



ILGA-EUROPE Review of the Human Rights Situation of Lesbian, Gay, Bisexual, Trans and Intersex people in Turkey Contribution to the 2014 EC Progress report

*Based on the ILGA Europe review 2014 with contributions from Kaos GL
and LGBTI News Turkey¹*

16 May 2014

Introduction

In its last report ILGA-Europe reported that hate speech, violence and murders targeting LGBTI people, including ‘honor killings’ by the families, continued to cause grave concern. The Criminal Code and Law on Misdemeanor continue to be used to discriminate against LGBTI people, particularly trans people. Turkey’s practice to classify gay men as ‘psychosexually disordered’ and ‘unfit’ for the military exposed them to further discrimination and was condemned by the Parliamentary Assembly of the Council of Europe as degrading treatment. During the year, Turkey was drafting its first civilian Constitution. LGBT organizations 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.

No progress was achieved by the end of the year, as the Reconciliation Commission suspended the writing of Article 3 (equality before the law) due to disagreement on the inclusion of sexual orientation, gender identity and ethnic identity.

The European Parliament expressed its concern over the country’s hate crime record, common hate speech, and 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 Constitution². It further stressed the urgent need for comprehensive anti-discrimination legislation and the establishment of an anti-discrimination and equality board.

¹ ILGA Europe is grateful to Zeinep Bilginsoy from LGBT news for its support in preparing this submission.

² European Parliament resolution on the 2013 progress report on Turkey (2013/2945(RSP))

The EP further reaffirmed the importance of opening Chapters 23 (judiciary and fundamental rights) and 24 (justice and home affairs) early in the negotiation process and closing them and called on the European Commission to promote without delay further dialogue and cooperation with Turkey in the fields of the judiciary and fundamental rights and of justice and home affairs in the framework of the Positive Agenda³.

Developments since the last ILGA Europe report

Turkey continued treating LGBTI persons as second-class citizens throughout law, policy and practice. Transphobic murders have continued unabashed; gay men continued to be excluded from the military via discriminatory and humiliating practices; and a pervasive discourse based on ‘morality’ prevents applying a human rights based approach to issues of sexual orientation and gender identity. The AKP-led government’s ‘democracy reform package’ failed to include any measure to redress legal and policy injustices towards LGBTI people. Positively, the CHP’s and the BDP/HDP’s parliamentary groups started taking up LGBTI issues; and a court was deliberating over considering harmful comments in a newspaper as hate speech.

Equality and non-discrimination

In February 2013, 59 CHP MPs (Republican People’s Party, social-democratic) had requested a parliamentary inquiry into providing legal protection on grounds of sexual orientation and gender identity; bias-motivated crimes; discrimination at the workplace; and police violence against LGBTI people. The ruling party AKP (Justice and Development, Centre-right/conservative) blocked the inquiry. In December 2013, ruling party AKP presented the Democracy Reform Package – including the Anti-Discrimination Bill and Hate Crimes Legislation to parliament, removing protection on grounds of sexual orientation and gender identity from earlier drafts. The 6th Democratization Package that included Anti-Discrimination Bill and regulations on the basis of Hate Crimes was enacted in February, 2014 but without references to sexual orientation and gender identity in the package.

Access to goods and services

In December, two trans-women sought refuge at the Zeytinburnu Sports Complex Homeless Guesthouse in Istanbul, and stayed one night. The next day, they were told that they were not welcome, and forced to sign a paper stating they would leave the guesthouse willingly.

Bias-motivated speech.

In May, the parliament’s Commission on Health, Family, Labour, and Social Affairs’ Deputy President Türkan Dağoğlu (AKP, centre-right/conservative) stated that being LGBT “is a behaviour that is outside the bounds of normality” in response to a request to look into LGBTI discrimination (see Equality and non-discrimination). In August, the Istanbul Criminal Court overturned a decision not to prosecute, and allowed LGBTI NGO Kaos to try suing government-affiliated newspaper Yeni Akit for calling them “deviants” and “perverts” in 2012.

³ European Parliament resolution on the 2013 progress report on Turkey (2013/2945(RSP))-article 23

The court found that “a group with different sexual orientation [was] clearly humiliated and insulted” by the article in question, and ruled that Yeni Akit may have breached article 216 of the Penal Code which prohibits insulting social groups.

This ruling allowed Kaos GL to file a lawsuit against Yeni Akitin the Bakirköy Second Court of First Instance. A final ruling had yet to be issued by the end of the year.

Bias-motivated violence

Impunity for violence and crimes against LGBTI individuals remained high. For instance, in January the Iskenderun Second High Criminal Court sentenced a driver who had killed his client (whom the murderer claimed had offered him to have sex) to 15 years’ imprisonment instead of a life sentence, because of ‘unjustified provocation’ and ‘good behaviour’. In November, the body of a gay man was found in Hatay with a bag over his head, hands and feet tied, and choked to death. The three suspects were released and the police acted uncooperatively. Reacting to this trend, Parliamentary Assembly of the Council of Europe (PACE) delegates signed two written declarations: one calling on Turkey to stop reducing penalties for homophobic crimes (April, doc. 13194), and one calling on Turkey to counter transphobic and homophobic violence and discrimination (October, doc. 13323). Violence against Trans people remained frequent.

Several trans people were murdered in Istanbul (2), Kuşadası (1) and Düzce (1) during the year, and one trans woman committed suicide in Izmir following domestic violence. In August, a mob lynched a group of trans individuals in Ankara, wounding 30.

Other reports include stabbing, stoning and group attacks. In December, three defendants in the 2011 murder of a trans woman in Izmir were acquitted for lack of evidence.

Employment

The new Military Code of Discipline continues labelling homosexuality as “unnatural intercourse”, which constitutes a basis for discharge from compulsory military service along with murder, fraud, or bribery. The European Committee on Social Rights released its conclusions on Turkey’s conformity with the European Social Charter in January. It found that Turkey did not abide by the Council of Europe treaty, which foresees protection from discrimination on grounds of sexual orientation in employment. The case opposing referee Halil İbrahim Dinçdağ to the Turkish Football Federation (TFF) continued. Mr Dinçdağ was sidelined by the TFF after the federation found he had been exempted from compulsory military service due to his sexual orientation. The TFF kept delaying court hearings. This year, the provincial Human Rights Board of Istanbul unanimously found the TFF guilty of wrongful dismissal and breach of Mr Dinçdağ’s privacy for revealing his sexual orientation to the press. However, the Board’s decisions aren’t legally enforceable.

Family

In February, Deputy Prime Minister Bekir Bozdağ and President of the Parliament's Human Rights Commission Ayhan Sefer Üstün instructed Turkish diplomats to retrieve Turkish children fostered in Christian families and families with same-sex parents abroad. Turkish authorities began legal proceedings to return Turkish children placed with same-sex foster parents abroad, citing a violation of human rights and psychological damage done to children. A nine-year-old boy's case, who had been taken from his family aged six months by Turkish social services and placed with a lesbian couple in the Netherlands, received heightened media attention in both countries. Prime Minister Recep Tayyip Erdogan commented that placing a child from a Muslim background with lesbian women could breach his nation's "moral and religious values", and asked Dutch Prime Minister Mark Rutte to return the child. The Dutch PM replied that the adoption was approved in the child's best interest, and without distinction based on either sexual orientation or religion.

Freedom of association and Freedom of assembly

A university LGBT student club was allowed for the first time in November in Galatasaray University. In June, the Director of Associations in the province of Van sent a review letter to NGO Youth and Ecology Association, arguing its statutes breached article 56 of the Civil Code which forbids associations "contrary to laws and ethics", because they mentioned that the group "may work in the field of sexual orientation". The Director stated that a lawsuit for closure would be filed at the relevant court of first instance if the articles were not changed. The case had yet to be resolved by the end of the year.

In June, the Trans Pride and the Istanbul Pride took place without police interference and saw over 50,000 take part, according to activists. Following the Istanbul Pride in June, 74 conservative and religious NGOs complained to the Turkish Media Council that images of the event published in newspapers were "pornographic and against [their] values". Council President Pınar Türenç opened a formal procedure but dismissed the claims, saying they "should not be taken seriously".

Freedom of expression and media

Several incidents of censorship were reported. In October, the telecommunication authority blocked website transsicko, an online resource for trans men. In September, gay dating application Grindr was blocked for "protective measures". The publisher of French poet Apollinaire's "Exploits of a Young Don Juan" was also sued for obscenity; the wasn't condemned, but was warned not to publish "obscenities" in the next three years.

In 2014, the Supreme Board of Radio and Television (RTUK) has fined several TV channels for airing local and international music videos, including Shakira's Can't Remember to Forget You ft. Rihanna, for "promoting homosexuality".

Health

In December, the Psychiatric Association of Turkey filed a criminal complaint against website homofinal.com for providing a fake drug, "homofin", claiming it "cured homosexuality".

Participation in public, cultural and political life

In March, the Peace and Democracy Party (BDP, Kurdish/social-democratic) welcomed to parliament two LGBTI organisations, Kaos GL and Pink Life Association.

In April, Michelle Demishevich was the first-ever TV reporter to come out as trans. Between May and July, LGBTI activists played an active role in anti-government Gezi Park protests in Istanbul and other cities, which saw harsh police repression which led to deaths and serious injuries. Rainbow flags were frequently seen at the protests. Following those events, in June, numerous Gezi Park demonstrators joined the Trans Pride and the Istanbul Pride. In September, a mayoral candidate in the coastal town of Giresun came out as gay.

Can Çavuşoğlu announced he would run in the March 2014 election, but then withdrew his candidacy. Both CHP (Republican People's Party, social-democratic) and HDP (People's Democratic Party, left-wing) put forward LGBTI candidates for municipality councils in the March 2014 local elections. LGBTI activists also met CHP leader Kemal Kılıçdaroğlu to discuss sexual orientation and gender identity in politics.

Police and law enforcement

In March, Istanbul police broke into the apartments of trans women, rounding them up and taking them to a police station arguing they provided a venue for sex work. The women were harassed, forcibly taken to the hospital, and forced to undergo compulsory tests for sexually-transmitted diseases. Answering a freedom of information request in July, the Ministry of Justice revealed that the 79 LGBT individuals currently imprisoned nationwide were always separated from other convicts, often placing them in de Facto solitary confinement.

Recommendations

Turkey needs to ensure that its laws and policies protect all human rights of LGBTI persons in accordance with the existing international legal standards applicable at the level of the United Nations, the Council of Europe recommendation CM/Rec (2010) on measures to combat discrimination on grounds of sexual orientation or gender identity.

Turkey needs to ensure full alignment of its legislation with EU fundamental rights acquis and laws and policies covering equality and non-discrimination on the grounds of sexual orientation, enshrined in Articles 10 and 19 of the Treaty on the Functioning of the European Union (TFEU) and Article 21 of the Charter of Fundamental Rights of the European Union (CFREU).

The EU's founding principle of equal treatment also protects transgender persons against discrimination. This is enshrined in the EU Gender ReCast Directive (2006/54/EC), in the Gender Goods & Services Directive (2004/113/EC) and, with explicit reference to gender identity and expression, in the EU Asylum Qualification Directive (2004/83/EC) and the EU Victims' Rights Package (2011/0129).

At the national level, Turkey should⁴:

Prohibit discrimination on grounds of sexual orientation and gender identity in law and practice

- Extend Constitutional protections of the right to non-discrimination to include sexual orientation and gender identity;
- Extend non-discrimination provisions in domestic law to include the grounds of sexual orientation and gender identity;
- Introduce comprehensive non-discrimination legislation;
- Amend the Law to Combat Discrimination and Equality with protection on grounds of sexual orientation and gender identity;
- Conduct a review of all domestic legislation ensuring that discriminatory provisions are removed and that other provisions do not result in discrimination in practice;
- Prohibit the use of discriminatory language by public officials;
- Ensure that public officials do not encourage negative attitudes about lesbian, bisexual, gay and transgender individuals in their public discourse;
- Address discriminatory language by public officials with appropriate disciplinary or other measures;

Take positive steps to prevent discrimination;

- Carry out targeted training initiatives aimed at all public officials in all sectors (including the judiciary, police, teachers, social workers, health professionals, local authorities, and so on) about relevant non-discrimination and equality standards and ways of implementing them.

End violence and harassment of lesbian, gay, bisexual, and transgender individuals by state officials

- Ensure that police only use such force as is consistent with international human rights standards;
- Investigate promptly, thoroughly, independently and impartially allegations of torture and other ill-treatment against lesbian, bisexual, gay and transgender individuals;
- End the harassment based on an individual's sexual orientation or gender identity by law enforcement officials;

⁴ These recommendations are building on the comprehensive report published by Amnesty International "Not an illness nor a crime Lesbian, gay, bisexual and transgender people in Turkey demand equality"-2011



- Suspend the application fines under the Misdemeanour Law and the Traffic law for pedestrians due to their widespread discriminatory and arbitrary application by police officers until measures can be put in place to ensure that these laws are not used in a discriminatory manner;
- End violence and harassment of gay men in the military,
- Remove from the Military Penal Code the discriminatory provision terming homosexuality as a “psychosexual disorder” preventing gay men serving in the military;
- Investigate promptly, thoroughly, independently and impartially allegations of ill-treatment and harassment against gay men in the military and hold those responsible to account, including by criminal sanctions where appropriate.

Protect the rights of transgender people

- Remove the requirement for enforced sterilisation and other compulsory medical treatment as a necessary legal requirement to recognise a person’s gender identity in laws regulating the process for name and gender reassignment;
- Ensure that gender reassignment procedures, such as hormone treatment, surgery and psychological support, are accessible for transgender persons, and ensure that they are provided within state health insurance.
- Ensure the right to adequate housing is respected for all
- Ensure that police raids on houses and subsequent orders barring entry are not used as a pretext for the harassment of transgender individuals;
- Ensure that evictions are only carried out as a last alternative after all other feasible alternatives to eviction have been explored and only when procedural protections required under international human rights law are in place.
- Protect the right to seek and enjoy asylum for lesbian, bisexual, gay and transgender refugees and asylum-seekers
- Allow lesbian, gay, bisexual and transgender refugees and asylum-seekers to reside in large cities in Turkey with established LGBT solidarity associations and communities;

Take steps to ensure the rights of all persons to freedom of association are respected, without discrimination;

- Ensure that notions of public morals are not used as the basis to restrict any exercise of the right to peaceful association on the basis that the association affirms diverse sexual orientations or gender identities;
- Remind provincial governorships and their association directorates of their obligation to respect and protect the rights of all persons to freedom of association, without discrimination, including on grounds of sexual orientation and gender identity, and to take measures to eliminate all forms of discrimination on grounds of sexual orientation and gender identity.

**Prevent violent crimes against lesbian, gay, bisexual and transgender individuals
Take urgent steps to ensure that lesbian, gay, bisexual and transgender individuals, as
well as members of other at-risk groups, are protected from violence;**

- Ensure the message is clear: discriminatory comments by public officials, including law enforcement officials are not tolerated;
- Speak out publicly against hate crimes and commit to bringing those responsible to justice.
- Bring perpetrators of suspected hate crimes to justice; in co-operation with LGBT rights groups outline and implement measures that would
- encourage reporting of homophobic and transphobic incidents, such as establishing specialized agencies with trained personnel to which the hate crimes can be reported;
- Ensure that all police officers receive in-service training on the nature of hate crimes and the role of the police in combating them;
- Introduce a system of comprehensive monitoring of all incidents that may constitute hate crimes. The monitoring should cover all stages of proceedings, including complaints lodged, charges brought and convictions recorded;
- Allow victims, their families and LGBT groups' involvement in the investigation. Include sexual orientation and gender identity to clauses on equality, non-discrimination, and hate crimes legislation.
- Provide trainings on the international standards of non-discrimination to government officials, police, military, prison and detention staff and judiciary with the specific inclusion of sexual orientation and gender identity.