

SHADOW NGO THEMATIC REPORT ON TURKEY TO THE COMMITTEE ON THE
ELIMINATION OF DISCRIMINATION AGAINST WOMEN

**DISCRIMINATION AND VIOLENCE
AGAINST WOMEN ON BASIS OF
SEXUAL ORIENTATION AND GENDER
IDENTITY**

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PREPARED BY LGBT RIGHTS PLATFORM:

- ❖ KAOS GL ASSOCIATION
- ❖ LAMBDAISTANBUL LGBTT SOLIDARITY ASSOCIATION
- ❖ PURPLEHAND ESKISEHIR LGBTT INITIATIVE
- ❖ PINK LIFE LGBTT SOLIDARITY ASSOCIATION
- ❖ PYRAMID LGBTT DIYARBAKIR INITIATIVE
- ❖ BLACK PINK TRIANGLE IZMIR ASSOCIATION

DISCRIMINATION AND VIOLENCE AGAINST WOMEN ON BASIS OF SEXUAL ORIENTATION AND GENDER IDENTITY

Turkey – General Situation

Even though there are no laws in Turkey against lesbian, bisexual and transgender (LBT) women, these women are subject to many problems and handicaps in their daily lives due to many prejudices, social oppressions, and members of the executive and judiciary branches of the state, such as the police, judges and prosecutors, who project their personal viewpoints to their professional work.

As the LGBT Right Platform, we offer this report for consideration in the 46th session of CEDAW. The report comprises detailed information on the CEDAW articles that Turkey is in breach of, with court decisions, research findings, issues that received media coverage, and eyewitness accounts.

Lesbians and Bisexual Women

Lambdaistanbul LGBT Initiative, which formed Lambdaistanbul LGBTTT Solidarity Association, interviewed 396 gay and bisexual individuals in 2005 to investigate their problems.¹ 151 participants of this research were women, and it was found that 48% of lesbian and bisexual women in Turkey are afraid of being left alone because of social oppression, while 64% are forced into marriages by their families and acquaintances.

The participants were asked about the reactions of others when they came out. In reaction to their coming out, 82% of the participants were faced with the question “how do you have sex?” and 74% “are you top or bottom?” Gay and bisexual women, who are generally perceived as sexual objects, often have to deal with such questions.

Despite the fact that homosexuality is not an illness according to modern medicine, 50% of the participants were pressured into a psychiatrist or a therapist. Some of those who did go to a psychiatrist or a therapist were subject to negative attitudes of the said expert. (i.e. The expert viewed homosexuality as an illness: 27%, the expert didn’t have enough information on homosexuality: 45%, the expert pressured the patient into becoming a heterosexual: 24%, the expert forced medication on the patient although they denied it: 24%)

Similar reactions and pressures to alter gay and bisexual women’s sexual orientations exist in society in general. 66% of the participants were told that they “feel this way because you haven’t met the right man yet,” while 65% told that “this is a phase you’re going through,” and 51% were asked if they were treated badly by some members of the opposite sex.

¹Lambdaistanbul LGBT Initiative. “You’re Neither Wrong, Nor Alone, A Field Study, Problems of Gays and Bisexuals”. Istanbul, 2005.

Transgender Women

Lambdaistanbul LGBT Solidarity Association interviewed 116 transgender women in person and inquired into the problems they are having.² 39.7% of the participants said that they considered suicide because of the pressures they faced based on their identity, while 32.8% of these did attempt suicide.

According to these findings, transgender women are subject to severe violence from several sections of the society. The groups with the highest ratio of committing physical violence are: Members of the police force outside of detention (90.5%), strangers (79.3%), and clients of sex workers (73.3%). The groups with the highest ratio of bullying and making derogatory comments are: Members of the police force outside of detention (92.2%), clients of sex workers (69.8%), and drivers of public transport vehicles (56%). The groups with the highest ratio of committing sexual abuse are: strangers (78.4%), members of the police force outside of detention (70.7%), clients of sex workers (56.9%), and drivers of public transport vehicles (53.4%). The groups that refuse to provide service: Members of the police force outside of detention (75%), drivers of public transport vehicles (73.3%), and workers like waiters, bartenders and market owners (56.9%). The groups that threaten or blackmail: Strangers (73.3%), members of the police force outside of detention (73.3%), clients of sex workers (50.9%).

The Articles that Turkey is in Breach of

Article 2 – a

Article 10 of the Constitution, the article on equality, does not include sexual orientation and gender identity.³ LGBT organisations in Turkey demand that the article on equality be amended to include gay, bisexual and transgender persons. The application of this law sometimes works against LGBT individuals since sexual orientation and gender identity are not clearly stated in the article on equality.

The most striking example to this is the court case to close down Lambdaistanbul LGBT Solidarity Association, which was founded in 2006. On May 29th, 2008, the Third Civil Court of First Instance in the Beyoglu district of Istanbul ruled to close down the association.⁴ The decision was based on the

²To be published.

³ The Constitution of the Republic of Turkey, 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.

⁴ From the decision of the Third Civil Court of First Instance, Beyoglu, dated May 29th, 2008, file no. 2007/190, ruling no. 2008/238:

“[S]ince there are no constitutional regulations regarding any other gender identity besides man and woman, forming an association based solely on sexual orientation and gender identity is against the essence and the spirit of this Article, and the concept of equality aimed by it.”

fact that the Constitution's article on equality does not mention homosexuals and that Article 33⁵ on freedom of association which states that "Freedom of association may only be restricted by law on the grounds of [...] protecting public morals and protection of the rights and freedoms of others." This court ruling also is in breach of Article 3 of the Convention.

As with the Constitution, many other specific laws also disregard gay, bisexual and transgender individuals. Article 5 of Law on Labour (Law no. 4857)⁶, which defines the equal treatment principle, does not include sexual orientation and gender identity.

Since the law which regulates equality in working conditions does not include sexual orientation and gender identity, gay, bisexual and transgender women experience many problems in their working lives. Many gay and bisexual women hide their identities in the work place for fear of losing their jobs. 58% is hiding their identities from all their employers and managers, while 6% from most of them, and 14% from some of them. Only 22% of the participants reported that they are fully out to their employers and managers. On the other hand, transgender women, whose identities are very visibly seen, cannot find jobs and forced into sex work. 34.5% of the participants in the problem of transgender women research said that they had to cut their education short, albeit they wanted to continue, due to their identities, 57.8% said they weren't employed because of their identities, 23.3% said they were fired because of their identities, and 89.7% said that they were going to have to go into sex work due to a lack of alternatives.

Eylem, who graduated from Istanbul University, Sociology Department in 2005, had been looking for a job with a CV that stated that she is transgender. She mentioned in an article in the *Gacı* fanzine⁷, prepared and distributed transgender women, that 90% of the times she received calls from the offices she applied to, she was offered sex, and the rest of the calls included insults and swearwords. In the same issue of the fanzine, Derya Deniz has asked firms if they would hire a person who is completely qualified for the job, knowing that the applicant is a transsexual, and then compiled the answers⁸. Koç Holding has answered, "absolutely not;" *Hürriyet* (a highly popular daily newspaper), "that is not possible anywhere in the world;" and Ceylan Intercontinental (a 5-star hotel), "we don't know, it's a very difficult dilemma."

The fact that there are no legal regulations to ensure equal treatment of gay, bisexual and transgender women in the workplace is in breach of Articles 3, 11.1-a and 11.1-b of the Convention.

14 hate murders have been committed since 2006. Because of the penalty reduction given due to the so-called "unjust provocation" by the victim, the murderers do not receive enough punishment. In

⁵ The Constitution of the Republic of Turkey, Article 33 - Freedom of association may only be restricted by law on the grounds of protecting national security and public order, or prevention of crime commitment, or protecting public morals, public health and protection of the rights and freedoms of others.

⁶ Law on Labour (Law no. 4857), Article 5: Discrimination based on language; race; sex; political, philosophical and religious belief, or denominational differences; and suchlike in work relations is prohibited.

⁷ Eylem. *Gacı* Istanbul fanzine, 2005, September-October issue.

⁸ Prostitution is forced destiny! Derya Deniz. *Gacı* Istanbul fanzine, 2005, Eylül-Ekim Sayısı.

other words, the number of the murders against transgender women is increasing because the penalties are not deterrent. So, the state does not guarantee the right to life of transgender women. In other words, the state does not take the necessary measures in order to guarantee that transgender women can live as equal citizens as other individuals. In conclusion, the state violates the Articles 2.a and 15.1 of the Convention.

Article 2 - b

Article 122 of the Turkish Penal Code⁹, which regulates anti-discrimination, does not include sexual orientation and gender identity. When the Turkish Penal Code was extensively rewritten in 2004, LGBT organisations and women's groups demanded that the article on anti-discrimination be amended to include sexual orientation and gender identity. Even though sexual orientation was included in the new penal code drafted by the Grand National Assembly of Turkey's Justice Sub-Commission, it was omitted from the final text in the Assembly's general meeting. Therefore, gay, bisexual and transgender women have been denied protection against discrimination.

Article 2-d

We have already mentioned that police brutality and discrimination towards transgender women are very high. The above mentioned numbers and ratios were of members of the police force outside of detention. On top of this, transgender women are regularly detained and are subject to violence under detention. 80.2% of the participants in the research had to bribe the police, 89.7% were detained at least once, 49.1% were detained at least 30 times.

Applications of victims to the LGBT Rights Platform in 2007 and 2008¹⁰ show that many transgender women are detained especially on the basis of Law on Misdemeanours¹¹. Even prostitution is not

⁹ Turkish Penal Code (Law no. 5237), Article 122. – (1) A person practicing discrimination on grounds of language, race, colour, gender, disability, political opinion, philosophical belief, religion, sect or similar reasons and who

a) prevents sale or transfer of a movable or immovable property or execution of a service or prevents others from benefiting a service, or employs / does not employ a person on grounds of the above mentioned reasons,

b) does not provide food or refuses to provide a service meant to be provided for the public,

c) prevents a person from undertaking a regular economic activity shall be sentenced to imprisonment for a term of six months to one year or a judicial fine

¹⁰ Human Rights Report on LGBTTT Individuals 2007, Commission for Monitoring the Human Rights of LGBTTT Individuals and the Law, 2008.

Human Rights Report on LGBTTT Individuals 2008, LGBT Rights Platform, 2009.

¹¹ Law on Misdemeanours (Law no. 5326)

Article 32 - (1) Those who violate lawfully given orders from authorities for reasons of judicial conduct or protection of public safety, public order or public health will be fined 100 Turkish Liras. The fine will be determined by the authority that gave the violated order.

Article 37 - (1) Those who disturb others while conducting sales of merchandise or services will be fined 50 Turkish Liras.

mentioned in Law on Misdemeanours, the police forces claims prostitution against transgender women in their legal documents to apply prosecution.

80.2% of the detainees reported that they were subjected to physical violence, 87.1% to bullying, humiliation and insults, 69.8% to sexual abuse. 75% of the participants mentioned that even though they were taken into custody, there was no police report of the detainment. 29.3% pressed charges for several incidents of police brutality, 52.9% of the time these charges were dismissed without investigation, 26.5% were investigated but were dismissed afterwards and not taken to court, and 41% were investigated but the perpetrators were not punished. Only 1 participant reported that the perpetrators were punished. The participants, who did not press charges for the violence they were subjected to, expressed distrust in the justice system by saying “who are we supposed to file our complaints to?”

Article 2 – f

“Criteria for and Classification of Disability, and Ordinance on Health Board Reports Given to Disabled Persons”¹² classifies transsexuality under “Gender Identity Disorders, and Sexual Preference Disorders.” This classification helps exclude transsexuality from what’s “normal” and facilitates discrimination.

Decision of the Supreme Court of Appeals 2nd Civil Chamber dated June 21st, 1982 (file no. 1982/5077 and ruling no. 1982/5531)¹³ states that “custody of the child will not be given to a gay/lesbian

¹² CRITERIA FOR AND CLASSIFICATION OF DISABILITY, AND ORDINANCE ON HEALTH BOARD REPORTS GIVEN TO DISABLED PERSONS

(Published in the Official Gazette no. 26230 and came into effect on July 16th, 2006)

Article 5 (1) Works on classification of disabled persons are based on International Classification of Functioning, Disability and Health, which is an exhaustive classification system that was developed by World Health Organization to standardize the language and framework for defining health and health related conditions, and to define personal functionality and invalidities.

LIST OF RATIOS OF LOSS OF BODILY FUNTIONS ACCORDING TO DISABILITY

MENTAL, PSYCHOLOGICAL, BEHAVIOURAL DISORDERS

PSYCHOLOGICAL ILLNESSES THAT CAUSE TEMPORARY LOSS OF FUNCTIONALITY*

NOTE: * The illnesses in this group require a check-up after 1 year.

G- Sexual Identity Disorders, Sexual Preference Disorders (includes transsexualism, fetishism, exhibitionism, sexual desire towards children, sadomasochism)

¹³ “The grounds for divorce [in this case] is homosexuality, namely lesbianism, which could never be tolerated by the society. Giving custody of a girl child to a woman with such pathological habits could endanger the child’s future development. There would be no point in waiting for the child to grow and separate her from her mother after her personality is damaged. When regulating custody, not only the child’s current wellbeing, but also his or her future gains should be taken into consideration. Therefore, precautions should be taken before the child acquires bad habits. Under these circumstances, the child’s moral development takes precedence

mother.” Since discrimination based on sexual orientation is not dispelled by law and equality is not secured, this decision of the Supreme Court of Appeals causes discriminatory decisions in custody cases involving lesbian mothers.

That this Supreme Court of Appeals decision is still in effect and its utilisation is also in breach of Article 16-f of the Convention.

Article 3

The decision to close down Lambdaistanbul LGBT Solidarity Association is in breach of Article 3 of the Convention, for it infringes upon the principle of guaranteeing the exercise and enjoyment political and cultural equality, and fundamental freedoms. Inclusion of sexual orientation and gender identity in the article on equality of the Constitution could have prevented such a court ruling. Turkish Supreme Court of Appeals overturned the ruling of the local court on the closure of Lambdaistanbul LGBT Solidarity Association. However the Supreme Court used these wording in the ruling states that “dissolution of the organisation could be possible if it would act in the ways of encouraging or provoking LGBT behaviour or acting with the aim of spreading such sexual orientations”.

Omission of sexual orientation and gender identity from Article 5 of Law on Labour (Law no. 4857)¹⁴, which defines the equal treatment principle, causes many problems for gay, bisexual and transgender women when partaking in the economy. The lack of legal regulations to ensure equal working conditions for gay, bisexual and transgender women also is in breach of Articles 2-a, 11.1-a and 11.1-b of the Convention.

Article 5 - a

In Turkey, prejudices toward gay, bisexual and transgender persons are widespread. Not only does the state fail to protect its citizens from such prejudices, it also rejects the demands of LGBT individuals and organisations, which it then justifies by the society’s views. The judiciary has clearly demonstrated such an attitude in the decision to close down Lambdaistanbul LGBT Solidarity Association¹⁵.

over his or her need for affection. Thus ‘the lesser of two evils’ should be preferred and the custody should be given to the father. Not doing so is against procedure and the law.”

¹⁴ Law on Labour (Law no. 4857), Article 5: Discrimination based on language; race; sex; political, philosophical and religious belief, or denominational differences; and suchlike in work relations is prohibited.

¹⁵ From the decision of the Third Civil Court of First Instance, Beyoglu, dated May 29th, 2008, file no. 2007/190, ruling no. 2008/238:

“Even though there is no statistical measure or percentage applicable to this specific incident on whether the defendant association is against our society’s sense of morality, when we take into consideration the strong prevalence of the patriarchal family structure in our society; the sanctity of the institution of family; kinship; religious conventions and etiquette; the scarcity of men and women with different sexual orientation; the recency of the time where such demands have started to be voiced; and that these voices originate from the urban areas of the country, rather than the rural areas; we can say that this issue involves factors that are rejected more or less by the whole society, and which are deemed to be against morality and decency.”

Governing and bureaucratic establishments and individuals themselves utilise language that insults LGBT persons. Dengir Mir Mehmet Firat, the former Deputy President of Justice and Development Party (AK Parti), has said in August 2006 of Haluk Koç, Republican People's Party (CHP) former Acting President of Parliamentary Group, "He thinks he's being funny by behaving like he's in a wrong sexual preference."¹⁶ In October 2007, Burhan Kuzu, chairperson for the Grand National Assembly of Turkey's Commission for Constitution responded to demands of the LGBT rights organisations for equality in the Constitution by saying "Just because gays want equality, are we supposed to grant them that? The public is not ready for this. Maybe in the 22nd century."¹⁷

Articles 11.1 – a, 11.1 - b

Omission of sexual orientation and gender identity from Article 5 of Law on Labour (Law no. 4857)¹⁸, which defines the equal treatment principle, causes many problems for gay, bisexual and transgender women when partaking in the economy. The lack of legal regulations to ensure equal working conditions for gay, bisexual and transgender women also is in breach of Articles 2-a and 3 of the Convention.

Article 12.1

According to Article 40 of the Turkish Civil Code (Law no. 4721)¹⁹, which regulates sex reassignments, the education and research hospital's "health report to show that surgery is essential for the patient's mental wellbeing" is not enough to receive sex reassignment surgery. Other requirements stipulate that the applicant is not married, and that he or she is irreversibly devoid of reproductive faculties. This article keeps persons who require surgery for mental wellbeing from receiving proper medical care, or complicates the procedures with bureaucratic hindrances.

¹⁶ Hürriyet Daily Newspaper, August 22nd, 2006, <http://hurarsiv.hurriyet.com.tr/goster/haber.aspx?id=4958055&tarih=2006-08-22> (Retrieved: December 28th, 2008)

¹⁷ Hürriyet Daily Newspaper, October 20th, 2007, <http://hurarsiv.hurriyet.com.tr/goster/haber.aspx?id=7522667&tarih=2007-10-20> (Retrieved: December 28th, 2008)

¹⁸ Law on Labour (Law no. 4857), Article 5: Discrimination based on language; race; sex; political, philosophical and religious belief, or denominational differences; and suchlike in work relations is prohibited.

¹⁹ Turkish Civil Code (Law no. 4721), Article 40 - The individual who desires to change his or her sex can apply to the court in person and request permission for sex reassignment. However, for the permission to be granted, the applicant is required to be over 18 years of age and unmarried; also he or she is required to be of transsexual disposition, and has to document, with a formal health from the health board of an education and research hospital, that sex reassignment is essential for his or her mental wellbeing, and that he or she is irreversibly devoid of reproductive faculties.

Article 16.1 - b

According to a study involving 151 lesbians and bisexual women, 64% of the participants were forced into marriages by their families and/or acquaintances. The state takes no measures to end the troubles women go through when they want to remain unmarried.

Moreover, the wording of Article 134 of the Turkish Civil Code (Law no. 4721)²⁰ mentions “the man and the woman who require to get wed,” and therefore blocks any way for two women to get married to each other. This is in breach of the right to freely choose a spouse and to enter into marriage only with one’s free and full consent. Since lesbian couples aren’t allowed to marry, they are denied the rights heterosexual women receive by getting married.

Article 16 – f

Decision of the Supreme Court of Appeals 2nd Civil Chamber dated June 21st, 1982 (file no. 1982/5077 and ruling no. 1982/5531)²¹ states that “custody of the child will not be given to a gay/lesbian mother.” That this Supreme Court of Appeals decision is still in effect and its utilisation is in breach of Articles 2-f and 16-f of the Convention.

²⁰ Turkish Civil Code (Law no. 4721), Article 134 – The man and the woman who require to get wed shall apply to a registrar in either one’s place of residence.