



Symposium on Fighting Against Disability Discrimination

**03 - 05 November 2010
Ankara**



PRIME MINISTRY OF
REPUBLIC OF TURKEY



Human Rights Presidency

**SYMPOSIUM ON FIGHTING AGAINST DISABILITY
DISCRIMINATION**

**November 3-5, 2010
Ankara**

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ABOUT THE COMMUNITY PROGRAM FOR EMPLOYMENT AND SOCIAL SOLIDARITY (PROGRESS)

The Community Program for Employment and Social Solidarity (PROGRESS) was created as per the Decision no: 1672 of European Council on October 24, 2006. Thanks to the program, the European Community Programs of Combating Social Exclusion, Gender Equality, Combating Discrimination, Employment Incentives, concluded at the end of 2006, were combined under one single program. Aforementioned Program, was created to include the period of 2007-2013 in order to support practices regarding European Union's legislation of social policy and employment, and therefore to improve the practices in this field in Member States. It was foreseen that the PROGRESS Program would serve for change and modernization in the fields of employment, social inclusion and protection, working conditions, combating discrimination and gender equality.

The Law regarding the Approval of the Memorandum of Understanding about the Community Program of Employment and Social Solidarity between the European Union and the Republic of Turkey by the Republic of Turkey took effect on October 17, 2007 after it was published in official gazette. The Department of EU Coordination of Ministry of Labor and Social Security was rendered responsible for the coordination and running of the works under the PROGRESS Program.

This Project was conducted by Prime Ministry Administration for Disabled People with the partnership of Prime Ministry Human Rights Presidency under the subtitle "Anti-discrimination" of the PROGRESS Program under the project of Fighting Against Disability Discrimination in Turkey. Within the scope of the project, "the Research on Measurement of Disability Discrimination" was carried out to contribute the determination of strategies of disability discrimination and determination of knowledge-based policy. The symposium, the second activity of the project, was convened with the participation of the relevant public institutions and social parties between the dates of November 03- 05, 2010 in Ankara.

The project was carried out with the co-finance of the European Union and Turkey.

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ENCL- Symposium Program

Selma Aliye KAVAF

Minister of State

PRESS RELEASE ON THE SYMPOSIUM ON FIGHTING AGAINST DISABILITY DISCRIMINATION

Disability is a social problem affecting all parts of the society regardless of income levels, status. Therefore, the problems of disabled people are social problems comprising not only themselves and their families but also the whole society and should be handled with integrated approach. For disabled people, leading their life without discrimination in all fields of life and standing on their own legs are issues of fundamental human rights. Solving the problems of disabled citizens, constituting an important part of our population, and enabling them to lead their life by being self-sufficient and productive individuals are primary duties of our State.

In this framework, our government's social service policy including the disabled is not aid-oriented but "rights-oriented" policy. For this reason, the main aim of our disability policy is to make them individuals using their rights in equal opportunities, to employ them and to gain a place in social life as a productive citizen without being subject to discrimination. Practices of Mr. Prime Minister while he was the Metropolitan Municipality Mayor of Istanbul, as the first examples of social municipality understanding, were the guidelines of AKP governments. Our government carried out lots of important legal reforms such as Disability Law in the first place which brings important acquisitions and is the most detailed one in the history of the Republic of Turkey.

Despite the whole legal arrangements for the prevention of discrimination in our country, it is known that problems still occur in application. Protection of disabled people against discrimination is an important problem field. In this framework, the project named "-Fighting Against Disability Discrimination in Turkey" was carried out with the cooperation of Administration for Disabled People Human Rights Presidency of the Prime Ministry and under my Ministry with the purposes of determining the strategies of disability discrimination and contributing to the determination of knowledge-based policy. Aforementioned project was carried out under the subtitle of "Anti-Discrimination" of the European Program for Employment and Social Solidarity.

The aims of this project are introducing the levels of disability discrimination in Turkey with scientific methods, increasing awareness, the discussion of how the concept of disability takes place in the construction of equality. Sharing good practice examples of disability discrimination in EU Member States and discussion of developments in different discrimination areas in our country and operability of application mechanisms are among our aims.

The project has two actions: The first one is “the Research on Measurement of Disability Discrimination”. The fieldwork of the Research was done by Public Administration Institute for Turkey and the Middle East. Another aim of the meeting is sharing important results of the research with you. The second branch of the project, “the Symposium on Fighting Against Disability Discrimination”, started today and continues with the participation of all public institutions and social parties on November 4-5, 2010. In the symposium, the results of the research will be shared and evaluated in order to contribute the method determination of disability discrimination in original conditions of our country. Moreover, anti-discrimination policies of the EU and examples of good practices in the EU Member States will be presented, and the current situation in Turkey, the problems encountered and solution suggestions about anti-discrimination will be discussed.

Now, I would like to share some of the striking results of the Research done in the scope of the project. The Research was done on 1 507 disabled chosen by random sample among 63 000 people, members of 533 associations from 29 cities between June and July in this year. In the research, the questions about whether they encountered with discrimination in different fields of life were asked to find out their experiences and thoughts.

An important part of sample group thinks that disabled people are subject to discrimination in employment and working life. The ratio of disabled being always subject to discrimination in employment and working life is 31.5 %; the ratio of being never subject to discrimination is 4.7 %. This is an important point because increasing employment opportunities of our disabled sisters/brothers is our government’s one of the most important social policies. We should mobilize all of the means to enable disabled people to take part in social life fully and efficiently. According to data of Turkish Employment Agency in 2002 the number of employed disabled workers in public institutions and private sector was 10.883 while in 2009 the number of employed increased two and a half folds and it was 26.405; in the first 6 months of 2010 it was 16.670.

At the beginning of the year, we took an important step for disabled people to be civil servants: with the amendment to “Central Administration Budget Law”, disabled personnel appointments are out of exception. Therefore, it is allowed to appoint to the vacant disabled civil servant positions in public institutions and organizations. According to the data of State Personnel Administration in 2002 the number of employed disabled civil servant in public institutions was 6.103 while this number reached 10.357 in the last year and reached 14.330 in January 2010. Moreover, the salary of disabled who can not find a job or who can not work has increased in 200-300 % and its scope has been extended.

Again looking at the results of the Research, 27.4% of participants stated that disabled people were never subject to discrimination in the field of health; 14.1% stated they were always subject to discrimination in the field of health.

In field of education, 25.3% of participants stated that disabled people were usually subject to discrimination. The ratio of participants who stated that disabled people were never subject to discrimination in education is 13.3%.

It is a constitutional right of our disabled brothers/sisters to reach certain knowledge and culture level, to be productive by having a job and participate in social life. The first and most important condition of their full end efficient participation to social life is education.

Our mission on that scope is providing and popularizing support mechanisms enabling disabled people to conclude their formal and vocational education. We carry on our works on this matter with determination and without considering financial worries. As a result of our works, today the number of disabled students taken education from official education institutions has reached 55.000 while the number was 22.000 in 2002. The number of disabled students who benefited from 68 private rehabilitation and training centers was 22.000 eight years before, but today the number of the students has reached 220.000 from 1.686 centers. Furthermore, our government took the responsibility of carrying disabled students needing special education to their schools. In this scope, every day about 35.000 children are taken their houses and reach their schools.

Looking at research results again, disabled people were not subject to discrimination in political participation according to 26.2% of the participants; and in reaching justice the same situation is valid according to 29.5% of the participants. The ratio of participant thinking that they were subject to discrimination in these areas is between 12-15 %.

In free time and participation to resting activities, 14.4 % of participants stated that they were rarely subject to discrimination; 17.8% stated that they were never subject to discrimination. In the field of reaching knowledge 26.9% of sample group stated that they were not subject to discrimination; 13.4 % stated that they were always subject to discrimination.

In the field of inclusion to society; 11.9% of sample group thought that disabled people were never subject to discrimination while 20.8% thought that they were always subject to discrimination. Physical access is one of the most effecting elements on their social life. 77.3 % of the participants had difficulty in access because of lack of necessary arrangements in public places like roads, walkways, and parks. 70.2 % of them had difficulty in institutions serving public because of the same reason. 72.1% of sample group cannot use local public transport vehicles and 59% could not use inter-cities public transport vehicles as they had no necessary modifications for disabled people.

As is known, Prime Ministry Circular dated 2006 was published according to which public institutions, public places and public transport vehicles should be suitable for disabled until 2012 in accordance with the provision of Disability Law No 5378. In order to accelerate the works in this field and to enable relevant institutions to take part in planning with the participation of relevant sections Administration for Disabled People prepared Accessibility Strategy and National Action Plan and the Plan has taken effect after approval in recent days. This works made it obligatory for public institutions to carry out accessibility arrangements under a schedule. For accelerating and supporting the works in that area, under the control of our Administration, “Basic Information on Accessibility Technical Guideline for Local Administration” was distributed to all relevant bodies.

Looking at the results of the Research again, disabled people stated that they encountered “discriminatory attitudes of people” in the field of inclusion to society. 65% of participants stated that they were subject to mocking, scorning, etc. attitudes of people they did not know. 42.7% of participants stated that they encountered ill treatment of public officers; the ratio of

participants who said they were always or usually encountered such treatment is %12.2. 41.8% of sample group stated that they were subject to discriminatory behavior of public or bank officials. According to the Research, mentally disabled people lead the disabled group who are exposed to discriminatory attitudes with the ratio of 35.7%. People with hearing disabilities follow them with 21.3%; and the ratio of visually impaired is 20.6%; the ratio of people having chronic mental illness is 10.2%; the ratio of people having speech and speaking disabilities is 8.2% and the ratio of orthopedically disabled is 4%. Another important point in the Research is the ratio of people who said they knew the legislation about disability discrimination is 28.7% while the ratio of people who stated that they did not know is 71.3%.

These results show the barriers in the minds and their important reflections on daily life. Contributions of everyone and every institution in cooperation are necessary for making disabled people's life easier and for quick advance. Every step in this field is important. Being disabled is not an obstacle for being successful or taking fully a place in life. Legal arrangements have been concluded to overcome physical obstacles together with barriers in the minds. We carry on works multilaterally within my Ministry to perform these arrangements in daily life.

Our citizens with disabilities included in the scope of positive discrimination with the constitutional amendment made after the referendum on September 12, therefore an important development in human rights has been provided. We have initiated works for making disabled citizens life easier by developing more efficient policies in positive discrimination in the scope of this constitutional amendment in the forthcoming period.

As you all know, "home care support for the disabled" developed after Disability Law is an important practice relieving especially families' burden. Today, 271.962 disabled citizens benefit from home care support in Turkey. In this scope, we pay the amount of net minimum wage, 545 TL, to disabled person, family caring at their home or relative as a pension. We expanded the service scope of Social Services and Child Protection Agency of my Ministry with Regulations taken affect last month for supporting families that have disabled members. Disabled citizens living with their families have troubles in times of weddings, travels, etc. From now on, disabled citizens can temporarily stay in our institutions as a guest. This practice relives families socially and meets an important need.

Some disabled people do not stay in official care centers but need an assistant in daily life. For making their life easier, our officers appointed by our institutions help them in certain hours of day.

I believe that all these works make the disabled people visible in public areas and provide support for each of them and their families. The more good practices increase, the more problems in the area of disability reduce; and this is the power to remove the barriers.

Providing cooperation between different social sections in the areas of physical environment, medical-vocational-social rehabilitation and employment is the basic condition of implementing disability friendly social policies successfully.

I believe that “the Project Fighting Against Disability Discrimination in Turkey” provide great support for preventing disability discrimination. I wish the symposium, about this scope, will be successful, and I would like to thank everyone who contributed to preparation and running of this up-to-date and important project. I present my respects to all of you.

OPENING SPEECHES

Bekir KÖKSAL

Director General of Administration for Disabled People

According to 2002 Turkey Disability Survey, basic social indicators related to disabled people are far behind the general population in our country. Although there are diverse legal arrangements to prevent discrimination, problems are seen in practice. Approach to disabled people cannot go beyond the medical model in some legal arrangements and generally in practice. Protecting disabled people against discrimination is an important problem area.

Some arrangements about anti-discrimination were foreseen in Disability Law dated 2005 in Turkey. While creating policies on disabled people with Disability Law, anti-discrimination is accepted as one of the basic principles, and participation of disabled people, their families, and NGOs while taking decisions related to disabled people form the basis. Moreover with Disability Law, disability discrimination is accepted as crime with amendment to Article 122 of Turkish Penal Code.

Nonetheless, our country has not performed the obligations fully in this field. As seen from the 2008 Progress Report, limited progress was made in anti-discrimination and preparations were at the beginning level. Definitions like direct and indirect discrimination and important principles has not taken part in legislation yet and European Union Directives about discrimination having a base including disability has not been incorporated to national law yet. Furthermore, an effective and independent equality institution encouraging anti-discrimination and equal treatment has not been established yet. As stated in 2008 Progress Report, lack of research and data about discrimination prevents determining information based policy.

A project named “Fighting Against Disability Discrimination in Turkey” is carried out with the cooperation of Human Rights Presidency of the Prime Ministry by Administration for Disabled People under the subtitle “Anti-Discrimination” of the European Union (EU) Program on Employment and Social Solidarity (PROGRESS).

Main purpose of aforementioned project is to contribute determination of disability discrimination strategies and determination of knowledge-based policy. In line with this purpose, the project targets are:

- To present the size of disability discrimination in Turkey with scientific methods,
- To raise awareness about EU policies, especially about EU Directive No:2007/78; to discuss how disability takes part in the establishment of equality institution,
- Sharing good practice examples about disability discrimination in the EU States,
- To discuss developments in different discrimination areas and operability of application mechanisms.

The project has two basic activities. The first one is “the Research on Measurement of Disability Discrimination”. Related to the Research, in the framework of UN Convention on the Rights of Persons with Disabilities and we are a party to the Convention; a fieldwork for determining disabled people’s perception of discrimination and place where they were subject to discrimination, knowledge level about discrimination-related legislations, application and support mechanisms, discrimination experiences, and anti-discrimination methods at personal level has been conducted by contractor firm, Public Administration Institution for Turkey and Middle East. The second one, “Symposium on Fighting Against Disability Discrimination”, is carrying out with the participation of relevant public institutions and social parties, with approximately 200 representatives from different public and private bodies.

Our disabled citizens included in the scope of positive discrimination with the constitutional amendment made after the referendum on September 12, 2010, therefore an important development in human rights has been provided. It is thought that important contributions will be gained in the areas of measuring the level of disability discrimination and prevention of disability discrimination by realizing aforementioned project.

I would like to thank everyone contributing to preparation and running of the project.

Prof. Dr. Eyüp G. İSBİR

General Director of Public Administration Institution for Turkey and Middle East

Today we meet for a symposium convened for announcing the results of a research made about an important issue of Turkey.

The subject is not only the issue of the Republic of Turkey but universal. Important decisions and arrangements in terms of solutions of the problems and future policies are taken and done in the world. We must not fall behind them. Therefore, works initiated by Prime Ministry Administration for Disabled People acquired important data for policy determination and development within certain measures with the research of Public Administration Institution for Turkey and Middle East; I am the General Director of the institution. We will discuss the data herein today and try to acquire positive conclusions for future policy determination.

We reached 1.500 people from 183 associations for the Research, and the works, done with self-sacrifices of our friends from 29 cities in summer especially in June and July, and results are remarkable. I would like to thank them. Availing myself of this opportunity, I would like to express my gratitude on behalf of me and my institution to all academicians and association members participated to the Research.

I think the Research carried out by 65 selfless pollster yields beneficial results and I salute you all.

Yusuf ÇELEBİ

President of the Turkish Confederation for the Disabled

Actually today is an important day. If we look behind and see past with pros and cons, we reach a point. Therefore, I would like to start my speech by giving the devil his due.

Today is an important day, because in 1990s while fighting for disabled people, no one saw us. I can say that we were in the backsides of the state. Today, Administration ascertained the discrimination in public and made it the subject of the symposium. I would like to congratulate them.

Article 10 of the Constitution refers equality of all citizens. They have equal rights before law no matter what their language, religion, race, and thought is, and discrimination shall not be mentioned. However, looking at the past, in 1980s, there was discrimination to women and protection on children. Nobody talked about disabled people, they were left to charity. People helping them with mercy were seen as good people. Today discrimination can be discussed.

Important developments for disabled people commenced with decrees of provision in 1997; in 2005 policy for disabled people was taken under law. With the great contributions of Mr. Prime Minister and unanimity of the opposition party, Disability Law No 5378 took effect and a disability policy was determined. This is very important for us.

As people exist; the more demands are met, the more problems arise. After 2005, as our Mr. Prime Minister said that “it is a right not a charity”, right-oriented approach became prominent and problems became visible to everyone although they continued. It came to light that discrimination should be stopped.

Therefore, as you all know, in the Article 61 of Constitution while referring children, women, veterans and disabled people, using the term “protection of disabled people” is a serious discrimination in terms of us.

Today, you become a teacher; teach in a city like Ağrı, and you have a disability. You try to walk the same as other people. On the other hand, in the event that a normal citizen says that “how can I entrust my child to disabled people? They are still in need of protection”, the

normal citizen is justified before law. This is discrimination. Many rights are given by Law No 5378 but problems in many areas continue. I believe that these problems will be solved with the cooperation of administration and civil society.

Article 65 will be an obstacle for disabled people during the process. We understand the thought of “State performs its duty within its capability” as “does the capability of State mean it serves its purpose?” Amendment to Article 61 and abolition of Article 65 are necessary. It is not a correct article for the state. When we look at the Article 67, we see that disabled people do not cast a vote with their free will. We will solve these problems by working together.

In order to arrange all of them, we are talking about 8.5 million disabled people but you cannot find 100.000 disabled people in the streets. Accessibility will increase our education level. Increase at education level changes our career and this leads to awareness.

In the event that Additional Optional Protocol to the United Nations Convention on the Rights of Persons with Disabilities, signed by esteemed Minister of Foreign Affairs, is submitted to the Assembly with the ability of Mr. Prime Minister and voted in General Session with the unanimity of the opposition party, then discrimination will be ended at that time. So we will struggle together. We will continue our struggle together. Administration undertakes the discrimination today; we will stop it together tomorrow.

I submit my regards.

Turan İÇLİ

Head of the Confederation of People with Disabilities

Thanks to the struggles in Turkey since 1990s, an important awareness and sensitivity in the field of disability has been arisen. As a result, political parties in the TGNA (Turkish Grand National Assembly) started to deal with problems of disabled people, realize them, and try to solve their problems. As a result, important legitimized activities were seen between 1997 and 2005. So we break the leg in the field of disability in Turkey. Now the problems are discussed in more original efficient and detailed ways. At the beginning, the problems were addressed in general terms and we tried to create a general sensitivity then, special titles have been opened and content of the titles have been discussed. These are positive and important developments.

On the other hand, we diagnose strengthening on the protective understanding to the disabled people. The strengthening is of course the result of charitable sentiment and can affect disabled people positively but it hinders right-oriented approaches. Unfortunately, Article 10 became a protective article with the last constitutional amendment. Article 61 transferred into the Article 10 and placed in there at the cost of damaging principle of equity. I hope this mistake will be realized and restored in the future constitutional amendments. Because, an understanding developed in this base reiterates protective approach instead of right-oriented approach and it has the risk of disseminating the understanding in the society.

The essence of the issues during the historical period is discriminatory arrangements, practices, value judgments, attitudes and behaviors against disabled people. Disabled people will be equal individuals of the society with the elimination of all of them. But it is not easy because these value judgments, attitudes and behaviors have settled in pores of the society for thousands of years. Cleaning all the pores of society is only possible with an enlightenment process and radical economic infrastructural change. Because in the last analysis we see that value judgments about disabled people are the reflection of their places in production process and in social life. In the event that the place is strengthened, they take place in social life freely and in equal terms and all of the barriers before them are removed; then negative value judgments will be changed without doubt.

This symposium is important for bringing the matter to the table, seeking and developing solutions about the details of the subject. I would like to thank to Administration for Disabled People for preparing such a work. I wish success in the name of Confederation. Thank you.

INTRODUCTION OF THE PROJECT “FIGHTING AGAINST DISABILITY DISCRIMINATION IN TURKEY”

Dr. Sermet BAŞARAN

Administration for Disabled People

Head of the Department of European Union Affairs and Foreign Relations

Project Coordinator

Our project is supported by the PROGRESS Program of European Union. PROGRESS Program covers the years between 2007 and 2013 and aims at the EU's fields of employment, social inclusion and protection, gender equality, and anti-discrimination. Ministry of Labor and Social Security is responsible for PROGRESS Program in Turkey.

The aim of the project is to contribute the determination of disability discrimination strategies and knowledge-based policies. The targets are:

1. To present the size of disability discrimination in Turkey with scientific methods,
2. To raise awareness to the EU policies, especially to the EU Directive No:2007/78; to discuss how disability takes part in the establishment of equality institution,
3. Sharing good practice examples about disability discrimination in the EU States,
4. To discuss developments in different discrimination areas (child, woman, etc.) and operability of application mechanisms.

The reasons of the responses to the question of why the project conducted can be listed as follows:

1. There are diverse legal arrangements to prevent discriminatory practices but in practice, problems are encountered,
2. In the European Union Accession Partnership Document, it is indicated that human rights and fundamental freedoms of individuals must be guaranteed without being subject to any discrimination having a base like disability,
3. In 2003 National Program, it is stated that the Directive of Equal Treatment at Work and Employment No 2000/78/EC, forming the general frame of equal treatment at work and employment under the subtitle of anti-discrimination, will be incorporated to national law,
4. It is stressed in the Program that the works for the establishment of “equality institution” will be initiated,

5. With the Disability Law, fundamental principles in policies determined for disability discrimination and disability discrimination is accepted as a crime with the amendment to Article 122 of Turkish Penal Code,
6. Limited progress was seen on anti-discrimination in 2008 Progress Report,
7. Systemic works on informing and raising awareness about disability discrimination have not been initiated under or off the information campaign titled as “Distinctness against Discrimination”.

As a conclusion, the project contributes to the disability discrimination aim “to determine disability-based anti-discrimination strategies and to support and monitor their performance at all levels” which has 2009 priority.

The project includes 2 basic activities. These are

1. Measuring the Level of Disability discrimination
2. Symposium on Fighting Against Disability Discrimination

In the scope of the Research on Measurement of Disability Discrimination, a fieldwork was conducted on 1500 subjects to determine the disabled people’s:

1. Perception of discrimination and place where they were subject to discrimination,
2. Knowledge level about discrimination-related legislations, application and support mechanisms,
3. Discrimination experiences,
4. Discrimination methods of disabled people at personal level.

The Research on Measurement of Disability Discrimination was conducted by contractor institution, Public Administration Institution for Turkey and Middle East (TODAIE). Asst. Prof. Dr. Argun AKDOĞAN, Dr. Başak BEYDOĞAN, Dr. Pınar YELSALI PARMAKSIZ, Dr. Ayşegül SABUKTAY and Res. Assist. Hasan VURAL were in the TODAIE Research Group.

In the Symposium on Fighting Against Disability Discrimination, contribution to method determination of disability discrimination in original conditions of our country is intended. In line with the target, the followings will be provided:

1. Sharing the results of the research,
2. Presentation of anti-discrimination policies of the EU and examples of good practices in the EU Member States,

3. Discussion of current situation in Turkey, the problems encountered and solution suggestions about anti-discrimination.

Our project partner is Human Rights Presidency of Prime Ministry. The project was initiated on 01.12.2009 and will be concluded on 30.11.2010.

The project has the total budget of 213 084 Euros, the contribution of the EU PROGRESS Program is 170 467 Euros and the contribution of Administration for Disabilities is 42.616 Euros. Hard copies of Abstract Book of the Research, Book of the Research, Symposium Book, and project website are available. Our project group includes Head of Department - Dr. Sermet BAŞARAN, Branch Manager Selma ÇALIK and Disability Specialists Coşgun GÜRBOĞA, Keziban KARÇKAY, Bahar UĞURLU and Erem İLTER. Prof. Dr. Esra BURCU, Academic Member in Sociology Department of Hacettepe University, has been the scientific advisor of the project at all levels as project consulter.

THE CONCEPT OF DISCRIMINATION

Selvet ÇETİN

Strategic Thinking Institution

Expert of the Human Rights Law

Legislation on Discrimination

Definition

Discrimination means basically or at least potentially being unequal and includes different treatment to some individuals. Therefore, clarifying direct relation between discrimination and “equality” is necessary. There are two general conceptual approaches to equality. These approaches correspond to the right of equality and not being exposed to discrimination in both national and international law. This situation, qualified as formal and tangible by us, determines borders of discrimination’s conceptual framework.

Generally discrimination bases on race, color, religion, gender, political idea, national or social origin, birth or other status depend on the fight against slavery and religious intolerance in the historical development of human rights’ struggle. Besides, today discrimination is seen in different forms depending on complex structure of modern life. It is possible to add other discrimination types different having different basis like poverty, physical appearance to contemporary discrimination types like gender, ethnic origin, age, language and disability. Prohibition of discrimination and equality principles form two basic dimensions of international human rights legislation. International human rights legislation adopts the principle of all people are equal and prohibits discrimination. Equality principle and prohibition of discrimination are clearly stated in the Constitution of the Republic of Turkey. However, discriminatory practices are still among the most crucial problems of Turkey both in national legislation and in practice.

Discrimination in the UN Documents

In addition to being a human rights violation alone, discrimination is also an attack to fundamental values composing human rights. International Convention on Civil and Political Rights, one of the UN twin conventions and shapes equality and prohibition of discrimination, is among the important global regulations. According to Article 2 of the convention, contracting parties are obliged to provide and respect the rights of all individuals living in their countries and under their authorities vested by this Convention without any discrimination in terms

of race, color, gender, language, religion, political or other ideology, national or social origin, property, birth or other status. Article 3 of the Convention states that men and women equally avail themselves of the civil and political rights. Article 26 of the Convention includes the principle of equality before laws. According to article, everyone is equal before laws and everyone is protected equally by laws without considering any discrimination. In this respect, laws ban all kinds of discrimination and provide equal and effective protection against all types of discrimination like race, color, gender, language, religion, political or other idea, national or social origin, property, birth or other status. General Comment No. 18 of the United Nations Human Rights Committee on discrimination in 1989 refers that Article 2 and 26 of the Convention are not same arrangements. Article 26 states that all individuals are equal before laws without any limitation while Article 2 limits content of the rights to be protected by rights vested in the Convention.

United Nations International Convention on Economic, Social and Cultural Rights is another global regulation mentioning discrimination. Paragraph 2 of Article 2 states that economic, social and cultural right shall be implemented without any discrimination in terms of race, color, gender, language, religion, political or other idea, national or social origin, property, birth or other status.

The UN Convention on the Rights of Persons with Disabilities

The UN Convention on the Rights of Persons with Disabilities, which took effect in 2006 and ratified by Turkey in 2008, regulates fundamental rights and freedoms of disabled people in the general principles framework of respect for inherent dignity, individual autonomy including the freedom to make one's own choices, and independence of persons; non-discrimination; full and effective participation and inclusion in society; respect for difference and acceptance of persons with disabilities as part of human diversity and humanity; equality of opportunity; accessibility; equality between men and women; respect for the evolving capacities of children with disabilities and respect for the right of children with disabilities to preserve their identities.

According to second paragraph of Article 1, defining the concept of disability, persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.

In the Article 2 of the Convention where the definitions takes place, “discrimination on the basis of disability” means any distinction, exclusion or restriction on the basis of disability which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. It includes all forms of discrimination, including denial of reasonable accommodation. In the Convention, it is underlined that discrimination on the basis of disability comprises all kinds of discrimination including unrealized reasonable accommodations, and obligations of the States Parties are stated in detail.

The UN Declaration on the Rights of Persons with Disabilities

According to declaration, persons with disabilities have all the rights stated in this declaration. These rights are conferred to all persons with disabilities without any exception or discrimination based on race, color, gender, language, religion, political or another ideology, national or social origin, physical condition, birth or status of disabled person or his/her family.

The UN Standard Rules on Equal Opportunities for Persons with Disabilities

According to these rules, it is demanded that disabled people should be protected in many different areas. States should initiate and foster information campaigns transmitting the message that disabled people has equal rights and duties and it is necessary to remove the barriers hindering their participation in social life.

States should provide effective medical care for disabled people. Similarly, States should accept the principle of giving primary, secondary and higher education to everyone and with equal rights to disabled people, and should ensure that education of disabled people need to be integral part of national education system. Moreover, states admitted the principle of completion of human rights related to disabled people especially on the grounds of employment. Income protection, social security, and protection of family life and personal integrity need to be among the obligations of the states.

In the context of cultural obligations, States should ensure that persons with disabilities have the opportunity to utilize their creative, artistic and intellectual potential, not only for their own benefit, but also for the enrichment of their community, be they in urban or rural areas. Examples of such activities are dance, music, literature, theatre, plastic arts, painting

and sculpture. Particularly in developing countries, emphasis should be placed on traditional and contemporary art forms, such as puppetry, recitation and story-telling.

States have important obligations in terms of protecting religious freedom of persons with disabilities. States will encourage measures for equal participation by persons with disabilities in the religious life of their communities. States should encourage, in consultation with religious authorities, measures to eliminate discrimination and make religious activities accessible to persons with disabilities. States should encourage the distribution of information on disability matters to religious institutions and organizations. States should also encourage religious authorities to include information on disability policies in the training for religious professions, as well as in religious education programs.

Arrangements about Discrimination in the European Convention on Human Rights

European Convention on Human Rights (ECHR) includes two different arrangements about discrimination like the United Nations Convention on Civil and Political Rights. The first one is the Article 14 of the Convention. According to the Article titled as Prohibition of Discrimination, the enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, color, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

Prohibition of discrimination imposed by the Article is limited within those rights and freedoms conferred by the ECHR; the action of “discrimination” is not seen as a human rights violation.

Additional Protocol No. 12 of European Convention on Human Rights comprises another arrangement about discrimination. Article 1 of the Protocol is titled as “General Prohibition of Discrimination”. As understand from the title, the Article 1 of the Protocol No. 12 prohibits discrimination generally without limiting the rights and freedoms mentioned in the Convention.

EU Charter of Fundamental Rights, declared in 200 and has not legally binding force yet, comprises an arrangement about discrimination in the first paragraph of Article 21:

Although the rule in the Community Treaty does not include discrimination prohibition directly, it enables making provision against discrimination. The EU bodies has formulated strategies based on Article 13 until now and has made legal arrangements.

Legal arrangements on discrimination in the European Union are made by directives. Directives are secondary and binding in the Union's legal system. States are obliged to incorporate directives into their national laws. Each state incorporates according to characteristics of the legal system. From the point of accepting that prohibition of discrimination in practice is not sufficient to reach full equality, directives pave the way for making provisions and paying damages in order to satisfy and compensate historical disadvantages of groups defined by gender, ethnic or social origin, religion or belief, disability and age.

In the event that certain group of people is not employed in definite works, giving education to the same group on these kinds of works will be a positive action. For instance, an important part of disabled people cannot attain even primary education. The ratios are about 90s % for people having serious disability. In such a situation, offering education and vocational training by the state to the group called by the adult training method is an example of positive action.

Taking the Appropriate Measures for the Disabled

Employment Framework Directive provides for the employers to take the appropriate measures which will enable the disabled to access to and participate in the employment, to make progress in their job and educated. The supply of special work table and chair for the physically disabled by the employer, the opportunity by the employer for the employees with hearing disabilities to be educated in sign language for them to have advantage of the vocational training and the shifting of the working hours of the visually disabled out of the rush-hour are all examples of appropriate measures.

Decisions and Recommendations of the Council of the European Union

The Council of the European Union has adopted the decision to make any kind of arrangements, allocate sources and produce the relevant materials in the education policies of the member countries for the integration of teenagers and children with disabilities in the

normal education system. The decision also covers that the Member States should arrange their national policies so that it will enable the disabled to gain strength in the society, adopt any kind of measures to stop the negative discrimination against the disabled, cooperate with the non-governmental organizations to create equality of opportunities for the disabled, eliminate all the barriers to the fully integration of the disabled in the society and take any legal and practical measures regarding the matter.

In another recommendation, the Council of the EU calls for the Member States to take any kind of legal and practical measures to create equality of opportunities when seeking a job for the disabled, to extensively cooperate with the non-governmental organizations regarding the matter and to make the arrangements so that they will cover both public and private sector.

Amendment in Turkish Penal Code

In the 122th Article of the Turkish Penal Code, a new kind of crime called “discrimination” which did not exist in the previous code has been defined. According to this regulation, it will be a reason to be sentenced to imprisonment from six months to a year not to give someone food products by discriminating them with such reasons as their language, race, color, sex, disability, thought, philosophical view, religion, sect and the like; to prevent persons from usual economical activities, to associate the access of the persons to employment facilities with their above-mentioned characteristics or to prevent persons from selling or passing on their movable or real estate to another.

Due to the structure of the article, it depends on the existence of a special intent for that crime to be perpetrated. Persons need to commit the acts defined by the intent of discrimination. For example, it needs to be proved that the offender committed the crime with the intent of discrimination to prove the access of the persons to employment facilities. Because it is so hard to prove this specific intent, there has not yet been a court decision based on that article. It is seen as a more effective method to create the arrangements which need sanctions in the law of discrimination within the means of civil and administrative jurisdiction rather than in the penal law.

Remarkable practices of the Court of Appeals regarding the disabled whose right to employment has been infringed within the context of the provisions of the Labor Act:

a) It is unfair to annul the labor contract of those who work with the status of disabled in the privatized institutions apart from the conditions of closing down of recommendation although it is prescribed in the law that they cannot be discharged.

b) The disabled, reasonable accommodation: It is seen that the plaintiff has been working in the quota for the disabled workers, and although it is stated in the committee report he had supplied before starting the work that he is 45% disabled due to the discomfort in his leg and that he could only work as a desk officer, he has been forced to work to be standing for 8 hours. In this case, it is unfair for the plaintiff to be fired due to his performance. The performance of the worker should be evaluated by taking into consideration his disorder (9th Civil Chamber of the Court of Appeals, 4.21.2005, E. 2004/23961, K. 2005/14007).

c) Undue termination: The employer is obliged to send the notice of termination in writing and state the reason for termination clearly and openly. The employment contract of indefinite duration of a worker can not be terminated without taking his defense against the claims based on such reasons as his behavior and efficiency (9th Civil Chamber of the Court of Appeals, 3.7.2005, E. 2005/5408, K. 2005/7277)

Applications to the European Court of Human Rights

The applications of the disabled from Turkey to the European Court of Human Rights in the recent period have started to draw attention. For example, in the case filed by a person who became 100% disabled due to an accident, Turkey was fined with 297.000 Euros.

The application of a visually disabled teacher from Adana to the European Court of Human Rights (ECHR) who demands that the “not qualified to teach” note taken on his record should be corrected, that those who wrote that note on his record should be brought to justice and he should be compensated has been accepted.

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The Effects of Disability Approaches on Disability Policies

When we look at the social history, we can see that biological and cultural differences determine the social behaviors (discrimination) through various prejudices and stereotyped jurisdictions on personal and social grounds. When it's been evaluated in terms of freedom, it becomes clear that prejudices and stereotyped jurisdictions against the disabled on personal and social grounds cause these people to become discriminated.

Discrimination is a set of biased behaviors against certain group(s). The opportunities given to the members of the other groups are not given to a certain group(s) or the members of certain group(s). While discriminatory behaviors emerge in various shapes, they have the characteristics of ignoring and excluding in collaboration. On its basis lays the dilemma of me and the other.

Based on this point, I want to talk about some concepts which are deemed to have determined the emergence of disability discrimination. First I want to emphasize the concepts of norm and otherness and then discuss the concept of stigmatization.

If we look at the concepts of "Me and the other" to understand the origin, the norms in the societies are created culturally. When we approach it from the point of the disabled, they are perceived as the opposite to a physically superior group. Thus, the status of "Otherness" brings along exclusion.

When we look at discrimination, another important concept is stigmatization. Stigmas are the characteristics of individuals or groups which get reactions from the other side and offer continuity and they are formed in the process of interpersonal interaction. Stigmas emerge by influencing people which differ from the social values. In this case, those individuals who are not seen capable of meeting the standards arising from the social norm in terms of physical appearance and functional freedom are seen biologically inferior and stigmatised.

There have been various approaches (models) aimed at explaining disability in the historical process. The societies' way of describing disability has been influential in determining policies and services aimed at these persons. In this chapter, I will mention about these approaches and the effects of these approaches on the policies aimed at the disabled. The historically prominent of these approaches can be said to be the moral model.

In the moral model rule the religious and spiritual point of view. In this approach, the disabled were seen as a punishment or present from the God, as victims of fate or sorcerer or witch. The fear or discomfort against the disabled in general put forward the religious or beneficent approaches towards these persons based on pity and mercy. Real problems have been ignored by providing services based on nursing with donations and charity. However, this approach has to a great extent lost its validity.

Towards the beginning of the 20th century, we see the emergence of the medical approach especially with the developments in the area of medicine. Disability was defined with functional inadequacy. According to this definition, disability emerges as an emotional dysregulation. Here, the important thing is need to eliminate or minimize the dysregulation. In other words, it focuses on pathology and seeks the cure in the medical science. Here changing the people with treatment and harmonizing them with the society are put forward. There is muffledly the acceptance of the stability of the society.

Within the framework of this approach, the basic aim of the policies aimed at the disabled is designated as treatment, rehabilitation and nursing. In other words, disabled people are expected to harmonize with the society by being "normalized". If they can't be "normalized", protection and help services come forward. As examples to these services, there is an inclination towards nurseries, private schools, sheltered workshops, special transportation services which are separated from the other individuals in the society. As a result of this approach, the disabled are exposed to "othering", "discrimination" and "social exclusion". In the medical model, the disabled people are seen as "objects" whose needs are determined and solved by others.

The developments in the fields of science and technology, the rise in the statements regarding human rights and the rise in the social movements after the 1960s have enabled the disabled people to start building an independent identity and the organizations of disability to gain strength. In this process the disabled people started to struggle to become a "party" in

the forming of a social policy and bring forward the social, economical, political and cultural dimension of the disability by questioning the medical approach towards the disabled. This situation caused the disability to be re-explained by the disabled themselves, in other words; it triggered the emergence of the social model.

In the social model, disability is seen as a social disadvantage confining the lives of people caused by the physical and social environment. Prejudice on an individual basis, discrimination on an institutional basis, non-accessible locations, non-accessible transportation systems, unbundled education, exclusive types of working etc.

It emphasizes that the disability stems from the organization of the society without taking into consideration the existence of the disabled people rather than the individual boundedness. According to this understanding, the existence of inadequacy (disorder) is denied but the cause of the problem is sought in the society, not in the individuals. Focus point is the obstacles in the physical and social environment.

The rights-based model can be seen to be the extension of the social model. In this model, freedom is seen as a matter of human rights and the case of freedom is evaluated as a situation of inequality arising from the infringement of the human rights. It defines the disabled people as subjects of the human rights law. This approach stops seeing the disabled as problems and necessitates seeing them as right holders. It emphasizes that the basic values of the human rights are true of them, too.

When we look at the models aimed at explaining disability, we can see a general shift in paradigms. There has been a shift from the need-oriented approach towards the right-oriented approach. The disabled people now became the subject of law rather than the object of support within this framework.

The social/ human rights model of disability is not only an academic model, it has also affected the disability policies of inter and supra national levels for the disabled since the 1970s and now it's become the main key element of them. It also affected the policies of the countries, but at different levels.

The Disability Policy of the United Nations

The effects of the social/rights-based approach started to come into surface with the “Declaration on the Rights of Persons with disabilities” published in 1975 annexed to the “Universal Declaration of Human Rights”. For the first time, the concept of rights was first brought to agenda on this document. With the “World Program of Action Concerning Persons with disabilities” of 1982 came the concept of equality of opportunities for persons with disabilities along with the concepts of disability prevention and rehabilitation, which is one of the key concepts of social model. “Standard Rules on the Equalization of Opportunities for Persons with Disabilities” (22 rules), which covers the measures to be taken by the countries regarding creating equality of opportunities for the disabled and is a kind of guide, was published in 1993. While these rules made important contributions to the disability policies of the countries, it could not create the desired effect due to its being non-binding.

In 2006, “Convention on the Rights of Persons with Disabilities” was adopted. This document came into existence as the basic document which was binding and with which the social/human rights model became operative. The convention confers the States Parties the responsibility to put into practice and strengthen all the human rights and fundamental freedoms of disabled people without discriminating them on grounds of disability.

The Disability Policy of the European Union

The social model was first brought to agenda in 1996 with “Equality of Opportunity for People with Disabilities- A new Community Disability Strategy”. This strategy stresses the need to define the obstacles the disabled encounter in all walks of life and to remove the obstacles to equality of opportunities for the disabled. The Treaty of Amsterdam of the European Community, which was adopted in 1997 and came into force in 1999, authorized the Community to take the relevant measures to fight discrimination based on various reasons including disability (Article 13). Based on this article, in 2000, the Council of the EU published the Directive no. 2000/78 (it is binding for the member countries), which specified the general framework regarding employment and equal treatment at work, and created the Community Action Program, which encompassed the period 2001-2006 in the fight against discrimination. The activities for the fight against disability discrimination are conducted within

an integrated program called PROGRESS (Employment and Social Solidarity Program), which was established for the 2007-2013 programming period. In 2000, Charter of Fundamental Rights was established. This document defines the fundamental rights of the citizens of the EU and the responsibilities of the EU towards its citizens. In the Article 21 of the Charter it says that “ No discrimination can be made based on sex, race, color, ethnic or social origin, genetics, language, religion or belief, political or other views, being a member of a national minority, property, birth, disability/ disability, age or sexual inclinations”, and in the Article 26, it is stated that “the European Union accords the disabled people the right to benefit from the measures which are to enable them to have freedom, to join and contribute to the society in social and vocational terms and respects these rights.” The EU Disability Action Plan (2003-2010) put forward positive measures and anti-discrimination.

Due to the directive for equal treatment in employment and occupation’s being confined to working life, the requests for establishing a Directive which provides for anti-discrimination in all walks of social life of the EU citizens urged the EU to draw a new directive. In parallel to this process, the EU signed the Convention on the Rights of Persons with Disabilities as a Union and its ratification process still goes on.

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The Convention on the Rights of Persons with Disabilities and Non-Discrimination

Human rights are rights people acquire because of their nature of human being. Within this scope, the human rights law comprise of regulations which provide for the enjoyment of these rights by all humans without regard to their different characteristics. Conventions on protecting and promoting human rights were established to prevent discrimination, ill treatment and human rights violations witnessed during and after the Second World War from ever happening again. These conventions were created with the aim of protecting and promoting the human rights of all humanity, including the disabled people. Though the disabled people were one of the groups who suffered from these violations, they were hardly talked about in the internationally signed documents. The provisions regarding the principle of “equality and prohibition of discrimination” should be evaluated as regulations amending the protection and promotion of the rights of the disabled people.

For example, with the statement “it is liable to provide and respect the rights mentioned in this convention without any discrimination” in the Covenant on Civil and Political Rights, the rights of all humanity were put under protection by imposing an obligation encompassing disability on the States Parties.

The disabled people were for the first time directly involved in the universal human rights system with the Convention on the Rights of Persons with Disabilities. The reflection of the disability approaches on the international law and their embodiment with the provisions of the Convention should be evaluated as an important step on the legitimization of the rights of the persons with disabilities.

The aim of the Convention was stated as (Article 1) “to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity”, thus the disabled people who were not clearly mentioned in other human rights conventions and were thought to be

discussed within the term “the other” first became a matter of a human rights convention and accepted as subjects in terms of the human rights law.

In paragraph 2 of article 1, in which the objective of the convention was explained, the need to avoid using the term “disabled people” was stated but no other term was offered; thus, any differences in the interpretations while implementing the convention were meant to be prevented. Besides, any restriction which may arise from a definition a “disabled person” or “disability” in the Convention was averted.

Equality and Elimination of Discrimination:

The terms “anti-discrimination”, “equality and elimination of discrimination” were spread all over the convention and especially they were thoroughly detailed in terms of all other rights and in articles 2, 3, 5 when needed.

Regarding Introduction:

The Introduction, which was formed from ‘a’ to ‘y’ and 25 paragraphs and arranged as a highly detailed part, contrary to the other parts of the Convention, does not contain any legally binding provisions. However, Introduction is of importance as it involves many elements which may be of help in interpreting the Convention. So, by starting to discuss the issue of discrimination from the Introduction on, any interpretations against the nature of the Convention were meant to be prevented.

Regarding the Definitions of the Convention:

The “disability discrimination” in the Convention was defined based on the definitions in the UN Conventions about race and sex based discrimination and by adapting these definitions to the issue of disability.

That the concept of “disability discrimination” is placed under Article 2 with the heading Definitions enables the evaluation of all obstacles against the full and equal enjoyment of human rights and freedoms by the disabled people within the scope of discrimination. The definition in the Convention not only encompasses direct discrimination but also discrimination of any kinds.

“Discrimination on the basis of disability” means any distinction, exclusion or restriction on the basis of disability which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. It includes all forms of discrimination, including denial of reasonable accommodation” (Article 2)

The definition of disability discrimination in the Convention provides for the equal enjoyment of all human rights and freedoms by the disabled people in all areas of social life without being limited to the rights identified in the Convention.

Moreover, the definition of reasonable accommodations in Article 2 especially gains importance within the context of discrimination and disability. Not providing a reasonable accommodation was seen as discrimination by the Convention.

Regarding the General Principles of the Convention:

While it is of grave importance for the human rights law to add an article defining the general principles to the Convention, the aforesaid convention is a first among the conventions of its kind as it contains an article defining the general principles. For example, it does not have any special article arranging the general principles which will be of help in interpreting and implementing the Convention on the Rights of the Child.

All human rights conventions begin by admitting the respect to the human dignity and that the inherent equality of human beings is the basis of human rights and freedoms. The general principles of the Convention (Article 3) contain some concepts like equality of opportunities, and respect for diversity which are especially closely connected with disability. The general principles emphasizes that the concepts of autonomy, independency, involvement and inclusion are essential especially for respecting the disabled people and protecting and realizing their rights. In the other basic human rights conventions, these concepts (autonomy, independency and social inclusion) have not been directly stressed and even not used within the text. The Convention on the Rights of Persons with Disabilities both encompasses these concepts and makes a strong statement about the importance of the human rights of persons with disabilities by defining them within the scope of the general principles.

Avoding any kind of discrimination is stated among the general principles of the convention, so it gains a meaning which necessitates it to be interpreted integrated within all the provisions of the convention. It lays emphasis on all kinds of restrictions including not making the reasonable accommodations within the scope of discrimination.

Regarding the General Obligations of the Convention:

The Article 4, which is about the general obligations, clarifies the activities required from the States Parties to ensure the respect for the human rights of the disabled people and the protection and conduction of mentioned rights. The general obligations in the Convention are common to the other human rights conventions within this scope. However, with this Convention, some obligations which are not mentioned in the other human rights documents are added to the general obligations of the countries regarding the rights of the disabled people.

Another role of the general principles is to stand out against the historical failures of the countries in understanding their obligations towards the disabled people as the basic human rights obligations. Because, the States Parties have mostly been inclined to see their mentioned responsibilities as exceptional behaviors and special social measures, not as the basic necessities arising from the human rights law. Stating the general obligations in the Convention clearly is an important step towards reversing this negative mentality. From this point, the General Obligations which were arranged in detail unlike the other human rights conventions clarify the responsibilities of the States Parties.

Article 4 of the Convention contains provisions which discuss the obligations of the States Parties in great detail. The general principles first explains the Articles 4/1 and 4/3 of the Convention to lay emphasis on discrimination. Paragraph 1 of Article 4 presents a detailed list of the obligations of the States Parties:

“...undertake to ensure and promote the full realization of all human rights and fundamental freedoms for all persons with disabilities without discrimination of any kind on the basis of disability” (Article 4/1)

In the subparagraph (e) of the same Article, the emphasis on anti-discrimination is once again repeated with the statement “Taking the necessary measures to eliminate disability discriminatory practices by persons, organizations or private enterprises”

Regarding equality and non-discrimination (Article 5):

In Article 5, the obligations of the States Parties were mentioned in four subparagraphs. Article 5 of the Convention with the heading equality and non-discrimination obliges the States Parties to ban all kinds of “disability” discriminations as well as ensuring the equality of the persons with disabilities. This way, the Convention expects the States Parties to recognize that “all people are equal before law” and to accept that “all people have the right to equal protection and equal benefit from the laws” without any discrimination.

The Convention, which did not find pure legal/ formal equality sufficient, also provided for taking the necessary special measures i.e. “reasonable accommodations” to exactly reach the de facto equality of the disabled and stated that the reasonable accommodations could not be rendered as discrimination.

Regarding Women and Children with Disabilities (Articles 6 and 7):

Women and children with disabilities are two special groups which are explicitly referred to in the in the Convention due to the fact that they are very often exposed to multiple discrimination. The issue of women and children with disabilities were tackled in a separate article but the relevant articles in the whole convention made references to these disadvantageous groups. While all the disabled people were encompassed with the article “equality and non-discrimination”, it was strongly emphasized in the Convention that the rights of multiple discriminated women and children should be more powerfully protected and they should gain an equal position to all humanity in terms of equality of opportunities by overcoming their now disadvantageous situation.

The Articles from 10-30 of the Convention comprise of the rights like the right to labor, the right to participate in the political life etc which are also guaranteed under the other human rights conventions. These rights are sometimes the rights which do not have any field of application and in which special requirements are the bases, and sometimes they are the

human rights which are infringed and which are encountered in the types of discrimination against the disabled. While these articles do not establish new rights, they try to explain rights at levels of detail which will enable countries to understand their responsibilities.

Unlike the other conventions, the Convention on the Rights of Persons with Disabilities clarified the articles such as Living independently and being included in the community (Article 19), Personal Mobility (Article 20), Habilitation and Rehabilitation (Article 26), thus rendering the other rights applicable for the disabled people.

Although some articles are regarded as rights not encountered in the other conventions, these rights were added to orient the other rights within the scope of the Convention and to clarify the applications in the fields of discrimination. For example, if one wants to have access to the right of employment, the articles of freedom of personal mobility and habilitation and rehabilitation gain importance.

The issue of anti-discrimination was emphasized several times within the scope of the other rights in the convention, especially in terms of the social rights and preventing discrimination with the aim of implementing the aforementioned rights was intended.

In short, the Convention was not arranged in itself to aim at anti-discrimination like The Convention on the Elimination of All Forms of Discrimination against Women and the International Convention on the Elimination of All Forms of Racial Discrimination. Elimination of discrimination is one of the components of the Convention with its basic purposes like strengthening and promoting the human rights of the disabled people, enabling them to use these rights etc. The European Court of Human Rights referred to the definition of discrimination in its decision for the case filed against Switzerland in April 2009 and decided against Switzerland. The Convention is going to be an instrument in eliminating the violation of human rights and discrimination faced by the persons with disabilities and is going to strengthen the ways to legal remedies for the persons with disabilities.

**THE RESULTS OF THE RESEARCH ON
MEASUREMENT OF DISABILITY DISCRIMINATION**

EXPLAINING AND DISCUSSING THE RESULTS OF THE RESEARCH

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The main reason for the arrangement of this symposium is to share with all the participants the results of “the Research on Measurement of Disability Discrimination”. We, as the research team, are going to share the results with you today.

In this research, we aimed at defining:

- The perceptions of the disabled people regarding discrimination and the fields of discrimination,
- Their levels of knowledge regarding legislations, applications and help mechanisms about discrimination, and their experiences of discrimination,
- The anti-discrimination methods they use on an individual basis.

When we look at the research method, this research was not conducted just with the associations providing services for the disabled people in Turkey. Some of these associations are dealt with in the samples. Five basic disability groups have been covered. It was realized in five basic categories with 1507 disabled people who are members to 183 associations out of 63.000 people who are members to 533 associations. The research was not only conducted in the centers but in the towns, too. The surveys were carried out with the help of 65 pollsters in the associations for the disabled in 29 provinces in the period June-July 2010. I would like to thank my team and those who participated in the survey.

When we look at the demographic data, 72% percent of the disabled participants are women, the 27% are men; and when we look at the age groups of the disabled participants, they mostly represent 26-35 age groups. Moreover, an important part of those who participated in the interview live in metropolitan cities. The highest rate of household income of the disabled

people are between 500-1000TL. Among the groups who are thought to suffer most from disability discrimination, come first the visually disabled, followed by people with all kinds of disabilities. These are followed by the orthopedically, mentally and hearing disabled and inarticulate people.

One of the most striking points of our research is that, when we asked the interviewers about the field in which the disabled suffer most from experienced discrimination and perceived discrimination, they answered “according to us, the disabled in Turkey are discriminated mostly in employment and working life”. When we asked the same question as “In which field are you discriminated most?” they answered “participation in the social life”. Perceived discrimination was higher in proportion to experienced discrimination. In other words, they say “the other disabled people may also be exposed to discrimination”. But when we ask them “are you exposed to discrimination?” their answer is “not that much”. We took this positively. Now we are going to share with you the findings about the experienced discrimination in the determined fields.

Discrimination in the Fields of Employment and Working Life

Almost everyone of the sample group think that the persons with disabilities are exposed to discrimination in employment and working life. 31,5% of these expressed that they were always exposed to discrimination in this field, 40,3% of these said they were often exposed to discrimination in this field, 14.1% said they were sometimes exposed to discrimination and 9.5% said they were seldom exposed to discrimination. Only 4.7% stated they were never exposed to discrimination in this field.

Discrimination in the field of working life includes positions of discrimination which can be dealt with at different levels like recruitment, working life and unfavorable physical environment. 17.9% of the sample group expressed their job applications were always rejected and 17.3% expressed their job applications were often rejected although they had the same qualities as or higher qualities than a non-disabled applicant. The most encountered type of discrimination is not being allowed to work in jobs they could be promoted like the non-disabled workers in the working life. 22.5% always and 14.7% often came across with this situation. 29.5% of the sample group thinks they are always exposed to discrimination because the necessary arrangements appropriate to his situation are not made in his workplace, while 13.5% think they are often exposed to discrimination due to the same reasons.

The level of perception regarding the discrimination experienced by the disabled in the fields of employment and working life differ greatly according to the types of disabilities, level of education, personal wage rate and household income. The inarticulate people/ people with speaking disabilities perceive more discrimination than mentally, orthopedically and visually disabled people. Those who are primary school graduates perceive more discrimination than high-school graduates. The groups whose personal wage rates are less than 500TL (approx. 320 USD) and between 500-1000TL perceive a higher level of discrimination. The groups whose household income is less than 500TL perceive a higher level of discrimination.

Discrimination in the Field of Healthcare

27.4% of the sample group said the persons with disabilities were never, 16.7% said the persons with disabilities were seldom, 19.6% said the persons with disabilities were sometimes, 22.2% said the persons with disabilities were often and 14.1% said the persons with disabilities were always exposed to discrimination in this field. As it's seen, 55.9% of the sample group think there is sometimes, often or always discrimination in the healthcare field. When we add those who state they are seldom exposed to discrimination to this proportion, the proportion of those who perceive discrimination in the healthcare field rises to 72.6%. The most important variables affecting the perception of general discrimination are income statute, social security and type of disability. Women, who do not have a social security, turn out to perceive a general discrimination in access to healthcare services at higher levels than men who have a social security. The persons with hearing disabilities turn out to perceive significantly higher levels of discrimination than all the other groups.

The sample group state that they are seldom-sometimes discriminated since they are provided with healthcare services of lower standard and quality than the other members of the society; the appropriate physical arrangements in the healthcare institutions for the disabled are absent; the necessary healthcare services which the disabled need to be provided because of disability (including equipment and devices) are not covered by the health insurance; the healthcare institutions do not provide the necessary healthcare services which the disabled need because of disability; the healthcare personnel (doctors, nurses etc) treat them negatively compared with the other members of the society because of their disability.

When we look at the perceptions regarding personal discrimination arising from the quality of services, 55.9% of the sample group they are sometimes, often or always provided with services of lower standard and quality compared to the non-disabled. The perception of discrimination in the healthcare field arising from the quality of services is significantly higher among the inarticulate people/ people with speaking disabilities and the persons with hearing disabilities than the visually disabled. Those who do not have a social security perceive higher levels of discrimination about the quality of services in the healthcare field than those who have it.

When we evaluate the perceptions about the experiences of individual discrimination arising from the negative attitude of the healthcare personnel, 19.7% of the sample group stated that they sometimes, often and always perceived discrimination arising from the negative attitude of the healthcare personnel. When we add those who said that they seldom experienced this, this proportion rises to 31.7%. The perceptions about the experiences of individual discrimination arising from the negative attitude of the healthcare personnel is significantly higher among the persons with hearing disabilities and the people with language or speaking disabilities than the other disability groups.

When we evaluate the perceptions about the experiences of individual discrimination arising from the physical arrangements in the field of healthcare, 43.3% of the sample group stated to have sometimes, often or always been discriminated due to the physical arrangements. When we add those who said that they seldom experienced this, this proportion rises to 54%. The perceptions of discrimination arising from the physical arrangements in the field of healthcare are significantly higher among the orthopedically disabled people than the other disability groups. Among those with 80% or more disability proportion, the perceptions of discrimination arising from the physical arrangements in the healthcare field is significantly higher compared to those who do not have any report.

About the perceptions about the experiences of individual discrimination arising from the coverage by the health insurance, 34.3% of the sample group sometimes, often or always perceive discrimination in the access to the healthcare services arising from the coverage of the healthcare services, tools and materials by the health insurance. When we add those who seldom experience this, the proportion rises to 44.7%. The perceptions of discrimination arising from the coverage by the health insurance are significantly higher among the persons

with hearing disabilities, orthopedically or people with multiple disabilities than mentally and visually disabled. Those who do not have any social security perceive significantly higher levels of discrimination due to the coverage of health insurance.

When we look at the perceptions about the experiences of individual discrimination arising from the non-coverage of the healthcare service required because of disability by the healthcare institution, 23% of the sample group sometimes, often or always perceive discrimination since the healthcare institution do not provide the healthcare services they need because of disability. When we add those who seldom experience this, the proportion rises to 33.6%. The perceptions of discrimination arising from the non-coverage of the healthcare service required because of disability are significantly higher among those who do not have a social security.

Proposals on Discrimination in the Healthcare Field

- All persons with disabilities should be taken under social security without having to pay premiums, and no contribution should be demanded from them.
- The healthcare personnel should be supported to learn sign language. Paying a certain amount of language compensations to the healthcare personnel who learn sign language should be considered as an incentive method. In case the doctors haven't learned sign language, they should be directed towards asking for help from the nurses who know the sign language while communicating with the patient.
- The appointment system of the healthcare institutions should be visually accessible, too. For this purpose, as an alternative to appointment by telephone, appointments could be made on the internet, or the personnel in the appointment department could be chosen among those who know the sign language or could be subject to compulsory training for the sign language.
- Widespread use of visual communication and sign language should be adopted as a policy by making the announcements on the screen in sign language in the healthcare institutions. For this purpose, healthcare institutions could be obliged to employ a certain proportion of personnel who know the sign language.
- It's mandatory that the healthcare institutions should be made physically accessible, and at the same time clinics, diagnostic devices, toilets, and canteens should be made accessible for the disabled.

- A campaign which is organized in the form of revealing and displaying the positive and negative cases which will serve to this purpose to reveal and eliminate the prejudices which may pose obstacles to the enjoyment by the persons with disabilities of the right to health.

Discrimination in the Field of Education

The sample group thinks the disabled people are always and usually discriminated in the field of education. 25.3% of the sample group said the disabled people were usually discriminated in this field, 31.4% said they were usually discriminated in this field, 16.6% said the disabled were sometimes discriminated in this field, 10.8% said the disabled were seldom discriminated and 13.3% said the disabled were never discriminated in the field of education.

As it's seen, more than half of the sample group, I mean 59.4% share their perceptions that the disabled are always and usually discriminated. Those who think that the disabled are discriminated since the appropriate communication tools and technologies are not used for the disabled constitute almost half of the group. This proportion is 46.6%. The second most important reason the disabled are discriminated that the educators in the educational institution are not trained about disability. The proportion of those who think the disabled are always and usually discriminated due to this reason is 47.4%. People with multiple disabilities and the persons with hearing disabilities perceive significantly more discrimination compared to the other disability groups. Those whose degree of disability is 80% or more perceive more discrimination.

Discrimination in the Field of Political Participation

When we look at the frequency levels of voting in the elections and applications to be a member of a political party, 70.1% of the sample group said they always, 81% said they usually or always voted in the elections. 24.4% stated they attempted to become a member of a political party.

When we evaluated the sample group's perceptions of general discrimination in the field of political participation, 26.2% said the disabled people were never, 15% said they were seldom, 20% said they were sometimes, 23.8% said they were usually and 15% said

they were always discriminated in this field. As it's seen, 58.8% of the sample group think there is sometimes, usually or always discrimination in the field of political participation. When those who think there is seldom discrimination are added, this proportion rises to 73.8%. The perception of general discrimination in the field of political participation is significantly higher among those whose degree of disability is 80% or more compared to those whose degree of disability is between 40-59% and 60-79%; and among those who are high school or university graduates compared to all other levels of education.

The sample group state that they are sometimes discriminated because they are not allowed to vote with the help of an attendant because of their disability; the necessary arrangements (the ballot boxes not being on the first floor, waiting in the queue etc) are not made although they are registered as disabled in the electoral roll. The perception of discrimination while voting is significantly higher among those whose age range are between 26-35, 36-45 and 46-60 compared to those whose age range is between 18-25; among those whose degree of disability is 80% or more compared to those whose degree of disability is 40-59% and 60-79%; among those who are orthopedically disabled compared to those who have mental disabilities and the persons with hearing disabilities; among those who are adventitiously disabled compared to people who are congenitally disabled.

In the field of political participation, when we look at the personal perceptions about the experiences of individual discrimination regarding the rejection of the application for membership to a political party and not being allowed to take part actively in the party, those who applied for membership to a political party from the sample group stated that they were seldom-sometimes discriminated since their applications were rejected because of their disability; they were not allowed to actively take part in the party although they were members of a political party because of their disability.

24.7% of the sample group who are members to a political party stated they were not sometimes, usually and always allowed to actively take part in the party. When we add those who answered rarely, the proportion rises to 31.2%. The perception of discrimination arising from their rejection of the application for membership to a political party and not being allowed to actively take part in the party is significantly higher among the persons with mental disabilities compared to the inarticulate people/ people with speaking disabilities and the persons with hearing disabilities; among those who spent most of their lives in village compared to those who lived mostly in greater countries.

Proposals on Discrimination in the Field of Political Participation

- The campaigns for anti-discrimination should be conducted in such a way to publicly bring the issue of the participation of the persons with mental disabilities up for discussion and to support them. The participation of mental disabilities people in the political life and their right to labor in political parties should be opened for discussion to make the negative point of the public apparent and change it.
- Voting processes, ballot papers and guides should be rearranged for the visually disabled and other illiterate disabled groups. A different voting procedure could be developed benefiting from the experiences of the other countries for this group.
- The election officer should be reported that such regulations as availability of the accessible boxes where disabled people can use their votes and ensuring the disabled people not to wait in queues are compulsory in order to ensure the physical accessibility of the ballot boxes. On election days, ballot boxes can be open to inspection of the disability related organizations in terms of their physical accessibility and it can be thought to develop a sanction where the officer responsible for the ballot box which is not physically accessible even though it is known that the disabled voters will cast their votes there will be held responsible personally because of this negligence. Beyond these partial solutions, in general, physical accessibility problem of the public buildings and open areas must be settled in the short term.

Discrimination in Terms of Access to Justice

Sample group is of the opinion that disabled people are 'occasionally' subject to discrimination in terms of access to justice. 29.5 % of the sample group states that disabled people never experience discrimination in this regard, 18.5 % of them states that they are rarely exposed to discrimination, 21.1 % of them expresses that they are occasionally subject to discrimination, 19 % of them states that they are usually exposed to discrimination and 11.8 % of them states that they always experience discrimination.

As can be seen, almost half (51.9 %) of the sample group states that individuals with disabilities are occasionally, usually or always exposed to discrimination in terms of access to justice. Within the sample group, general justice discrimination perceptions of the women and

those having no social security, of those that have mostly passed their lives in big cities and of those with a report rate of 20-39 are significantly higher respectively than men and those with a social security, those living in towns and villages and those having the other report rates.

Depending on their own personal experiences, sample group stated that they are occasionally exposed to discrimination on grounds that appropriate physical regulations and communication opportunities do not exist at police stations and/or courts, that their complaints, testimonies, defenses are neglected due to their disability and that enforcement officers (police, gendarmerie, city police) behave in an adverse manner.

General discrimination perceptions of those who have somewhat been to a police station or a court based on their personal experiences in terms of access to justice differ according to the income level. Discrimination perception of the income group of 3001 TL (approx. 1900 USD) and over in this regard is significantly higher when compared to the other income groups.

Of the sample group, 49.5 % of those who have somewhat been to a police station or court stated that they occasionally, usually or always encounter with a problem regarding physical regulations and communication in terms of access to justice. When the ratio of the disabled people whose answer was 'rarely' is added, this ratio becomes 58.7 %. Discrimination perception resulting from physical access and communication opportunities in the access to justice is significantly higher in the orthopedically disabled people than the visually impaired. Discrimination perception level of those having a report of over 60 % in this regard is significantly higher than those with a disability report in the ratio of 40-59 %.

Of the sample group, 27.2 % of those who have somewhat been to a police station or a court expressed that their testimony or defense were rarely, occasionally, usually or always ignored due to their disabilities and 23.6 of them stated that they rarely, occasionally, usually or always encountered with adverse behaviors of the enforcement officers because of their disabilities. In this respect, those having several disabilities and mental disabilities perceive significantly more discrimination than the orthopedically disabled and visually impaired. Moreover, the people with 3000 TL income and over perceive significantly more discrimination than the people of the other income groups.

Recommendations Regarding Discrimination in Terms of Access to Justice

- Courthouses, police stations, prisons and detention houses, vehicles used while detaining the individuals must be designated and regulated in such a manner that the individuals with physical disabilities will not encounter problems because of their disabilities.
- The fact that personal care of the disabled people who need the assistance of another person for their personal care can not be left to the mercy of the third parties during supervision, detention and punishment execution processes and that security forces are responsible for fulfilling this task should be taught to the security forces, and the relevant institutions should be reorganized within the framework of this principle.
- Considering the fact that medical needs of the disabled people are more urgent and common than the other individuals, they should be provided with medical services in the form of routine controls in case they demand any medical service in prisons.
- Legislative arrangements may not be sufficient in preventing discrimination alone. Thus, personnel of the justice field should be provided with the necessary information and training in order to change their mentalities.

Discrimination in terms of Participation in the Spare Time and Leisure Activities

Sample group thinks that individuals with disabilities are “occasionally – usually” exposed to discrimination in terms of participation in the spare time and leisure time activities. 17.8 % of them stated that disabled people are never exposed to discrimination in this regard, 14.4 % of them stated that they rarely experience discrimination, 18.4 of them stated that they occasionally become the subject of discrimination, 37.6 % of them stated that they usually experience discrimination and 17.8 % of them stated that they are always exposed to discrimination.

As it is understood, almost half of the sample group (49.4 %) states that individuals with disabilities are either usually or always exposed to discrimination in terms of participation in the spare time and leisure time activities. 23.1 % of the sample group stated that they never participate in spare time activities while 25.8 % of them stated that they can rarely participate in such activities. In other words, the ratio of those who can never participate in spare time activities or who rarely participates in these activities constitutes almost half of the sample group (48.9 %). On the other hand, 31.6 % of the sample group states that they occasionally

participate, 12.4 % of them usually participate and 7.1 % of them always participate in this kind of activities.

Depending on their own personal experiences, sample group states that they are rarely-occasionally exposed to discrimination due to the fact that necessary arrangements or informative trainings are not conducted, support services and opportunities (lack of personnel, physical arrangements etc.) are not provided. Perceptions regarding personal discrimination experience in terms of participation in spare time and leisure time activities do not differ significantly by variables of gender, age, marital status, type of disability, site of settlement, economical status, and degree of the disability. However, it was determined that the disabled people who have worked/have been working in any job for the last five years perceive significantly less discrimination based on their own personal experiences than those who have not worked. Furthermore, it was found that primary school graduates perceive significantly more discrimination based on their personal experiences than the high school graduates.

Recommendations Regarding Discrimination In Terms Of Participation in Spare Time and Leisure time Activities

- Necessity to encourage disabled people to participate in spare time and leisure time activities should be paid attention both in terms of fight against discrimination and in terms of positive psychological effects of these activities.
- In this field, arrangements and/or informative trainings, support services and opportunities (lack of personnel, physical arrangements etc.) needed to eliminate discrimination should be promoted.
- It is considered important to perform arrangements, informative trainings and support activities that are necessary in order to increase the participation rate in spare time and leisure time activities by considering especially the needs of the disabled people who perceive more discrimination, have no profession and have a lower level of education.

Discrimination in terms of Integration to the Society

Sample group is of the opinion that disabled people are “usually-always” exposed to discrimination in terms of integration to the society. 11.9 % of the sample group states that disabled people are never exposed to discrimination, 12.3 % of them states that they

rarely experience discrimination, 18.1 % of them states that they occasionally experience discrimination, 36.8 % of them states that they usually become subject of the discrimination and 20.8 % of them states that they are always exposed to discrimination in terms of integration to the society. As it is understood, more than half of the sample group (57.6 %) is of the opinion that individuals with disabilities are usually or always exposed to discrimination in terms of integration to the society.

Variables influencing the general discrimination perception of the sample group as regards to integration to the society are gender, working status, apparent disability, and age, site of settlement, economical status, and degree of disability and education level. It was determined that men, those who have worked so far and those having an apparent disability perceive significantly more discrimination respectively than women, those who have never worked so far and those without an apparent disability. Discrimination perceptions of the group of 61 ages and over and those who have passed their lives mostly in rural areas are lower than the other groups of age and settlement site. Individuals with a disability level of 80 % and over, those having a monthly income of 3001 TL and over and the disabled people who have a bachelor's degree and master's degree perceive significantly more discrimination respectively than the individuals with a disability level of 40 % and 59 %, those with a monthly income of 1500 TL and less and the individuals who are only literate or primary school graduate. Younger and more educated men who live in cities, have a higher income level and degree of disability, have a working experience and an apparent disability have a higher discrimination perception in terms of integration to the society.

Depending on their own personal experiences, sample group states that they face discrimination resulting from inaccessible nature of the physical environment or discriminative behaviors of the individuals. Discrimination resulting from the inaccessibility of the physical environment is most frequently experienced at public places. Public places are followed by intra-city public transportation, public buildings and inter-city public transportation. 77.3 % of the sample group has experienced access difficulties in public places such as roads, pavements and parks due to lack of necessary arrangements for the disabled. 70.2 % of them have experienced access related problems in the buildings providing public services due to lack of necessary arrangements for the disabled. 72.1 % of them could not use the means of intracity public transportation because of the lack of necessary arrangements for the individuals with disabilities. 59 % of the sample group could not use the means of intercity public transportation due to the lack of necessary arrangements for the disabled people.

Factors influencing the discrimination perception of the sample group about the accessibility of the physical environment in terms of integration to the society are age, type of disability, settlement site, degree of disability, education level and whether the disability is congenital. 18-25 age group; persons with mental disabilities and those having speech disorders; those with a congenital disability stated significantly less frequent discrimination experiences respectively than 26-35 and 36-45 age groups; the visually impaired and those with a orthopedically disability and those having multiple disabilities; the individuals whose disabilities are not congenital. The individuals who have mostly passed their lives in cities; those with a disability degree of 80 % and over; high school and university graduates stated more frequent discrimination experiences when respectively compared to the other groups; those having a disability level of 20-39 % and 40-59 % ; and illiterate individuals. Individuals within the 26-45 age group, who live in city, who are more educated, who have high level visual impairment or orthopedically disability which is not congenital stated more frequent discrimination experiences.

Anti-social behaviors of the unknown third persons rank first among the discriminative behaviors that the sample group reported depending on their personal experiences. It is followed by maltreatment by the public officers and the discriminative behaviors of the bank workers and public servants. 65 % of the sample group faced anti-social behaviors (teasing, humiliation etc.) of the unknown people. 23.7 % of them stated that they usually or always encountered such behaviors. 42.7 % of them have been the subject of ill treatment (teasing, humiliation) by the public servants. 12.2 % of them stated that they usually or always encountered such situations. 48.1 % of them experienced discriminative behaviors (request of witness, recusation of the demand) of the officers in the banks or public institutions. 25.2 % of them stated that they usually or always encountered such situations.

Variables influencing the discrimination experiences of the sample group resulting from discriminative behaviors of the people in terms of integration to the society are gender, settlement site, type and degree of disability and education level. Women; individuals with orthopedical disabilities; those having a 80 % disability degree encountered significantly more frequent discriminative behaviors when respectively compared to men; those with a visual or hearing impairment; those who do not have a report and who have a degree of disability of 40 % and over. Individuals who have mostly passed their lives in towns and illiterate people encountered less discriminative behaviors when respectively compared to the other settlement

site groups and primary school, secondary school and university graduates. Educated women living in cities and having a high degree of orthopedically disability expressed a high level of discrimination experience originating from the behaviors of the individuals.

Recommendations Regarding Discrimination in terms of Integration to the Society

- Providing functional validity for the implementation standards and implementation guides as regards to reasonable accommodations in order to fight against discrimination originating from the inaccessible nature of the physical environment.
- Ensuring the immediate implementation of decisions and recommendations regarding the physical environment which were put forward in II. Council on Disability.
- Evaluation of the trainings, awareness raising activities and penal regulations all together with the purpose of fight against discrimination resulting from the discriminative behaviors of the individuals.

Discrimination in terms of Access to Information

Sample group is of the opinion that the individuals with disabilities are “rarely-occasionally” exposed to discrimination in terms of access to information. 26.9 % of these people expressed their opinions that the individuals with disabilities never experience discrimination, 14.5 % of them stated that they rarely experience discrimination, 17.0 % of them stated that they are occasionally exposed to discrimination, 28.2 % of them stated that they usually experience discrimination and 13.4 % of them stated that they always become the subject of discrimination in this respect.

As it is understood, 73.1 % of the sample group shares the conviction that the individuals with disabilities are exposed to discrimination in terms of access to information. Variables influencing the general discrimination perception of the sample group as regards to access to information are gender, type of disability, settlement site and economical status. Discrimination perceptions of the women, individuals with hearing disabilities, those who have passed most of their lives in cities, those with an income of 3000 TL and over and the people with a low degree of disability are higher in terms of access to information. It was determined that no significant difference emerged due to the education level which was expected to be influential in terms of access to information.

Depending on the personal experiences, it was stated that 65.2 % of the sample group experienced difficulty due to lack of reasonable accommodations regarding the accessibility of communication and information means and services, that 66.2 % of them could not be aware of the public informative statements as they are not issued in an appropriate manner for the disabled, that 53.2 of them could not reach the necessary information due to the fact that there is not arrangements regarding communication means appropriate for their disabilities when they applied to the public institutions, 54.4 % of them could not reach the necessary information at the web sites of the public institutions due to lack of directions including communication means appropriate for the individuals with disabilities. Variables influencing the discrimination perception of the sample group in terms of access to information are settlement site, type and degree of disability. Individuals with hearing disabilities; and visually-impaired individuals stated that they experience inaccessibility more frequently when respectively compared to all the other groups; and those who have speech disorders, orthopedically disabilities and mental disabilities. Individuals who have passed most of their lives in cities and have a disability ratio of 60 % and over stated that they experience relatively more frequent inaccessibility. It was found that economical status and education level do not make a significant difference in terms of personal experiences as well as general perception regarding the field.

Recommendations Regarding Discrimination in terms of Access to Information

- Paying a special importance to the accessibility of the television broadcasts by the hearing-impaired individuals.
- Reorganization of the public institutions in such a way that they can use Braille in the correspondences with the visually impaired citizens; in particular, starting to use this system in the correspondences containing sensitive and private in formations within the scope of the protection of the private information; ensuring that financial institutions and the other private institutions storing sensitive and private information adopt similar application measures.
- Use of marking systems for the visually impaired individuals by using sounds or braille in the buildings providing public service to the citizens, in particular public institutions.
- Providing accessibility at the WAI standards in the web sites of the public institutions.

Knowledge Level about Legislation Regarding Disability Discrimination

28.7 % of the sample group stated that they know the legislation about the disability discrimination while 71.3 % of them stated that they do not know the legislation. Legislation knowledge level of the sample group as regards to disability discrimination is higher in the age group of 46 and over, in the people who have an upper income and education level, lives in big cities, have a disability degree of 59 % and over, in men and in the working group.

56.9 % of the sample group stated that they do not know where to apply to claim their rights. 58.7 % of them stated that they do not know the places that they can seek support and consultation. 80 % of them expressed that they have too little knowledge of the Convention on the Rights of the Persons with Disabilities. Of the sample group, legislation knowledge levels of the individuals who try to fight against discrimination in terms of disability discrimination are higher. Moreover, legislation knowledge levels of the people who have higher general and personal discrimination perceptions are also higher.

Recommendations for the Knowledge Level on the Legislation Related to Disability Discrimination

- Provincial and district human rights committees and service units created by the metropolitan municipalities that the disabled people can receive consultancy should be promoted and publicized.
- Efforts should be exerted in order to raise the awareness of the disabled people about their rights and in particular to increase their basic knowledge level regarding the legislation in cooperation with the organizations related to disability and under the leadership of the Administration for Disabled People and Human Rights Presidency of the Prime Ministry.
- Basic information regarding the legislation can be announced in a widespread manner from the mass media and in particular from television as spot programs.

EUROPEAN UNION POLICIES ON FIGHTING AGAINST DISABILITY DISCRIMINATION

Mehmet Caner DEMIR

Delegation of the EU to Turkey

Sector Manager

Integration of the Persons with Disabilities and Anti-Discrimination Policies in the EU

When it comes to European Union, actually it is an institutional organization. Thus, it is necessary to discuss the EU countries and the EU itself individually. In my presentation, I would like to talk about what has been done for the disabled people at the EU level.

Policies regarding the disabled people are basically under the responsibility of the EU member states. However, these member states cooperate in the EU platform at varying levels. As the problems and needs of the disabled citizens are identical in all countries, EU has deemed it necessary to conduct studies on this issue as a union. Measures that should be taken by the states about this issue are also similar. Many EU policies have effects on the citizens of all the countries within the union. In this regard, establishing a common policy is accepted as useful for several reasons.

There are many different policy areas addressing the different aspects of the life in the European Union. It is seen that EU has full authority on some of these policies and practices about money unit, government aids and tariffs can be given as example. However, in some areas, both practices at the EU level and legislative authority at the national level are available. In some other areas, authority of the EU is only limited to support and coordinating the cooperation between member states. Examples of these areas are culture, education and employment.

Which methods are used by the EU to govern these efforts? It has legislative power. It has legislative and policy-making powers and efforts as in the case of our country. There are money funds that support these efforts. As for the legal basis, there are direct references to the persons with disabilities in the 10th and 19th articles of the EU treaties. These articles show the fight of the EU against discrimination towards the persons with disabilities. EU has the authority to take this into consideration and to establish special policies according to this. EU can shape its policies in such areas as transportation, environment and health by considering

the rights of the persons with disabilities or can envisage actions aimed directly for those groups.

In the EU Charter of Fundamental Rights, there is direct reference to the persons with disabilities. Discrimination against the disabled is prohibited in the Article 21. In the Article 26, it is stated that measures should be taken to ensure the freedom of the persons with disabilities, their participation in the social life and their social and professional integration. If it is necessary to continue with the other legal instruments, there are directives. Directives, to some extent, correspond to the international legal regulations. There are many different types of discrimination. Two basic directives are available in the fight against discrimination. One of them is formed to fight against racial discrimination and the other one is the directive for the equal treatment in the working place and employment which includes the persons with disabilities.

In the second directive, discrimination based on religion, age and disability in terms of employment is prohibited.

The European Union is going through a new legislative process. At this present moment, legislative directed at the disabled is only limited to employment and vocational training areas. Nonetheless, EU is planning to extend this to the other areas, as well. References to the disabled are also available in the sectoral legislations. All forms of discrimination in the fields of employment and vocational training are prohibited at the EU level.

When the importance of these policies for Turkey is analyzed, Turkey will be entitled to implement them when it becomes a member state. It is observed that racial discrimination was prohibited in the fields of education, access to goods and services, social protection. However, such legislation is not currently available for the persons with disabilities. Thus, it is planned to extend these areas at the end of the legislative efforts. Within the scope of the directive, discrimination based on disabilities in terms of access to employment and vocational training has been prohibited. Discrimination in the working conditions and hours due to the disability of the employee is also within the scope of this prohibition. In case of discrimination in any of these areas, it is the liability of the employer to prove it. Directive of employment equality imposes the obligation to make reasonable regulations. For instance, employers should take the appropriate measures enabling the persons with disabilities to access to jobs,

to participate in the employment, to be promoted or to receive trainings in all the necessary situations provided that it does not create a disproportionate burden on the employer. There are some objectives regarding social inclusion within the framework of the Lisbon Strategy.

In 2010, 2020 strategy of the EU was prepared. In the 2020 strategy of the EU, various measures are envisaged against poverty. Measures regarding the youth are given priority. These all concern the persons with disabilities indirectly, as well.

The employment strategy put forwards the active labor market programs and the concept of flexicurity. This new concept has been under discussion in Turkey recently. Furthermore, various measures have been planned to promote the exchange of ideas between the states. Annual reports are prepared in the fields of employment, social protection and social inclusion in the manner that covers all the EU member states. Turkey is also liable to conduct a reporting in this regard within the framework of the negotiation process as a candidate country. Turkey is expected by the Union to conclude a common inclusion document regarding this issue. A subtopic of this document will be “the Policies regarding the Disabled”.

Ministers of the EU member states convene three times a year and they discuss the problems of the individuals with disabilities. Besides, EU term presidencies organize conferences aimed at policy-making for the benefit of the disabled. A policy dialogue organized by the European Commission takes place at the first week of December every year. A special activity is held in Brussels on the day called as the Day of the Persons with disabilities. These are the practices at the EU level.

If it is necessary to talk about the financial instruments apart from the policies, we should express that EU does not have legislative power on every issue. It can only have a facilitative role in the disability policies of the EU. We can make an analogy of catalyzer. European Union urges the member states to fulfill their commitments. This incentive realized within the scope of the PROGRESS Community Program also financed this project. It is possible for the candidate countries to benefit from the community programs. At the moment, Turkey benefits from them. Ministry of Labor and Social Security is the information center in this regard. European Social Fund is another important financial source in this field. There is a total budget of 75 billion Euros for a seven year period. Turkey can make use of this fund when it becomes a member state. 4th component of the IPA program prepares Turkey for its integration to the EU at the

moment. Within this scope, Ministry of Labor holds many funds. These funds are provided for the Turkish people to take advantage of them by means of various coordination mechanisms with the European Commission.

All EU member states and the EU as a legal entity adopted and implement the UN Convention on the Rights of the Persons with Disabilities. Turkey is a party to this convention at the moment. EU is preparing a new strategy: "European Disability Strategy 2010-2020". General objectives of this strategy are to strengthen the persons with disabilities to enable them benefit fully from their rights, to create a Europe without barriers for everybody, to abide by the international commitments laid down in the United Nations Convention on the Rights of the Persons with Disabilities. These conventions are signed but to what extent they are implemented remains an issue of concern. This is also valid for the EU member states. One of the objectives of this strategy is to follow to what extent the member states of the EU implements this convention. Another part of the European Disability Strategy is to form an online instrument. Web portal that will be formed will enable the follow of the EU itself and its member states as to how they implement the convention.

A communiqué was prepared by the European Commission in order for this strategy to come into effect. However, this communiqué has not entered into force yet. It is expected that European Union will adopt the strategy within several weeks. Then, providing more detailed information will be possible. Such issues as accessibility, participation, equality, participation in the employment, education, training, social protection and health were specified within this strategy. Providing support to the countries out of the EU is also a part of this strategy. As for the instruments that will be employed to fulfill these objectives, they are awareness-raising, providing financial support and the availability of comparable data thanks to accurate statistics and they will constitute a part of this strategy.

Fighting against discrimination, inclusion of the persons with disabilities in the labor market that is open to everybody, fighting against poverty and social exclusion, equal access to the medical services and providing support to the member states and the other countries will be the components of this strategy. More detailed information regarding this issue is available at the official web site of the European Commission. Thank you.

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European Union's Methods for Fighting against Disability Discrimination and Their Legal Basis

Presentation is composed of three topics:

New Draft Directive on Anti-Discrimination

Equality Institutions

Sample Lawsuits Filed before the ECCJ Concerning Disability Discrimination

1. New Draft Directive on Anti-Discrimination

New draft directive on the anti-discrimination which is more comprehensive and has a more integrated scope of application was prepared and was started to be published in the Council in July 2008 to be negotiated. Objective of the draft is to create an umbrella and a cooperation ground in order to fight against discrimination based on sexual origin, age, disability, sexual orientation, religion or faith.

2000/78/EC Directive (Directive on Equal Treatment in Employment and Occupation) prohibited discrimination based on disabilities in many fields. Based on this deficiency, scope of the Draft includes the following activity areas:

- Social security and social protection including the medical services,
- Social advantages,
- Education,
- Access to goods and services that are provided by the state and that include housing acquisition.

Apart from these areas, it is emphasized in the draft that member states have to take measures to ensure that the necessary infrastructure is set up with the purpose of enabling the persons with disabilities to benefit from the cultural activities and to have access to all the other indoor areas equally.

In line with this, it is stated in the draft that adoption of proportionate, reasonable accommodation measures may be needed so as to provide social integration opportunities. Besides, it is stressed that public institutions and organizations need to take necessary precautions in order to ensure the equal presentation of the individuals before the judicial organs.

Approach adopted for the prohibition in the specified field is that it should be applied to all the natural and legal persons by taking both the public and private sectors into consideration and within the limits of the powers on the society. However, in this draft, it is aimed to give the public authority and power prominence in the specified fields.

It is also stated in the draft that member states should adopt additional measures including the revision of the texts especially containing discriminative expressions and clauses in order to ensure that the principle of equal treatment is well respected. These additional measures are specified in the draft as follows:

- Annulment or abolition of any and all legal regulations and administrative terms inconsistent with the principle of equal treatment.
- Abolition or legal arrangement of the terms, commitments, internal rules, administrative rules and all the regulations which are included in the contracts concluded by the institutions and organizations no matter whether they are profit-oriented or non-profit and which are contrary to the principle of equal treatment.

2. Equality Institutions

Implementation of the decisions taken in the field of fight against discrimination is ensured by the equality institutions. These are specialized institutions which are mostly affiliated to the central administration; conduct inquiries in the fields envisaged by the laws of anti-discrimination and ensure the application of the sanctions. Moreover, in general, they can fulfill their duties independently without the restrictions of the other national public authorities. Other duties of these institutions are as such:

- To follow the complaints regarding discrimination, to provide independent support to the victims of discrimination and to ensure that public and private institutions and organizations and the other legal organizations show respect to the rights of these victims,
- To conduct independent investigations as regards to discrimination,

- To announce independent reports and to provide comments and recommendations regarding discrimination at every level.

There is not a single standard sample of equality institution covering all the EU member states. An imbalance exists in many countries throughout the Union in terms of institutional change during the formation of equality institutions. In some countries, new equality institutions have been created while some countries have applied reforms on their existing institutions; such countries as the Czech Republic, Malta and Spain have not conducted an institutional arrangement yet. Moreover, there are also some differences in structuring and naming these institutions. For example, these equality institutions are named as “Ombudsman’s Office for the Disabled”, “Equality Office” and “Equal Treatment Commission” in some countries.

2.1. Swedish Disability Ombudsman’s Office

Its basic objective is to ensure the full integration of the persons with disabilities to the society and its general vision is social inclusion. There is a president and 15 officers in this institution. Main responsibilities of the institution are as follows:

- To analyze the reports on the discriminative attitudes and behaviors sent to the institution and to prepare reports about them,
- To provide data flow regarding anti-discrimination, to provide consultancy to the individuals and to put forward recommendations,
- To conduct investigations as regards to the complaints and to send reports to the institutions on this complaint,
- To propose legal and practice-related arrangements,
- To coordinate the other related agencies and organizations,
- To participate in the international organizations and to have a role within these institutions,
- To ensure that the citizens comply with the basic laws concerning the discrimination.
- Another field of work of this institution is the individuals with long-term diseases. Narrow action plans are prepared in this field and the data flow regarding the persons with disabilities is ensured through the reports at the national level. The institution is also responsible for the follow and investigation of the allegations and has the quality of leader and primary regulatory institution in the field of legal arrangements. However, it has secondary authority in the cases to be filed.

- In line with the Article 3 of the Ombudsman Code for the Disabled, HO tries to fulfill the abovementioned duties through the informative activities. It is stated in the article 4 that the competent units, regional councils and the municipalities which are liable to provide services in favor of the persons with disabilities should inform the Ombudsman about their activities. These institutions are also obliged to negotiate with the international institutions in a manner compliant with the criteria set by HO. As for the article 5, it is expressed that HO will be represented by a special advisory body and the president of this advisory body will be the Ombudsman. It is specified that the president and members of the Ombudsman's Office will be appointed for a specific period.

3. Sample Lawsuits Filed Before the ECCJ Concerning Disability discrimination

3.1 Lawsuit of S.C. Navas v.Eurest Cloectividades SA.

Its scope is related to determining whether the dismissal of an individual who cannot return to his/her work in a short time due to a disease or disability can be evaluated within the Directive or not.

Development of the case: Ms. Chacon Navas started to work in Eurest Company in 2003. When the medical institution reached to a conclusion that she could not return to her work in a short term, Eurest sent a written notification to Ms. Navas stating that she was dismissed without any further explanation. On 29th July 2004, Ms. Navas filed a lawsuit against Eurest by claiming that she was exposed to discrimination in a manner inconsistent with the principle of equal treatment when she had to be on leave for 8 months due to health problems and that consequently she was dismissed.

National Labor Court no. 33 which ruled the case applied to ECCJ for a preliminary ruling on the grounds that there is not a disability description and that it cannot determine whether the disease is evaluated within the scope of discrimination under the 2000/78/EC Directive. ECCJ defines the concept of disability as follows in this context:

“Concept of disability should be accepted to define the restraints which lead to physical, mental or psychological disorders and impede the participation of the individual in the professional life. However, using a different term other than “disease” is an informed choice and the “concept of disability” is used with its meaning in the article 1 of the abovementioned Directive. Thus, these two concepts are not interchangeable.”

It was emphasized by ECCJ that it is necessary for the restraint to last for a long time in order to be able evaluate it within the scope of “disability”. ECCJ which has the authority to interpret the community legislation stated clearly that an individual dismissed by the employer only due to her disease cannot be evaluated within the scope of the fight against disability discrimination of the 2000/78/EC Directive establishing a general framework regarding equal treatment in occupation and employment.

Court did not make a distinction between the diseases causing disability and the diseases not causing disability and ruled that an individual could not be protected under the scope of the disability discrimination due to a short term disease. The Court’s ruling that dismissal based on a short term disease that does not cause disability does not lead to disability discrimination is a sound decision.

However, the individual who will experience disability due to her existing disease in the long run will not be included in the scope of the abovementioned protection when she become the subject of discrimination on this ground. Therefore, scope of the application of 2000/78/EC Directive will remain limited due to this narrow interpretation.

3.2. Lawsuit of S.Coleman v. A.Law (C-303/06, 2008)

Here is the process of the lawsuit. Coleman started to work as secretary with her old employer (A.Law and S.Law) in January, 2001. In 2002, she gave birth to a male child suffering from apneic attacks and congenital laryngomalacia (respiratory distress).

On 30th August 2005, Mrs. Coleman filed a lawsuit at the Labor Court located in Southern London by claiming that she was dismissed unjustly and impliedly and she was treated in a different manner when compared to other employees on the ground that she undertook the care of her disabled child. Realities accepted to cause controversy in the case of Mrs. Coleman are not showing the necessary flexibility in terms of working hours and conditions and the negative and insulting comments about her and her child and her dismissal.

Court of Justice adopted the following decisions:

Council Directive no. 2000/78/EC and dated 27th November 2000 establishing a general framework for equal treatment in employment and occupation and especially the articles 1, 2 (1), 2 (a) thereof should be interpreted in a way that prohibition of direct discrimination does not cover only the persons with disabilities themselves. In case an employer treats his/her employee who is not disabled in a more negative manner than s/he adopted, adopts or will adopt against another employee under similar conditions and it is detected that the reason of such treatment is the disabled child of the said employee, such a attitude or behavior is deemed inconsistent with the prohibition of direct discrimination laid down in the article 2(2) (a).

At the end of this lawsuit, ECCJ accepted that disability discrimination takes place from the point of the individual. Therefore, it extended the scope of the 2000/78/EC directives in terms of the persons with disabilities. It stated that narrow interpretation including the protection of only the persons with disabilities themselves is not consistent with the anti-discrimination policy and that results to be obtained in this manner would be limited.

It emphasizes that discrimination is not always focused on the persons with disabilities but discrimination related problems can arise via the families and relatives of the persons with disabilities. Moreover, it is rather interesting that ECCJ stated that this interpretation should also be applied to the other types of discrimination. Thank you.

Lütfiye KELLEÇİ BİRER

Parliamentary Advisor

European Union Disability Action Plan and Turkey

Instruments of the European Union are important and determinative for our country. One of the basic reference documents of the EU as regards to discrimination is “2003-2010 Disability-Action Plan”. This Plan addresses the issues of employment, effective participation and accessibility. This Action Plan was completed at the end of 2010.

At the end of the investigations, it was stated that there are still deficiencies in this regard in the member states and these issues should be dealt with in a more detailed manner. Besides, United Nations Convention on the Rights of the Persons with Disabilities was adopted by the EU and its all member states, while the additional protocol was adopted by most of the member states. Adoption of the convention also requires the studies regarding this field to be more detailed. As a result of all these, European Council instructed the Commission to have the studies of a new strategy action plan launched in March, 2008. Upon this instruction, studies on the 2010-2020 Disability Strategic Plan was launched in the EU and the member states.

Convention envisages that discrimination policies should be based on rights. Thus, it is expected that policies to be established in the 2010-2020 action plan will be based on this right-based approach. It is predicted that this action plan will include coherent objectives to indicate the practices of the member states regarding the convention. It is thought that the new strategy will propose actions at the EU level and include some measures for the follow of the implementation of the convention. These measures are expected to answer such questions as “we ratified the convention but to what extent we implement it, are we on the right lines, do we still have deficiencies?” And this should be followed with a specific method.

When the issue of disability is considered comprehensively, it coincides with many of the EU policies. Such areas as education and construction that play an important role in the daily lives of the individuals are the responsibilities of the member states. However, this does not mean that the EU cannot conduct studies or provide recommendations regarding these issues. According to data, the EU has currently approximately 50 million disabled citizens. These data

indicate that the persons with disabilities constitute one of the disadvantaged groups with the largest population within the EU.

Again, these data demonstrate that the persons with disabilities are faced with the risk of discrimination in the EU despite all the measures and positive practices. Certain indicators of this situation can be listed as follows:

- Employment rate of the persons with disabilities is low in the EU member states.
- Persons with disabilities are poorer in the ratio of over 70 % in terms of poverty average.
- “Gaining favor” trap of the employers in the employment is a major hindrance for the labor force.
- Persons with disabilities who cannot develop themselves personally are not expected to participate in the other areas of the society.
- Even though most of the abovementioned areas such as education, employment and social support are the common issues of the member states, local authorities are influential in the decision-taking processes of these areas.

What should be the basic objective of the 2010-2020 Action Plan?

The plan in question is expected to ensure the active participation of the persons with disabilities in the daily life, to eliminate all the discriminations based on disability, to render all the human rights and freedoms applicable and to assure the capability of the persons with disabilities to benefit from all the human rights.

Furthermore, it is necessary to ensure and follow the proper implementation of the commitments made in the United Nations Convention. We can sum up the measures to be taken in order to fulfill these objectives in three groups:

- First one of them is the administrative measures and it can consider as the fulfillment of the commitments as regards to the procedure of the convention adopted by the EU institutions and member states. These are general obligations such as forming mechanisms for the follow of the implementation of the convention in the EU member states and the performance of the reporting obligation. Establishing common policies at the EU level and the revision of the studies regarding the disability in the implementation of these policies are also of paramount importance. Collecting reliable data and statistics is another important matter. In my opinion, this is the basis of the

studies to be carried out in all the EU member states. Unless you have reliable data and statistical information, your studies and policies might become incoherent and inconsistent.

- Second one is the thematic measures: these are the measures to be taken within the scope of the conventions adopted by the EU institutions and member states. Election arrangements, inclusion materials and accessibility of the transport, education, medical services, independency within the society, free movement, participation in the social life, institutionalization and benefiting from the services are the examples of these areas. Participation in the cultural life, entertainment and sport activities can also be added. Above all, measures should be taken to provide a independent and honorable life to the persons with disabilities.
- Third group is supportive measures: these are the efforts such as the sharing of the information and the best practices of the member states, the exchange of ideas between the specialists, conducting research studies and establishing dialogue with the non-governmental organizations. In a general sense, in the objective of the 2010-2020 Strategy Plan is to extend the scope of the fight against disability discrimination and to be able to fight against discrimination through more concrete measures.

What is the Situation in Turkey Regarding the Fight against Discrimination?

Disability discrimination is considered as an offence in the Turkish Criminal Code as per the law no 5378. One of our fundamental problems is the limited nature of the discrimination description in the Turkish Criminal Code. What is more important is that we completed our accession process to the UN Convention in 2009 and it has the characteristics of a law as we became a party to the convention in line with the procedures of our constitution. Moreover, there is an anti-discrimination draft proposal that, I believe, should be touched upon. I hope that the equality institution will be established thanks to this draft. One of the first steps to be taken to strengthen this fight may be to provide support for the adoption of this draft proposal in the shortest time possible. In my opinion, another significant step is to complete the accession process of the additional protocol of the UN Convention that we have already signed but have not completed the accession process yet.

**THE APPROACHES OF NON-GOVERNMENTAL
ORGANIZATIONS TO DISABILITY
DISCRIMINATION**

Turhan İÇLİ

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About the Historical Background of Discrimination and Discrimination against Disabled People

On the basis of humanity, discrimination is the earliest and most common value judgement and attitude in the history. It has been continuing for thousands of years with different types and in different dimensions. Geographical discrimination, gender discrimination, class discrimination, racial discrimination, and other types of discrimination against social minority groups... This chain continues like that. Then, what are the historical and social reasons of discrimination?

I am under the impression that at first, limited food sources led to the discriminatory treatments and value judgements. Our primitive ancestry had been living in small consanguineous communities called clan. At the development level of that time, it was necessary to make incredible amount of effort to keep the clan alive and feed the clan members. For this reason, every clan had to fight with other clans or to be well-prepared for the fight at any moment for the sake of protecting and extending their living space. Otherwise, it would disappear off the face of the earth. Because they were encompassed by the enemy clans having the potential of eliminating them just in a night raid. Every clan was necessarily the enemy of the other. One clan was representing the “we” with its members worshipping the same totem while other clans were representing the “others”. The “we” had to be protected and the “others” had to be destroyed or to be disabled. The clans were integrated against the destructive and jeopardizing feature of the war to the humanity and constituted tribes while the tribes then constituted federations or confederations. However, the root of the problem did not change. Wars for the purpose of extending the territories continued by acquiring bigger dimensions. Because, war was a compulsory living style and a productive force for the primitive society of that time. Therefore, they had no choice but to separate the “others” from themselves and act accordingly. Beliefs, customs, traditions, value judgements... Everything was shaped accordingly.

Morgan, an American anthropologist from the 19. century, divides the civilization or prehistoric communities into two main stages: Savagery and Barbarism. Also he further divides

the barbarian stage into three. These are the Lower, the Middle, and the Upper period of barbarism.

Communities living in the lower barbarism period make their living with hunting and gathering and use primitive tools such as arrow, bow and spear. The community, worshipping the same totem, jointly consumes the products which were obtained together. In this period, no social differentiation exists between either female or male or among the other members of this community. Because the economical level of the community does not allow for obtaining any remaining product and saving them. In this community, division of labour is not developed also. There is only a simple and obligatory division of labour between the female and male due to the gender difference. While male is mainly oriented towards hunting and gathering, female is oriented towards the child care and housekeeping due to her child-bearing feature. In this period, child-bearing feature of the female brings a social prestige to the female, as female secures the continuity of her bloodline thanks to this feature and takes up the role of keeping the fire alive which protects the community members from cold, darkness and predatory animals and diversifies and flavours their foods. Because of these reasons, family tree of the community is formed having regard to the female. These communities are called matriarchal societies as it gives the female a special statue and power.

Above we mentioned that the development level of the community does not allow for the creation or storage of remaining products except for the daily sources of living in the lower barbarism period. Under these circumstances, it is highly expected that the society could not stand non-productive, non-combat, i.e. useless individuals. Because such individuals posed a threat to the very existence of the society. Who were they? Undoubtedly, they were primarily the disabled people and elders. In addition to being useless, the disabled people and elders shared the food stuffs that the society obtained with a heavy heart and became a burden to the society. Therefore it was necessary for the society to get rid of this burden. By this means, the tradition of alienation or elimination of the disabled people and elders from the society has been continued to this date.

In fact, there was a period where the disabled people and elders were left to dead on wild and remote places or killed in a sort of way. Furthermore, these practices were carried out as regional or traditional rituals owing to the fact that such a practise did not conform to the social conscience. All these beliefs, customs, traditions, value judgements were shaped in line

with this ugly truth. Children born with disabilities are considered as a disaster for the society. It is a punishment of the wrathful gods. It is a sign of bad luck for the future. People that are old enough to be separated from the production process are condemned to death even if they still have many years to live. Death is now the most dreamy and divine duty for them. The individual born disabled, injured or got older is excluded from the “we” and included to the “others”. In that case, “murder of them is necessary”.

According to the classification of Morgan, our ancestry living in the Upper Barbarism period learned how to domesticate the animals and the welfare level of the society increased considerably thanks to the cattle economy. The cattle became the basic and secure economical power of the society. However, force of circumstances, it is male that gains advantage. Because, it is male who put the cattle out to grass and watch them for months. It is male again who protects the grasslands, cattle and the tribe from the assaults of other enemy tribes. By this means, the male had the edge over the female with economic and social priority and took the control property and government of the tribe. Now the bloodline is determined with regard to the male. The female was now a slave imprisoned in the house, giving birth to a child for her man and meeting all of his needs. She was now “the half-wit” and “petticoat”. She was now among “the others” against the male gender representing the “us”. Not long before, the beliefs, customs, social value judgements will come to the rescue and will legalize and support this situation. This society is called “patriarchal society” in the anthropology.

Beyond any doubt, womankind did not quietly come to heel under this situation. Matriarchal societies had stood out against the new patriarchal social order through long ages and the women showed great heroism during the wars but at the end, they failed to stand against the male sovereignty which represented the new productive forces. The Amazons known to live on the Black Sea coasts of our country are the members of that matriarchal society which fought against the male sovereignty. The Amazon means “without breast” in Latin. Women of the matriarchal society are named so as they had their right breast cut off or burnt out, so that they would be able to use a bow more freely and throw spears without the physical limitation and obstruction.

As the developments in the means of production give the opportunity to the individuals for overproduction beyond eating their fill, the prisoners of war were not killed but used as slaves in the Upper Barbarism period. Thus the society was divided into two basic classes:

the masters and the slaves. At first, those could render service as a slave for quite a while but then they became slaves for generations from one bloodline to another. The slave has no right. He is just a “talking device”. They are used for any use of their masters as well as being killed, so the order does not call the masters to account. Regional beliefs, value systems, traditions, customs...Everything started to be shaped by this class division and this turned to a more systematic and secure thing with the arrival of a political institution called state. Now social and historical reasons of a class division have come into existence. Slaves, plebs, serfs, peasants, labourers...They took place among the members of society being the object of many negative value judgements and being subjected to the class division during the history.

During the 19. century, within the framework of colonialism that was conducted savagely and offensively, the African people hunted by human hunters, taken from their home countries and carried by ships under inhumane conditions to be worked for peanuts in the huge latifundias of the North America were subjected to the racial discrimination, which is the most embarrassing type of discrimination, in both that continent and in South Africa where the whites are minority. Racial discrimination treatments have continued during the 20. century, the so-called “human rights era”.

One of the parts of the society being subjected to the discrimination since the ancient ages is the disabled people. As we mentioned at the beginning of our article, negative value judgements of the society towards the disabled people first came into existence in the primitive communities and the society has always seen the disabled people as the wages of their sin, punishment of the wrathful gods or seen as parasites non-contributively imposing upon the goods produced by that society. They wanted to get rid of these people and as the only way for escape is alienating or eliminating, somehow they killed them even with their conscience pricking them. Such confusing feelings have been engraved and embedded in the conscious of society throughout the history. In fact, members of the society watch their end and future on the mirror of disabled people and become frightened due to these images but can not face their mistakes although they also see the reflection of their mistakes. In other words, they want to draw away from themselves or try to ease their conscience by making atonement for their sins to some extent. Thus, the society ignores the disabled people or assumes that they have done their parts by means of benefaction or safeguarding. The cause of these two attitudes is based on the most remorseless and insincere ways of discrimination. Discriminatory value judgements and practices rush out from the dark sub-consciouses of the unexpected people all of a sudden.

For this reason, it is not very surprising to see that in the teachership lawsuit in the Council of State, the legal affairs manager of the Ministry of National Education addressed a question to the judges that “Could you entrust your children to a blind teacher?”, parents launched a campaign against the visually impaired Ibrahim Er who was appointed as a philosophy teacher to the Senir High School, Prof. Dr. Can Etili who is known as a highbrow performer, did not enroll Ceyda to the Conservatory, the Turkish Airlines get a waiver and a certificate of release signed to Elif Tomar regarding that under no circumstances does the Turkish Airlines take any responsibility in case of an air crash or negation.

Therefore it is a great mistake to believe that the discrimination against the disabled people can be removed in a short time by simple precautions, legal arrangements. The exact solution of this problem is only possible with the removal of economic bases of the discrimination within the society, in other words, it is only possible by making the disabled people an active part of the social life and production process together with a social revolution and an education and enlightenment process operating in all parts of the society.

The final and exact solution of the problem does not mean that certain legal arrangements and practices are useless. Arrangements made both nationally and internationally at least created an awareness and consciousness in the society and could take the edge of some discriminatory treatments against the disabled people.

The most important international arrangement against the disability discrimination is undoubtedly the United Nations Convention on the Rights of Persons with Disabilities. This convention is based on the principle of equality and prohibition of discrimination. All 50 articles of the Convention include the necessary mechanism for the removal of different types of discrimination and the necessary precautions for practising the principle of equality. As you may well know, direct and indirect ways of discrimination were prohibited. However, harassment which is the more implicit way of discrimination still remains as a type of discrimination in the society. The measure resorted against discrimination that is called “reasonable accommodation” took its place in the convention as a commonly acceptable, practicable and sustainable method. If you pay attention, you can see that the convention has no place for the term “positive discrimination”. Because even if the term of “positive”, discrimination is perceived as favoritism and has the risk of being abused by certain parts of the society. Therefore, the convention puts the emphasis on the “reasonable accommodation” to provide equality in various fields of the life.

On the national basis, the most important arrangements against the discrimination were brought with the law no. 5378 which came into force on 2 July 2005. Discrimination in the fields of education, employment and other fields is prohibited by this law and discriminatory treatments, behaviours and attitudes based on the disability have been placed under criminal sanction by adding the phrase “disability” to the article 122 of the Turkish Penal Code titled as discrimination. However, due to the lack of definitions of different discrimination types in our legislation, complaints regarding the discriminatory treatments, behaviours and attitudes are still concluded with the decision implying that there are no grounds for investigation. Furthermore, verification of the discrimination constitutes another problem.

In consideration of these determinations, we demand the following recommendations to be taken into account in the forthcoming law enactment process regarding the disabled people.

1. In the United Nations Convention on the Rights of Persons with Disabilities, denial of reasonable accommodation is defined as a type of discrimination. In a sense, approval of the reasonable accommodation in various fields of the life is the most effective, practicable and sustainable way of anti-discrimination. However, despite the existence of prohibition of discrimination in our legal order, no definition is available regarding the direct and indirect ways of discrimination and even for the term “reasonable accommodation”. For this reason, in the new law enactment process, discrimination types should be defined individually, the standards for the reasonable accommodation should be determined and it must be indicated which commissions would determine whether an accommodation is reasonable or not.
2. In cases where the complaint is resorted in the discriminatory arrangement and practices, the above-mentioned results can not be accomplished. One of the most important reasons behind this is the understanding that “the claimant must prove his claim” which has been settled in the law of our country. That means those making a complaint against discrimination must prove the existence of discriminatory treatment. However, discriminatory treatments are mostly not documented and carried on under implicit ways. Internalization of the discriminatory value judgements by the society for many years cause the burden of proof on the complainant or the claimant to give no results. However, in many European Union member states, the burden of proof has been reversed or shared among them. There is also a need for such arrangements

in Turkey. In case of the disability discrimination, it should be the defendant or the complained but not the complainant or the claimant who is in charge of the burden of proof or at least the burden of proof must be shared between two parties.

3. In our country, there is no such institution monitoring the arrangements, practices, attitude and behaviours and reporting and conveying them to the competent authorities. This causes the continuity of discrimination in implicit ways. For this reason, it is obligatory to establish, authorize a commission comprising of the experts and confederation representatives to monitor the disability discrimination and to place this commission into law.

Yusuf ÇELEBİ

Head of Turkish Confederation for The Disabled

Persons with Disabilities and Discrimination

The Turkish Dictionary published in 1983 by the Turkish Language Association describes discrimination as ‘not treating equally, treating differently’. The same dictionary describes ‘exclusion’ as “the society or a person ignoring or not giving attention to a person, situation or idea”. In addition, as for discrimination, there are descriptions such as “separating a social group from other groups on account of their race, religion, political belief, gender, social position and humiliating or treating them in a hostile manner or its tendency” or “the action of treating a group differently (in most cases, less favourably), which is separated from the rest on grounds of its race, gender, social position or religion”.

Distancing The Other

Discrimination is a phenomenon observed in all parts of community life. The separation between “I (we) and the other (the others)” lays at the root of discrimination which results from different reasons and experienced in different forms. According to the dominant social view, the other is what is different from us and therefore not like us. Various characteristics, differences in gender, ethnic origin, belief, physical characteristics, residential area etc. can be used to describe the others. Discrimination poses different threats depending on which characteristics you are inclined to use.

History of discrimination against the disabled goes a long way back. In time, discriminatory attitudes and behaviours have permeated every part of society and almost become an inseparable part of life.

Social and individual rights and freedoms paralleled the development of humanity, and consequently texts of social agreement such as constitutions, laws and regulations were drafted. Despite all developments, people have not yet been able to achieve a functional model of society which embraces the whole society, preventing and eradicating discrimination.

Once equality ceases to be a right and cannot be applied, discrimination starts to occur among individuals and in societies. The disabled form part of society which experience discrimination most intensely either covertly or overtly. A life style designed according to behaviour patterns of the majority is a difficult way of life for the disabled, which is full of obstacles to overcome.

The Attitude Towards the Persons with Disabilities in the Constitution and Laws

A number of articles in our Constitution contain phrases to ensure equality between individuals. Implementation of all articles which are egalitarian and against discrimination in constitutions and laws within the framework of a “social state” can be excluded and ignored with a single article.

Article 65. The State shall fulfil its duties as laid down in the Constitution in the social and economic fields within the capacity of its financial resources, taking into consideration the priorities appropriate with the aims of these duties. The article stipulates the following: until now, I have promised numerous rights and legal order, however I can only act if I have the money! Therefore, this article can invalidate all other relevant legislation. As long as this article exists, solutions to social problems such as discrimination and inequality are at the mercy of circumstances.

Article 61 of the Constitution which is directly related to persons with disabilities has a structure which conflicts with the principle of equality for the disabled and prepares grounds for discrimination. Article 61 stipulates that: The State shall protect the widows and orphans of those killed in war and in the line of duty, together with the disabled and war veterans, and ensure that they enjoy a decent standard of living. The State shall take measures to protect the disabled and secure their integration into community life. The elderly shall be protected by the state. State assistance to the elderly, and other rights and benefits shall be regulated by law. The State shall take all kinds of measures for social resettlement of children in need of protection. To achieve these aims, the State shall establish the necessary organisations and facilities or arrange for their establishment. This article is important as it reflects a defective point of view which sees the disabled as in need of protection. In reality, the disabled do not want protection provided by any institution, particularly the State, or an individual, but equal opportunities for transport, access, education, health and employment and removal of obstacles in common living space.

The same defective point of view exists in Article 67 “right to vote and to be elected” of the Constitution. According to the article, issues of barriers to transportation access which prevent persons with disabilities people from practicing their democratic rights freely is left to the initiative of the Supreme Election Board. The requests of the persons with disabilities to remove the barriers to vote, expressing their free will are met with the negative comments and perspective of the SEB and the solution is hindered.

Discrimination of the Persons with Disabilities within the Scope of Human Rights and Freedoms

In a functioning democratic society, human rights and freedoms are guaranteed under international agreements, constitutions and legislation. Equality is accepted as a right that ranks high within the universal rights and freedoms. Equality as an inherent right to everybody, right to benefit from all rights and freedoms equally, often loses its meaning in daily life.

In the struggle for human rights and freedoms, “discrimination” is not seen as a clearly understood legal concept. Discrimination is generally dealt with as a concept which focuses on race, nationality or gender. Whereas, in reality, the disabled are the part of society who are overtly or covertly surrounded by obstacles in their community lives and experience discrimination most. Common behaviour patterns accepted by the majority, in other words, discrimination taking place within the dominant ideology, is a problem of which the general public is not aware. The issue of awareness is a problem which needs to be overcome fundamentally by education.

There are international conventions to which our country is also a signatory party: United Nations Covenant on Civil and Political Rights, The European Convention on Human Rights and United Nations Convention on the Rights of Persons with Disabilities.

However, of those international agreements that our country put a signature to for example “Article 15 of the European Social Charter” was excluded when ratified. Article 15 of the Charter aims at taking measures for the education of the disabled along with providing specialised job seeking services for their job placements , creating sheltered employment and encouraging employers to employ and keep in employment persons with disabilities. Therefore, the obligation of taking these measures has been refused.

Rights and freedoms expressed in legal texts do not mean anything in themselves. Even though the existence of such clauses is important, from a legal point of view, what is expressed only has a value if it can be implemented or is implemented.

Everyone is entitled to fundamental rights such as education, health and fair trial. If one cannot get access to those rights expressed on paper, if the right is not applied as required, then the existence of it does not mean anything. The existence of a right for the disabled is measured by its accessibility and the availability of conditions to facilitate it.

In recent years, due to international developments, the disabled have been put on the agenda of legal regulations. Even though following the enactment of the Act No. 5378 in 2005 it was expressed that the struggle against discrimination would be a fundamental policy, it is observed that the existing status has not changed and the application has not been any different.

For example, despite the relevant provisions, the disabled are clearly in a physically hindered position in all areas of urbanisation. Buildings, roads and transport systems as a whole constitute a barrier to the disabled preventing them from practicing their rights. People with disabilities cannot leave their homes, even if they do, they cannot proceed well on the roads, they cannot enter most of the buildings and get stuck at the obstacles of transport and access.

However, the fundamental problem is the social prejudices neglecting or excluding the disabled. People with disabilities are seen as an uncomfortable situation by ordinary people. Prejudices and traditional superstitions are rooted within people's subconscious in uneducated societies. For example, according to deeply held superstition, a disabled child is recompense of a great sin. Families with such children, also under the influence of people around them, imprison their children for life. It is very common to come across families who do not want the disabled in same the classes as their children.

Working life is an area where discrimination becomes very evident. Despite obligatory quotas under legislation, many businesses do not employ the disabled, instead, prefer to pay the penalty. The ones that do employ make notional payments for formality, as they do not want the disabled in the workplace.

The State also discriminates between the disabled. For example, in order for a person to qualify as a disabled person, he/she is required to receive a disability report indicating 40 % of disability. The ones with 5-39 % of disability represent people who can not enjoy life as they wish who cannot read or work because of their disabilities and they can't enjoy any rights. The disabled, like anyone else, deserve a respectable life not because of any other reason but because they are human. For this reason, all obstacles in the way of full participation in community life should be removed and in accordance with the principle of equality, the disabled should be supported in all areas of life.

However, the disabled are looked upon as people who are neglected and pitied and who require protection at home, in streets and work places etc. Religion/tradition based 'conscientious approach' to the disabled is an individual, protective, and repressive attitude. According to this approach, in a good society, good people think of the others 'in need'. Doing such would mean fulfilling social duties for the disabled. The modern approach does not deny these kinds of thoughts and emotions of people; but in the face of problems and needs of people, it puts the responsibilities predominantly on the state (social state). As for the responsibility, it cannot be left to 'the well intentioned' impulses of individuals, groups and communities, which are due to different reasons and which took place with their own initiatives. These are defined as a right and take their places in law and regulations which are texts of social consensus. There needs to be a referee for the implementation and taking necessary actions related to laws and regulations. This referee is the social state based on the rule of law itself.

The problem of handicap and disability is the problem and responsibility of the whole community. Therefore, the entire society, particularly the non-governmental organisations should be supportive and supervisory parties to all work which has been or will be carried out by the state in order to remove all barriers to the disabled, particularly discrimination. At this point, media has a great duty and responsibility. The power of media tools in informing, guiding and raising awareness of the society is well known. In order to solve the problem once and for all, our media should employ constructive broadcasting policies at modern and scientific norms to contribute to the development of human rights and freedoms.

Incorporating concepts such as handicap, disability, equality on the basis of rights and freedoms and awareness in our social consciousness in a constructive way will be a positive step, not only for the disabled but for the entire society, and will be a good start. The point of view saying “people first” which prioritises people is the starting point of solutions for all social problems.

Feray SALMAN

Human Rights Joint Platform

Human Rights and Disability

Human Rights Joint Platform was established as a network of human rights organisations 5 years ago. In essence, it is a network of solidarity and sharing. It provides a platform for organisations in the areas of common challenges and problems to achieve the things they cannot otherwise collectively. When we say Human Rights Movement, we do not only refer to organisations which have human rights worded in their title, but also everyone who endorses human rights and universal principles, such as equality, non-discrimination and who contributes to the development and improvement of human rights in all areas and the eradication of the breach of them; in other words, this includes everyone who is fighting for human rights. In reality, it also includes everyone fighting for human rights in public administration. In addition, it includes civilians combating breaches of human rights that result from public administrations and third parties. Therefore, anyone fighting for rights and freedoms of the disabled can see herself/himself as part of this fight. The Human Rights Movement is that far-reaching.

Discrimination in our country is actually a very deep rooted subject. Since the time we are born we come across this concept in a variety of circumstances- sometimes between girls and boys. It begins with the attention we receive as a child at home. When we say home, it does not include only the family. There is another mechanism directing home life, the mechanism of education. The Ministry of Education has recently started to expurgate discriminative phrases in the curriculum books, but this process has not been completed, yet. Human rights concept is a dynamic process and cannot be achieved by completing at a specific time. Behaviours that are suitable for this dynamism need to be adopted. Suitable behaviours should be adopted in response to many things brought about by modernisation and the complexity of life.

I would like to contest the word disability. The reason for this is that when we say disabled this is as if to avoid saying handicapped. If disability as a concept is used in place of handicapped as a consequence of the discrimination and exclusion practice, then we need to give up using the word. What is important here is the intention, which views the point you hold when you address; whether you see it as a subject or not or as an “object”. From my point of view, disability is the prevention from being able. Therefore, when I say a disabled person, I do

not refer to the blind, lame or deaf, I refer to the exclusion they face because of those reasons. These concepts are easily incorporated into the literature in Turkey, but the essence is lost in implementation. In fact, what is important here is the matter of justice and conscience which are the very basic principles of human rights. What makes a person a person, what sets her/him apart from the rest, is having a conscience which is strengthened by justice. If feelings of justice and conscience are lost, it is not possible to talk about humanity. Being able to speak does not mean being human. However, conscience and sense of justice makes one human. We are all equal for all these reasons. What we are, our physical appearance and outlook have no significance.

You could ask if that is how human rights organisations address the issue. They are not contradictory elements of this community. Those sections of society also grow up with the same educational system and social practices. But as long as we are respectful of human rights and ethical values, we are in a system where we try to see what we cannot see. I would like to talk about our works as Human Rights Platform.

The Human Rights Association launched the first study on the rights of the disabled in the civil area. We also tried to advance this work. In all cases, a disadvantaged person says that their disadvantage is the most disadvantageous position. But human rights do not recognise comparison. What is important is how you feel when experiencing the disadvantage. It is about the consequences of the disadvantage. From the perspective of the disabled everybody, except the healthy, is at a disadvantage one way or another.

At the moment, as Human Rights Joint Platform, we work together with two other platforms for the disabled. One of them is Mersin Platform for the Disabled and the other is Diyarbakır Platform for the Disabled.

There are a few more platforms for the disabled in Turkey. Civil Society Development Centre carried out services which facilitated the development of the Autism Platform. In the end, a very successful Autism Platform has emerged. Collective power brings success by making the problems more visible. One of the most effective forms of combating discrimination is firstly revealing it. In terms of disability, there are different forms of discrimination within the disabled. There are children, women and the disabled living in rural and urban areas. There are disabled people due to different reasons. For example those that are disabled because

his/her family do not have adequate access to health care, those who are disabled because of a land mine. So, there are many causes of disability. There are people with different types of disabilities; those who cannot use their hearing, visual and physical skills fully, persons with mental disabilities etc, even persons with mental disabilities themselves vary. Needs of each of these individuals also vary. In order to combat discrimination, necessary mechanisms need to be established in cooperation all of the parties and taking into account the individual differences of those people.

One of the elements that reinforce discrimination is “the language”. All sections of society, including the disabled, discriminate through language. We, as the victims of discrimination, can victimise another. In other words, discrimination becomes a way of conduct penetrated to the system. This is not an accusation but a state of being aware. This is a case of responsible people not fulfilling their responsibilities completely.

When we look at research measuring disability discrimination, the ratio of men taking part in the survey was stated to be 83%. Where are women? This research shows that the level of organisation of women within the organisation of the disabled remains very low. What is called as the right based approach is not only limited to implementation of human rights standards. This, as a stand-alone, is not enough. You can enact a law for the disabled and define everything but this is not enough. In order for the right based approach to exist, the principle of participation and accountability should be implemented. If the public administration can ensure accountability and meet the needs of not only the disabled but anyone with different needs among the disabled or even if it cannot meet those demands, if it can provide the mechanisms that enable access, then we can talk about right-based disability or handicap approach. Having needs does not mean being the actor of the charity culture, it means having rights. Like everyone else, I also have needs: needs for receiving education, going out, having fun, improving and expressing myself. In order to mention a right-based approach, policy instruments or decisions should contain the opinions of those in need. If this can not be ensured, the old paradigm, which reproduces discrimination, deepens the sense of injustice and damages the belief for human rights, continues. Therefore, a process of paradigm shift is being lived. Non-governmental organisations which are the most important instruments between the right owners and duty owners, should adapt to this paradigm shift. They are the facilitators who will ensure that the state performs its obligation towards the right owners continuously and in a sustainable way and they are also intercessors to strengthen this relationship.

In terms of civil approach, combating discrimination requires collective work, confrontation and accepting criticism. Turkey is a country that refuses to face discrimination. Enunciation of discrimination is feared at both public administration and social levels. Nevertheless, in order to combat discrimination, firstly, it needs to be accepted. We can overcome discrimination by either vertically meaning institutionally, or horizontally meaning socially, by facing our relationships. All sections of the society have a share in realisation of justice. This is a collective work. With regards to the matter, both public administration and civil society should accept criticism. Right-based approach on the basis of human rights is an area of shared responsibility. This is an area that belongs to all of us. May it be easy for us all...

Hakan Ataman

Human Rights Agenda Association

Human Rights of the Persons with Mental Disabilities

In this meeting I will not refer to the disabled in general but “persons with mental disability”. Firstly, I would like to show you the diagram of the World Health Organisation regarding making investment for persons with mental disabilities. First of all, this is a cyclical case according to the World Health Organisation. The purpose of all kinds of investment made by states or governments is to contribute to national development. If this investment is not made and the necessary funds are not allocated, this results in a significant deficiency in health, neglecting public health, as well as causing a big blow to the national development. This is the overall approach of the World Health Organisation.

The matter of mental disability is expressed by 7 different concepts in different countries. Adopted legislation has been based on those different concepts. Therefore, the way in which the issue is addressed is important. Legislating and being a party to international conventions do not mean anything. What is important is how to react to these problems and how to act in the face of these reactions.

When we look at the existence of laws related to persons with mental disabilities, 30% of countries around the world still do not have any legislation. In other words, the disabled are considered non-existent, even their existence is overlooked. When it is evaluated on the basis of income levels of countries, it appears that countries with high income levels make effective legislation with regards to persons with mental disabilities. As the income levels decrease the rate of law making also falls. I think this issue is a little more related to social justice. Therefore, you can enact any law or convention you wish but if you cannot provide a fair and equitable order, the legislation will not mean anything. Therefore, legislative acts sometimes do not mean a lot, when people are hungry, unemployed, homeless or unable to have access to sufficient accommodation and health care.

Arthur Rimbaud said in one of his poems “I is someone else. So much the worse for the wood that discovers it’s a violin”. This is a very interesting thought. This is something which was, later on, expressed by many philosophers and social workers. The matter in question here is identifying oneself with another and showing empathy to the other.

It seems that this business will be a little hard if we cannot achieve this empathy and “if we cannot manage to walk in someone else’s shoes” or fail to feel what the other feels.

The fundamental problem is this: when it comes to human rights, there is the state and the citizen. Disadvantages are usually caused by the State. When the state victimises the citizen, she/he acts against that, suing, protesting in streets, giving a press speech etc. and tries to resolve this victimisation. However, in the case of discrimination, the vertical issue also becomes a horizontal one. Therefore, what we call discrimination is not only carried out by the state but also by non-state actors.

Additionally, this does not show only the responsibility of the state. As you know, in many cases, the European Court of Human Rights convicted Turkey on the grounds that the state did not demonstrate a duty of care, even though the state officials were not in any violation. Lastly, you know the “Decision 30”, this is a case of a woman who was killed due to domestic violence. The European Court of Human Rights convicted Turkey on the grounds of torture, ill-treatment, right to life and discrimination. Even though the woman was killed by her husband, Turkey was convicted because it did not demonstrate a duty of care. Again, I would like to remind you of the case of Hirant Dink. Here, the crime was not committed by a state official. Yet, the European Court of Human Rights convicted Turkey on the grounds that it did not demonstrate a duty of care. This is the same problem in the cases of both discrimination and disability. The treatment might not always be executed by the state but the state should show a duty of care. Such is the situation in practice.

Nonetheless, due to specific reasons, discrimination in Turkey is seriously misunderstood. Firstly, it has given connotations of politics and emotions. Secondly, this perception leads to a serious problem with regard to necessary measures to be taken. Because of this misunderstanding, the State struggles to take a step in this regard. In this respect, I think the work of the Administration for Disabled People titled “Discrimination” is a very important step. This step sets an example for the other state institutions relating to the issue. It is important that it is believed that this issue is not a problem to be afraid of, on the contrary, it is an issue to be resolved and state is making efforts to demonstrate the importance of it. This is also important to ensure the continuity of this work.

Let's get back to the issue I mentioned at the beginning. Discrimination, in reality, works through fixed judgements and labelling and when we look at the issue of "prejudice", we see that they both nourish one another. We are against discrimination because we have a fundamental worry: We want equality. This is a very basic issue. At the bottom of all struggles against discrimination, there lays the quest for equality. Since we are busy complaining about discrimination, we do not fight against it. We are fighting because we have a fundamental aim of replacing discrimination with equality and we want to accomplish the concept of equality.

My friend has given some specific examples from history. Mr. Turan has touched upon something very nice. In fact, the historical perspective offered by Mr. Turan has expressed what is known as "great confinement". It may vary from one community to another but with no exception in modern communities or with the introduction of modernisation as a concept, the disabled; particularly the persons with mental disabilities have taken their place in the large category of "great confinement" where they were imprisoned in specific large buildings. They were not wished to be seen by society, so they had to live in an isolated manner.

There are many definitions of equality. Moving away from Rimbaud, Kant made a generalisation. According to Kant; "I cannot exist without the other". Therefore, I should think of human rights in a way that what applies to me should apply to another. What applies to another should apply to me.

When we say discrimination, we refer to different types of discrimination: For instance, direct discrimination and indirect discrimination. I will skip these but we could dwell on the concept of positive action-restorative action or positive discrimination which has been well incorporated into our language. First of all, this positive action needs to take place. What this means is there is a case of inequality. We should take special measures in order to ensure this equality. Once the equality is achieved we can eliminate these special measures. A number of conventions were mentioned in the morning session related to the subject. I will not mention any of them anymore.

In this field, right to education, torture, ill-treatment and not getting access to rehabilitation services come across as very important problems. It is possible to give different examples. For example, this was the news in 2005. Cemile Kurt is a woman with mental disability who was chained at home. She lost her life due to a fire that broke out at home.

Again, according to research carried out by the International Association for the Mentally Disabled, persons with mental disabilities are still held in very adverse conditions and might be subjected to torture and ill-treatment.

Another example from 2007 is Filiz Acil who was kept chained at home for 16 years and was finally rescued from home and hospitalised following a tip-off. Can you imagine living in chains for 16 years? This is how they used to treat galley slaves. Such is a sanction for very serious offenders. Another example is a child being subject to sexual abuse in ... Centre. Particularly the persons with mental disabilities and people with psychological disorders may be vulnerable to sexual abuse. Most importantly, the abuse can remain undiscovered as they cannot express themselves afterwards.

Finally, I would like to touch upon the European Committee of Social Rights to which Turkey is a party but has not ratified the relevant additional protocol relating to procedures for collective complaints. In order for the disabled to enjoy their rights at a desired level in society, Turkey needs to ratify the additional protocol to the European Social Charter which provides collective complaint procedures. The Committee of Social Rights has two fundamental decisions regarding this issue. One of them is the result of a case opened against France by the International Association for Autism; the other is the result of another case opened against Bulgaria by the Mental Disability Advocacy Centre. The case against Bulgaria which was opened in 2009 has recently come to a conclusion. In both cases, associations submitted a collective complaint on the grounds that autistic children and children with mental disabilities were not provided education in the boarding centre.

The European Committee of Social Rights accepted the case on the basis of Article 15 of the Charter for Social Rights and another article prohibiting discrimination. Both cases were investigated and the applications were accepted from both countries. France and Bulgaria were convicted on the grounds of “violating the rights of the disabled” which meant that they were convicted on the grounds of violating economic and social rights. The decisions were approved by the Committee of Ministers. What this means is that: just like the European Court of Human Rights, these decisions have now become provisions of the Convention. Consequently, both countries made necessary arrangements for the disabled to enjoy the right to education and reported to the European Committee of Social Rights in their next national reports.

Problems are not solved by making legislation or being a party to conventions. This brings up the question of who is going to monitor these obligations? In order for the civil society to become more effective, the additional protocols to the convention need to be approved by Turkey. This includes both the United Nations Convention on Human Rights and the European Social Charter. These additional protocols include a set of instruments, methods and some ways to ensure easier participation of non-governmental organisation.

We are aware that the state cannot catch up with everything at all times but many applications are received by non-governmental organisations. Non-governmental organisations would like to act on the basis of the available data. Perhaps, the Republic of Turkey should lead the way in this area. Then, in my opinion, it would be appropriate for non-governmental organisations to use those channels effectively.

For instance, I come across the disabled on different platforms across different parts of Anatolia, especially Izmir. A short while ago, a series of training has been carried out to establish a coalition of discrimination by my association in Izmir. Unfortunately, this was carried out in a 4 star hotel as our project budget was limited. Disabled friends from associations were also invited. However in this work for the disabled, we happened to realise that the hotel entrance was not arranged for access of the disabled. We had to carry our disabled friends out of the meeting room. The hotel did not even build a ramp at the entrance of the hotel. So, this situation can be an example of the indirect discrimination. This hotel does not have an issue about the disabled entering the hotel; on the contrary, they would like that because they would earn money. However, unfortunately they built the hotel in a way that it is not possible for the disabled to access it. We learnt that there is only one hotel in Izmir which is a 5 star hotel, the name of which I cannot give, which makes arrangements for the disabled. However the prices of this hotel are 5 times of its counterparts. So, something we are not aware of in our daily lives strikes us as a problem. What did we do? We had a petition with the friends participating in training that day and handed in a letter of request to the hotel. They eventually built a ramp for the next training and our friends were at least able to enter the room in their wheel chairs. But these situations are experienced as one lives. Thank you.

**RECOMMENDATIONS DEVELOPED TO
CONTRIBUTE TO THE STRATEGIES FIGHTING
AGAINST DISABILITY DISCRIMINATION
IN TURKEY**

RECOMMENDATIONS FOR THE FIGHT AGAINST DISABILITY DISCRIMINATION IN TURKEY

- 1) Convention on the Rights of Persons with Disabilities act as a reference document in combating discrimination. The development of performance criteria, structural, process and outcome indicators and establishment of a monitoring and reporting system in order to fulfil the obligations of the Convention by public administrations,
- 2) Ratification of the Protocol to the United Nations Convention on the Rights of Persons with Disabilities,
- 3) The establishment of a control mechanism to ensure implementation of policies for the disabled. The establishment of equality units under the name of ombudsman or any other name with regards to the rights of the disabled, which would police violations of rights and be points of solution,
- 4) Increasing the capacity of monitoring and reporting to combat disability discrimination,
- 5) Monitoring the work with regards to the disabled in provinces through a sub-commission under the human rights committees,
- 6) Streamlining human rights committees gathered at the provincial level, making their decisions binding and putting an emphasis to the representation of civil society in these committees,
- 7) The establishment of provincial coordination committees in the fight against discrimination and monitoring all services with a single body,
- 8) Strengthening the mechanisms of compensation in combating disability discrimination,
- 9) Dealing with discrimination as two-sided, positive and negative,
- 10) Conducting studies regarding multi-discrimination,
- 11) Addressing discrimination and exclusion in the field of mental disorders along with other disability groups,
- 12) Sharing the results (accepted proposals) of the Symposium with the public by converting them into an action plan,
- 13) Arranging the Symposium on Combating Disability discrimination to be held in other provinces with a view to creating awareness and sensitivity,
- 14) Improving the language related to the disabled to combat discrimination against the disabled in society. Composing a common terminology by evaluating different concepts regarding the disabled within the framework of human rights and in co-operation with the relevant parties,
- 15) Informing and raising awareness of disabled people regarding their rights which are regulated by documents of human rights,

- 16) Informing and raising awareness of the public regarding the disabled and disabilities,
- 17) Providing training for awareness of all levels of education starting from the primary,
- 18) Speeding up information and awareness raising works firstly in education and media in order to ensure that the way the disabled are looked upon in society is based on rights,
- 19) Educating families regarding discrimination,
- 20) The development of rehabilitation programmes for the disabled and their families who are exposed to discrimination,
- 21) Promoting campaigns of awareness raising to disabled women as a more disadvantaged group in community centres of the Social Services,
- 22) Informing civilian authorities and local managers about disability discrimination,
- 23) The development of training programmes for judges, prosecutors and prosecutor candidates on disability and provision of in-service training in co-operation with the Ministry of Justice,
- 24) The establishment of disability commissions in Bar Associations and informing lawyers who are to provide services regarding disability and discrimination,
- 25) Informing the universities on relevant legislation regarding the disabled and providing support for university theses in the area,
- 26) Strengthening of civil society organisations providing services for the disabled,
- 27) Providing state support to non-governmental organisations to carry out studies pertaining to rights,
- 28) Giving people with disabilities the right of representation in political parties,
- 29) Increasing the level of representation of the disabled in municipal councils,
- 30) Making necessary arrangements by examining relevant international legislation and institutions related to discrimination,
- 31) Making sure that the design of services provided to the society are not based on separation but on the integration of the disabled,
- 32) Incorporation of disability in all state policies (education, health, employment, vocational training etc.),
- 33) Description of discrimination, types of discrimination and reasonable regulatory arrangement and its criteria in the legislation, the establishment of an enforcement mechanism and execution of coordination by the Administration for Disabled People,
- 34) Launching a screening programme by the Administration for Disabled People, regarding identification of discriminatory regulatory arrangements within the current legislation,
- 35) Adoption of the Draft Laws on Equality Institute and Discrimination by the Ministry of Interior,

- 36) Repeal of discriminatory articles in the Communiqué on Health Applications,
- 37) Amendment of discriminatory articles regarding the Secretary General selection in the Law on Chambers, Commodity Exchanges and the Union,
- 38) Amendment of discriminatory articles of the Law on Judges and Prosecutors No. 2802,
- 39) Amendment of Article 10 of the draft Law on Human Rights Council as it may contain negative discrimination against the disabled,
- 40) Amendment of the articles of legislation relating to guardianship and custody,
- 41) Prevention of the announcements made by the Social Security Institution and Directorate of Proceedings, indicating that disabled civil servants will not be employed, not to be repeated by other institutions,
- 42) Considering that the mother tongue of the hearing impaired is Turkish, establishing an educational system with this language ensuring that upgrading the level of education of hearing impaired individuals,
- 43) Recruitment of Turkish sign language interpreters in public institutions and organisations,
- 44) Encouragement of the establishment of disability research centres in universities,
- 45) Educational diagnostic assessment to be made by special teachers of education in Guidance and Research Centres,
- 46) Strengthening of the implementation in areas such as private education, health, employment, vocational training,
- 47) Restructuring the Administration for Disabled People,
- 48) Ensuring access for disabled people to physical and special areas,
- 49) Providing necessary coordination for the arrangements regarding accessibility and transportation in public areas to be made by primarily the Ministry of Public Works and Local governments,
- 50) Making necessary arrangements in schools to ensure the accessibility of the disabled,
- 51) Making facilities servicing the cultural arena such as museums, historical sites, cultural centres, theatres, libraries and cinemas (taking into consideration all disability groups) accessible. As well as architectural accessibility, considering many aspects such as sound systems and display methods and making those accessible,
- 52) Regulating every aspect of accommodation facilities in the field of tourism (keeping in mind the universal design principles).

ENCLOSURE:

SYMPOSIUM PROGRAM

03 November 2010, Wednesday

Press Release by Selma Aliye Kavaf, Minister of State

04 November 2010 – Thursday

08:00 – 09:30 **Registration**

09:30 – 10:30 **Opening and Protocol Speeches**

Mr. Bekir KÖKSAL, Director General of Administration for Disabled People

Mr. Prof. Dr. Eyüp G. İSBİR, Director General of TODAİE

Mr. Yusuf ÇELEBİ, Head of the Turkish Confederation for the Disabled

Mr. Turan İÇLİ, Head of the Confederation of People with Disabilities

10:30 – 10:45 **Introduction of the Project Fighting Against Disability Discrimination
in Turkey**

Dr. Sermet BAŞARAN, Head of the Department of EU Affairs and Foreign
Relations, Administration for Disabled People

10:45 – 11:00 **Coffee Break**

11:00 – 11:45 **Presentations on the Concept of Discrimination**

Selvet ÇETİN, Specialist of Strategic Ideas Institute, Jurist on Human
Rights Law

Keziban KARÇKAY, Disability Specialist

Erem İLTER, Disability Specialist

11:45 – 13:00 Release of the Findings of the Research on Measurement of Disability Discrimination

TODAİE Research Team

Doç. Dr. A. Argun AKDOĞAN

Dr. Başak BEYDOĞAN

Dr. Pınar YELSALI PARMAKSIZ

Dr. Ayşegül SABUKTAY

Res. Asst. Hasan VURAL

13:00 – 14:00 Lunch

14:00 – 14:40 Presentations on EU Policies on Fighting against Disability Discrimination

M. Caner DEMİR, Sector Manager in Turkish Delegation of EU

Serkan KOLAT, Disability Specialist

Lütfiye KELLEÇİ BİRER, Parliamentary Advisor

14:40 – 15:30 Presentations on the Approaches of Non-Governmental Organizations for Fighting Against Disability Discrimination

Mr. Yusuf ÇELEBİ, Head of the Turkish Confederation for the Disabled

Mr. Turan İÇLİ, Head of the Confederation of People with Disabilities

Hakan ATAMAN, Human Rights Agenda Association

Feray SALMAN, Human Rights Joint Platform

15:30 – 16:20 Coffee Break

16:20 – 17:00 Presentations on the Approaches of Non-Governmental Organizations for Fighting Against Disability Discrimination

05 November 2010 – Friday

09:30 – 11:00 **Suggestions on Possible Strategies to Fight against Disability**

Discrimination in Turkey

Moderators:

Selma ÇALIK, Branch Manager

Keziban KARÇKAY, Disability Specialist

11:00 – 11:20 **Coffee Break**

11:20 – 12:30 **Suggestions on Possible Strategies to Fight against Disability**

Discrimination in Turkey

12:30 – 13:30 **Lunch and Social Activity**