



## **SCREENING CHAPTER 19 SOCIAL POLICY AND EMPLOYMENT**

### **AGENDA ITEM: ANTI DISCRIMINATION**

**Country Session: The Republic of TURKEY  
22 March 2006**



**Directive 2000/43/EC implementing the principle of equal treatment  
between persons irrespective of racial or ethnic origin  
and  
Directive 2000/78/EC establishing a general framework  
for equal treatment in employment and occupation**



## **CONSTITUTION OF THE REPUBLIC OF TURKEY**

**ARTICLE 90 - In case of contradiction between international agreements regarding basic rights and freedoms approved through proper procedure and domestic laws, due to different provisions on the same issue, the provisions of international agreements shall be considered.**

## **RATIFIED INTERNATIONAL HUMAN RIGHTS TREATIES AND CONVENTIONS**

**- European Convention for the Protection of Human Rights and Fundamental Freedoms**

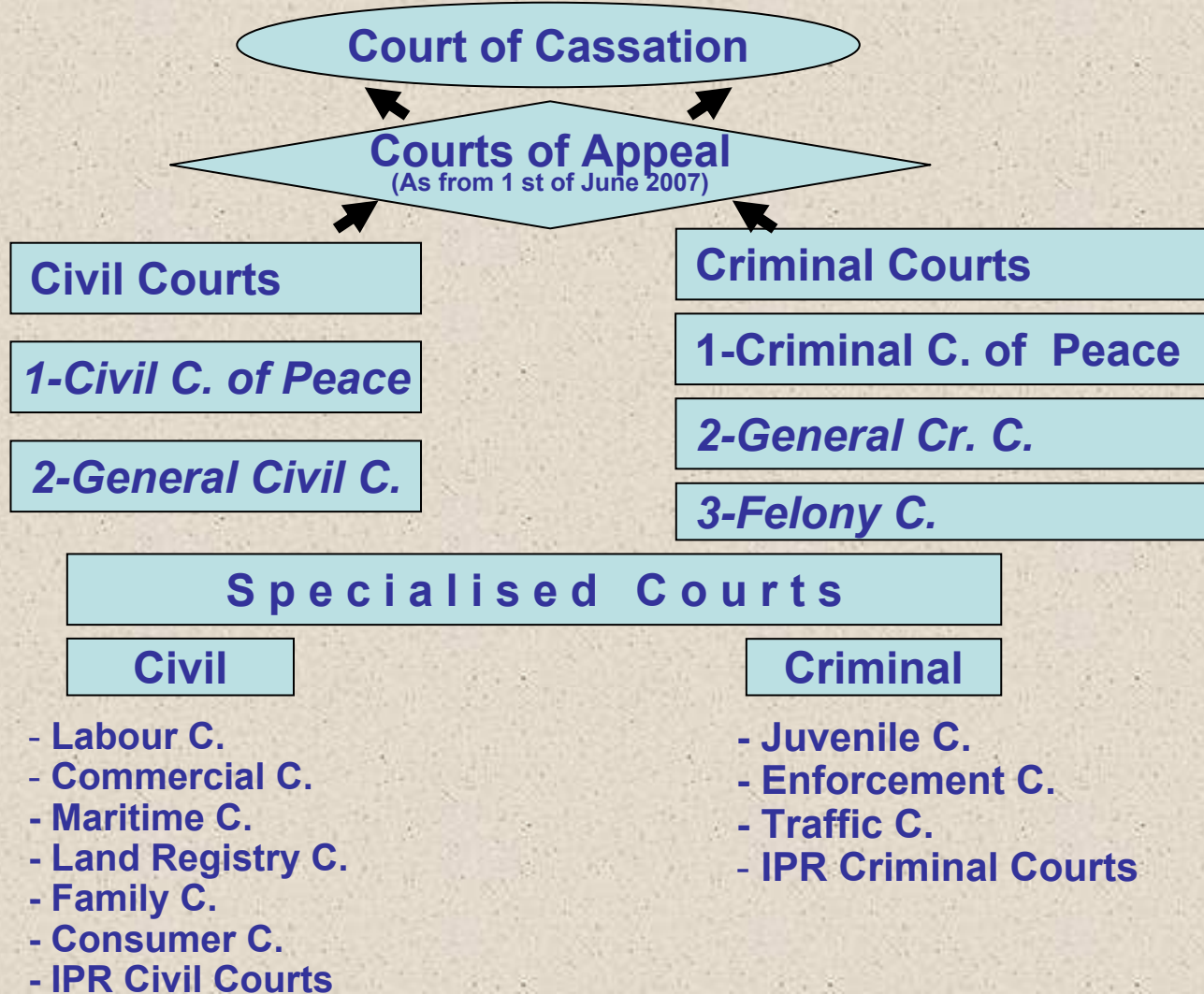
- \* Protocol No. 1 (right of property and other issues)**
- \* Protocol No. 6 (death penalty)**



- **European Convention on Preventing Torment**
- **European Social Charter (1961)**
- **International Covenant on Civil and Political Rights**
- **International Covenant on Economic, Social and Cultural Rights**
- **Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment**
- **International Convention on the Elimination of All Forms of Racial Discrimination**
- **European Agreement relating to persons participating in proceedings of the European Court of Human Rights**



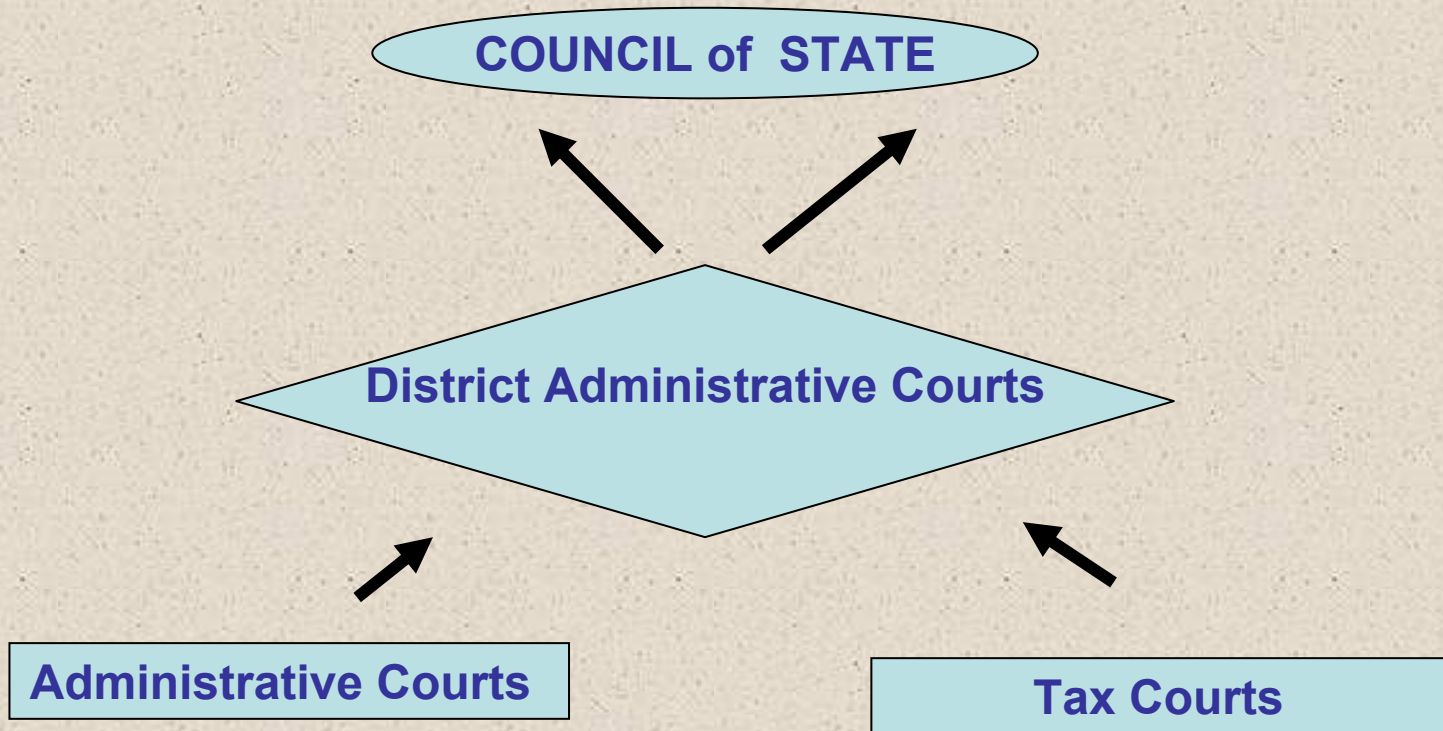
## TURKISH JUDICIAL COURT SYSTEM







## TURKISH ADMINISTRATIVE COURT SYSTEM





*Conditions for access to employment, to self-employment and to occupation, including selection criteria and recruitment conditions, whatever the branch of activity and at all levels of the professional hierarchy, including promotion:*

### **CONSTITUTION**

**ARTICLE 10.** All individuals are equal without any discrimination before the law, irrespective of language, race, colour, sex, political opinion, philosophical belief, religion and sect, or any such considerations

...

State organs and administrative authorities shall act in compliance with the principle of equality before the law in all their proceedings.



## ***CONSTITUTION (cont.)***

**ARTICLE 48.** Everyone has the freedom to work and conclude contracts in the field of his/her choice. Establishment of private enterprises is free.

**ARTICLE 49.** Everyone has the right and duty to work.

**ARTICLE 50.** No one shall be required to perform work unsuited to his age, sex, and capacity. Minors, women and persons with physical or mental disabilities, shall enjoy special protection with regard to working conditions.

**ARTICLE 70.** Every Turkish citizen has the right to enter public service. No criteria other than the qualifications for the office concerned shall be taken into consideration for recruitment into public service.





**PENAL CODE No. 5237**

**ARTICLE 122(1)** - A person who by practicing discrimination on grounds of language, race, colour, gender, disability, political ideas, philosophical beliefs, religion, sect and other reasons;

a) who makes the employment of a person contingent on one of the circumstances listed above,

...

c) who prevents a person from carrying out an ordinary economic activity,

shall be sentenced to imprisonment for a term of six months to one year or imposed fine.



**LAW ON CIVIL SERVANTS No. 657 (ARTICLE 7)**

➤ **Civil servants;**

cannot discriminate anyone on the basis of language, race, sex, political thought, philosophical belief, religion or sect when performing their duties.



**LAW ON DISABLED PEOPLE No. 5378 (ARTICLE 14).**

In recruitment, no discriminative practices can be performed against the disabled people in any of the stages from the job selection to application, selection process, technical evaluation, suggested working periods and conditions.

Working disabled people cannot be subjected to any different treatment than the other people with respect to their disability such that it could cause a result which is unfavourable for them.



**LABOUR LAW No. 4857 (ARTICLE 5).**

No discrimination based on language, race, sex, political thought, philosophical belief, religion, sect and similar grounds can be made in the employment relationship.

➤ *After starting to work, accession to all levels of the professional hierarchy, including promotion is a part of employment relationship.*

**LAW ON CIVIL SERVANTS No. 657 (ARTICLE 48-51)**

➤ *General and special requirements for being civil servant are envisaged in the Law: being a Turkish citizen, achieving the exam and having completed the relevant education, etc.*

**BY-LAW ON PROMOTION OF CIVIL SERVANTS**

➤ *Objective criteria like education, achievement in exams, working period, positive employment record are required in order to be promoted.*





*Access to all types and to all levels of vocational guidance, vocational training, advanced vocational training and retraining, including practical work experience:*

**LAW ON CIVIL SERVANTS No. 657 (Article 214)**

- In-service training of civil servants
- relevant secondary legislation providing equal opportunities to all staff





## **BASIC LAW ON NATIONAL EDUCATION No. 1739 (ARTICLE 4)**

Education institutions are open to everyone without any discrimination based on language, race, sex and religion. No privileges should be granted to any person, family or group in education.

## **LAW ON VOCATIONAL TRAINING No. 3308**

- The basic principles of the Basic Law on National Education are also valid for vocational training.
- In order to benefit from vocational training and to be trained as apprentice, foreman and master, there are certain requirements like age, achievement in exams and education.



*Employment and working conditions, including dismissals and pay:*

**LAW ON CIVIL SERVANTS No.657 (ARTICLES 10, 18, 125-E and 155)**

- A coefficient/indicator system is applied in calculating wages of civil servants.
- Civil servants cannot be dismissed except for the reasons mentioned in the Law.
- Superiors are supposed to treat civil servants equally and fairly.



**LABOUR LAW No. 4857 (ARTICLES 5 AND 18-d)**

- *Wage, employment and working conditions are part of the employment relationship.*
- Particularly the following issues do not constitute a valid reason for dismissal:

Race, colour, sex, marital status, family obligations, pregnancy, birth, religion, political opinion and similar reasons



*Membership of and involvement in an organisation of workers or employers, or any organisation whose members carry on a particular profession, including the benefits provided for by such organisations:*

**CONSTITUTION (ARTICLE 51)**

Employees and employers possess the right to become a member of a union and to freely withdraw from membership.



**LAW ON TRADE UNIONS No. 2821**

**ARTICLE 20.** Any person who is a worker within the meaning of this Law and is over 16 years of age may join a trade union.

Any employer within the meaning of this Law may join an employers' union.

**ARTICLE 33.** Trade unions and confederations shall ensure equality between their members in benefiting from their services.

**LAW ON TRADE UNIONS FOR CIVIL SERVANTS No. 4688**

**ARTICLE 14.** Everyone is free to join trade unions.





***Law on Occupational Associations for Craftsman and Artisans***  
***Law on Turkish Union of Chambers and Stock Exchanges***

All craftsmen and artisans are obliged to register with the records of craftsmen and artisans.

All traders are obliged to register with the chambers.

Members of public vocational institutions are obliged to register with the occupational chambers.



*Social protection, including social security and healthcare:*

## **CONSTITUTION**

**ARTICLE 56.** Everyone has the right to live in a healthy, balanced environment.

To ensure that everyone leads their lives in conditions of physical and mental health and to secure cooperation in terms of human and material resources through economy and increased productivity, the state shall regulate central planning and functioning of the health services.

**ARTICLE 60.** Everyone has the right to social security. The state shall take necessary measures and establish the organisation for the provision of social security.



*Employees (workers, civil servants) and self-employed are statutory insured under Laws below respectively:*

- Law on Social Insurance (people working with an employment contract);*
- Law on Pension Fund For Civil Servants (people working as civil servants);*
- Law on Bag-Kur\* (the self-employed)*

\* Social Insurance Institution for Craftsman, Artisans and Self-Employed



***Social Advantages:***

There are several institutions which provide social advantages (both local administrations and public institutions).

These institutions work in accordance with the principle of equality before the law.

There is no provision in legislation containing direct or indirect discrimination in terms of social advantages.



*Education:*

**CONSTITUTION**

**ARTICLE 42.** No one shall be deprived of the right of learning and education.

Primary education is compulsory for all and is free of charge in state schools.





**BASIC LAW ON NATIONAL EDUCATION No. 1739 (ARTICLE 4)**

Education institutions are open to everyone without any discrimination based on language, race, sex and religion. No privileges should be granted to any person, family or group in education.

**LAW ON HIGHER EDUCATION No. 2547 (ARTICLE 45)**

Students attend to higher education institutions of State with an exam of which conditions are defined by the Board of Higher Education.



*Access to and supply of goods and services which are available to the public including housing.*

**PENAL CODE No. 5237**

**ARTICLE 122(1)** - A person who, by practicing discrimination on grounds of language, race, colour, gender, disability, political ideas, philosophical beliefs, religion, sect and other reasons;

- a) prevents the sale or transfer of personal property or real estate or the performance or enjoyment of a service or who makes the employment of a person contingent on one of the circumstances listed above,
- b) withholds foodstuffs or refuses to provide a service supplied to the public,
- c) prevents a person from carrying out an ordinary economic activity,

shall be sentenced to imprisonment for a term of six months to one year or judicial fine.



## *Defence of Rights*

### **CONSTITUTION**

**ARTICLE 74** (*Petition Right*)

**ARTICLE 125** (*All actions and acts of administration are subject to judicial review*)

### **LAW ON THE PETITION RIGHT No. 3071 (ARTICLE 7)**

- Citizens and resident foreigners (subject to reciprocity) have the right to apply in writing to the competent authorities with regard to the requests and complaints concerning themselves or the public.
- Turkish citizens have also the right to apply to the European Court of Human Rights.



**LAW ON CIVIL SERVANTS No.657, ARTICLE 21**

**LAW ON LABOUR COURTS No.5521, ARTICLE 1**

**LABOUR LAW No. 4857, ARTICLE 5**

**LAW No. 3146 ON ORGANIZATION AND FUNCTIONS OF MOLSS**

**ADMINISTRATIVE JURISDICTION LAW No. 2577, ARTICLES 12-13**

➤ People, without being subject to any kind of discrimination, have the right to make applications at administrative level or to bring an action both in Administrative and Judicial Courts.





*LAW ON TRADE UNIONS No.2821, ARTICLE 32*

*LAW ON TRADE UNIONS OF CIVIL SERVANTS No. 4688, ARTICLE 19/f*

- Trade unions can represent their members before court.
- Associations can bring action concerning the **general** benefits of the association.





## *Burden of Proof*

### **LABOUR LAW No.4857**

**ARTICLE 5.** When the worker puts forward a situation strongly suggesting the **probability** of the existence of an infringement (including different treatment), the employer becomes obliged to prove that no such infringement exists.

**ARTICLE 20.** The employer is obliged to prove that the termination of the employment contract is based on a valid reason, i.e. there is no discriminatory dismissal.

➤ In the cases brought to administrative courts, according to Administrative Jurisdiction Law, the court can make any kind of inspection *ex officio*.



## *Victimisation*

### **BY-LAW ON COMPLAINTS AND APPLICATIONS OF CIVIL SERVANTS**

**ARTICLE 10.** Civil servants who exercise their right of complaint cannot be subjected to disciplinary measures.

### **LABOUR LAW No. 4857**

**ARTICLE 18.** Particularly the following issues do not constitute a valid reason for termination of the contract:

Application to administrative or judicial authorities against the employer with a view to seeking the rights arising from laws or the contract.



*(cont.)*

**ARTICLE 21**

- In case the employer does not assert a valid reason or the court or special arbitrator decides that the asserted reason is not valid and the termination is decided to be ineffective, the employer is obliged to re-employ the worker within one month.
- If the employer does not re-employ the worker within one month upon his/her application, the employer becomes liable to pay an indemnity equal to minimum four and maximum eight months' wage to the worker.



### ***Dissemination of Information***

- Human Rights Boards in provinces and districts distribute basic international legal texts and documents on human rights and relevant legislation to the citizens and public authorities; prepare signboards, posters, brochures; organize panels, conferences, seminars, slide and movie shows.
- According to the *Law on Trade Unions of Civil Servants* and *Law on Trade Unions*, the representatives of the unions inform the workers.
- Also NGOs play an important role in the information activities.





## *Dialogue with Non-Governmental Organisations*

### ➤ **The Consultancy Board of Human Rights**

The board is established to improve communication between relevant public institutions and NGOs, as well as consultation on national and international issues concerning human rights.

### ➤ **Human Rights Province Boards Human Rights District Boards**

Human Rights Boards are composed of representatives from relevant institutions and bodies, occupational organisations, social partners, universities and NGOs.





**(cont.)**

➤ **Executive Committee for People with Disabilities**

Members are representatives of governmental organizations, NGOs, employee and employer unions, and universities. They are responsible for determining the priority for application and selecting the projects prepared by Administration for Disabled People affiliated to Prime Ministry.

➤ **The Council for People with Disabilities**

The duty of the Council is to discuss and analyze all ideas and developments about disability at national and international levels, make suggestions about the solutions and raise public awareness about disability issues.



## *Sanctions*

### **PENAL CODE (ARTICLE 122)**

- Persons found guilty of offence of discrimination shall be sentenced to imprisonment for a term of six months to one year or judicial fine.

### **LAW ON CIVIL SERVANTS (ARTICLE 125/C)**

- Decrease in wage is the sanction for any kind of discrimination on grounds of language, race, gender, political thought, philosophical belief, religion and sect in carrying out a duty.

### **ADMINISTRATIVE JURISDICTION LAW (ARTICLES 12-13)**

- In the cases of full judgement or annulment, the transaction may be annulled and the persons concerned may take a compensation.



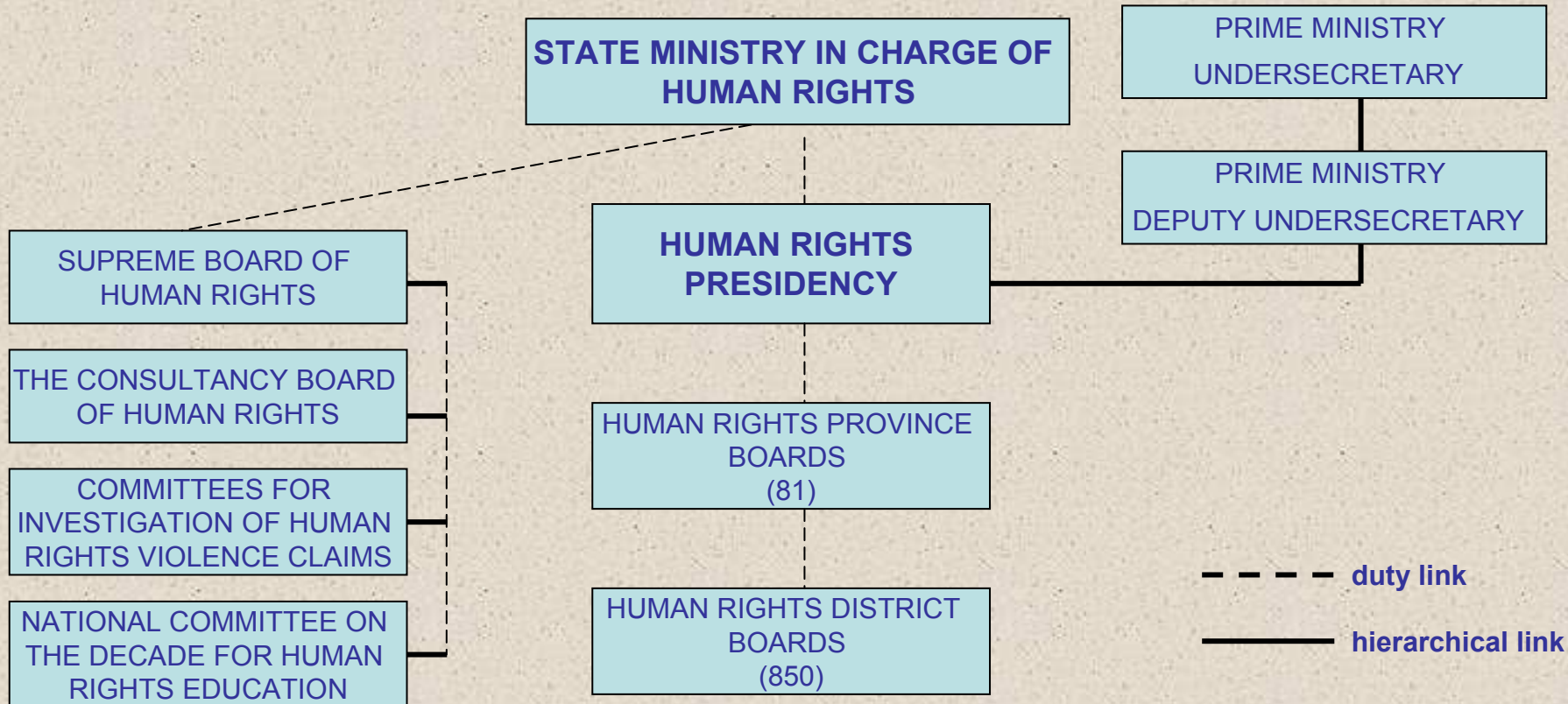
*(cont.)*

**LABOUR LAW (ARTICLES 5, 18, 19, 20, 21, 99)**

- In discrimination cases, the worker can demand the rights that he/she has been deprived of besides an appropriate indemnity equivalent up to four months' wage.
- In case of discriminatory dismissal, the employer is obliged to re-employ the worker within one month. If the employer does not re-employ the worker within one month upon his/her application, the employer becomes liable to pay an indemnity equal to minimum four and maximum eight months' wage to the worker.
- In discrimination cases, employers are also subject to fines.



## Bodies responsible for the promotion of equal treatment







## Human Rights Presidency

### Main duties:

- To be permanently in touch with both public and private authorities in charge of the issues related to human rights and to provide coordination between these organisations.
- To monitor, evaluate and coordinate application of the pre-service education, training and in-service human rights education programmes in public institutions.
- To examine and investigate applications for human rights violation claims, evaluate research results and coordinate studies regarding the measures to be taken.





## Human Rights Province Boards (81)

## Human Rights District Boards (850)

Main duties:

- To examine and investigate allegations of human rights violations,
- To examine and investigate obstacles to the protection of human rights, enjoyment of human rights and liberties, as well as social, political and administrative reasons leading to violations of rights and to recommend solutions to the governorship and sub-provincial governorship,
- To conduct the necessary work to prevent all kinds of discrimination,



## The Consultancy Board of Human Rights

Main duties:

- To improve communication between NGOs and the related government institutions.
- To act as a consultative body concerning human rights.
- To act as a consultative body to the State Minister in charge of human rights and to the Supreme Board of Human Rights on the issues of human rights including all terms of discrimination and xenophobia.



## Reasonable Accommodation for Disabled Persons

### LAW ON PEOPLE WITH DISABILITIES (ARTICLE 14)

It is obligatory that measures in the employment processes in order to reduce or eliminate the obstacles and difficulties that may be faced by the disabled people working or applying for a job are taken and the physical arrangements are done by the employer.



## **LAW ON CIVIL SERVANTS AND RELATED BY-LAW ON EMPLOYMENT OF THE DISABLED**

- Institutions that are obliged to employ disabled civil servants, have to arrange the workplace for facilitating work of the disabled, take necessary measures and provide special subsidiary and supportive tools and facilities related to their work.



## LABOUR LAW AND RELATED *BY-LAW ON EMPLOYMENT OF THE DISABLED*

Employers;

- have to prepare the workplace in order to facilitate working of disabled where it is possible,
- have to employ the disabled in their own occupation or in works similar to their occupation,
- have to improve their disabled workers' occupational knowledge and abilities,
- have to provide necessary tools and facilities,
- where it is possible, working hours can be adjusted according to the needs of disabled workers.





## Quota

### LAW ON CIVIL SERVANTS (ARTICLE 53)

- Bodies and institutions are obliged to employ disabled persons at three percentage of the permanent staff

### LABOUR LAW (ARTICLE 30)

- Employers are obliged to employ disabled at four percentage of the workers where they employ fifty or more workers



**THANK YOU FOR YOUR ATTENTION**