



Gender Law Studies Association

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Adana Bar Association
Association for Monitoring Equal Rights

Non-discrimination - Articles 2, 3, 6, 25 and 26

1. Although the National Action Plan on the Rights of Persons with Disabilities (2023-2025) announced by the State Party mentions efforts to support the independent living of persons with disabilities, no concrete planning has been undertaken to encourage the design, implementation and provision of accessible buildings, open spaces and public services, including housing, information communication technologies and services.
2. In the provisional Article 3 of the Law No. 5378 on the Disabled, which entered into force after being published in the Official Gazette dated 07.07.2005 and numbered 25868, the implementation of the regulations on accessibility standards has been made impossible with the legislative amendments made by the legislator almost every year. In the aforementioned legal provision, firstly, with the amendment made by Law No. 7333 in 2021, the legislator extended the 3-year period for accessibility standards in public transport vehicles by 1 year, and the specified period expired in July 2022.
3. This time, with Article 47 of the Law No. 7417, which entered into force after being published in the Official Gazette dated 05.07.2022 and numbered 31887, the accessibility inspection standards were reorganised and amended.
4. Article 47 of Law No. 7417, paragraph 6 of the provisional Article 3 quoted above
In the 3rd sentence, the time period for monitoring and supervision units to give a deadline of 4 years has been rearranged as 8 years. In this way, the Constitutional Court cancelled the relevant legal provision with its decision dated 22.06.2023 and numbered 2022/10 E, despite the fact that a contradictory regulation was made with the UN ECHR, the Committee's General Comment No. 2 and the Committee's recommendations for Turkey. Despite this, the State Party has not made any effective fulfilment action that would lead to any change in its practices in favour of persons with disabilities.
5. Existing legislation has not been reviewed in terms of other obligations arising from the Convention, in particular the prohibition of discrimination. The Law on Persons with Disabilities defines and prohibits forms of discrimination. However, this Law does not include any criminal sanctions for prohibited discrimination. Article 122 of the Turkish Penal Code No. 5237 imposes a penalty for discrimination, but this provision can be applied if the discrimination is motivated by "hate".
6. Discriminatory provisions in some laws are still in force. For example, Article 74(e) of the Law No. 5174 on the Union of Chambers and Commodity Exchanges of Turkey and Chambers and Commodity Exchanges contains discriminatory provisions.
7. Lack of legal information and counselling mechanisms in accessible formats hinders access to justice. There is no legal provision stipulating legal counselling services for persons with disabilities.
8. When the legal aid practice is analysed in terms of persons with disabilities, it is seen that legal aid offices have accessibility problems, online application is not possible in many bar associations, there is no established practice on where and how to obtain interpretation services for the hearing impaired, and statistics of persons with disabilities benefiting from legal aid are not kept.
9. There are no alternative conditions for disadvantaged groups in the legal aid system. It is also observed that the criteria for the certification of economic disadvantage are insensitive to the realities of disadvantaged individuals.

10. There are also some problems related to lawyers in the provision of legal aid services to persons with disabilities. In particular, the lack of communication between the hearing impaired and lawyers during the litigation process causes lawyers to refrain from acting as the attorney of deaf and dumb persons. In addition, when the trainings given to the lawyers on the legal aid list of the bar associations are analysed, the trainings on the rights of persons with disabilities are insufficient.
11. The government does not allocate sufficient budget for legal aid services. In most cases, in the second half of the year, the legal aid services of the bar associations become unavailable due to budgetary constraints. It is not realistic for the state to plan legal aid services for the effective exercise of the right to access to justice by disadvantaged groups.
12. In criminal proceedings, Article 202/2 of the Code of Criminal Procedure titled "Situations where an interpreter shall be present" states that "The defendant or victim with a disability shall be told the essential points of the claim and defence in the hearing in a manner they can understand.". However, this provision is general and insufficient. There is no explicit provision in the legislation on the appointment of a "sign language interpreter" to enable hearing impaired persons to communicate with their mandatory defence counsel and the lawyer appointed through the legal aid system. Furthermore, the Regulation on the Procedures and Principles for Improving Access to Broadcasting Services for the Deaf, Hearing and Visually Impaired does not contain any provisions for the judicial sphere.
13. The law on mediation and conciliation, which is a new and alternative dispute resolution mechanism in Turkey's domestic legal system and a compulsory recourse in labour disputes, does not include differentiated methods and personalised support arrangements for persons with disabilities.
14. In Turkey, the Turkish Statistical Institute (TurkStat) is responsible for preparing the official statistical programme and compiling, evaluating and publishing statistics in the fields of economy, social, demography, culture, environment, science, etc. Ministries may also collect data on their own areas of responsibility. In addition to TurkStat, DG EYHGM collects statistical data on persons with disabilities.
15. TurkStat systematically publishes statistics in certain fields. These statistics on education, health, labour life etc. do not include data on persons with disabilities. For example, there is no data on how many disabled children are married off in the statistics on child marriages, which cause serious debates in Turkey. Similarly, statistics on suicides or divorces do not include disaggregated data on persons with disabilities. .
16. The data announced by DG EYHGM is prepared on the basis of disabled people who have received a 40% health report and registered in the ministry database and is related to social assistance.
17. The relevant public institution, DG EYHGM, does not monitor and record a small number of lawsuits filed by persons with disabilities alleging discrimination.
18. There are five main problems with the statistics on persons with disabilities in Turkey. Firstly, the data collection policy and system is not in line with a human rights approach. Only the numerical data of those who can access certain rights or benefit from a social aid are collected, which is not intended to reveal the access of different groups to human rights. No data are collected and analyses are not conducted on the reasons for the exclusion of those who cannot access rights.
19. The second problem is that the data is not disaggregated. The published data is most detailed on gender and types of disability. Data on persons with disabilities at risk of multiple discrimination are not collected or disclosed.

20. As the third problem area, the data are not comparable. TurkStat uses the general sample group, while DG EYGM uses the data of only 40 per cent of the reported persons.
21. Fourth, data are not systematically collected at regular intervals. This makes it impossible to measure changes in the lives of people with disabilities and to recognise areas of gaps.
22. Finally, disabled people and CSOs cannot participate in the process of determining the data collection policy.
23. Currently, no public institution, including the focal institution DG EYHGM, knows the number of persons with disabilities, their gender and age distribution, their education and employment status, which disabilities they have, and the provinces or districts where they live. Especially the lack of data on disabled people living in rural areas creates problems in identifying and meeting the needs of disabled people living in these areas.
24. The fact that data is not collected and the collected data is not publicly available makes it impossible for CSOs to carry out monitoring.
25. In the National Action Plan on the Rights of Persons with Disabilities 2023-2025, the State Party states; "Today, ensuring protection and safety in disasters and humanitarian emergencies is recognised as one of the priority measures for persons with disabilities as well as for everyone. In this context, it is of vital importance to ensure equality of opportunity for persons with disabilities in accessing preparatory and protective services against the risks posed by disasters and humanitarian emergencies. Persons with disabilities generally experience more severe losses due to the physical, environmental and social barriers they face before, during and after disasters." and the importance of policies and planning inclusive of persons with disabilities in disasters and humanitarian emergencies is emphasised.
26. The experience during the earthquake disaster in Turkey on 06.02.2023, which was centred in Pazarcık and Elbistan in Kahramanmaraş province and affected 11 cities, causing thousands of casualties, injuries and destruction, has shown that there is no planning and programme inclusive of disabled people before, during and after disasters.
27. Moreover, although 1.5 years have passed after the disaster, thousands of disabled people still continue to live in accommodation areas that are not suitable for their disabilities.
28. At the same time, many persons with disabilities exposed to disasters have their privacy violated during their support and care in these accommodation areas that are not suitable for their disabilities. The national Action Plan on the Rights of Persons with Disabilities announced by the State Party does not include a financial plan to meet the needs that require financial resources such as accommodation, care support and rehabilitation, which cover the diversity of the needs of persons with disabilities, especially in the aftermath of disasters and humanitarian emergencies.
29. "28. The Committee recommends that the State party (a) Take the necessary steps to ensure and facilitate access to the justice system for persons with disabilities without discrimination, including by making procedural and age-appropriate adjustments and implementing clear administrative procedures based on the law; (b) Ensure human and financial resources to provide accessible and affordable legal aid to persons with disabilities, including through services such as contact facilities with lawyers and information resources; (c) Develop a plan with timelines and benchmarks within the judicial system to ensure access to police stations, courts and prosecutor's offices for persons with disabilities, including accessible transport, and allocate the necessary resources

(d) Taking legal measures that enable and facilitate the effective participation of all persons with disabilities in the justice system, as judges, witnesses, complainants or defendants, and amending the Law No. 2802 on Judges and Prosecutors."

30. While it is encouraging that the Law on Judges and Prosecutors has been amended and that Sabit Kılıç, who is visually impaired, has been appointed as a deputy judge, the State party has not taken reasonable harmonisation actions to ensure that candidates for judge-prosecutor with disabilities can take the examination and practice their profession on an equal footing with others in the same situation.
31. It is a legal obligation that all courthouses, police stations, prosecution units and prisons providing services within the justice system are physically accessible. However, very few courthouses, police stations, prosecution units and prisons are accessible for persons with disabilities. On the other hand, there is no record in the Public Procurement Law and the Public Building Standards Guide regarding the inspection of these places. Therefore, existing police stations and courthouses are not properly inspected for accessibility for persons with disabilities, and new constructions are not sufficiently careful about the implementation of these standards.
32. There is no regulation that includes measures to be taken for the disabled to follow their cases effectively. For example, there is no induction loop system for hearing aid users in courthouses, and there is no technological infrastructure necessary for the visually impaired to follow the hearing minutes. There is no court officer who can provide descriptions to the visually impaired when necessary (especially during crime scene investigation), no personnel who know sign language are employed within the prosecutor's offices and no shuttle services are provided to facilitate the participation of the disabled in the hearings.
33. In recent years, instead of small courthouses, large courthouses have been built in areas far from the city centre. This practice has made access to courthouses, prosecutor's offices and courts more difficult as the majority of public transport vehicles are inaccessible. It is still known that courts in many provinces are not accessible, lacking ramps for wheelchair users, embossed text for the visually impaired and sign language interpreters.
34. The process of appointing a guardian, which leads to the restriction of the capacity to act of disabled individuals, causes violations of rights in cases of malicious use. The appointment of a guardian is made by the courts on the basis of medical reports. The person's ability to distinguish is not taken into account in the appointment of a guardian, and there is no special support mechanism.
35. In practice, even if the guardianship authority is the civil courts of peace and guardianship books are kept, the control over the guardians seems to be reduced to financial control. There are no effective control mechanisms regarding the living conditions, physical and mental health of the restricted person, and as such, the restricted persons seem to be at the conscience and mercy of the guardians. For example, it is observed that a social worker acts as a guardian for approximately 30 to 50 persons. In this situation, it is not possible for the guardian to develop an approach in line with the rights of persons with disabilities, and it is questionable whether they are acting in accordance with the main guarantees, including the provision of communication channels for other judicial processes
36. Women and girls with disabilities face intersectional discrimination in access to rights. There are no legislative arrangements, concrete action plans or policies for them to benefit from rights such as education, access to justice, health etc. It is not possible to access data on how many women and girls with disabilities are in closed institutions, similarly, it is not possible to access data on violations of rights experienced by women and girls with disabilities in closed institutions.

It is not.

37. The fact that training and awareness programmes that will enable effective investigation and prosecution by law enforcement and prosecutor's office for victims with disabilities, who have difficulties in expression and narration and face various problems in identifying the perpetrator due to their disabilities, have not been implemented continuously and using effective methods, deepens the effects of violence and abuse faced by victims with disabilities, especially women and girls with disabilities.

Recommendations:

1. Domestic legislation should be reviewed to amend/cancel discriminatory provisions. - Ratify signed international conventions, treaties and protocols (Protocol No. 12 to the European Convention on Human Rights).
2. The Law on TIHEK should be amended to enable CSOs to make applications on behalf of persons with disabilities. The Ombudsman's Office should appoint a disability ombudsman to work only on disability rights.
3. An independent monitoring mechanism, including organisations of persons with disabilities, should be established to monitor closed institutions for persons with disabilities, including prisons.
4. Interpreters and experts working in courts should be trained on the rights of persons with disabilities.
5. The Code of Criminal Procedure should be amended to make it compulsory to appoint a lawyer, as well as an interpreter and, where necessary, a psychological support expert.
6. The Ministry of Interior and DGMM should provide in-service training on the rights of persons with disabilities to police officers, gendarmes, prison personnel and private security guards. The post-training practices of the trained personnel should be monitored.
7. The Ministry of Justice should organise disability rights trainings for prosecutors and judges and the decisions of the trained prosecutors should be monitored.
8. DG EYHGM should prepare a policy document in line with the Convention on the priority areas of statistical data on persons with disabilities and should actively involve persons with disabilities and CSOs in the preparation process.
9. The sample groups selected for the collection of data on persons with disabilities should include persons with disabilities belonging to different ethnic, belief groups, gender identities (LGBTI), etc. who are at risk of multiple discrimination, and the collected results should be analysed in terms of these groups.
10. Organisations and CSOs supporting persons with disabilities should be actively involved in the data collection process. A timed and budgeted action plan should be developed to collect data on levels of access to rights, starting with ethnic and belief groups known to have the least access to rights in general, LGBTI+ persons with disabilities living in rural areas and persons with disabilities in closed institutions.
11. In cases of sexual abuse of children with disabilities, the obligation of effective investigation must first be fulfilled.
12. Improvements should be made in various areas such as investigation, prosecution and execution in a way to protect the best interests of the child.