combating torture and ill-treatment and fulfilling the mandate as the national preventive mechanism.

Under Project on “Fighting Discrimination against Persons with Disabilities in Turkey” a survey was conducted to measure disability discrimination across Turkey by the Administration for Disabled People (de funct) with the partnership of Prime Ministry Human Rights Presidency under EU PROGRESS program in 2010. The target population of the survey was members of civil society organizations of /for persons with disabilities in Turkey. Data were gathered on the perceptions of the PwDs regarding discrimination and the fields of discrimination including access to justice (employment and working life, healthcare, education, political participation, access to justice, participation in leisure activities, integration into the society, access to information), their levels of knowledge regarding legislation, application and support mechanisms, and the methods they use to cope with discrimination they experience on an individual basis. The results of the survey were disseminated with a symposium on disability discrimination with the participation of all the concerned public institutions including representative of justice authorities and civil society organizations including the ones of/for PwDs. The results of the survey have shown that legal arrangements are not alone sufficient for fighting against discrimination. It also requires raising awareness and improving knowledge in human rights and disability issues among all parts of the society.

In this framework, EYHGM of ASPB conducted a project titled "Awareness Raising Seminars on Human Rights and Disability" in 2012. The aim of the project was to hold awareness and knowledge raising seminars on human rights and disability to promote the realization and the protection of human rights of persons with disabilities in Turkey targeted to four major target groups, which are namely representatives of [public authorit](https://eposta.aile.gov.tr/owa/redir.aspx?C=55011a0a10544f9d8da0eaf05aa89896&URL=http%3a%2f%2ftureng.com%2fsearch%2fpublic%2520authority)ies, civil society organizations, members of judiciary and [legislative bod](https://eposta.aile.gov.tr/owa/redir.aspx?C=55011a0a10544f9d8da0eaf05aa89896&URL=http%3a%2f%2ftureng.com%2fsearch%2flegislative%2520bodies)y experts. In this regard four seminars that are lasted two days were realized to raise awareness on human rights and disability issues of four target groups in different provinces of Turkey. The seminars had been designed by taking into consideration the needs of each target group. Particularly the Judiciary Seminar, held in Mardin within the scope of this project, was attended by approximately 100 people, consisting of judges and prosecutors from the Supreme Court of Appeals, the Council of State, and the District Administrative Courts. The other purposes of the seminar were raising awareness about the Convention, promoting reflection of the convention’s provisions on court decisions. Besides presentations by academics and NGO representatives, a representative of the Council of Europe Commissioner for Human Rights gave a presentation on the subject at the seminar. Additionally, with the aim of promoting the application of the Convention in Turkey, implementation manuals for these target groups and various publications have been introduced also in accessible formats for people with disabilities. After this Project, these types of awareness rising seminars has been continued for all stakeholders including persons with disabilities themselves.

To increase the institutional capacity of disability CSOs; supporting good practices and strengthening their relations with all public institutions – notably EYHGM, the Project “Improved Integration of Disabled Persons into Society”, funded under EU – IPA, was initiated in 2009. The project which was actively started in 2011 and completed in June 2015 has contributed to the equal and effective enjoyment of human rights of persons with disabilities by strengthening the capacity of CSOs and improving administrative capacity of the EYHGM. The capacity of CSOs was increased through organising 16 regional training programs for the CSOs around the country) and awarding grants for their projects regarded as best practices. In this respect 23 projects of CSOs have granted. Those activities have improved the collaboration between EYHGM and CSOs and thereby resulted in a professional working relationship. Moreover, these activities have strengthened lobbying and advocacy activities of disability CSOs.

In 2015 and 2016, CSO Capacity Building Seminars have been continued at regional level with the purposes of enhancing public sector and civil society dialogue and improving the capacities of civil society organizations, particularly the ones advocating disability rights. 8 seminars at regional level have been organized within this period. The seminars aim to encourage civil society organizations to carry out rights based disability advocacy and to put forward rights based solutions to the problems in this field.

Inclusion of concrete examples and the types of reasonable accommodation and disability based discrimination in the general comment on discrimination would strengthen the national efforts on fighting against discrimination through guiding legislation, implementation and judicial processes.