

LGBT RIGHTS in Turkey

Submission to the Country Report Task Force for the Adoption of Lists of Issues

Initial Report CCPR/C/TUR/1

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Presented on behalf of Turkish LGBT Rights Platform:

- KAOS GL Association
- LambdaIstanbul LGBTTT Solidarity Association
- Purplehand Eskisehir LGBTTT Initiative
- Pink Life LGBTTT Solidarity Association
- HEBÛN LGBT DİYARBAKIR Initiative
- Black Pink Triangle Izmir Association
- Social Politics Association

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Equality between Men and Women (Art.3)

Recent Developments:

Article 216 of the Turkish Penal Code criminalizes incitement to hatred based on social class, religion, race, sect, or ethnicity. Lesbian, Gay, Bi-sexual and Transgender (LGBT) persons are not afforded specific protection. In recent years, there have been a number of high-profile speech related hate crimes committed against the LGBT community in Turkey. None of these incidences have resulted in a criminal conviction.

Examples:

1. On Sunday 6th August 2006, the Rainbow Association of Bursa called for a pro-LGBT demonstration. Before the group could hold the march, however, approximately five hundred counter-demonstrators gathered around the association's headquarters. They chanted and threw stones, forcing the activists to seek shelter inside the building, where they remained for hours. Following this incident, the police cancelled Rainbow Association's planned demonstration stating that they would be incapable of protecting the group. In February 2007, a criminal case was filed against Fevzinur Dundar, the individual who had led the counter-demonstrators. The charges were brought under Article 216. However, although Mr. Dünder's homophobic comments had been recorded in the media, he was acquitted on the basis that the Bursa Criminal Court of First Instance could not find sufficient evidence to support the charges.
2. In March 2010, the State Minister responsible for Women and Family issues, Mrs. Selma Aliye Kavaf stated that homosexuality is a "biological disorder" and a "sickness". Despite international condemnation, Mrs. Aliye Kavaf has refused to retract her comments.

Recommended Questions For the State Party:

- Please clarify if Article 216 of the Turkish Penal Code protects LGBT persons.
- If not, what measures has the State Party put in place to ensure that where LGBT individuals are subject to hate speech, those acts are investigated, prosecuted, and, where applicable, appropriately punished?

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Right to Life (Art.6)

Recent Developments:

There is no specific hate crimes law in Turkey. Where an individual commits a crime on the basis of a victim's sexual orientation or gender identity, he or she can often plead "unjust provocation", allowing the Court to pass a reduced sentence.

For example:

1. In 2004, Ms. Yelda Yıldırım was stabbed to death by the husband of her girlfriend. The perpetrator, Mr. Hüseyin Yardımcı, was charged with murder and tried in Istanbul's 2nd High Criminal Court. The defendant argued that the crime was committed because of a homosexual relationship, which was ground for the "unjust provocation" defense. The Court agreed and reduced the sentence by sixteen years.
2. On 22nd February 2006. Abdülbaki Koşar, a gay journalist, was stabbed to death. At trial the defendant stated that he had committed the crime after Mr. Kosar had propositioned him for sex. The Court found that this constituted "unjust provocation" and reduced the sentence from life imprisonment to fifteen years incarceration.
3. On April 11th 2009, Melek K, a transsexual woman, was stabbed to death at her house in Ankara. During the subsequent trial, the defendant argued that the victim had offered him sex and that he therefore had committed the crime in response to an "unjust provocation". The Court held that transphobia cannot serve as the basis for a claim of unjust provocation. The case is notable as the first such instance where the perpetrator of a transphobic act received the maximum punishment provided by law.
4. On July 15th 2008 Ahmet Yıldız, a gay man, was shot to death in front of his house in Istanbul. The victim's father is the suspect in the case. Mr. Yahya Yıldız allegedly committed the crime in order to protect his family's honor, having discovered that his son was gay. The case is Turkey's first instance of an LGBT honor killing being tried. The court proceedings however are currently stalled, as the prosecution is unable to locate the defendant, who is said to be hiding in the Kurdish autonomous region of Northern Iraq. In their 2011 report, Amnesty International concluded that the Turkish police had failed to carry out an effective investigation into the killing, despite considerable evidence and eyewitness accounts. An arrest warrant for Mr. Yıldız was not executed until October 2008, three months after the murder.

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Police also failed to protect eyewitnesses who received threats after testifying in the case.

Recommended Questions for the State Party:

- Please explain whether Turkish law specifically protects individuals from violent crimes based on sexual orientation and gender identity. If not, please explain what measures are in place to protect Turkish LGBT persons from hate crimes.
- Please explain whether the concept of “unjust provocation” works as a defense where an individual has committed a violent crime based on the victim’s sexual orientation or gender identity

Right to Liberty and Security of the Person (Art.9)

Recent Developments:

Transgender persons in Turkey face systematic harassment from law enforcement officers.

The police frequently fine transgender individuals under the Law of Misdemeanors, which allows officers to punish noise disobedience and disturbance, with virtual impunity. Under Article 32 of the Law, individuals may be fined \$67 for disobeying an order to protect “public security” or “public order”. Article 34 and Article 37 target anyone who “makes noise with a purpose of discomforting or breaking the peace of others” or “disturbs others to sell goods and services”.

Examples:

1. In 2006, Şevket Memiş and Orhan Bayraktar were arrested by the police and charged with acting impudently because they were wearing women’s clothing. The Court decided that wearing the clothing of the opposite sex cannot be an imprudent act and acquitted the defendants (*Şişli-İstanbul Criminal Court of Peace No 1 with Case Number: 2006/579, Decision Number: 2006/459*).
2. In 2008, Ms. Nevin Yaylacı was fined under Article 37 for disturbing the public. Ms. Yaylacı filed a complaint about her case (*Beyoğlu-İstanbul Criminal Court of Peace No 1 with Miscellaneous Number: 2008/1834*) and the Court subsequently ruled in her favor, holding that the police could not justify the fine.

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3. In 2009, Ms. Ece Dalaman was fined under Article 37. She successfully challenged the fine.

(Beyoğlu-İstanbul Criminal Court of Peace No 1 with Miscellaneous Number: 2009/229)

Police harassment also extends to those who advocate for the rights of the Transgender community

4. On 17th May 2010, the police stopped a car in which five transgender activists from Pink Life Association were travelling. The officers asked for passengers' identification cards, and although the request was complied with, they forcibly removed the activists from the vehicle and placed them in a police van. Using cudgels and pepper spray, the police also attacked twenty-five LGBT rights activists who were present at the scene. The five-transgender women were kept at the Esat Police Station until the early hours of the morning. In order to document the police brutality, the women requested a medical examination by Legal Medicine. The District Attorney charged the activists with resisting arrest and property damage. On 25th October 2011, the final hearing took place in the Ankara 15th Court of First Instance. Ms. Buse Kilickaya, the founder of Pink Life, was convicted for "resisting public officials and preventing them from performing their duty" and was sentenced to five months in prison. Two other activists, Selay Tunc and Naz Gudumen received a suspended prison sentence. The activists have appealed the rulings, and a final decision in each case is still pending

Recommended Questions for the State Party:

- Please explain what steps have been taken to ensure that legislation such as Articles 32, 34 and 37 of the Law of Misdemeanors is not used to systematically harass transgender persons
- Please outline what measures have been put in place to educate and train Turkish law enforcement officers about the transgender community

The right to be recognized as a person before the Law (Art.16)

Recent Developments:

Every year thousands of people, including many LGBT individuals, leave their home country out of fear of persecution and violence and seek refugee in Turkey. Turkey offers asylum status to European refugees and requires all non-European refugees to be resettled in a third country. The individuals can stay in Turkey temporarily, as

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long as the United Nations Refugee Agency (UNHCR) recognizes them as refugees and works with a third country to resettle them.

Since 2007, Kaos GL Association has worked with LGBT refugees in Turkey, providing assistance to an average of twenty-five people per annum. However, it is estimated that each year approximately one hundred and twenty persons enter Turkey as refugees because of a fear of persecution and violence due to their sexual orientation or gender identity.

Similar to all other refugees, LGBT individuals applying for refugee status are required to live in small towns in the Turkish interior, where they have to wait a year or more to be recognized as refugees by the United Nations High Commissioner for Refugees (UNHCR). They may then be “resettled” in third countries.

LGBT refugees in Turkey enjoy very limited access to social support, employment and medical care. There are worrying omissions where police are called upon to investigate violence and harassment against these individuals. Most persons reported consistent, often violent harassment from local community members. They also described a lack of sufficient police protection in response to their complaints of violence, including advice that they stay home or dress “like a man” to avoid being targeted. Others reported being evicted from their homes on the basis of their sexual orientation or gender identity. The few who are able to secure work described being violently forced off the job when their LGBT status was exposed. Some reported identity-based barriers accessing social services and education. Discrimination against LGBT asylum-seekers and refugees reduces their chances of supporting themselves financially while in Turkey. Like all refugees and asylum-seekers, they do not have permission to work in Turkey or obtain other means of support. However, due to their appearance, or prejudicial perceptions about their “lifestyle”, LGBT asylum-seekers and refugees are also excluded from the informal employment that many asylum-seekers rely upon. The specific healthcare needs of transgender people (such as hormone treatment etc) are not covered for the duration of their asylum application.

(For documented evidence of the information contained in this section, please refer to: “Not an Illness nor a Crime”, 2011 Report by Amnesty International, The Right to Seek Asylum at Page 26; “We are Buried Alive”, 2010 Report by Human Rights Watch, The Situation of Iranian LGBT Refugees and Asylum Seekers at Page 91; “Unsafe Haven”, 2009 Joint Publication of ORAM and the Helsinki Citizens’ Assembly)

Recommended Questions:

- What measures has the State Party put in place to ensure the security and rights of LGBT individuals who apply for refugee status in Turkey?

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The Right to Privacy (Art.17)

Recent Developments:

Article 27 of the Law on Elementary and High School Teacher's Promotion and Discipline, Number 1702, threatens LGBT teachers and violates their privacy. According to this article, teachers whose behavior is believed to be inappropriate – either towards students in school or outside the school in relation to others – shall be removed from their employment. This means that where a teacher is deemed to have engaged in inappropriate conduct at any time, even where that conduct is private, he or she can be fired from an education position. Since LGBT people's sexual orientation or gender identity is widely considered to be “immoral” or “inappropriate”, this law violates the privacy of LGBT teachers and subjects them to discrimination on the basis of their sexual orientation or gender identity.

Recommended Questions:

- Please outline what measures the State Party has taken to ensure that Turkish teachers are not removed from their employment because they engage in private, consensual homosexual acts, or because of their gender identity or expression.

Freedom of Opinion and Expression (Art.19)

Recent Developments:

The government of Turkey limits the freedom of expression for LGBT-related materials - including artwork, novels, and magazines - by arguing that gay relationships are “obscene and against morality”. In limiting publications, which discuss sexual orientation and gender identity, the Turkish government takes advantage of the fact that there is no clear definition of “public morality” in national law.

For example:

- 1) In July 2006, the Press Division of the Ankara's Public Prosecutor's office launched a criminal investigation against the editor of Turkey's only LGBT magazine, published by Kaos GL. The Prosecutor's Office stated that Issue 28 contained “immoral” artwork and asked Ankara's 12th Criminal Court of Peace for authorization to confiscate all copies. The request was based on Article 28 of the Constitution. On July 21st 2006, the Court granted authorization to the Prosecutor, holding that “some articles and pictures

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from the magazine interfered with the “protection of public morals””. Kaos GL appealed the Court’s decision, which was upheld on July 28th 2006. The case is now before the European Court of Human Rights (Case No 4982/07).

- 2) In July 2009, the Prime Minister’s Council of Protection of Children from Harmful Publications decided that a book named “Üçüncü Sınıf Kadın” (Third Class Woman), by the author, Anıl Alacaoğlu, should be distributed in a sealed envelope carrying a warning that it cannot be sold to underage persons (Case Number B.02.0.MNK-572-02/01242). The reason given for the Court’s decision was that the book contained “gay relationships which are not normal according to Turkish customs” and “could harm the sexual health of children”. The author appealed against the decision at the Ankara Criminal Court of First Instance on 17th August 2009, claiming that the decision violated freedom of expression. The appeal is currently pending before the Ankara Criminal Court of Peace.
- 3) In 2009, the Press Division of Istanbul’s Public Prosecutor’s Office confiscated copies of the book “Aşkın L Hali” (The ‘L’ Aspect of Love), jointly published by Kaos GL Association and Sel Publications. Subsequently, the Prosecutor’s Office launched an investigation into the publication, arguing that lesbian culture is “an unnatural sexual relation” and “obscene”. The defendants objected to the investigation, arguing that the authorities’ interference was in violation of the Right to Freedom of Expression. The case is still being investigated (Case Number 2009/66795).

Recommended Questions:

- What is the definition of obscenity under Turkish law?
- Please explain what measures have been put in place to ensure that LGBT publications are not automatically banned or censored because they discuss issues of sexual orientation and gender identity?

The Right to Equality (Art.26)

Recent Developments:

Article 49 of the Turkish Constitution recognizes that each person has the right to work. Article 5 of the Turkish Labor Act prohibits discrimination in employment on several grounds, but there is no specific protection for LGBT individuals. Furthermore, there is also no National Human Rights Commission, Equality Commission, or Ombudsman to address workplace discrimination on the grounds of sexual orientation or gender identity. According to Article 125 of the Civil Servants

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Code “civil servants whose behavior is against the dignity of their profession or whose behavior in the work place is immoral shall receive disciplinary punishment”. Since homosexuality is widely viewed as “immoral or against dignity”, LGBT workers are at risk of such disciplinary punishment for no other reason than their sexual orientation or gender identity. There are other special regulations governing the rights and duties of different government agencies and their civil servants, such as judges, prosecutors, army officers, police officers etc. These laws list “immoral behavior” as a reason for the employee to be subject to disciplinary measures.

Examples:

- 1) Mr. İlhan Kocabaş was a civil servant in the Ministry of Finance Income Administration Presidency. After discovering that Mr. Kocabaş' is gay, his employer changed his rank and place of work. The case is pending (İstanbul 8. İdare Mahkemesi Esas No: 2009/775) but the Court has given a temporary decision on behalf of the plaintiff, reinstating him to his previous position
- 2) Mr. S.K. was employed at Akbank. His employer removed Mr. SK from his position because of his sexual orientation. Mr. SK sued the bank in order to regain his employment. On 26th May 2009, the Court decided against Mr. SK who immediately appealed. The case is now pending at the Civil Chamber (No. 9 of Court of Appeal with Case Number 2009/27672) of the Court of Appeal.
- 3) Mr. A.Ş. was a teacher in the Ministry of Education. He was fired from his work after the Ministry found out about his sexual orientation. The Ministry cited Article 125 of the Civil Servants Code as justification for terminating the employment. Mr AS sued the Ministry and the case is now pending at the Çorum Administrative Court
- 4) In May 2009, Mr. Halil İbrahim Dinçdağ, a football referee, was barred from taking a test to pass his national referee certification after it was revealed that he is gay. Mr. Halil İbrahim Dinçdag filed a complaint with the Turkish Football Federation. The case is pending.

Recommended Questions:

- Please explain whether private, consensual homosexual acts and the expression of gender identity are considered as unnatural or undignified behaviour for the purposes of Article 125 of the Civil Servants Code.
- Please outline what measures the State Party has taken to ensure that LGBT persons do not experience workplace discrimination because of their sexual orientation or gender identity.