

Human Rights Violations of LGBT Individuals in Turkey

REPUBLIC OF TURKEY
Submission to the United
Nations Universal
Periodic Review



Pink Life LGBTT Solidarity Association

Address: Ataç 1 Sokak No: 3/8 Yenişehir Ankara
Telephone: 0 312 433 85 17
Fax: 0 312 433 85 18
E-Mail: pembehayat@pembehayat.org
URL: www.pembehayat.org

Kaos GL Association

Address: Gazi Mustafa Kemal Bulvarı 29/12 06440 Kızılay Ankara
Telephone: 0 312 230 03 58
Fax: 0 312 230 62 77
E-Mail: bilgi@kaosgldernegi.org
URL: www.kaosgl.org

Cover Design: Serkan Yolcu

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Ayrıntı Basımevi, Ostim, Ankara
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Human Rights Violations of LGBT Individuals in Turkey

Submitted By:

Kaos GL, Ankara
www.kaosgl.org

LGBTI News Turkey, Istanbul
www.lgbtinewsturkey.com

IGLHRC, New York
www.iglhrc.org

Endorsed By:

Social Policies, Gender Identity, and Sexual Orientation Studies Association
(SPoD), Istanbul
www.spod.org.tr/turkce/

ANKA LGBT, Ankara
www.facebook.com/AnkaLGBT

Siyah Pembe Üçgen, Izmir
www.facebook.com/siyahpembeucgenizmir

Mersin LGBT 7 Renk, Mersin
www.facebook.com/MersinLgbt7Renk

LİSTAG, Istanbul
listag.wordpress.com/

Pembe Caretta LGBT, Antalya
pembecarettagbtq.tumblr.com/

MorEl Eskişehir LGTBİ, Eskişehir
moreleskisehir.blogspot.com.tr/

Pembe Hayat, Ankara
www.pembehayat.org

Lambdaistanbul, Istanbul
<http://www.lambdaistanbul.org/s/>



Executive Summary

This report is a joint submission by Kaos GL Association, LGBTI News Turkey, and the International Gay and Lesbian Human Rights Commission (IGLHRC) (ECOSOC accredited NGO), to the United Nations Human Rights Council on the occasion of the 21st Session of the Working Group on the Universal Periodic Review. This submission presents human rights violations in Turkey on account of actual or perceived sexual orientation and/or gender identity. These violations consist of acts of violence against LGBT individuals, discriminatory domestic laws, arbitrary administrative measures, and hostile approach of State officials towards the LGBT community.

In preparing this submission, we relied on documentation and data from the following sources: LGBT organizations and allies in Turkey; reports by national and international human rights NGOs; the European Commission's Annual Progress Report; Concluding Observations of the UN Human Rights Committee's review of Turkey's compliance with the ICCPR; recommendations from Turkey's first-cycle UPR; Turkey's Constitution and recent legislation; and media reports of violence and discrimination against LGBT individuals.

1. Lack of Domestic Legal Protection for LGBT Individuals in Turkey

Domestic legal provisions do not explicitly discriminate against individuals on the basis of sexual orientation and/or gender identity. However, there are numerous examples of discriminatory applications of the laws being against LGBT persons. In addition, the lack of explicit legal protection for LGBT individuals has amounted to a tacit legal endorsement of acts of violence and discrimination. For example:

1. Hate Crimes against LGBT Individuals: Between 2010 and June 2014, there were at least 41 reported hate murders of individuals known to self-identify as lesbian, gay, bisexual, or transgender.¹ According to the European Commission's 2013 Turkey Progress Report, advocacy of hatred amounting to incitement of violence and physical attacks against gay and lesbian individuals increased from 2012 to 2013. The Report cites 12 murders of LGBT people in 2013 alone, as well as a number of attempted acts of lynching, and instances of torture, rape, ill-treatment, domestic violence, and harassment of LGBT persons. The European Commission's concern with inadequate police investigations and prosecutions of LGBT attacks also grew from 2012 to 2013.²

2. Legal Discrimination: According to Article 29 of the Turkish Criminal Code, "A person committing an offense with effect of anger or asperity caused by an unjust act is sentenced to imprisonment from eighteen years to twenty-four years instead of heavy life imprisonment, and to imprisonment from twelve years to eighteen years instead of life imprisonment".³ The Code does not define or set criteria for what constitutes an "unjust act", leaving it up to the sentencing judge to determine whether an assault

¹ This statistic was generated by aggregating data from five reports. The first was a catalog of LGBT murders in 2014 compiled by LGBTI News Turkey ["Rights Violations in 2014", available at: <http://lgbtinewsturkey.com/category/rights-violations-in-2014/> [accessed 6 June 2014]]; the second was a 2013 declaration from the Council of Europe [Council of Europe, Written Declaration No. 543, Doc. 13194, 24 April 2013], the third was a 2013 report of data from the previous year, compiled by the Social Policies, Gender Identity, and Sexual Orientation Studies Association [Project to Strengthen Mechanisms of Access to Justice for LGBT People in Turkey, "2012 Report of Human Rights Violations Based on Sexual Orientation and Gender Identity", August 2013], the fourth was a 2011 report by Kaos GL [Kaos GL, "İnsan Hakları Raporu", 2011, available at: <http://bianet.org/bianet/lgbti/137165-kaos-gl-2011-insan-haklari-raporu-yayinlandi> [accessed 6 June 2014], and the final document was a 2010 report by Kaos GL [Kaos GL, "Siyah Pembe Üçgen İzmir, and Pembe Hayat, "LGBT Nefret Suçları Raporu 2010", 2010, available at: http://www.kaosgidemeji.org/resim/kutuphane/dl/nefret-suclari_raporu_2010.pdf [accessed 6 June 2014]].

² European Commission, Turkey Progress Report 2013, at p. 59 (2013).

³ Turkish Criminal Code (Law No. 5237 of September 26, 2004, as last amended by Law No. 6217 of March 31, 2011), Art. 29, available at: http://www.justice.gov.tr/basiclaws/Criminal_Code.pdf [accessed 5 June 2014]

or murder was the result of “unjust provocation”.⁴ As a result, judges have routinely used Article 29 to reduce the sentences of those who have killed LGBT individuals.⁵ As recent as February 26, 2014, a man who killed a trans woman was given an “unjust provocation” sentence reduction from life to 18 years.⁶ According to the verdict, the “unjust act” was the victim’s “being a transvestite”.⁷

3. Violations of the Right to Free Speech: Freedom of speech in support of diverse sexualities faces regular challenges. For instance, Turkish courts have censored and blocked gay social networking applications based on Law No. 5651 on Regulating Broadcasting in the Internet and Fighting Against Crimes Committed Through Internet Broadcasting.⁸ In August of 2013, one of the Penal Chambers of the Supreme Court of Appeals in Istanbul ordered a publishing house to stand trial for translating and publishing a novel with “homosexual content”, citing Article 226 of the country’s Criminal Code on “indecenty”.⁹ In a similar vein, Turkey’s Supreme Board of Radio and Television fined a TV network for “promoting homosexuality” by airing a music video in which two females behaved in a manner that could suggest they were in a romantic relationship.¹⁰ The Human Rights Committee has noted that “[t]he scope of paragraph 2 embraces even expression that may be regarded as deeply offensive...,” as long as such speech does not violate the prohibition of advocacy of hatred, contained in article 20 of the ICCPR.¹¹ Government regulations that require imposing fines on a network simply for airing a video that may “promote” homosexuality is the very definition of limiting free speech.

4. Violation of Rights to Freedom of Assembly and Association: In November 2013, the governing administration of Turkey’s Van province -in eastern Turkey- threatened to file a lawsuit to shut down the Youth and Ecology Association, a student environmentalist group, citing Article 2(27) of the group’s charter, which states that it will “work on the rights of people with different sexual orientations”. The Directorate claimed that the clause violates Article 56 of the Turkish Civil Code, which states that “no association can be formed for an object contrary to laws and ethics”.¹² The Directorate’s reasoning that differing sexual orientations are “contrary to law and ethics” represents a blatant disregard for the notion that all persons have a right to equal protection under the law. Although Turkish law does not criminalize consensual adult same-sex activity, the lack of explicit legal protection based on sexual orientation and gender identity has allowed government officials to apply their own interpretation of “ethics” in order to violate or limit the fundamental rights of LGBT individuals.

5. Employment Discrimination: De facto penalizing of differing sexualities and gender identities is not solely an issue at the level of provincial government; it occurs in the implementation of national statutes, as well. Article 125/E(g) of Turkey’s Law on Civil Servants includes a clause that allows for dismissal if a government employee is found “to act in a shameful and embarrassing way unfit for the position of a civil ser-

4 Turkish Criminal Code, supra note 3, at Art. 61(5).

5 European Commission, supra note 2.

6 LGBTI News Turkey, “Killing a Trans Is Reason for Reduced Sentences”, 6 May 2014, available at: <http://lgbtinewsturkey.com/2014/06/05/killling-a-trans-is-reason-for-reduced-sentences/> [accessed 5 June 2014]

7 According to the same article as the previous citation, the defendant had claimed that “he beat the victim in anger because she was a transvestite and she propositioned him”. The Court stated in the verdict that the defendant’s statement might be true, and was thus sufficient for a reduced sentence under the “unjust provocation” provision of Article 29.

8 Kaos GL, “Grindr Censored in Turkey”, 11 September 2003, available at: <http://www.kaosgl.com/page.php?id=14799> [accessed 5 June 2014]

9 LGBTI News Turkey, “Court Finds French Book ‘Obscene’”, 12 August 2013, available at: <http://lgbtinewsturkey.com/2013/08/12/sel-apolinaire-case/> [accessed 5 June 5, 2014]

10 LGBTI News Turkey, “RTLK Fines Show TV for ‘Promoting Homosexuality’ with the Music Video of Shakira and Rihanna”, 5 March 2014, available at: <http://lgbtinewsturkey.com/2014/03/05/rtuk-fines-show-tv-for-promoting-homosexuality-with-the-music-video-of-shakira-and-rihanna/> [accessed 5 June 2014]

11 Human Rights Committee, “General Comment No. 34: Article 19 Freedom of Opinions and Expression,” UN Doc. CCPR/C/GC/34, 12 September 2011, para. 11.

12 LGBTI News Turkey, “Homophobic Decision from Van Governorate”, 16 December 2013, available at: <http://lgbtinewsturkey.com/2013/12/16/homophobic-decision-from-van-governorate/> [accessed 5 June 2014]

vant”.¹³ In 2012, that clause was used to dismiss a police officer due to his perceived gender identity.¹⁴

6. Systematic Violations of Rights based on Actual or Perceived Sexual Orientation and/or Gender Identity: The European Commission reports that instances of LGBT discrimination were “frequent” in 2013. According to the Report, “There were cases of police officers, teachers and bank personnel being dismissed from their jobs due to the disclosure of their sexual identity.¹⁵ High school and university students were reported to face discrimination, including pressure to leave schools.” In a 2011 report, Amnesty International also noted the widespread nature of this discrimination. The group stated that “almost all people from [LGBT] communities feel compelled to hide their identity for fear of losing their job, irrespective of whether they work in the public or private sector. For transgender women there is very little access to employment, resulting in many being forced into sex work as the only means of survival.” The report notes that in a survey of LGBT individuals, 33 percent reported that they had not been hired for a job directly or indirectly due to their sexual orientation or gender identity.¹⁶

¹³ Law on Civil Servants, Law No: 65, passed 14 July 1965. Available at: <http://www.wipo.int/edocs/lexdocs/laws/tr/tr024tr.pdf> [accessed 8 June 2014].

¹⁴ Social Policies, Gender Identity, and Sexual Orientation Studies Association, “2012 Report of Human Rights Violations based on Sexual Orientation and Gender Identity”, August 2013, available at: <http://lgbtinewsturkey.files.wordpress.com/2013/09/2012-sogi-rights-violations-in-turkey1.pdf> [accessed 5 June 2014]

¹⁵ European Commission, *supra* note 2.

¹⁶ Amnesty International, “‘Not an Illness nor Crime’: Lesbian, Gay, Bisexual and Transgender People in Turkey Demand Equality” (2011), available at: <http://www.amnesty.org/en/library/asset/EUR44/001/2011/en/aff47406-89e4-43b4-93ed-ebb6fa107637/eur440012011en.pdf> [accessed 5 June 2014]

II. State Involvement in Discrimination against LGBT Individuals

Violence and discrimination against LGBT persons in Turkey has continued steadily since the Republic's first-cycle UPR review. Instead of actively enforcing the law to protect all citizens equally, judges and government officials in Turkey have used vague legal provisions to actively discriminate against LGBT individuals. Rather than take heed of various treaty monitoring bodies' recommendations - to openly and clearly condemn discrimination against LGBT persons, and to codify legal protection of LGBT rights - Turkish government officials have denounced LGBT individuals and jettisoned attempts to explicitly protect them from discrimination. We offer the following examples:

1. Homophobic Comments by State Officials: Members of the Turkish Administration have never publicly denounced discrimination on the basis of sexual orientation or gender identity; instead, they have openly made derogatory remarks about homosexuality that demonstrates their lack of commitment to providing equal protection for LGBT community members.

a. In 2010, former State Minister of the Affairs of Women and Families, Aliye Kavaf, stated that she believes "homosexuality is a biological disorder, a disease ... something that needs to be treated".¹⁷

b. In a 2011 speech on terrorism, former Minister of the Interior Idris Naim Sahin spoke disparagingly of "an environment in which there are all sorts of immorality, indecency and inhuman situations - from pork meat to ... homosexuality".¹⁸

c. In 2012, Ankara mayor and member of the ruling Justice and Development Party Melih Gökçek spoke of homosexuality as contrary to Turkish culture; he remarked, "Each society has its own moral values. Especially for our Turkish society, it is not possible for us to be together with the gay culture in Europe. It is also not possible to approve of this. How we have been brought up, our brand of morality, our views are a little different. I hope to God that in Turkey there will not be a gay and there should not be".¹⁹

d. Türkan Dağoğlu, Istanbul MP and Deputy President of the Committee on Health, Family, Labor, and Social Affairs, stated in 2013 that "'LGBT' is a behavior that is outside the bounds of normality".²⁰

e. These statements by government officials with a legal responsibility to protect all persons engender discrimination and violence against LGBT persons, and only serve to propagate an attitude of hostility toward people of differing sexual orientations and gender identities. Indeed, they run counter to the Human Rights Committee's 2012 recommendation that Turkey explicitly codify legal protection for LGBT individuals.²¹

2. Exclusion of Sexual Orientation and Gender Identity from the Constitution: In drafting Turkey's new constitution, members of opposition parties pushed for including "sexual orientation" and "gender identity" in the provision guaranteeing equality under the law.

¹⁷ Hürriyet Daily News, "Homosexuality is a disease" says Turkish minister", 7 March 2010, available at: <http://www.hurriyettailynews.com/default.aspx?pageid=438&n=8216homosexuality-is-a-disease8217-says-minister-2010-03-07> [accessed 6 June 2014]

¹⁸ Kaos GL, "LGBT Organizations Demand the Resignation of Interior Minister", 30 December 2011, available at: <http://kaosgl.org/page.php?id=10241> [accessed 6 June 2014]

¹⁹ Dailymotion, "Okan'dan Melih Gökçek'e Gay Sorusu", 3 April 2012, available at: http://www.dailymotion.com/video/xpvcrm7_okan-dan-melih-gokcek-e-gay-sorusu_tv [accessed 6 June 2014]

²⁰ LGBTI News Turkey, "AKP Dağoğlu's rebuttal of CHP's motion to investigate LGBT problems", 9 August 2014, available at: <http://lgbtinewsturkey.com/2013/08/09/akp-rebuttal-lgbt-motion/> [accessed 6 June 2014]

²¹ UN Human Rights Committee (HRC), Concluding observations of the Human Rights Committee: Turkey, at para 10, 13 November 2012, CCPR/C/TUR/CO/1, available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2F%2FTUR%2FCO%2F1&Lang=en [accessed 4 June 2014]

However, the proposal was blocked by members of the Justice and Development Party, who hold a majority in the Parliament. Regarding the party's stance, Istanbul deputy Mustafa Şentop stated, "We don't find it right to have an expression concerning gays in any part of the constitution".²² Instead, the current draft proposal includes mention of "sexual orientation" and "gender identity" only in a note about the preamble to be discussed. However, it is doubtful that even that reference will be reflected in any form in the final version of the Constitution.²³ Furthermore, Prime Minister Recep Tayyip Erdogan's "Sixth Democratization Package", which was enacted in March 2014 and includes the Anti-Discrimination Bill in addition to hate crimes legislation, makes no reference to "sexual orientation" and/or "gender identity".²⁴

3. Failure to Include Sexual Orientation and Gender Identity in New Legislation: In March 2012, Turkey passed the Law to Protect Family and Prevent Violence against Women.²⁵ While we commend the effort of the Government of Turkey in passing this law, we note that it leaves important terms undefined. It contains no definition of either "gender-based discrimination" or "gender-based violence". Moreover, there is no reference to the terms "gender", "gender identity", or "sexual orientation" in this or any other Turkish law.

4. Inequitable Applications of Domestic Statutes: Turkey's Law on Misdemeanours is regularly used to discriminate against transgender persons.²⁶ For example, trans individuals in Istanbul report being stopped by the police while merely walking around or working, and being told that they violate the Law on Misdemeanours by "disturb[ing] the environment".²⁷ The singling out of transgender individuals by police escalated after Istanbul Chief Police Officer Huseyin Capkin introduced a bonus system that gives officers "points" for the number of fines they assess. Because the Law prosecutes misdemeanours and not "crimes", it is enforced solely by the police, without any judicial oversight. The Law's vague and extensive language thus allows the police to act with impunity while targeting marginalized members of the population. In May 2013, a proposal for government to investigate the problems faced by Turkey's LGBT population was voted down by Parliament.²⁸

5. Discriminatory Treatment of Inmates: The Turkish Ministry of Justice pursues an active policy of segregating LGBT inmates. According to a statement by Turkey's Ministry of Justice, "it is planned that LGBT inmates and other convicts and detainees are to be kept apart while using common areas and during social activities". Those who self-identify as LGBT are required to obtain a medical report verifying their "condition" and are to "be housed in units appropriate to their status with convicts and detainees in the same condition".²⁹ In April 2014, the Ministry of Justice announced plans to make this segregation even more stringent, by constructing a separate prison for LGBT inmates.³⁰

22 Hürriyet Daily News, "Protection for gay rights vetoed", 14 September 2012, available at: <http://www.hurriyetdailynews.com/protection-for-gay-rights-vetoed.aspx?page-ID=238&nID=30096&nNewsCatID=339> [accessed 5 June 2014]

23 Human Rights Campaign, "Will Turkey's New Constitution Prohibit Discrimination Against LGBT Community?", 16 September 2013, available at: <http://www.hrc.org/blog/entry/turkey-poised-to-expand-protections-for-lgbt-community-in-new-constitution> [accessed 5 June 2014]

24 Resmi Gazete, No: 28940, p. 16.

25 Law to Protect Family and Prevent Violence Against Women, Law Nr. 6284 (Turk.), 20 March 2012.

26 European Commission, supra note 2.

27 LGBTI News Turkey, "What is the Legal Basis of Police Violence against Trans People?", 4 November 2013, available at:

<http://lgbtinewsturkey.com/2013/11/04/istanbul-lgbt-protest-of-police-violence/> [accessed 11 June 2014].

28 LGBTI News Turkey, "CHP Toprak's Motion to Investigate LGBT Problems", 9 September 2013, available at:

<http://lgbtinewsturkey.com/2013/08/09/chp-motion-lgbt/> [accessed 11 June 2014].

29 Republic of Turkey Ministry of Justice, General Directorate of Penal Facilities and Penitentiaries, No: 10972642/2683/96537 24/07/2013, Subject: Information request, Recipient: Mr. Zafer KIRAC, CİSST, Kamerhatun Mh. Hamaltası Cad. Üstündağ İş Merkezi No: 14/139 Galatasaray-Beyoğlu/İSTANBUL

30 Reuters, "Homosexual prisoners in Turkey segregated for 'protection': minister", 15 April 2014, available at:

<http://www.reuters.com/article/2014/04/15/us-turkey-prisons-segregation-idUSBREA3E0VC20140415> [accessed 6 June 2014]

Although the State claims the plan is for the “protection” of these inmates, government officials’ hostile attitude towards homosexuality raises serious concerns that the move might jeopardize the LGBT inmates’ safety. The Turkish government has a history of mistreating LGBT inmates: in at least one case, Turkey’s treatment of a gay inmate in Buca Prison moved beyond that of separate placement, to solitary confinement. In 2012, the European Court of Human Rights found that the confinement was in violation of Article 3 (freedom from torture, and inhuman and degrading treatment) and Article 14 (non-discrimination) of the European Convention on Human Rights.³¹

6. Army’s Prejudicial Policies toward Gay Men and Trans Individuals: The Turkish military’s Medical Competence Regulation continues to use the antiquated Diagnostic and Statistical Manual of Mental Disorders (DSM) from 1968, which labels homosexuality and transsexuality as psychosexual illnesses.³² On that basis, those who self-identify as gay, bisexual, or transgender are deemed “unfit to serve” after a grueling process of interviews with military and hospital personnel. This designation continues to haunt those individuals when employers question applicants on the status of their military service.³³ Not only does this constitute unjustifiable State-sponsored discrimination on the basis of sexual orientation and gender identity, it also exacerbates social stigmatization against LGBT individuals and violates their right to privacy.

³¹ X v. Turkey (dec.), no. 24626/09, ECHR 2012-II.

³² European Commission, *supra* note 3.

³³ LGBTI News Turkey, “The Case of S.C.: Discrimination in Employment”, 2 December 2013, available at: <http://lgbtnewsturkey.com/2013/12/02/case-of-s-c-discrimination-in-employment/> [accessed 11 June 2014] and LGBTI News Turkey, “The Case of Halil Ibrahim Dincdag: Discrimination in Employment”, 29 November 2013, available at: <http://lgbtnewsturkey.com/2013/11/29/case-of-halil-ibrahim-dincdag-discrimination-in-employment/> [accessed 11 June 2014].

Recommendations

We respectfully request that the Human Rights Council ask the Republic of Turkey to:

- 1.** Include the terms “sexual orientation” and “gender identity” in constitutional clauses on equality and non-discrimination, as well as in hate crimes legislation.
- 2.** Take all administrative measures, both on the national and local levels, to prohibit and prevent discrimination on the basis of sexual orientation and gender identity, in order to provide effective protection of LGBT people in Turkey.
- 3.** Conduct full and independent investigations into all allegations of harassment, violence, or abuse of LGBT individuals, and prosecute perpetrators.
- 4.** Monitor, aggregate, and publish data on the number of complaints of violence against members of the LGBT community.
- 5.** Provide mandatory trainings on the international standards of non-discrimination to government officials, police, military, prison/detention staff and to the judiciary with specific emphasis on sexual orientation and gender identity.
- 6.** Provide a comprehensive framework for public school education on sexuality that includes sexual orientation and gender identity.
- 7.** Cease to categorize homosexuality and transsexuality as illnesses of any sort.
- 8.** Ensure that an individual’s mere existence as an LGBT individual is never considered “unjust provocation” of a criminal act, nor “contrary to law and ethics”.
- 9.** Provide legal protection and equal treatment for LGBT people who have faced discrimination and abuse due to their actual or perceived sexual orientation and/or gender identity.
- 10.** Guarantee the freedom of speech and assembly for LGBT community members and their allies.