

ILGA-Europe's submission to the European Commission's 2011 Progress Report on Turkey¹

Brussels, April 29, 2011

Political criteria

Human rights and the protection of minorities	
<i>Civil and political rights</i>	
Freedom of assembly	Since 2003 annual Pride Parades are held in Istanbul. Rallies on the International Day Against Homophobia are also organized annually since 2008 by LGBT organizations in Ankara. The Trans Remembrance March organized in November 2010 in Ankara went peacefully.
Freedom of association	Freedom of association is guaranteed for every citizen in the Turkish Constitution. However, Art. 56 of Turkish Civil Code allows for the closure of an association that goes against 'laws and ethics'. The Directories of Associations of cities are the bodies deciding whether an association applying to register is in violation of that article. So far, whenever an LGBT organization applied to register, the Directory of Association of that city applied to the Public Prosecutor to close down the organization. Closure cases were filed against Lambdaistambul, Kaos GL, Pink Life and Black Pink Triangle. While the charges against Kaos GL (September 2005) and Pink Life (July 2006) in Ankara were dropped, Lambdaistanbul went through a lengthy legal battle when finally in November 2008 the decision by the local court to close down the organization was overturned by the Supreme Court of Appeals. In the case of Black Pink Triangle Association the local court ruled against the closure in April 2010.
Hate crime and hate speech, public statements targeting LGBT people	There are no provisions in the Criminal Code of Turkey that allow the homo/transphobic motive to be treated as an aggravating circumstance. On the contrary, the courts in Turkey often give reduced sentences to the perpetrators of violence and crimes against LGBT people on the grounds that they have committed the crimes under 'unjust provocation'. In the absence of any legal protection and political will to tackle homophobic violence, LGBT people are continuously

¹ The submission is made based on the contributions from KaosGL and Pambe Hayat, LGBT organisations in Ankara, Turkey

subjected to violence and ill-treatment which often cost them their lives. In the course of 2010 15 hate murders of gay men and transgender people have been reported by LGBT associations in Turkey. In addition, one person was killed in Istanbul because of his perceived sexual orientation (the victim was a heterosexual man but was targeted for the attack as he had earrings and long hair).

From September 2010 till April 2011 10 cases of hate crimes against LGBT people were reported:

- On 20 September 2010, a transwoman [Irem Okan, 24], was stabbed 30 times to death in her house in Bursa.
- On 12 November 2010, [Serap Toman, 50] a transwoman in Izmir was stabbed to death.
- On 10 December 2010, a transwoman [E.C., 24] in Ankara was raped by 3 men and had her ear cut off.
- In January 2011, a gay prisoner [N. T., 19] in Corum was threatened and beaten by the guardians of the prison.
- On 15 February 2011, a transwoman in Ankara was stabbed from her back 24 times and she is still under intensive care in a hospital.
- On 26 February 2011, a transwoman, one of the founders of Pembe Hayat [Gorkem K., 45] was beaten and knifed 10 times. She remained under intensive care for 15 days in a hospital.
- On 1 March 2011, a gay asylum seeker [Ghassan K., 17] who escaped from Iran was severely beaten up by 2 men in Kirsehir.
- On 7 March 2011, a woman [Pinar Türkmen, 21] was murdered by her boyfriend [Emrah Gumus, 24] in Gaziantep. The murderer confessed that he killed her because she had a lesbian relationship.

- On 22 March 2011, a transwoman [S.P.] was brutally murdered in Izmir. Her head and legs were cut off.
- On 19 April 2011, a transwoman [R.B., 36] was shot to death in Izmir, Turkey. During the same gunshot 2 other transwomen [M.K. 26 and Y.E. 36] were injured and taken to the hospital.

Hate crimes target particularly transgender people in Turkey. It doesn't therefore come as a surprise that amongst all 47 CoE member states, Turkey ranks first for trans murder cases. Only in 2010, 7 trans people were murdered in Turkey.

Transgender people in Turkey are indeed a particularly vulnerable group. The inability to access the formal labour market often forces them into sex work further increasing their vulnerabilities. Although prostitution is legal in Turkey transgender sex workers are treated as criminals by the police. Police harassment and abuse of transgender women is a widespread practice in Turkey. Physical violence, psychological abuse, rape and unjustified fines are common practice in the police forces against transgender women in Turkey.

While on a fact finding trip to Turkey, ILGA-Europe documented the case of police violence against 5 transgender women in Ankara on 17 May, 2010². After the incident the 5 trans women were charged with "resistance to police authority". However, none of the police officers responsible for the violence were held accountable.

When a trans person is beaten up by the police they interfere in the medical examination of the victim to make sure that the reports do not reflect the real medical condition of the victim and that the victim doesn't seek further medical care and examination. As for the procedural examination, medical staff is often insensitive and doesn't respect the privacy and dignity of trans sex workers. Furthermore, police routinely fines transgender women under the Code on Misdemeanour. The fines issued are for 'disturbance of the traffic' or 'disturbance of the public peace'. The transgender women in fact claim that they do not need to be doing any sex work in

² http://www.ilga-europe.org/europe/guide/country_by_country/turkey/detailed_account_of_the_recent_case_of_police_violence_against_transgender_women_in_ankara

	<p>order to be stopped by the police and be fined. At times, the police have also issued them fines without their being in the location at the indicated time. They have been fined an average of 16 times each.³</p> <p>The most recent case of the police harassment and arbitrary arrest of a transperson happened in December, 2010 in Antalya.</p> <p>The article 216 of the Criminal Code on incitement to hostility doesn't recognize LGBT people as a group which could be targeted for hate speech.</p> <p>In the meantime, homophobic and transphobic statements in media are widespread. This is particularly worrying coming from leading political figures and professionals.</p> <p>In March 2010 the State Minister responsible for Woman and Family issues, Mrs Selma Aliye Kavaf declared that "Homosexuality is a biological dysfunction that needs treatment". In November 2010, the Minister went a step further calling for 'sufficient measures' to be taken 'for homosexuality and incest' and expressed her support for 'all the joint works that will be done to stop such diseases which threaten the society'.</p> <p>In March 2011, in newspapers Yeni Akit and Sok a psychologist Nevzat Tarhan stated that 'trans and gay people bring the disease of the West to Turkey in a form of immorality and they should be stopped'.</p>
<i>Economic and social rights</i>	

³ The least number of fines is 14 and the highest is 20.

<p>Discrimination /</p> <p>Anti-discrimination laws and policies</p>	<p>In January 2011, the Government of Turkey prepared the Draft Law on Combating Discrimination and Equality Committee in Turkey. Initially the Ministry of Interior, responsible for proposing the law, consulted civil society organizations and experts on the law and approved the draft prepared by the Human Rights Joint Platform which included “sexual identity” as a protected ground of discrimination under Article 1. Regrettably, the Ministry removed sexual identity ground from final draft of the law. Thus, the first and the only law that was going to provide protection from sexual orientation and gender identity discrimination in Turkey is now denying lesbian, gay, bisexual and transgender (LGBT) individuals this protection. ILGA-Europe addressed a letter to the Commissioner Stefan Füle and to the head of the Turkey Unit at DG Enlargement Mr. Filori calling them to urge the relevant executive and legislative branches of the Government of Turkey to maintain the full list of protected grounds, including sexual identity in the proposed Draft Law on Combating Discrimination and Equality Committee in Turkey. We have not yet received a response to our letter.</p> <p>We would like to remind that no protection from discrimination on the grounds of sexual orientation and/or gender identity is provided in any of the non-discrimination provisions of Turkish legislation. Article 10 of the Constitution of Turkey provides for non-discrimination. However, sexual orientation and gender identity are not among the nondiscrimination grounds. There is no specific reference to sexual orientation as a ground for non-discrimination in the main anti-discrimination provision of the Labour Act (Article 5). Also there is no legislation specifically prohibiting discrimination in recruitment. Moreover, under Article 25 of the Labour Act an employer may terminate an employment contract for “immoral” behavior, which can be used to dismiss employees because of their sexual orientation and gender identity. Similarly, Civil Servants Code and many other laws regulating the rights and duties of specialized civil servants provide for disciplinary actions on the bases of ‘immoral behavior’. In the absence of legal definition of ‘immoral behavior’ the sexual orientation and gender identity of LGBT people is almost always defined as such.</p> <p>In the absence of any legal protections, LGBT people continue facing discrimination on a regular basis in the fields of employment, health care, access to goods and services, etc.</p>
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Employment discrimination on the ground of sexual orientation and gender identity is a particularly serious issue. There are a number of accounts of people being fired from work based on their real or perceived sexual orientation and/or gender identity.

A gay referee Halil İbrahim Dinçdag was fired from the Turkish Football Federation [TFF]. He filed a case against TFF the hearing of which is scheduled for 31 May 2011.

Murat S., 28 from Istanbul was not hired for a job he applied in a private company because of his sexual orientation. During the interview he was asked about his military service report and was forced to reveal his sexual orientation. He was called in the evening of the same day by the interviewer and told that he was not accepted for the job because of his “sexual choice” which might create problems in the working environment.

A teacher of religion [Zafer Hoca] who was fired from work on the grounds of his sexual orientation in 2000 lost his case against the Ministry of Education. After 10 years of legal battle in Turkey he applied to the ECtHR in November 2010.⁴

A gay policeman [F.E.] from Istanbul was fired by the Ministry of Interior after the detailed investigation on his sexual orientation launched by the Ministry in 2010. He opened a case against the decision of the Ministry. The case is under investigation.

S.K., a gay man, was fired from his job and he opened a case in Istanbul 4 Labour Court. The court rejected his case, stating the reason of being fired is valid. He appealed the decision and the Court of Cassations is currently reviewing the case.

There are a number of other employment discrimination cases documented by the local LGBT organizations particularly in the fields of education, military service and law enforcement which goes to show that many laws regulating the rights and duties of specialized civil servants that provide for disciplinary actions on the bases of ‘immoral behavior’ are used to discriminate against LGBT people.

⁴ <http://www.hurriyet.com.tr/gundem/16454577.asp>

Many cases of discrimination, however, go unreported and the victims never file complaints.

Employment discrimination is a particularly serious problem for transgender people who face extreme social exclusion. Unable to find employment, many are forced into sex work and subjected to violence, harassment and psychological abuse.

LGBT organizations have also documented a number of discrimination cases in the field of education.

In one case LGBT students from Middle East Technical University wanted to establish their student club and applied to the University administration in September 2010 to be able to carry out their studies and social activities on sexual orientation and gender identity issues in the campus. However, the university administration did not approve their application, stating that '[...] "identity", "creating sensitivity", "carrying out activities to raise awareness" are not sufficient for establishing clubs.' While the same university allows many other clubs to work on "identity issues", LGBT students were overtly discriminated as regards to their right to association in the university campus.

GBT people are also not allowed to serve in Turkish army. According to the Turkish Armed Forces Health Requirement Regulations, GBT people are considered unfit to serve in the military. Furthermore, military doctors subject GBT people to humiliating and degrading tests and procedures as to 'diagnose their pathology'.