

ILGA-Europe's written submission to the European Commission's 2013 Progress Report on Turkey¹

Brussels, May 17, 2013

Reporting period: October 2012-April 2013

A summary of key developments and trends

Violence and murders targeting LGBTI people, including 'honour killing' by the families, continued to cause grave concern. The Criminal Code and Law on Misdemeanour continued to be used to discriminate against LGBTI people, particularly trans people, and the courts continued to give reduced sentences to perpetrators of violence, including brutal murders of LGBTI people, based on the defence of 'undue provocation'. The practice of classifying gay men as 'psychologically disordered' and 'unfit' for military service continued while the new *Military Code of Discipline* introduced in January 2013 labels homosexuality as an 'unnatural imminence' which is a basis for a discharge from the military service. During this reporting period the European Court of Human Rights (ECtHR) found that Turkey has violated Article 3 (prohibition of torture and inhuman or degrading treatment) and Article 14 (prohibition of discrimination) of the Convention in the case (*X v. Turkey*) concerning a gay prisoner who was placed in solitary confinement in a small rat infested cell for over 8 months. Moreover, the European Committee on Social Rights found that Turkey is not in conformity with the Social Charter in relation to providing protection from sexual orientation discrimination in employment. There is widespread discrimination against LGBTI people and yet no single piece legislation includes sexual orientation and/or gender identity as protected grounds. The governing party opposes to inclusion of protection from discrimination on the ground of sexual orientation and gender identity in the Article 3 (equality before law) of the new civilian *Constitution*.

Bias motivated violence

- Violence and murders targeting LGBTI people, including 'honour killing' by the families, continued to cause grave concern. LGBT organisations gathered information about bias motivated violence against members of LGBT community during 2012 including the cases listed below:
 - In January, a trans woman was stabbed by a knife 14 times in Izmir. She was taken to hospital in a critical condition. Investigation is under way to identify the perpetrator.
 - In February, a trans woman was killed in Kocaeli by her brother. The police arrested the murderer.
 - In March, two trans women were murdered due to their gender identity. The first case happened in Izmir, where a trans woman was shot in the head and left in a car. The killer was identified with the help of security cameras and was arrested. The other case happened in Antalya, where a trans woman was found dead with stab wounds in her home. The murderer was caught and imprisoned.
 - In March, a gay man went to a police station to report that he is being followed by a potential attacker on the ground of his sexual orientation. According to his testimony he was beaten up at the police station after having an argument with the police officer who

refused to take his report seriously. Shortly after leaving the police station, he was also attacked by the person following him. He reported the case to a human rights organisation which supported him get a medical report of his injuries and filed a complaint to the prosecutor's office.

- In April, a transgender woman was attacked by a group of seven men in Istanbul. She was walking her dog in front of her house when the assault happened. The neighbours overlooked the situation, but did not intervene. The victim reported the incident to the police, but no-one was charged. The victim believed that this attack was related to her earlier attempt to press charges against undercover police officers that had attacked her the previous year.
- In April, two transgender sex workers were attacked in Ankara. The women were threatened with knives, raped and robbed. Two men were arrested for the assault and imprisoned.
- In April, a transgender sex worker was injured by a gun shot in an incident with the police. The police officer had stopped the woman and wanted to fine her. She resisted, after which the police grabbed her arm. As she tried to run away from the situation, the woman got shot in her back by the police officer. The woman was taken to a hospital.
- In May, a transgender sex worker was beaten up by two men in Istanbul. The men stole her money and took her clothes, leaving her naked on the street.
- In May, a gay university student was killed in Aydin. He was found at his apartment with stab wounds to his stomach. As the victim's family rejected his sexual orientation, the public prosecution could not be involved.
- In May, a man who had murdered by his former partner for being a lesbian in Gaziantep, was sentenced to 25 years in prison.
- In June, a group affiliated with the BBP attacked a trans parade in Istanbul throwing stones and bottles. The police intervened and prevented any serious injuries.
- In July, a trans woman was murdered in Antalya. She was found in her home with a cut throat and deep cuts in her face. The case is being investigated by the police.
- In August, a gay teenager was killed allegedly by his father and uncle because of his sexual orientation in the southeastern province of Diyarbakır. According to the news reports, the 17-year-old victim sought refuge at a friend's house after being beaten up by his family members. He was forced out from his friend's house by his uncle and had a fight with his father on the same evening he was found dead with 14 gunshots. The victim's father and uncle were arrested. The court hearings are in process.
- In December, a 19-year-old trans women was murdered. The criminal attorney investigating the case told media that the suspect of her murder has been arrested.
- In December, gay fashion designer Barbaros Şansal was attacked and beaten up in Istanbul. Mr Şansal defended LGBT rights a few weeks before in an interview he gave to Turkey's Sözcü newspaper. The incident was clearly related to the interview as during the attack, the assailants told Barbaros: "You will pay for what have you written and what have you practiced".
- In February 2013, a member of Pink Life LGBTTT Solidarity Association based in Ankara reported that his boyfriend was kidnapped by his father and uncles. The father of the missing gay man who is a senior army colonel has allegedly threatened to kill his son

several times before the victim went missing. Although the police was alerted before the attack and the disappearance of the victim, it didn't take any action. According to the lawyer handling the case, the case is not being investigated properly 'because the victim is gay and the perpetrators are close to the police'.

- As a result of the high number of bias motivated incidents, a petition was launched to make President Abdullah Gül act on 'honour killings' of LGBT people. The petition calls on the President to "express his disapproval for the murders, to ensure that the offenders are punished, to establish laws condemning hate crime, homophobia and honour killings, provide extra protection for victims of hate crime, and establish laws to prevent violence against gay and transgender citizens".
- In October 2012, the European Court of Human Rights (ECtHR) delivered its judgment in the case of X v. Turkey (Application No. 24626/09) finding violations of Article 3 (prohibition of torture and inhuman or degrading treatment) of the Convention and Article 14 (prohibition of discrimination) taken together with Article 3. The case concerned a gay prisoner who, after complaining about acts of intimidation and bullying by his fellow inmates, was placed in solitary confinement in a small rat infested cell for over 8 months and denied even the possibility of exercise outside his cell. This case is significant because: (i) a significant problem in some countries is that the authorities ignore homophobic or transphobic motivation in the case of hate crimes or other forms of discrimination, or even fail even to investigate such incidents, where they involve LGBTI people; (ii) maltreatment of LGBTI prisoners is a serious problem in a number of Council of Europe member states; and (iii) the case is very important for the situation in Turkey.
- In February 2013, Turkish Supreme Court uphold the decision of the local court to give reduced sentence to murderer of a gay man on the basis of "undue provocation", since he was trying "to protect his honour following a sex offer". In August 2010, Tolgahan Gürsoy killed Ahmet Ö., stabbing him nine times. He had met Ahmet Ö. in a gay bar, and had gone back to his house of his own free will. Such cases are not uncommon. In the past, as reported by ILGA-Europe and Amnesty International, suspected homophobic hate crimes perpetrators routinely relied on the defence of "undue provocation", and in many cases were effectively awarded lower sentences on the basis of the identity of the victim. In response, delegates of the Council of Europe's Parliamentary Assembly have signed a written declaration 'calling upon the Turkish authorities and courts to take measures to ensure that legal provisions on "undue provocation" are not applied in a discriminatory fashion, particularly in the case of suspected homophobic and transphobic hate crimes'.

Bias motivated speech

- In January 2013, a government affiliated newspaper *Yeni Akit* published an article insulting LGBT organisations and the students of the Middle East Technical University (METU) in Turkey who protested during Prime Minister Erdoğan visit to the university. The article has noted that 'METU students make dance performances with dirty figures and getting along with deviants from LGBT organisation Kaos GL'. This is not the first time *Yeni Akit* is using LGBT hostile rhetoric. In 2008, when Kaos GL invited an MP for its International Anti-Homophobia Meeting, the paper accused the MP for 'being on the side of deviants'.

Equality and non-discrimination

- During 2012, Turkey was drafting its first civilian *Constitution*. LGBT organisations voiced their common demand for a constitutional article that would prohibit all kinds of discrimination on the basis of sexual orientation and gender identity. The proposal to include sexual orientation and gender identity as protected grounds in the constitution has been jointly introduced by the main opposition Republican People's Party (CHP) and the Peace and Democracy Party (BDP). However, Turkey's ruling Justice and Development Party (AKP) rejected the proposal. "We don't find it right to have an expression concerning gays" an AKP deputy said. The LGBT Intergroup in the European Parliament expressed its severe concern over the country's hate crime record, common hate speech, discrimination in employment, media censorship, homophobic bullying and the treatment of LGBT asylum seekers and encouraged Turkish parliamentarians to cover the rights of LGBT people in the Constitution. No progress was achieved by the end of this reporting period, as the Reconciliation Commission suspended to writing of Article 3 (equality before law) due to the disagreement on the inclusion of sexual orientation, gender identity and ethnic identity.
- The new *Military Code of Discipline*-drafted in November 2012 and adopted in January 2013, labels homosexuality as an 'unnatural imminence' which is a basis for a discharge from the military service. Other reasons for discharge include murder, fraud, bribery, and serving a prison sentence of more than a year.
- In December 2012, to mark *International Human Rights Day*, KAOS GL organised a *Symposium Against Discriminations* focusing on social rights of LGBT people. The participants and speakers in the event were human rights defenders, trade unionists and social work experts from Turkey and abroad. The organisation made a media statement noting that in addition to the disrespect for its international and regional human rights obligations the country "reproduces and institutionalises discrimination against LGBT people".
- In January 2013, the European Committee on Social Rights has released its conclusions on Turkey's conformity with the European Social Charter finding that Turkey is not in conformity with the Social Charter in relation to providing protection from sexual orientation discrimination in employment. The Committee pointed to authorities' failure to protect people from sexual orientation discrimination. In April 2012, Kaos GL and ILGA-Europe made a submission in relation to Turkey's national report on its social charter obligations in relation to employment.
- In February 2013, fifty-nine deputies of Republican People's Party (CHP) requested an inquiry-prepared by İstanbul deputy of CHP, Binnaz Toprak- from the Turkish Parliament to find solutions for the problems of LGBT community. The deputies expressed their concerns regarding high level of violence and discrimination against LGBT people in Turkey and proposed legal protection in different pieces of laws. Previous attempts by the opposition party to include sexual orientation and gender identity as protected grounds in the laws have been rejected by ruling Justice and Development Party (AKP).
- In February 2013, the Deputy Minister Bekir Bozdağ and the President of the Parliamentary Human Rights Commission Ayhan Sefer Üstün have instructed Turkish international representatives to start a process to retrieve Turkish children fostered by Christian families in Europe – starting with children fostered by gay and lesbian couples. One child, Yunus,

was taken from his family at 6-months-old due to the family not fulfilling child care requirements. The boy is now 9-years-old and lives with a lesbian couple in Belgium. Turkish authorities have begun legal proceeding to have Yunus and other Turkish children given to gay foster parents returned, citing a violation of human rights and psychological damage done to the child. In March 2013, the biological parents of a child adopted by Dutch lesbian couple went on television in Turkey and said that they consider the pair morally unfit to take care of their child. Turkish Prime Minister Recep Tayyip Erdogan expressed that placing a child with a Muslim background with lesbians could breach his nation's "moral and religious values."

- In March 2013, Peace and Democracy Party (BDP) welcomed women's organisations on the occasion of 8 March International Women's Day in its weekly meeting in the Turkish Parliament. Amongst the invited organisations, were Kaos GL and Pink Life Association who presented the human rights situation of lesbian, bisexual and trans women in Turkey.
- An experienced football referee Halil İbrahim Dinçdağ, who was dismissed from work by the Turkish Football Federation (TFF) because of his sexual orientation has filed a petition with the provincial human rights board of Istanbul and brought a civil case against the Federation for his dismissal and for unduly disclosing to the public his sexual orientation. In December 2012, the provincial human rights board of Istanbul unanimously decided that the plaintiff had been subject to a wide range of human rights violations, in particular, his to equality and non-discrimination, to the protection of privacy and family life and to employment, protected under the European Convention and Turkish Constitution. Although the decision of the Board has been positive it lacks enforcement powers and cannot impose any sanctions on TFF. The court hearing on the case is scheduled on 21 May 2013. The plaintiff is prepared to take the case further if he doesn't receive adequate redress nationally.
- The Council of Europe's Parliamentary Assembly has issued a resolution on Turkey -within its post monitoring dialogue with Turkey-calling on Turkey 'to take every step, educational measures included, to combat all forms of discrimination and adopt appropriate legal and constitutional provisions' and implement those reforms in relation to sexual orientation and gender identity and in accordance with Committee of Ministers Recommendation CM/Rec(2010)5 on measures to combat discrimination on grounds of sexual orientation or gender identity.

Freedom of expression

- In June 2012, the High Court ruled that oral and anal sex in movies should increase the penalty against the accused for selling CDs with sexual content. S.K. was given an increased penalty for selling movies that contained anal and oral sex displays. The High Court decided that S.K. had to be judged under *Penal Code* Article 226 Paragraph 4 which states that a "person selling products containing writing, sound or images of unnatural sexual behavior can be convicted to 1 to 4 years and to punitive fine up to 5000 days". However, in February 2013, an Istanbul court of the first instance delivered a ruling saying that sexual orientation cannot be considered as 'unnatural', contradicting a previous ruling by the high court. The ruling regarded a trader who was caught selling DVDs that contained anal, oral and group sex displays.

- In December 2012, LGBT news portal kaosgl.org was hacked right after Kaos GL's *Symposium against Discriminations*. The attack had blocked access to kaosgl.org for a short period of time displaying a messages of "hadith" (sayings of the prophet Muhammad), about homosexuality. A similar attack also happened during the International Day against Homophobia & Transphobia by religious fundamentalists.

Police and law enforcement

- In March 2013, the police broke into trans women's apartments in Istanbul, rounding them up and taking them to a police station on the bases that they provided space for sex work. The transgender women were harassed, taken to the hospital, and forced to undergo compulsory tests for sexually-transmitted diseases. Earlier in October 2012, following the complaints of the residents of Avcılar Meis Buildings, the police took 15 trans women into custody for 'performing prostitution' and sealed their houses.

¹ This submission gives a snapshot of human rights situation of LGBTI people in the country and follows a structure and approach similar to ILGA-Europe's Annual Review 2013. It is based on continuous monitoring of the country situation, collection and analysis of first-hand information from LGBTI human rights defenders and country experts.