

## The Constitutional Court Ruled that Providing Daycare Services to a Part of Female Employees While Not Providing Such Services to Other Female Employees in the Same Workplace Constitutes a Violation of the Prohibition of Discrimination

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The Constitutional Court concluded that while some female employees with children working at the workplace of the complainant were provided with daycare facilities, the failure to provide this opportunity to the complainant was within the scope of the right to respect for family life guaranteed in article 20 of the Constitution, and stated that it violated the prohibition of discrimination guaranteed in article 10 of the Constitution.

The complainant has filed a lawsuit before the local court and demanded compensation for discrimination by claiming that while some female employees with children working in the same workplace were provided with daycare facilities, this opportunity was not given to her, and declared that the employer has violated the obligation to open a daycare and the obligation of equal treatment.

The local court accepted the case in terms of compensation for discrimination and ruled that the complainant be paid TRY 3,787 and the other claims for compensation for the rights the complainant was deprived of and the amount paid to the nursery was rejected, and the parties appealed against the decision. The Court of Cassation reversed the decision of the local court by stating that the complainant was not able to prove that one of the grounds of discrimination listed under article 5 of Employment Law numbered 4857 existed in the employer's approach.

The complainant submitted an individual application to the Constitutional Court. According to the Constitutional Court, employers have an obligation to open a daycare in workplaces where more than 150 female employees, pursuant to the Regulation enacted based on the repealed article 88 of the Employment Law numbered 4857, and this obligation is evaluated within the scope of the prohibition of discrimination guaranteed under article 10 of the Constitution with reference to the right to respect for family life regulated under article 20 of the Constitution.

The Constitutional Court addressed the following issues in its examination on the merits:

- The main protection provided by the prohibition of discrimination is that individuals are not exposed to any different treatment that is not based on an objective and reasonable reason.
- The employer should be able to justify its attitude of "*different treatment that can be understood at first glance*" with a reasonable and objective reason; due to the fact that according to the Constitutional Court, the burden of proving that different treatments are based on an objective

and reasonable reason is on the employer.

- In this context, it should not be limited to reasons such as language, race, color, gender listed in article 5 of the Employment Law.
- In the present case, the employer did not provide any explanation as to the reason for the different treatment and failed to fulfill the employer's obligation to prove that the different treatment was based on an objective and reasonable ground.

In light of the above-mentioned reasons, the Constitutional Court has stated that any different treatment that is not based on an objective and reasonable ground, would directly violate the prohibition of discrimination, and decided that the prohibition of discrimination was violated in connection with the right to respect for family life concerning the present case.

The full text of the Court's decision dated 28 December 2021 and numbered 2016/5824, published in Official Gazette dated 27 January 2022 and numbered 31732, is available at this [link](#). (Only available in Turkish)

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