

**DOKUMENTE ZUR MENSCHENRECHTSWIDRIGEN UND
LEBENSGEFÄHRLICHEN SITUATION FÜR TRANS-MENSCHEN IN DER TÜRKEI**

**DOCUMENTS ON VIOLATION OF HUMAN RIGHTS AND
DANGEROUS SITUATION FOR TRANS PEOPLE AT TURKEY**

*Report Pembe Hayat (LGBTT Solidarity Organisation)
to the European Commission, 2010..... 1*

*LGBT Rights Platform:
Human Rights Violations Against LGBT Individuals in Turkey in 2008 3*

*Commission Staff Working Document:
Turkey 2010 Progress Report Accompanying the Communication
from the Commission to the European Parliament and the Council..... 5*

*Hate crimes in the OSCE Region – incidents and responses
OSCE :: Annual Report for 2009, Warsaw, November 2010..... 6*

*The European Parliaments Intergroup on
LGBT Rights Turkey and Montenegro:
LGBT rights part of EU accession conditions March 9th, 2011 6*

*Council of Europe Commissioner Thomas Hammarberg:
“Discrimination against transgender persons must no longer be tolerated” 7*

*Human Rights and Gender Identity
Issue Paper by Thomas Hammarberg,
Council of Europe Commissioner for Human Rights..... 7*

*"We Need a Law for Liberation":
Gender, Sexuality, and Human Rights in a Changing Turkey
Human Rights Watch, May 2008..... 8*

<http://www.pembehayat.org/>

**Report Pembe Hayat (LGBTT Solidarity Organisation)
to the European Commission, 2010**

Page 2 to 4 and # Page 6

Hate Speech / Hate Crimes:

Hate speech by several newspapers continue to exist and target LGBT individuals systematically. Private persons, academics, religious figures, etc. make speeches name homosexuality/transsexuality as illnesses and that programmes should be created to cure these individuals through psychologists.

On 2 March 2011, newspapers Yeni Akit and Şok published news targeting the Sex Work and Human Rights Symposium of Pembe Hayat, providing the names of the speakers and the location of the event; and a psychologists Nevzat Tarhan argued that trans and gays “bring the

diseases of the West to Turkey in the form of ‘immorality’ and that they should be stopped.” Similar cases continue to exist in national newspapers everyday. Some of the well-known religious leaders [e.g. Cubbeli Ahmet] continue to name homosexuality/transsexuality as illnesses and that this should be eliminated on TV shows.

Regarding hate crimes, murders against trans and gays continue to exist in an increasing way. Turkey proves to be the first ranking country within 47 Council of Europe member countries when it comes to trans murders, with 7 murders only in 2010. The last incident happened in Izmir on 22 March 2011, when a transwoman’s [S.P.] head and two legs were cut from her body. On 12 November 2010, [Serap Toman, 50] a transwoman in Izmir was stabbed to death. On 20 September 2010, a transwoman [Irem Okan, 24], was stabbed 30 times to death in her house in Bursa.

Physical attacks against trans worries the LGBT community. One of the founders of Pembe Hayat [Gorkem K., 45] was beaten and stabbed ten times on 26 February 2011 and she remained under intensive care for 15 days in a hospital. Another transwomen in Ankara was stabbed from her back 24 times on 15 February 2011 and she is still under intensive care in a hospital. A transwoman [E.C., 24] in Ankara was raped by 3 men and her ear was cut from her head, on 10 December 2010. A gay asylum seeker [Ghassan K., 17] who escaped from Iran was severely beaten by 2 men in one of the streets of Kirsehir on 1 March 2011. A gay prisoner [N. T., 19] in Corum was threatened and beaten by the guardians of the prison in January 2011. 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.

The police extensively use violence against trans individuals in the form of ill-treatment and torture. Several incidents happened which clearly prove the hatred of the police against the trans community in Turkey. Making use of the Law on Misdemeanors the police harrass trans individuals, arbitrarily arrest them and use violence while they are under custody. A transwoman, [K.O.] was arbitrarily arrested by the police in December 2010 in Antalya and she stayed in the police station for more than a day under police harrassment. She informed Pembe Hayat that she was provided with no explanation by the police as regards to her arrest and she was beaten by the police officers while she was under custody.

There are more incidents that are reported by LGBT organisations and these are only a few examples which clearly demonstrate that the existing hatred against LGBTs within Turkish society and by the public institutions is widespread.

Existing Hate Crimes Laws and Policies:

Despite the ongoing efforts of human rights organisations, there is no Hate Crimes Legislation in Turkey and the Turkish Government has shown no interest in preparing such a legislation. The existing laws, including the Turkish Penal Code does not include any phrases on hatred-motivated incidents. There is no phrase which protects sexual minorities in any of the existing legislation in Turkey. This fact, when combined with the homophobic/transphobic attitudes of the judicial authorities and the security forces [the police], results in widespread strong chain of hate crimes.

3 transwomen human rights defenders in Ankara [Buse Kilickaya, Derya Tunc, Naz Gudumen] were beaten by the police on 19 June 2010. The victims of ill-treatment filed complaints against the police officers; however the prosecutor’s office rejected the allegations against the police. On the other hand, the complaints of the same police officers against the three human right defenders were turned into a case by the prosecutor’s office. The case still continues with the charge of “resisting the police” and 3 years of prison sentence is demanded by the prosecutor at Ankara 15. Criminal Court of First Instance. The same case happened when 5 trans human rights defenders from Pembe Hayat were severely beaten by the police officers in Ankara in May 2010. There is no development as regards to the complaints of the victims against the police officers, while the victims were sued and charged at the court.

Discrimination:

Discrimination in employment based on sexual orientation and gender identity is widespread in Turkey and several cases were witnessed. Article 10 of the Turkish Constitution counts several grounds as regards to discrimination, but sexual orientation and gender identity is not included within the article. Article 5 of the Labour Law includes the same grounds as in the Constitution, without any reference to sexual orientation and gender identity. This is the proof of the fact that the Turkish legislation is not in line with the EU acquis.

[...]

Regarding trans individuals, the picture is worse since trans individuals are pushed into sex work due to discrimination they face in employment and education. A huge percentage of the trans community in Turkey do sex work.

[...]

Pembe Hayat reported several cases of discrimination in education. Onur C., a 17 year old gayman, left his high school in January 2011 due to psychological pressure that came from the school administration about his “femininity”. He also stated that he had faced insulting and threats from his peers and even though he filed complaints about the incidents, the president of the school found him guilty because of his “abnormal” acts.

[...]

Discrimination in right to shelter against especially trans individuals is widespread. Residents of apartments jointly file complaints about transwomen, stating “they commit immoral acts.” Ayda M. [37], a transwoman in Ankara, faced this complaint and she had to leave her house.

http://transx.at/2904/Dokumente/Human_Rights_Violations_Against_LGBT_Individuals_in_Turkey%85.pdf

**LGBT Rights Platform:
Human Rights Violations Against LGBT Individuals in Turkey in 2008**

Page 1

The human rights violations against LGBT individuals committed by the police in Turkey are monitored and reported by the LGBT Rights Platform consisting of seven LGBT organizations in Turkey. The LGBT Rights Platform also prepares reports about the attacks of civil people against LGBT individuals. The human rights violations monitored and reported by the Platform in 2008 occurred in Ankara, Aydin, Diyarbakir, Eskisehir, Istanbul, Izmir, Kayseri and Mugla. The Platform has also been working for the elimination of the existing barriers to the freedom of association of LGBT individuals in Turkey.

As a member of the LGBT Rights Platform, Lambdaistanbul LGBT Solidarity Association prepared 34 reports about the attacks of the police and civil people against LGBT individuals in 2008:

- * 14 cases about police violence against LGBT individuals in public places such as streets, parks or bars
- * 9 cases about police raid to transgender women’s houses and ill-treatment of the police there
- * 8 cases about violence of civil people against LGBT individuals

- * 1 case about the police who did not help a victim who was a transgender woman and who wanted to complain about the attack against her by two civil men
- * 1 case about ill-treatment of military psychiatrists and psychologists against a gay man who wanted to take a medical report in order to not to make compulsory military service
- * 1 case about discrimination against a transgender woman at a television program

The LGBT Rights Platform submits the reports about the human rights violations of the police to the Grand National Assembly of Turkey Human Rights Investigation Commission (T.B.M.M. İnsan Haklarını İnceleme Komisyonu), Republic of Turkey Prime Ministry Human Rights Presidency (T.C. Başbakanlık İnsan Hakları Başkanlığı), Provincial Human Rights Committee in Governorships (Valilik İl İnsan Hakları Kurulu), and Human Rights District Committees (İnsan Hakları İlçe Kurulu).

For example, Lambdaistanbul submitted 19 reports to Governorship of Istanbul Provincial Human Rights Committee in April 2007 and demanded an investigation about the cases. Governorship of Istanbul Provincial Human Rights Committee responded Lambdaistanbul's letter five months later in September 2007 and stated that there were some operations towards transgender women on the basis of several complaints about them but there was no human rights violation. However, Governorship of Istanbul Provincial Human Rights Committee did not talk to the victims whose cases were reported and to the activists who prepared these reports.

Page 4 ff

Examples of the Human Rights Violations Against LGBT Individuals and the Barriers to the Freedom of Association of LGBT Individuals

* M.'s case, Izmir, December 2007:
[Summit: Transgender woman was shot by a police officer during at a police barricade. The police officer was under indictment for "misusing his authority and wounding someone intentionally by gun". The police officer was given a fine punishment worth 2240 Turkish Lira which was equal to 1060 Euro but the decision was not announced and will be cancelled if the police officer would not commit another crime in the following five years. The transgender woman was accused for resisting the police officer during the event and the court case is continuing.]

* S.L.'s and M.D.'s case, Marmaris, January 2008:
[Summit: The transgender woman S.L. was insulted and beaten by four police officers by using truncheons when she was walking on the road at night. She had to pay a fine punishment worth 58 TL and she was beaten again the next night by two of the four police officers who attacked her the previous night. The transgender woman M.D. saw that her friend was beaten by the police officers by using truncheons and asked the police officers why they were doing it. She was also beaten and given an administrative fine punishment.]

Page 5 ff

Human Rights Violations Against Transgender Women in Ankara:

* In a decision of the Court of Appeals dated 1999 about a case regarding someone who participated illegal prostitution activities and provided place for prostitution to transgender women, it is stated that "it is a known fact that people who are called 'transvestites' spread HIV and other contagious diseases through sex". This decision is used as a reference in order to close down the houses of transgender women in Ankara in the name of "protecting public health".

* After the transgender women started to come together and organize themselves in Pembe Hayat LGBT Association, the administrative fine punishments given to them by the police increased. Pembe Hayat LGBT Association have objected to 406 administrative fine punishments since May 2007. However, most of the objections of Pembe Hayat were rejected by the Court.

* In 2006, transgender women in different districts in Ankara were attacked by a gang group. The case is known as the case of Eryaman which was one of the districts in which the attacks were made. 4 people from the gang group were arrested as suspects and were taken to the court. The court case lasted for two years and ended in October 2008. During the trials, the four suspects were accused for organized crime and wounding transgender women intentionally. At the end of the trials, they were found guilty and were given imprisonment punishment on the basis of Turkish Criminal Code (Türk Ceza Kanunu). This decision is very important in the sense that the judge considered the attacks against transgender women in Eryaman and in other districts as organized crime committed on the basis of hate. In other words, the judge decided that these 4 people formed a gang group in order to attack the transgender women and committed organized crime. The judge gave them imprisonment punishment on the basis of Turkish Criminal Code. Their punishment were not delayed or transformed to fine punishment because they did not feel regret. This is the good side of the decision. However, the judge punished them with the lowest level imprisonment for this crime. Moreover, the 2 years' period during the trials, in which they were arrested, was considered enough for this lowest level of imprisonment and they were released. It must be noticed that there is no specific legislation about hate crimes in Turkey. If there were a specific legislation about hate crimes, the attackers would receive more punishment. So, a specific legislation about hate crimes should be prepared by the legislative in Turkey.

* A transgender woman D.I. was shot from her head with a pump action shotgun in Ankara on 10 November 2008 and died on the next day. A couple of people were taken under custody after the event and were questioned however no evidence was found. A couple of days later after this murder, another pump action shotgun attack was made at the same district. Noone died or got wounded in the second case. The police investigated the second event however they could not find any evidence showing that the two events were interrelated. The investigation about D.I. murder is continuing.

http://ec.europa.eu/enlargement/press_corner/key-documents/reports_nov_2010_en.htm

**Commission Staff Working Document: Turkey 2010 Progress Report
Accompanying the Communication from the Commission
to the European Parliament and the Council**

Page 30

However, the current legal framework is not adequately aligned with the EU acquis. (See Chapter 19 – Social policy and employment) There have been several cases of discrimination at the workplace, where LGBTTT employees have been fired because of their sexual orientation. Provisions of the Turkish Criminal Code on ‘public exhibitionism’ and ‘offences against public morality’ are sometimes used to discriminate against LGBTTT people. The Law on misdemeanours is often used to impose fines against transgender persons.

The statements by the State Minister responsible for Women and the Family on homosexuality being a disorder sparked reactions from the LGBTTT community and human rights circles. Negative stereotyping by political figures can provoke further discrimination against LGBTTT people.

Court cases for the closure of LGBTTT associations ended positively during the reporting period. (See Freedom of association)

Homophobia has resulted in physical and sexual violence. The killing of several transsexuals and transvestites, along with recent violence by police in Ankara against transgender persons, are worrying developments. Courts have applied the principle of 'unjust provocation' in favour of perpetrators of crimes against transsexuals and transvestites.

Page 79

As regards treatment of socially vulnerable and disabled persons and the principle of non-discrimination, an amendment to the Constitution paves the way for positive discrimination for disabled. Access to education, health, social and public services for persons with disabilities still remain critical issues, despite existence of legislation in this field. The Government prepared a draft proposal establishing an anti-discrimination and equality board. Provisions of the Turkish Criminal Code on 'public exhibitionism' and 'offences against public morality' are sometimes used to discriminate against LGBTTT people. The Law on Misdemeanours is often used to impose fines against transgender persons.

<http://www.osce.org/odihr/73636>

**Hate crimes in the OSCE Region – incidents and responses
OSCE :: Annual Report for 2009, Warsaw, November 2010**

Page 80

Turkey: The NPC reported the murder of two transgender persons, including a prominent human rights activist. 553 The police arrested the alleged perpetrator in the latter case. The NGOs Kurdish Human Rights Project, the Human Rights Agenda Association, Pink Life (Pembe Hayat), TGEU and Lambda Istanbul reported five transgender murders between March and June 2009. 554 ILGA-Europe provided information on one additional murder and one instance of assault. 555

553 Information from the Turkish NPC, op. cit., note 510.

554 Hate Crime in Turkey (Ankara: Human Rights Agenda Association, 2009), op. cit., note 143; Information from the Kurdish Human Rights Project, op. cit., note 173.; Information from Lambda Istanbul, op. cit., note 173.; Information from Pink Life LGBTTT Solidarity Association, op. cit., note 173; Information from TGEU, op. cit., note 173; The Permanent Mission of Turkey to the OSCE and the Turkish NPC confirmed that the 5 murders occurred, while noting that the completed investigations did not reveal a bias motivation that would qualify the murders as hate crimes. Information from the Permanent Mission of Turkey to the OSCE, 22 September 2010; Information from the Turkish NPC, op. cit., note 510.

555 Information from ILGA-Europe, op. cit., note 537.

<http://www.lgbt-ep.eu/press-releases/turkey-and-montenegro-lgbt-rights-part-of-eu-accession-conditions/>

**The European Parliaments Intergroup on LGBT Rights
Turkey and Montenegro: LGBT rights part of EU accession conditions
March 9th, 2011**

Today the European Parliament adopted two resolutions on Turkey and Montenegro's progress towards joining the European Union. The Parliament said that more steps are required to bring the two countries in line with EU standards in the field of non-discrimination.

Parliamentarians urged Turkey "to ensure that equality, regardless of sex [...] or sexual orientation, is guaranteed by the law and effectively enforced". The resolution initially mentioned illegal forced closures of LGBT organisations and the army's classification of homosexuality as a psychosexual illness (sic). Progressive MEPs amended the text to also denounce ongoing murders of transgender people, and condemn the withdrawal of gender and sexual orientation from a draft anti-discrimination law.

Michael Cashman MEP, Co-President of the LGBT Intergroup, commented: "I welcome the progress that's been made generally in Turkey—a modern, secular state. But I urge the Turkish government to reinsert sexual orientation and gender identity into the draft anti-discrimination law; this will send yet another signal of Turkey's determination to complete the accession process."

[...]

http://www.coe.int/t/commissioner/Viewpoints/090105_en.asp

**Council of Europe Commissioner Thomas Hammarberg:
"Discrimination against transgender persons must no longer be tolerated"**

[...]

Data presented by EU's Fundamental Rights Agency shows that in some countries the unemployment rate of transgender persons can reach up to 50%. Some jobless transgender persons are unable to find employment, and see no other option but to work in the sex industry. A report from Human Rights Watch on Turkey called attention to the situation of transgender sex workers in that country - victimised by violence, drug addiction, sexual abuse, lack of health insurance, homelessness, police attacks, and a high risk of HIV/AIDS.

[...]

<https://wcd.coe.int/wcd/ViewDoc.jsp?id=1476365&Site=CommDH&BackColorInternet=FE65B&BackColorIntranet=FE65B&BackColorLogged=FFC679>

**Human Rights and Gender Identity
Issue Paper by Thomas Hammarberg,
Council of Europe Commissioner for Human Rights**

Page 35

Transgender men and women have a high risk of becoming victims of a hate crime or a hate-motivated incident.⁵²

52. See for example Basaran, Y, Aybasti, I and Cakmak, S (2009) Problems of Transgender Women: A Survey Conducted in Istanbul (forthcoming publication) and European Commission's Turkey 2008 Progress Report, p. 23.

Page 36

As a result, transphobia is usually not considered an aggravating factor for hate crimes committed against transgender persons, as shown by the sentences for perpetrators of hate motivated killings in for example Portugal and Turkey.⁵⁴

54. Human Rights Watch, We need a law for liberation – Gender, sexuality, and human rights in a changing Turkey. OSCE/ODIHR (2007) Hate Crimes in the OSCE Region: Incidents and Responses; Annual report for 2006; Warsaw: OSCE/ODIHR, p. 54.

-> Siehe: <http://www.unhcr.org/refworld/docid/48352ab42.html>

**"We Need a Law for Liberation":
Gender, Sexuality, and Human Rights in a Changing Turkey
Human Rights Watch, May 2008**