

# ‘NOT AN ILLNESS NOR A CRIME’

LESBIAN, GAY, BISEXUAL AND TRANSGENDER PEOPLE IN TURKEY DEMAND EQUALITY

**AMNESTY**  
INTERNATIONAL



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**AMNESTY**  
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*Cover photo:* Pride March in Istanbul 2010.

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# INTRODUCTION

**“Mother, do you know what I have suffered? What pain your son is going through? Have you noticed? Can you understand me? The reality is different; you don’t know me at all. If you know the reality you won’t cope, you’ll go into shock. Never mind mother (...).”**

A mother, part of a family support group, describes how difficult it was for her son to be open about his sexuality, Lambdaistanbul Family Group, 2010.<sup>1</sup>

**“I believe homosexuality is a biological disorder, an illness and should be treated”**

Aliye Kavaf, Minister of State responsible for Women and the Family, 2010 <sup>2</sup>

On 25 June 2010 thousands of people – among them lesbian, gay, bisexual and transgender (LGBT) men and women, members of their families, activists and other supporters marched through the centre of Istanbul in the greatest show of solidarity for the rights of lesbian, gay, bisexual and transgender people ever seen in Turkey to date. The show of support in 2010 and a similar event planned for 2011 take place against the background of continuing violence and systematic harassment and discrimination by the state authorities against members of the LGBT community in Turkey.

In defiance of Turkey’s commitments under international human rights treaties to which it is party<sup>3</sup> explicit discrimination in law remains in place while still other laws are interpreted or utilised in a discriminatory manner by judges and prosecutors, denying the equal rights of lesbian, gay, bisexual and transgender individuals. Critically no provision exists within Turkey’s constitution or domestic law framework proscribing discrimination on grounds of sexual orientation or gender identity. In contrast to advances in safeguarding non-discrimination on other grounds and protections of other fundamental human rights during the ruling Justice and Development Party’s period in government since 2002, the rights of lesbian, gay, bisexual and transgender individuals have continued to be ignored. This has been compounded by homophobic statements by state officials, most notably by Aliye Kavaf, Minister of State responsible for Women and the Family who remarked in 2010 that “Homosexuality is a biological disorder, an illness and should be treated.<sup>4</sup> Homophobic and transphobic views are common in the media. People are discriminated against on the grounds of their sexual orientation and gender identity both by the state and non-state actors in the workplace, in health services, in education and in housing.

Such pervasive prejudice means that many lesbian, gay, bisexual and transgender men and women feel compelled to conceal their sexual orientation from employers, public officials and even their families such is their fear of violence, discrimination and prejudice. This is particularly the case for lesbians and bisexual women who, due to their often-lower levels of economic autonomy and independence within the family than men, suffer different problems and have less access to protection mechanisms. While women have equal rights in law to men, they experience grossly unequal treatment in practice. This multiple discrimination contributes to the frequent invisibility of lesbians and bisexual women in Turkey. Gay and bisexual men risk violence and discrimination when they are open about their sexual orientation and are often perceived to violate narrow concepts of masculinity. Many transgender women and men, unable or unwilling to hide their gender identity from prejudicial audiences, suffer some of the most serious acts of violence and intolerance due to their gender identity and perceived sexual orientation. Transgender women in particular face the greatest barriers to entering employment and are in a great many cases forced to engage in illegal sex work, adding another layer of prejudice against them and providing an additional subtext for their harassment by law enforcement officials. Of great concern - yet largely ignored by the authorities - is the continuing prevalence of hate crimes – including violent attacks and murders. Transgender women in particular are targeted.

Despite the position of the authorities – at best ignoring the rights of lesbian, gay, bisexual and transgender people and at worst singling them out for discriminatory treatment – and the pervasive culture of homophobia and transphobia in the media and in society at large, recent advances have been made by LGBT rights organizations in Turkey. Their work combating intolerance has been conducted in a climate of discriminatory threats to their own right to freedom of expression and association. Yet despite this, through sustained action, real human rights victories have been achieved and stand as an example for others to follow. Recognising the link between intolerance of diverse sexual orientations and gender identities with other forms of official intolerance towards individuals and groups with marginalized identities and dissenting opinions, LGBT organizations<sup>5</sup> have increasingly worked on a broad range of human rights concerns in Turkey and have begun to forge alliances with wider civil society.

Amnesty International, together with our partner organizations in Turkey and internationally, fundamentally reject the view taken so far by the government of Turkey – that non-discrimination can be advanced while at the same time ignoring the grounds of sexual orientation and gender identity. Amnesty International therefore calls on the authorities as part of a series of recommendations, to amend the constitution so as to prohibit all forms of discrimination on grounds of sexual orientation and gender identity and to bring into force comprehensive non-discrimination legislation. Amnesty International and our partners also call on the authorities to take urgent steps to prevent further hate crimes and to adopt measures to prosecute past suspected hate crimes effectively.<sup>6</sup> Equally, Amnesty International calls on the Turkish authorities to respect and protect the rights of freedom of expression and association for all, without discrimination, including on grounds of sexual orientation and gender identity.

## METHODOLOGY

The report is based on research carried out by Amnesty International delegates in January and February 2011 in five cities across Turkey – Ankara, Diyarbakır, Eskişehir, Istanbul and İzmir. During this time Amnesty International conducted more than 70 interviews with lesbian, gay, bisexual and transgender individuals, their families, activists, lawyers and others. Information on individual cases set out in the report is based on interviews with the individuals concerned, NGOs or groups working with the individuals and their friends and supporters, court documents and other official documentation. Unless where stated that for their protection other names are used, individuals' names and locations are real. The scope of the report reflects the issues of greatest concern raised during the course of this research but is not intended to represent an exhaustive account of all threats faced by individuals based on their sexual orientation or gender identity. In addition to this, the well founded fear of discrimination and harassment against individuals demanding their rights led to challenges in documenting abuses. Amnesty International would in particular like to thank those individuals who despite ongoing threats and prejudices shared their stories with the aim of advancing the rights of all persons threatened due to their sexual orientation or gender identity. The recommendations found in this report are informed by their views on the steps needed to be taken to address the discrimination and abuse faced by them.

During the course of the research Amnesty International also sought the views of the state authorities. Delegates met with Mehmet Zafer Üskül, the chairperson of the Parliamentary Human Rights Enquiry Commission. Amnesty International also requested meetings with civil servants in the Ministry of the Interior, the Police and with officials of the Beyoğlu District Municipality in Istanbul but the officials indicated that they were not available to meet with Amnesty International delegates during the time of the research.

## **FAILURE TO PREVENT DISCRIMINATION: GOVERNMENT INDIFFERENCE AND LACK OF LEGAL PROTECTIONS**

**“Gays have made requests during the negotiations on constitutional changes. Are we going to respond to their requests? It is not possible in the current conditions. The public is not ready for this.”**

Burhan Kuzu, Justice and Development Party (AKP) Member of Parliament and head of the Parliamentary Constitution Committee. <sup>7</sup>

Despite the long fought campaigns of LGBT organizations<sup>8</sup>, no explicit protections of the right to non-discrimination on grounds of sexual orientation or gender identity exist in national law. At the same time, certain criminal and civil law provisions are frequently applied by the judiciary in a discriminatory manner. Not only have senior politicians and government officials refused equality demands, they have also made explicitly homophobic statements likely to encourage discrimination against lesbian, gay, bisexual and transgender individuals. In another sign of their refusal to recognise the equal rights of all people irrespective of their sexual orientation or gender identity, at the international level, the Turkish authorities have consistently rejected recommendations to reform their non-discrimination provisions and have refused to sign up to resolutions calling for protections to the rights of lesbian, gay, bisexual and transgender people. Turkey is also among a number of Council of Europe member states that have failed to ratify Protocol 12 of the European Convention on Human Rights and Fundamental Freedoms that provides a free-standing non-discrimination provision.

Many of the people who spoke to Amnesty International, from lesbian, gay, bisexual and transgender individuals to grassroots activists and academics, identified the absence of such legal protections as being the most significant contributor to discrimination against people of different sexual orientations and gender identities.

### **GOVERNMENT HOSTILITY**

Following the entry of the Justice and Development Party (AKP) to government in 2002, legislative reforms strengthening some human rights protections were brought into law.<sup>9</sup> In stark contrast to this, not a single provision has been brought before the Parliament to protect the right to non-discrimination based on sexual orientation and gender identity. Instead, there has been a long line of discriminatory statements by government officials from which the government has failed to distance itself or issue apologies for. Many activists spoke



to Amnesty International about the damage caused by the statement by Aliye Kavaf, the Minister of State responsible for Women and the Family that “homosexuality is a biological disorder and should be treated”.<sup>10</sup> The statement received widespread media coverage but was not rejected by the government and nor was an apology issued. Such homophobic remarks are not isolated incidents. In 2003 Prime Minister Recep Tayyip Erdoğan’s spokesperson said “homosexuals cannot be members” of the ruling party: “They can establish their own”.<sup>11</sup> Statements by the Head of the Parliamentary Constitutional Commission and AKP Member of Parliament, Burhan Kuzu, (above quoted) that the government would not bow to pressure to proscribe discrimination on grounds of sexual orientation and gender identity, represented a mainstream view within the government. It was followed shortly after by another member of the Committee, AKP Member of Parliament Dengir Mir Firat who stated that the 21<sup>st</sup> century was too soon for such amendments, but maybe in the 22<sup>nd</sup> century LGBT rights would be protected.<sup>12</sup> Such a view, that the public was not ready for such change, was also expressed by the Chairperson of the Parliamentary Human Rights Enquiry Commission, AKP Member of Parliament, Mehmet Zafer Üskül during a meeting with Amnesty International in February 2011.<sup>13</sup> In the face of such resistance to change, those campaigning for reform have also faced censure: Kürşad Kahramanoğlu, one of the few national journalists to campaign for the LGBT rights, was prosecuted for an article in *Birgün* newspaper stating that “Burhan Kuzu is a politician of the last century, not this one.”<sup>14</sup>

During consideration of Turkey’s human rights record under the United Nation’s Universal Periodic Review process in May 2010, Turkey rejected multiple recommendations from states to adopt the non-discrimination grounds of sexual orientation and gender identity, instead stating that the term gender identity (since removed) was included within the draft Law to Combat Discrimination and Equality.<sup>15</sup> In December 2010 Turkey also failed to register a vote during the historic adoption by the United Nations General Assembly of the Resolution that condemns extrajudicial, summary or arbitrary executions and references those targeted due to their sexual orientation.<sup>16</sup> Underlining Turkey’s failure to support the protection of the rights of lesbian, gay, bisexual and transgender individuals at the international level, Turkey did not support a joint statement issued in March 2011 by Colombia with the support of 85 states at the United Nations Human Rights Council on ending acts of violence and related human rights violations based on sexual orientation and gender identity.<sup>17</sup>

## LGBT RIGHTS REFORMS DENIED

Such government hostility is matched by a failure to take steps to provide protections to lesbian, gay, bisexual and transgender individuals in law. Before the introduction of the new Penal Code in 2005, civil society demands for necessary protections against discrimination on the grounds of sexual orientation and gender identity were rejected by drafters – reportedly on the request of then Minister of Justice, Cemil Çiçek.<sup>18</sup> In May 2010, constitutional amendments were passed by the Parliament, which effected changes to Article 10 of the Constitution regarding non-discrimination, allowing positive action to combat discrimination.<sup>19</sup> However, the chance to extend protections on grounds of sexual orientation and gender identity was not pursued.

Perhaps the most damning failure of the government to legislate for the protection of LGBT rights regards the draft “Law to Combat Discrimination and Equality”. The draft, finalized in March 2011 following collaboration by human rights civil society organizations in Turkey, was

intended to be comprehensive non-discrimination legislation. It proposed the establishment of an independent institution to ensure the application of non-discrimination standards. However, in the most recent version of the law as published on the website of the Ministry of the Interior in March 2011, the protection against discrimination on the ground of sexual identity – stated by drafters to encompass gender identity and sexual orientation - had been removed.<sup>20</sup> In this way, the most important advancement in prohibiting discrimination on grounds of sexual orientation and gender identity appears to have been rejected once again.

## DISCRIMINATORY APPLICATION AND INTERPRETATION OF THE LAW

National law in Turkey has never criminalized homosexuality, or required a higher age of consent for same sex couples.<sup>21</sup> However, individuals are routinely discriminated against in criminal and civil legal proceedings due to their sexual orientation or gender identity.

With the exception of military service requirements<sup>22</sup> (see p.18, section on violence and discrimination in the military) domestic law provisions do not explicitly discriminate against individuals on the basis of sexual orientation or gender identity. However, numerous laws, while not being explicitly discriminatory, are applied by the judiciary in such a way that lesbian, bisexual and transgender individuals are discriminated against in practice. For example with regard to employment, Article 125 of the Civil Servants Law includes a clause prohibiting “immoral and dishonourable behaviour” and has been used to dismiss civil servants due to their sexual orientation.<sup>23</sup> As such it forms one aspect of the practice of discrimination against lesbian, gay, bisexual and transgender individuals in employment (see p.21, section on discrimination in employment).

Concepts of morality are also frequently applied in a discriminatory manner. The application of the concept within the Civil Code has frequently been used by prosecutors to request the closure of LGBT associations (see p.27, section on freedom of association). The coverage of LGBT issues in media and communications has also been found to violate obscenity and public morals provisions. In 2006 all copies of a magazine issue produced by Ankara based LGBT association Kaos-GL were confiscated on the grounds that images were obscene and violated public morality. Kaos-GL, which rejects the charges, has exhausted domestic remedies and the case remains pending at the European Court of Human Rights.<sup>24</sup> As of March 2011, the Radio and Television Supreme Council (RTÜK), the state agency for monitoring, regulating, and sanctioning radio and television broadcasts was reported to have sought a defence from a television channel that bought the rights to the film *Sex and the City 2*. The Council found that scenes in the film depicting gay marriage “violated national and spiritual values and Turkish family structure”. If found guilty, the channel will be fined at least 10,000 Turkish Lira (4,500 Euro).<sup>25</sup>

Lesbian, gay, bisexual and transgender individuals also face discriminatory treatment in criminal cases where they have been victims of violent crimes. Amnesty International was told of numerous cases where information on the proceedings was not shared with the family of the victim as required by law. Perpetrators also sometimes receive reduced sentences in cases where they allege that a crime was committed following “undue provocation” – which is understood to include allegations that the victim suggested or offered sexual relations (see p.31, section on hate crimes).

Given the arbitrary and discriminatory justifications found in the decisions by elements of the judiciary of which several examples are cited above, there remains a real risk that lesbian, gay, bisexual and transgender individuals' access to justice will be compromised, in either civil or criminal proceedings where their sexual orientation or gender identity is known to the court.

In the face of such practices – at both the local court and appeal court level – it is clear that international law and standards on non-discrimination are not being applied. The government assertion that Article 90 of the Constitution - which requires international standards to be applied on the issue of fundamental rights and freedoms where there is a contradiction with domestic law – remedies the gap in legislation is completely flawed. It has proved to be woefully inadequate in providing justice to lesbian, gay, bisexual and transgender individuals.<sup>26</sup>

## DISCRIMINATION IN PRACTICE

Marginalized through the absence of protections from discrimination in law and their lack of access to justice, lesbian, gay, bisexual and transgender individuals face a heightened risk of adverse treatment by state officials. This, in addition to the prevalence of homophobic and transphobic views, results in some members of the LGBT community being routinely and in some instances systematically subjected to various forms of harassment by state officials. For transgender individuals, their often greater visibility than lesbian, gay or bisexual people who have no reason to divulge their sexual orientation means that state officials find more opportunities to harass them, especially in terms of violence and harassment from the police and in preventing access to services. Gay men are at risk of violence, including sexual violence within the armed forces. Lesbian, gay, bisexual and transgender refugees and asylum-seekers face still different problems – with their greater reliance on the state, they experience multiple discrimination as persons in need of protection and due to their sexual orientation or gender identity, often isolated from their national communities' support networks. LGBT solidarity associations combating such abuses have faced civil law cases brought by the authorities aimed at their closure, and other discriminatory attacks on their rights to freedom of expression and association.

### POLICE VIOLENCE

*"Here I take the records. Complain all you want, nothing will happen."*

Reported statement by police officer to a transgender woman attempting to complain about ill-treatment in Alsancak police station, İzmir

Transgender women as a group have suffered a long history of violence by police in custody. Amnesty International was told that in many instances police officers view all transgender women in public places as sex workers and legitimate targets for arrest, harassment and in some cases physical abuse. The police stations in the Beyoğlu area of Istanbul and the Alsancak area of İzmir, have been particularly notorious for the torture and other ill-treatment suffered by transgender women picked up by police officers on the street. In a rare example of a prosecution for such abuse, one police officer, Süleyman Ulusoy, nicknamed Hortum Süleyman (Suleiman the hose) was indicted for ill-treatment against nine transgender women during his tenure as head of the Beyoğlu police between 1996 and 1997. However, the prosecution was discontinued before its conclusion under the terms of an amnesty.<sup>27</sup> In a survey conducted by the LGBT solidarity organization Lambdaistanbul in 2010, of the 104 transgender women who took part, more than 89 per cent said that they had been victims of physical violence in police pre-charge detention. The figures for verbal abuse, swearing and insult were even higher, with 97 per cent of respondents saying that they had been exposed to this. Seventy-seven per cent of respondents said that they had suffered sexual violence while 86 per cent said that police had refused to take records during the detention.<sup>28</sup> The findings match the reports given to Amnesty International. Nearly every transgender woman that Amnesty International spoke to in early 2011 described being subjected to extreme violence - including sexual violence - by police officers in police stations in previous years. Perhaps due to the general reduction in cases of torture and other ill-treatment in police stations in recent years but more significantly - due to the activism of transgender women

publicizing and campaigning against police violence by way of street protests - cases of ill-treatment in police stations have dropped sharply. However, cases of ill-treatment in official places of custody remain while a still greater number of cases are alleged to take place on the street and outside official places of detention. In many cases transgender women told Amnesty International that they did not make complaints about the police because they feared repercussions from the officers who would continue to police the area where they lived. Many of the past cases of alleged ill-treatment where criminal complaints were issued have not been effectively investigated, while in other cases counter-charges have been issued by police officers. It was also alleged that medical personnel at the Taksim hospital in Beyoğlu, Istanbul, had, on occasions refused to document injuries sustained as a result of police violence further contributing to police impunity.<sup>29</sup>

One such illustrative case involves five members of the Ankara based LGBT solidarity association Pembe Hayat (Pink Life), whose car was stopped by police as they returned from an event marking anti-homophobia day on 17 May 2010 (see p.14, Pembe Hayat case).

Another case concerns Hasret from İzmir. She reported that police officers apprehended and attempted to take her to the Alsancak police station in Izmir. When she questioned why the officers wanted to arrest her they became violent, hitting her and forcing her to go to the police station. Once at the police station the police officers continued to beat her.

Amnesty International was shown the details of a further 12 cases of alleged ill-treatment by police officers in the Beyoğlu area between 2007 and 2009 where criminal complaints were issued but where no case was opened against the law enforcement officials concerned despite strong *prima facie* evidence of ill-treatment.

## PEMBE HAYAT

**Pembe Hayat (Pink Life) is a LGBT support organization based in Ankara.**

In the last year, there were two prosecutions of members of Pembe Hayat, following incidents involving the police. The first incident took place in Ankara on 17 May 2010 in the evening when four members of Pembe Hayat were travelling in a car when they were stopped by the police.

According to a member of Amnesty International Turkey who arrived at the scene after the group had been stopped by the police, the police officers asked the four to get out of the car without explanation. The activists offered to give their identity cards but refused to come out of the car, informing other members and supporters of Pink Life by phone. Around 25-30 members of the organization came to the scene of the incident and one of them joined the others in the car.

According to the Amnesty International member, the police used disproportionate force against those who had come to the scene, using pepper spray and beating them with batons. He described how they also sprayed pepper gas into the car, forcing the five transgender activists to come out. In addition, some of the police officers were said to have attempted to incite local residents into making complaints about the transgender activists.

The five transgender activists made a complaint against the police officers about their treatment after being taken into custody at Esat police station. According to information received, following their release, the five activists went to the Forensic Medical Institute to have their injuries documented. The activists' complaint against the police officers was dismissed while the prosecutor issued a decision to open a criminal prosecution against the activists for 'resisting an official in pursuance of his duties' (görevi yaptırmamak için direnme). The case was dismissed at the first trial hearing on 24 October 2010.

A second prosecution against three activists from Pembe Hayat was started for 'resisting an official in pursuance of his duties', 'insult' and 'damaging public property' (kamu malına zarar verme) following an incident on 19 June 2010. According to Pembe Hayat, the incident occurred when three members of the association, two of whom were among those prosecuted in the previous case, were in a car in Bağlar Street in Ankara, when they were approached by two police officers. In the indictment, it is alleged that the activists tried to drive away, that they resisted being put in the police vehicle, that one of them insulted the police officers and that another hit a police officer's hand, causing the officer's walkie talkie to fall to the ground and be damaged. The activists deny the charges and have lodged a complaint for ill-treatment against the police officers which was dismissed. As of March 2011 the case against the activists themselves was continuing. If convicted, the activists face a possible prison sentence of six months to three years.

## ARBITRARY APPLICATION OF FINES

The issuing of fines by police officers -using both the Misdemeanour Law and the Traffic Law - has become the principle method of harassing transgender women.<sup>30</sup> The discriminatory and arbitrary application of these laws to issue fines on the grounds of "obstructing traffic" or "breach of the peace" amount to a punishment issued on the basis of an individual's gender identity. Transgender women told Amnesty International that they had been issued with fines after being taken into custody when found walking on the street going about everyday business for example, shopping or visiting a hairdresser's studio. Amnesty International was shown official documents relating to fines in Istanbul, Ankara and Izmir indicating

widespread abuse of the laws. An internal document issued by a district police authority in İzmir in 2006 seen by Amnesty International authorizes police officers to stop and search any "transvestite" seen on the street without any indication that a crime had been committed, indicating a systematic practice of harassment. The document identifies strategies to be taken "in the context of our work to prevent inconvenience caused by people identified as transvestites". It continues, "due to our recent work the area has been "cleaned" of such people but transvestites, women involved in prostitution, glue sniffers and "psychopaths" are still present in the area". It authorizes police units to stop and search all "transvestites" along with women involved in prostitution, glue sniffers, homeless people and "psychopaths" before being taken into custody as required. The activists told Amnesty International that fines were issued routinely when transgender women were taken into custody. Activists in İzmir told Amnesty International that the document was used to justify the blockade of a street and the imposition of a curfew on a street in the district where a number of transgender women were living, and that the practice of apprehending transgender women from the street and arbitrarily issuing fines continues.

Activists told Amnesty International that attempts by transgender women to assert their rights, such as to seek justification for why they were being taken into custody, has led to ill-treatment and on occasion the issuing of criminal charges (see p.12, section on Police Violence and p.14, Pembe Hayat case).

The frequency of fines being issued and the size of the fine issued under the laws vary. A fine of 69 Turkish Lira (30 Euros) was commonly reported. Amnesty International was told that it was also usual for multiple fines to be issued on the same day and that transgender women were particularly at risk of being fined in busy upmarket areas of the cities and away from areas where many transgender women lived. Amnesty International was shown more than 40 documents recording fines issued against one individual in Istanbul in 2008/9 under the Traffic Law amounting to thousands of Turkish Lira. Another transgender woman showed Amnesty International a document indicating that she owed the authorities more than 300 Lira (140 Euros) to be paid to the tax office. Many transgender women told Amnesty International that the constant risk of being fined, and the financial burden that the fines constitute to transgender women, many of whom have very low incomes, means that they are afraid to go to certain areas of the city and that they feel trapped in the area where they live, severely restricting their right to freedom of movement.

Attempts by lawyers to challenge the fines in court have had mixed results. In some cases the fines have been cancelled by judges – since there is no evidence put up to substantiate the fines – while in other cases judges reject the applications despite this, relying on the police officers' version of events. Many transgender women told Amnesty International that they were fined so frequently that many people did not challenge the fines and did not pay them either. The resulting debts make them at risk of court cases being opened for non-payment and custodial sentences being applied. The debts also prevent transgender women carrying out day-to-day activities, for example registering an address for fear that bailiffs would come, opening a bank account or buying items on credit.

## EBRU AND ELÇİN FROM ISTANBUL

Ebru and Elçin, both residents of the Tarlabası neighbourhood in central Istanbul spoke to Amnesty International regarding the violence, harassment and intimidation they had suffered as transgender women both from the state authorities and from their clients who pay for sex. Ebru, now 52 years old, said that she had lived in Tarlabası for the last 36 years. Elçin, 24, is from Istanbul and has been living in Tarlabası for five years.

Ebru expressed the view that there had been a reduction in the level of violence against transgender women in Istanbul compared to years past. She said that up until four years ago it was common for transgender women to be taken from the street and ill-treated at the Beyoğlu police station. She said that she had been ill-treated at the police station and forced to perform sex acts on police officers on multiple occasions. Ebru said that more recently police officers instead ill-treated transgender women in Tarlabası outside official places of detention, for example during transit in police cars or issued them with punitive administrative fines under the Misdemeanours Law or the Traffic Law.

Ebru told Amnesty International of an incident that occurred in July or August 2010. She was walking on pavement next to the main road on the edge of Tarlabası with another transgender woman when a marked police car with three uniformed officers inside stopped next to them. They were both told to get into the police car. When they were inside the car the police officers started to abuse them calling them “faggot” and “letch” (“ibne”, “yavşak”) and slapping them in the face and beating them with truncheons. During this time they continued to drive the police car until they reached the Okmeydanı district of Istanbul where the police left them on the highway. Ebru told Amnesty International that she did not complain about the ill-treatment because she had no faith that the incident would be investigated nor that the police officers would be punished.

Elçin told Amnesty International that in December 2010 she was walking at around 3am on a side street in Tarlabası when five or six men wearing civilian clothes – but whom she knew from prior acquaintance to be police officers – came up to her. They called her over in a rude way and told her to ‘f... off, ibne, what are you doing here, are you getting f...ed in the arse, damn you, son of a b...’ and so on. She said that they also threatened her with violence, waving thick sticks at her, before beating her on the street, punching and kicking her. She went to hospital for a medical report in order to lodge a complaint about the attack, but despite x-rays being taken and evidence of actual bodily harm, Elçin was told to come back with police officers in order to be given the report.

Elçin also told Amnesty International about a violent attack that occurred the previous week. She described how she was picked up by three customers in a car on Tarlabası Bulvarı, and driven to an open space in the Beykoz district on the Asian side of Istanbul where four other men known to the three in the car subsequently arrived. Elçin said that one of the men hit her with a mobile phone and raped her before stealing 200 TL that she had on her and leaving her on the side of the street. Reporting this incident to delegates of Amnesty International, Elçin showed the cut next to her mouth that remained as a result of being hit across the face with a mobile phone. She also said that she did not consider making a criminal complaint, that such violence was routine and that the police were not interested in investigating it, even where there was strong evidence of the crime and the perpetrators.

Both Elçin and Ebru told Amnesty International that they continued to be subjected to arbitrary fines under the Misdemeanours Law or the Traffic Law by police officers who pick them up on the street and take them to the Beyoğlu police station where they issue them with fines for breach of the peace or disrupting traffic, simply



due to the fact that they are transgender women and assumed to be engaging in sex work. Elçin said that she currently had 200 or 300 Lira (90 or 140 Euros) of unpaid fines and that she feared that a case would be brought against her and that she could face imprisonment as a result of non-payment. Both she and Ebru said that they had been fined while walking on the street in Tarlabası and that the police officers frequently wrote down different locations to those where they had actually been picked up. Ebru showed Amnesty International 19 fines that she had been issued by police officers. She said that one fine was issued as she stepped out of a hairdresser's shop, while another was for disrupting traffic after she was picked up on İstiklal Caddesi (a pedestrianized street in central Istanbul) – although it was issued as if she had been walking in Tarlabası.

Despite the harassment and violence perpetrated by police officers in the area, both Elçin and Ebru said that Tarlabası was the one area in Istanbul where it was possible for them to live. Elçin said that she had previously lived in a district on the Asian side of Istanbul but that the police had made it impossible for her to live there, raiding her house and telling her that she was not wanted in the area. As a result she moved to Tarlabası. Ebru said that because there was a community of transgender women in the area and they organized themselves to protest against harassment from the police they felt stronger and more secure than anywhere else. They told Amnesty International that the fact that they faced eviction from their rented houses as a result of the "urban regeneration project" would mean that they would be less secure and more vulnerable to abuse (see p. 21, section on Tarlabası urban regeneration project).

## ABUSE OF GAY MEN IN THE MILITARY

In Turkey it is compulsory for all men between the ages of 19 and 40 to perform 15 months of military service for which no civilian alternative is available.<sup>31</sup> Turkey refuses to recognise the right to conscientious objection in violation of international human rights law and standards.<sup>32</sup> Gay men who spoke to Amnesty International in early 2011 stated that they were subjected to threats and abuse from commanding officers and from fellow conscripts and in some instances that they were subjected to homophobic violence by army conscripts due to their sexual orientation. Amnesty International was told that the experience of such abuse or the knowledge that as gay men they would be at risk of homophobic abuse had led many to evade military service, risking criminal prosecution, or to seek an exemption on the grounds of their sexual orientation.

According to regulations, gay men are exempted from performing military service on the grounds that homosexuality amounts to a "psychosexual disorder" and as a result of this "condition" persons are "unfit to serve". This discriminatory provision in itself violates human rights standards.<sup>33</sup> In addition to this, in order to obtain the exemption, men are required to "prove" their homosexuality. Such proof may consist of a forced anal examination, which may violate the prohibition on torture and other cruel, inhuman or degrading treatment, or photographic evidence of the individual engaged in gay sex, violating the right to privacy. Gay men who choose not to go through this humiliating process or those who are not granted an exemption are at risk of threats, humiliation and violence while performing military service.

## THREATS, ABUSE AND ISOLATION

Gay men recounting their experience of military service ranged from those who managed to withhold their identity and did not suffer negative treatment to those who suffered abuse and

threats of violence for the duration of their military service. Amnesty International was told of many instances where gay men were kept in isolation by commanding officers due to a declared threat to their safety (see p.19, the case of Asil from İzmir). Others told Amnesty International that in addition they were required to do the dirtiest or otherwise most unappealing jobs as a *de facto* punishment for their sexual orientation. Others told Amnesty International that they had suffered homophobic abuse or threats of violence. Amnesty International was told that like conscripts identified as Kurds or leftists, those identified as gay were at risk of violence from superior officers or from fellow conscripts. Gay men also said that they feared – or were threatened with rape or other forms of sexual violence by fellow conscripts.

#### “UNFIT FOR MILITARY SERVICE”

In assessing possible exemption from military service the Turkish military uses the internationally recognized Diagnostic and Statistical Manual of Mental Disorders. However, they use the manual dating from 1968 (DSM II), which defines homosexuality as a psychosexual disorder, and considers that those who have this “condition” are “unfit to serve”. In contrast, the medical community uses DSM IV, which dates from 2000 and does not list homosexuality as a disorder. With regard to the “proof” needed to support such an exemption, Amnesty International considers that sexual orientation cannot be determined by physical examination or by viewing photographic evidence of sexual acts. The organization further considers it unethical for a doctor to undertake an internal examination without the consent of the patient without a compelling reason (e.g. grave danger to the patient or others). Amnesty International would consider any such examination to violate the prohibition against torture and other cruel, inhuman or degrading treatment.

Additionally, the parents of gay men applying for an exemption from military service may be called on to provide testimony supporting their application – which is prohibitive for the many gay men who are not open about their sexual orientation to their families. Once the exemption has been granted the local authorities are informed of the decision. If the man is from a village or small town where individuals are likely to be known by public officials, this may result in details of his refusal to perform military service or sexual orientation being made public – and putting him at risk of homophobic abuse or violence.

A certificate indicating that a man has completed military service is also routinely required at job interviews. The fact that an exemption certificate would have to be submitted in its place has led to job offers being removed (see p.22, section on employment).

For those gay men who do apply for the exemption - it is not at all clear that it will be granted. Amnesty International spoke to gay men who were refused the exemption, but the fact that they had applied for it meant that the information remained in their file – and as a result they were at increased risk of violence (see p.19, for example the case of Asil from İzmir). Another man told Amnesty International that he was denied an exemption and required to perform military service. Due to the threats against him he escaped from the army – and now faces arrest, detention, prosecution and imprisonment for desertion if caught.<sup>34</sup>

## ASIL FROM İZMİR

Asil spoke to Amnesty International regarding the problems he encountered as a gay man related to his compulsory military service. He told Amnesty International that he was subjected to verbal abuse, solitary confinement, threats of violence and humiliating and discriminatory medical examinations in the course of his attempts to be exempted from performing military service. He said he was first refused exemption from military service but following his conscription, was able to obtain it with the support of his family on the grounds that his sexual orientation represented a "psychosexual disorder".

Asil told Amnesty International that he knew that there was an exemption for gay men from military service and that after he received his call up to the army, he stated that he was gay and that he did not want to perform military service. He was referred to a psychiatrist. However, he was judged to be fit to perform military service. As a result, the military authorities responsible for his admission refused his request, telling him "you are a very healthy Turkish man, you will do your military service".

Asil, as a 21-year-old without university education, was obliged to perform 15 months of military service. He told Amnesty International that the first month of this was spent receiving training within Izmir. During this time he hid his identity as a gay man for fear of negative consequences.

The situation changed however, when following the month of training he was transferred to the unit in Thrace where he was due to perform the rest of his military service. He told Amnesty International that while the first week passed without incident, fellow conscripts then began to verbally abuse him with homophobic language, calling him "top" or "ibne". Asil said that he felt threatened but believed that nothing could be done to prevent it. At around that same time, he was summoned to meet the officer in charge of the base. The officer asked whether there was anything that Asil wanted to explain to him. Asil told Amnesty International that it was apparent to him that the commanding officer knew from his file that he had attempted to be exempted from military service as a gay man, but that he could not say whether the homophobic abuse by conscripts was due to this information being shared with them or whether they perceived him as gay for another reason. Asil explained to the officer that he wanted to be exempted from military service but that he had been refused. The commanding officer responded that it would be very difficult for Asil to complete his military service due to the behaviour of the conscripts towards him and that something had to be done. He referred Asil to a military hospital for more tests to be done.

When referred to the hospital, Asil noted that the psychiatrist appeared to regard gay men and sex workers as one and the same, asking whether he had been a sex worker and as a result had a police record. The psychiatrist told Asil that he needed evidence to prove the fact that he was gay and that this could be done through being caught having sexual relations with someone in the armed forces, although that this would result in a custodial sentence, or through being able to "document" his sexual orientation. Asil protested that he did not want to have to do such things in order to be exempted from military service, and returned to his military unit without further discussion.

Asil spoke again to the commanding officer, who told him that he had a week to consider his options. Rather than reducing the pressure on him, Asil told Amnesty International that his referral to the hospital worsened the situation for him as everybody on the base appeared to know that he was attempting to be exempted because he was gay and that he had been referred to a military hospital. Asil said that conscripts threatened to attack him and that he feared that he would be raped. As a result of the threats of violence against him, he was separated from the other conscripts by the commanding officer and placed in solitary confinement, locked up in a dormitory and not permitted to leave at any time of night or day. Asil says that he stayed in solitary

confinement for a week before he met with the commanding officer, and told him that he might be able to get some proof. The commanding officer gave him one week's leave for this purpose.

Asil told his commanding officer that he planned to return home to visit an LGBT association that he had been in contact with so that they might write something on his behalf and that he could retrieve from his house a copy of an article in a gay magazine with a feature on him and his friends. He also said that he was prepared to provide photographs of himself having sex if that is what it took to be exempted from military service.

During his time on leave Asil also contacted activists who were able to advise him on the procedure and what was the best course of action. Contact with the army unit was also made on his behalf. When he returned to the unit after a week of leave Asil said that outside intervention had the effect of improving the behaviour of the commanding officer towards him and that he was not placed in solitary confinement but put in a dormitory with conscripts who had been warned not to harm him. The procedure for him to be referred back to the local military hospital was also expedited. Asil told Amnesty International that after being referred he was issued with a document stating that he "engaged in perverse sexual relations with men". As a result he was further referred to a military hospital in Istanbul. Asil gathered documentation but most importantly, he was able to count on the support of his family. His mother was requested to corroborate the fact that he was gay. Following this assessment the panel of doctors pronounced him "unfit to perform military service" due to his "psychosexual disorder".

## ACCESS TO HOUSING AND WORK

Domestic law standards prohibit discrimination in commerce or the provision of services - but sexual orientation and gender identity are not among the discrimination grounds offered this protection.<sup>35</sup> This, added to the practice of state officials targeting individuals for harassment on the basis of their perceived sexual orientation or gender identity, has resulted in denial of access to public services in general. It also prevents access to housing and work in violation of Turkey's obligations under international conventions to which it is a party.<sup>36</sup> As in other areas, transgender individuals' greater visibility means that in many cases they are the most vulnerable to discrimination. However, lesbian, gay and bisexual individuals have also consistently reported experiencing discrimination.

## ACCESS TO HOUSING

Transgender women have faced a long history of attempts by the authorities to force them out of their houses. Transgender women consistently told Amnesty International that police would harass them if they lived in upmarket areas of the city deemed by the police to be unsuitable for "undesirable people" such as themselves to live in. In other instances, in neighbourhoods where transgender women have come together seeking the greater security, solidarity and support transgender women can provide each other, police have specifically targeted such communities. In Istanbul for example, the city with the largest population of transgender women in Turkey, successive operations by the authorities to "clean up" neighbourhoods resulted in transgender women being forced out of particular areas. In many cases those forced from their houses had previously migrated to Istanbul due to the transphobia in their home towns and cities across Turkey which made it impossible for them to live there. The most notorious event, ahead of the UN Habitat II conference in Istanbul in 1996, saw transgender women being beaten in their homes and arrested in the process of forcing the women out of Ülker Sokak in Cihangir where many transgender women lived.<sup>37</sup>

Transgender women consistently described to Amnesty International how they were being forced to live in one area of a city and that living in other areas resulted in constant police raids making it impossible to live (see for example p.16, Elçin and Ebru from Istanbul). In Istanbul transgender women told Amnesty International that they could only live comfortably in the central district of Tarlabası while in Izmir a small area of Alsancak and the Halil Rifat Paşa neighbourhood were reported to be the only areas where transgender women could live without their houses being constantly raided by police. All of the transgender women to whom Amnesty International spoke reported that a non-transgender person was required to sign the rental agreement as in the vast majority of cases landlords refused to deal directly with transgender individuals.

Even in these areas transgender women reported that they risked their houses being raided by police on the grounds that they were being used for prostitution. Transgender women reported to Amnesty International that because police view all transgender women as sex workers, transgender women not engaged in sex work or transgender women engaged in sex work but not at their home address are also at risk of their homes being raided by police. Transgender women also reported that police fabricated evidence showing that the houses were being used as a brothel. In addition they also widely reported that following the police raids an order was issued forbidding entry to the house for periods of three or in exceptional cases six months. Activists in Izmir reported that police raided the houses of prominent transgender activists and told them "if you carry on like this, we wont let you live here" (see p.26, section on threats to the freedom of association).

#### TARLABAŞI URBAN REGENERATION PROJECT

In the Istanbul district of Tarlabası a new threat faces the transgender women living in the area. In this district, said to be the only one in the city where transgender women can live relatively comfortably, they, along with other residents, face eviction due to the area being redeveloped. Under the state sponsored scheme, the area's many historical buildings are to be refurbished and the others demolished to make way for high value housing.<sup>38</sup> As a result of the project, people who currently live in the district face eviction – including among others, transgender women who have lived in the area for many years, and other vulnerable populations such as Roma groups and Kurdish people who settled in the district after being displaced from their villages in the south-east of Turkey during the 1990s. Amnesty International was told that more than 100 transgender women currently live in the project area and face eviction. Among them are home owners who have to an extent been consulted and offered compensation for the loss of their property.<sup>39</sup> However, the vast majority of transgender women, as with other groups that live in the area, rent their homes and depend on the area's cheap rent and close proximity to Beyoğlu for their livelihoods. They told Amnesty International that, due to the fact that they do not own their homes, they were not offered alternatives to eviction from their houses, that they were not consulted on the process and that they were not given information on alternative housing or offered any form of compensation.

One of those facing eviction, Özge, a transgender woman who has been living in Tarlabası for 10 years, told Amnesty International that despite the fact that she faces eviction, she has had no contact with the local authorities or the private company that has the tender to carry out the project. In common with other tenants who spoke to Amnesty International, Özge said that the authorities only provide information to the buildings' owners and that the tenants'

only official correspondence from the authorities was when the property had been sold and they were issued with an eviction order and had to leave within 15 days. She told Amnesty International that no compensation was being paid to the tenants and that no appropriate housing was being offered to them.<sup>40</sup> Although they had not been approached by the authorities, Özge said that alternative housing potentially offered by the Housing Development Administration of Turkey (TOKİ) in Kayabaşı was completely impractical for the transgender women of Tarlaabaşı: it was too expensive, and more than three hours by public transport from Tarlaabaşı where they work. Like other tenants in Tarlaabaşı, Özge said that the cost of public transport would make it impossible for them to continue working as previously. Amnesty International is concerned that transgender women, like other tenants within the Tarlaabaşı Regeneration Project Area, have not been adequately consulted and that they have not been provided with compensation or alternative adequate housing.

## EMPLOYMENT

*"If they found out, you would make the customers uncomfortable"*

A gay man is told the reason for not being hired for a job.

As in other areas of law, discrimination on the grounds of sexual orientation and gender identity is not prohibited in the Employment law.<sup>41</sup> In cases where the courts have examined instances when an employee has been dismissed explicitly due to his sexual orientation, such dismissals were not ruled unlawful. Discrimination against lesbian, gay and bisexual individuals remains routine. Amnesty International was told that almost all people from these communities feel compelled to hide their identity for fear of losing their job, irrespective of whether they work in the public or the 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.

In a survey conducted by the LGBT solidarity association Kaos-GL, 33 per cent of respondents (lesbian, gay, bisexual and transgender individuals) reported that they had not been hired for a job due to their sexual orientation or gender identity.<sup>42</sup> Amnesty International was told that one of the most important causes of discrimination in employment for gay men who have been granted an exemption from military service is the requirement to produce proof of having performed military service ahead of being accepted into employment. The certificate of completion of military service is routinely required before a job offer is confirmed. Even though the grounds for exemption are not stated on the certificate, a common suspicion that it was granted on grounds of sexual orientation can lead to employers refusing a job on this basis.

In one highly publicized case Halil İbrahim Dinçdağ, a football referee who had been exempted from military service, found it impossible to obtain work after both the Turkish armed forces and the Turkish Football Federation (which licences referees in Turkey) made comments regarding his sexual orientation to the press in May 2009. After this, and despite his previous 14 years of work as a football referee, he was unable to find employment. Halil İbrahim Dinçdağ opened a civil claim for damages against the Turkish Football Federation: the first hearing was held on 22 February 2011 and as of March 2011 the case was continuing. Another recent case drawn to Amnesty International's attention involved a man who when asked to provide the military service certificate at a job interview explained that he

was gay and had been exempted from military service. He was offered the job but later called by the company's human resources department who told him "if the customers found out, you would make them uncomfortable". Amnesty International was told that in addition to such cases the lack of protections on employment in the private sector mean that employers frequently find ways to dismiss employees without providing the genuine reason for the decision – although the individuals frequently feel that it is due to their sexual orientation.

In the public sector there are stronger protections against dismissal in general, meaning that employees must be provided with greater reasoning for their dismissal and that channels for challenging the decision are more accessible. Even so, gay men in public sector employment have been dismissed from their jobs for the explicit reason that they are gay. According to official court documents seen by Amnesty International, the High Discipline Board of the Ministry of the Interior on 20 April 2004 took the decision to dismiss a police officer after hearing evidence that he had engaged in anal sex with a man. The decision was justified on the basis of Article 125 E-g of the Civil Servants Law (no. 657) that provides for persons to be dismissed if found "to act in an immoral and dishonourable way which is not compatible with the position of a civil servant". The administrative court, to which the police officer had appealed, found that the dismissal did not contravene applicable law and confirmed the decision of the High Discipline Board. The decision of the local administrative court was later confirmed by the Council of State, the highest administrative appeal court, exhausting domestic remedies. In addition to this case and another similar but unrelated case involving a police officer, the same article of the Civil Servants Law was used to dismiss a teacher who according to the decision of the High Discipline Board of the Ministry of Education in 2009, was found to have entered into a "homosexual relationship". Again the local administrative court did not find the decision to be in violation of law and rejected the appeal against dismissal.

With respect to the situation of transgender women, the vast majority of those interviewed told Amnesty International that the impossibility of finding other work had led them, either currently or in the past, to engage in sex work. Transgender women who were in employment during the time that they changed their gender also reported that they were forced out of their jobs as a result. These findings are mirrored by Lambdaistanbul's survey of transgender women living in that city. Of the 90 transgender women who were asked why they left their employment, 42 per cent said it was because they believed that they would be fired, 30 per cent said that they were fired, 29 per cent said that they were denied promotion and 24 per cent said that they were forced to resign.<sup>43</sup> Despite exhaustive efforts to find work for transgender women by activists, including advocacy with the local authorities in Istanbul for example, no positive results were reported. For example although one transgender woman attended state-provided vocational courses, gaining a professional qualification as a health worker, she was not able to find employment in any hospital. As a result of denial of access to employment, for the vast majority of transgender women the only option is to engage in unlicensed and dangerous sex work, the risks of which are indicated by the number of transgender women sex workers who have been killed or report suffering constant violence by customers (see p.30, section on violent crimes against lesbian, gay, bisexual and transgender individuals). Transgender women told Amnesty International that because the state does not regard them as women (who unlike men are able to legally work as sex workers), and therefore excludes them from licensed sex work, they were at a much greater risk of violence than women who worked in licensed brothels.<sup>44</sup> Amnesty International considers that the law

concerning sex work, like any other law, should not discriminate on grounds of gender, sexual orientation or gender identity.

## BARRIERS TO ACCESSING OTHER RIGHTS

Lesbian, gay, bisexual and transgender individuals told Amnesty International that their access to public services was frequently limited, either due to fear of homophobic and transphobic attitudes by public servants causing people not to seek medical attention or because of public officials' refusal of service or treatment due to an individual's gender identity or sexual orientation.

Transgender individuals reported that all interactions with the authorities where they had to show their identity cards were problematic in cases where their gender on the identity card did not match their appearance. In Turkey women are issued with pink identity cards while men are issued with blue cards. The gender marked on the card can only be changed following gender reassignment operations. Problems reported included harassment following random identity checks (see the case descriptions of Irmak from Diyarbakır and Rüzgar from Istanbul, p.36 and p.26 respectively) and refusal of service.

Trouble accessing health services was frequently cited as a major problem in particular by transgender women who spoke to Amnesty International. As a result of their inability to access formal work and low incomes, the vast majority of transgender women do not have either state or private health insurance.<sup>45</sup> Transgender women frequently reported to Amnesty International that they were refused medical treatment on account of their gender identity. Transgender men and women told Amnesty International that they did not have access to gender reassignment operations due to the cost of the treatment. Others said that they rejected having the operation on principle due to the requirement to have treatment making them infertile as part of the operation.<sup>46</sup>

Transgender individuals also told Amnesty International that they were forced to give up education as a result of their gender identity, for example as a result being refused access to university buildings due to identity documents not corresponding with their gender.<sup>47</sup>



## RÜZGAR FROM ISTANBUL

Rüzgar is a transgender activist from Voltrans, a support group for transgender men in Turkey. Voltrans is a relatively new group that participates in campaigns on LGBT rights in Turkey. Rüzgar outlined human rights violations experienced by transgender men and women, starting with problems linked to the process leading to gender reassignment operations, including the requirement female to male transgender individuals to be sterilized, the need for a medical certificate confirming gender identity disorder as a result of a two-year long therapy, lack of regulation and expertise of doctors performing gender-reassignment surgery and the difficulties in having identity cards changed.

Rüzgar told Amnesty International delegates of his own experiences of harassment by police and other people.

One incident took place in January 2011, around 9pm when Rüzgar was in a car park near the TRT studios in Tepebaşı (in the Beyoğlu district of central Istanbul) with a friend from Germany. Initially, they were approached by a police officer in civilian clothes for a routine ID check. The officer looked at his ID card<sup>48</sup>, then looked at him and said he did not believe the ID belonged to Rüzgar. The police officer wanted to look at Rüzgar's hands, pushing his fingers backwards. Rüzgar does not know what the significance of this was. Another four or five police officers surrounded them. Having called the control room with Rüzgar's ID number, the police officer said they would take him to the police station claiming Rüzgar had previously been arrested for drugs offences, which Rüzgar denies. The officer continued to insist that the ID card was fake. Another officer in civilian clothes checked the embossed stamp on the ID card. Rüzgar was asked to show another ID and showed his university ID card. A crowd built up around them and Rüzgar's friend also got involved in the argument. A discussion ensued about gender identity, involving Rüzgar's friend. Another officer touched Rüzgar's hair asking whether his hair was real (he has long dreadlocks). The incident went on for about 15 to 20 minutes and only ended when Rüzgar and his friend left the car park.

When asked about the difference between Istanbul and other cities in Turkey, Rüzgar told Amnesty International delegates that he was first beaten up in Galatasaray, in the Beyoğlu district of Istanbul in 2009. Rüzgar reported that a man said to him "see the look of that one", to which Rüzgar replied "what are you looking at". The man said "do you want to be beaten up" and proceeded to hit Rüzgar, whose lip was cut as a result of the blow. Rüzgar's friends intervened, saying "you can't hit a woman". The man replied "is this a woman?" A few friends of the assailant also got involved. Rüzgar went to the Beyoğlu police station to report the assault. He was told to go to the hospital, which he did and obtained a medical report. He took the report to the police station and made a statement. Rüzgar told Amnesty International delegates that despite informing the police about the assault, providing a medical report and pointing out that there were police cameras in the area where the assault took place, he did not hear anything back from the police about an investigation. He said making the complaint had also been very difficult: he was made to wait for hours and treated as if he had deserved to have been attacked.

Rüzgar told Amnesty International that incidents involving verbal abuse, comments and questions about his gender identity happen daily. He said: "after a while, it all merges into one, you try to block it out."

### THE RIGHT TO SEEK ASYLUM

Asylum-seekers from countries outside Europe are required to submit asylum applications to the UN's refugee agency in order for their status as refugees to be determined. Once recognised as refugees they can be resettled in third countries as required under law in Turkey which makes no provision for their local integration. Many asylum-seekers remain in Turkey for upwards of five years while their status remains pending and while they wait for resettlement following recognition as refugees. Among the thousands of asylum-seekers who seek refuge in Turkey every year are a number who are forced to leave their countries of origin due to persecution because of their sexual orientation or gender identity.<sup>49</sup>

The situation for lesbian, gay, bisexual and transgender refugees and asylum-seekers is made doubly difficult as they face discriminatory behaviour by public officials based on their status as foreign nationals or refugees/asylum-seekers in addition to discrimination on grounds of their sexual orientation or gender identity. In practice lesbian, gay, bisexual and transgender asylum-seekers are even more dependent on state support as their identity means they frequently cannot access the unofficial support networks made up of fellow asylum-seeker from their countries of origin.

The situation is made worse by the system of dispersal as a result of which asylum-seekers and refugees are required to reside in one of a number of Anatolian towns or cities in central and eastern provinces while they remain in Turkey. These locations are often more socially conservative than Ankara, Istanbul and Izmir where LGBT civil society groups offer assistance and solidarity, and as such are often unwelcoming to asylum-seekers and refugees with different sexual orientations and gender identities.

Informed sources told Amnesty International that the local authorities were in many cases insensitive to lesbian, gay, bisexual and transgender asylum-seekers when describing their reasons for seeking asylum. Amnesty International was also told that security concerns expressed by asylum-seekers and refugees arising due to their perceived sexual orientation or gender identity both in terms of harassment by other asylum-seekers and threats by members of the local population were not adequately addressed by the local authorities. Amnesty International is also concerned that regulations providing for the transfer of refugees and asylum-seekers away from a particular dispersal city, are not effectively implemented in practice. As a result refugees and asylum-seekers remain in locations where they are at risk of violence and other abuse due to their sexual orientation or gender identity.<sup>50</sup>

### THREATS TO FREEDOM OF ASSOCIATION

In the face of hostility and discrimination by government and public officials against lesbian, gay, bisexual and transgender individuals in Turkey, civil society groups have filled the gap left by the state and fulfil a vital role in providing support and advice. In Turkey's three biggest cities – Ankara, Istanbul and İzmir – non-governmental associations provide solidarity and a secure space for lesbian, gay, bisexual and transgender individuals while campaigning against hate crimes and discrimination.<sup>51</sup> In addition, civil society networks – known as “initiatives” in Diyarbakır and Eskişehir have been established and initiatives in other provincial towns and cities are set to follow.<sup>52</sup>

However, far from facilitating the development of support services provided by civil society, the authorities have taken steps to suppress them through administrative and judicial

harassment, threatening the right of all persons to freedom of association, expression and non-discrimination and contrary to Turkey's obligations under the European Convention on Human Rights.<sup>53</sup>

LGBT rights activists told Amnesty International that their work as human rights defenders to protect the rights of others was put in jeopardy by threats that they as individuals faced due to their own sexual orientation or gender identity (see for example the cases of Pembe Hayat activists in Ankara and Eylül in Eskişehir, p.15 and p.38 respectively). Activists in İzmir also told Amnesty International that at the time of their legal battle against the closure of the LGBT association Siyah Pembe Üçgen İzmir (see p.27, section on freedom of association), when they were also making frequent media statements on the progress of the closure case opened against them and organizing street protests, transgender women activists' houses were raided by the police who told them "if you carry on like this [taken as a reference to their prominence as activists], we won't let you live here any more."

The intolerance of some members of the public to lesbian, gay, bisexual and transgender people standing up for their rights has resulted in complaints leading to communication channels being blocked. Complaints made by unknown individuals resulted in groups operated by MorEL in Eskişehir and Hevjin in Diyarbakır on the social networking site Facebook being closed by Facebook administrators. While MorEL was able to successfully contest the close of their Facebook group, the Hevjin group was not reopened resulting in them losing hundreds of members of the group. Given the challenges associated with LGBT activism in Turkey, the security provided by online organising is even more important and limitations to it even more damaging.<sup>54</sup>

Tactics used by the local authorities against LGBT associations have been a far greater threat however. Arbitrary sanctions against LGBT associations - in common with some other human rights NGOs - were reported to Amnesty International. Pembe Hayat reported that they had been issued with an administrative fine for providing required documentation to the local authorities too early. Another Ankara based LGBT association, Kaos-GL reported that they had been issued with a fine following an audit by the Associations Directorate of the local Governors office (part of the Ministry of the Interior) in an apparently arbitrary application of the rules regarding receiving funds from abroad not applied to other NGOs receiving funding in this way. Kaos-GL also told Amnesty International that the Directorate carried out eight separate audits of the association between 2006 and 2009 – a far greater number than other human rights associations were subjected to. During this period all the copies of one issue of Kaos-GL's magazine were confiscated on grounds of protecting public morals (see p.11 section on discriminatory application and interpretation of the law).

#### CLOSURE CASES

The most frequent method used by local authorities to suppress the work of LGBT rights associations has been through attempts by local Governor's offices to open civil law closure cases on the grounds that the associations violate "Turkish morals and family structure".<sup>55</sup> Complaints by local Governors have been made against all but the most recently established LGBT rights associations, and it remains to be seen whether such attempts will also be made against them.

Such methods have been employed for many years, and aside from the costs of defending such actions, which divert financial and other resources from their core work, the length of some of the proceedings has been drawn out lengthening the uncertainties they face. In 2005 a complaint was brought against the LGBT association Kaos-GL but the Ankara State Prosecutor's office decided that there was no justification in bringing a closure case.<sup>56</sup> A similar complaint against Pembe Hayat in 2006 was also rejected by the Ankara State Prosecutor's office. A complaint was made against Lambdaistanbul by the Istanbul Governor's office in 2006 but rejected by the Istanbul State Prosecutor's office in 2007. The local authorities in Istanbul appealed the decision not to open a case. The decision was overturned and a closure case opened. In 2008 the local court upheld the complaint and ordered the closure of the association. The decision was, however, overturned by the Supreme Court of Appeals and finally confirmed by the local court in April 2009 following a high profile campaign in Turkey and internationally.<sup>57</sup> The decision came nearly three years after the initial complaint had been made by the Istanbul Governor's office. While the ruling of the Supreme Court of Appeals was positive in supporting the right of all individuals to form associations irrespective of their sexual orientation or gender identity, the verdict also stated that encouraging others to become lesbian, gay, bisexual or transgender was not protected by the right to freedom of association and that such a justification could lead to the closure of an LGBT association, seemingly pointing the way for future closure cases to be opened against LGBT associations.<sup>58</sup> Despite the ruling of the Supreme Court of Appeals earlier in the year, another closure case brought on grounds of public morals was opened against the İzmir-based Siyah Pembe Üçgen association in 2009 following a complaint by the local authorities. The closure case was rejected by the local court in Izmir on 30 April 2010.<sup>59</sup>

## THE CASE OF AHMET YILDIZ

The shooting on 15 July 2008 of 26-year-old Ahmet Yıldız, an openly gay man in what many believe to be an “honour” killing<sup>60</sup>, has come to symbolize the authorities’ failure to respond to violence based on an individual’s sexual orientation or gender identity.

On the day of the murder Ahmet’s partner, İbrahim Can, was in the house they shared in Üsküdar, a district on the Asian side of Istanbul. He explained that Ahmet left the apartment to buy ice-cream, and went downstairs to where his car was parked on the street outside. When he heard gunshots İbo ran down to find Ahmet shot dead. As in other suspected “honour” killings, the family failed to collect the body for burial as a gesture of their rejection.

İbrahim Can explained that in the months leading up to the shooting Ahmet had been receiving threats of violence from his family. As a result of this he went to the State Prosecutor’s office in Üsküdar and made a criminal complaint against his family and asked for protection.

After the murder it emerged that the complaint had not been investigated. Instead the state prosecutor had transferred the complaint to another office on the grounds that it fell within the jurisdiction of the neighbouring Sarıyer district, where it was not followed up. Activists regard the actions of the authorities – in erroneously transferring the complaint although it did lie within the first prosecutor’s jurisdiction – and failing to investigate it, as a symptom of the authorities’ reluctance to confront homophobic violence.

The events that followed the murder add credence to this belief. İbrahim Can told Amnesty International that the criminal investigation was not carried out effectively. Aspects reportedly not investigated include the alleged presence of a second car at the scene of the murder and the circumstances of an attack on the property of a witness in the case that came weeks after the shooting. Most critically of all, despite the fact that it had previously been alleged that Ahmet Yıldız’s family had been making threats against him, and the fact that a car belonging to a friend of his father was identified at the scene, no attempt was made to interview the father until October 2008, when an arrest warrant was issued more than three months after the murder had taken place. By this time Ahmet Yıldız’s father could not be found. Telephone records indicate that by this time he may have travelled to Iraq.

The trial stage of the prosecution of the murder has also failed to address concerns that justice will not be served. Despite the fact that court hearings are open to the public, trial judges refused to allow supporters of Ahmet Yıldız to observe the hearings. Only after a new judge was assigned to the case, at the sixth hearing on 14 March 2011 some three years after the murder, was an international arrest warrant ordered for the father of Ahmet Yıldız - the single suspect in the case. At the same hearing the Court for the first time ordered an investigation into the threats made against Ahmet Yıldız by the family before his death. The next hearing date was set for 16 June 2011.

# VIOLENT CRIMES AGAINST LESBIAN, GAY, BISEXUAL AND TRANSGENDER INDIVIDUALS

Far from isolated cases, crimes against lesbian, gay, bisexual and transgender individuals have been frequently reported. No official statistics are available regarding crimes committed against lesbian, bisexual and transgender individuals but in 2010 alone LGBT associations documented 16 murders of individuals believed to have been killed due to their real or imputed sexual orientation or gender identity.<sup>61</sup>

In 2011, during the research for this report, violent crimes against members of the LGBT community continued to be reported. On 7 March for example a national media source reported a murder with the headline “she was having a lesbian relationship, I killed her” regarding a man in the city of Gaziantep who reportedly shot dead his 21-year-old ex-partner.<sup>62</sup> Two weeks later, the press reported the discovery of the body of a transgender woman in İzmir. According to the report the body was found on waste ground, decapitated and dismembered.<sup>63</sup>

In many cases information on crimes against lesbian, gay, bisexual and transgender individuals is obtained from media sources, as LGBT associations or partners have little or no access to information during the investigation of the crimes and there is a lack of official data on suspected hate crimes (see p.32, section on suspected hate crimes). As a result, LGBT rights activists believe that the full extent of crimes against individuals due to their sexual orientation or gender identity is far higher than it has been possible to document.

Establishing a hate motive in respect of individual crimes reported solely through the media is not possible. However, in relation to suspected hate murders, activists point to the manner in which many of the victims have been killed. On occasion the confessions of the perpetrators suggest a hate motive for murders and other violent crimes against individuals with a different sexual orientation or gender identity. However, due to shortcomings in the investigation and prosecution of these crimes, in many cases those responsible are not brought to justice. In other cases of violent crimes committed against people with a different sexual orientation or gender identity, victims referred to homophobic or transphobic language by perpetrators or information relating to the identity of the victim being used by the alleged perpetrator to justify the crime.

Individuals are also at risk of other types of violent crime due to their sexual orientation or gender identity. LGBT rights activists told Amnesty International that lesbian, gay, bisexual and transgender individuals faced an increased risk of violence from within the family due to their sexual orientation or gender identity because protection mechanisms – even where they were available – were not accessible to them due to their sexual orientation or gender identity (see p.35, section on protection mechanisms). Amnesty International was also frequently told of cases where individuals were perceived to have been targeted by criminals – due to their

sexual orientation or gender identity, they would not report the crimes to the police, or that if they did, the perpetrators – due to the identity of their victim – would not be brought to justice.

## SUSPECTED HATE CRIMES

Amnesty International has documented several instances of crimes which had a discriminatory intent - often referred to as "hate crimes" - which targeted individuals due to their sexual orientation or gender identity in Turkey. The Organization for Security and Co-operation in Europe (OSCE) defines hate crimes as "criminal offences, including offences against persons or property, where the victim, premises, or target of the offence are selected because of their real or perceived connection, attachment, affiliation, support or membership of a group."<sup>64</sup> Many of the people that Amnesty International spoke to reported being assaulted due to their sexual orientation or gender identity by private individuals (see the cases of Rüzgar and Elçin, p.26 and p.17 respectively). In a survey of lesbian, gay, bisexual and transgender individuals over 70 per cent said that they feared that they would be attacked due to their sexual orientation or gender identity.<sup>65</sup> The fear of hate crimes was particularly strong among transgender women sex workers all of whom told Amnesty International that they had been previously attacked by clients. Many told Amnesty International that they knew transgender women who had been murdered. In this way suspected hate crimes have traumatized not only their victims and friends and relatives but the entire LGBT community.

Amnesty International was told that a great many hate crimes are not reported. Even when they are, such acts are not registered as crimes committed due to the victims' identity, and the motivation for the crime is routinely not investigated. In 2011 Amnesty International requested within the Information Law that the authorities provide statistics regarding the number of murders of lesbian, gay, bisexual and transgender individuals year on year since 2006 disaggregated by region, ethnicity, sexual orientation and gender identity. Amnesty International also requested that the authorities provide statistics regarding how many investigations, prosecutions and convictions had followed the murders and the sentence imposed on the perpetrators following any reductions. In reply the authorities stated that the no information was available regarding the requested issue.<sup>66</sup> Due to the fact that such statistics are not held by the state and because details of the investigation are often not released to LGBT associations or even relatives of the victims, available information on suspected hate murders is largely obtained from media reporting.

## HATE MURDERS

Of the 16 suspected hate murders documented by LGBT organizations in Turkey during 2010 several patterns emerge. In nine of the murders the victims were gay men while six victims were transgender women. In one case the victim was a heterosexual male apparently perceived to be gay. In all but one of the murders of gay men, the alleged perpetrators are reported to have stated that the victim requested or initiated a sex act. In two of the cases the alleged perpetrators reportedly stated to the investigating authorities that the victim attempted to rape them. Three of the murders of gay men also involved extreme violence – including multiple stab wounds – reportedly far more than would have been required to cause death, dismemberment of the corpse and in one case, evidence that the victim was restrained in a "hog tie" position before the murder was committed.

Of the six murders of transgender women documented in 2010, in one case the alleged perpetrator is reported to have stated that the victim requested to be the active partner in sex while in two cases extreme violence was documented. In one of the cases this involved 29 stab wounds being inflicted. In the other case the victim was reported to have been stabbed multiple times, including injuries inflicted after death, raped after death and had the sexual organ severed. At the scene of the crime a note was reportedly left stating that “more transvestites would be killed”.

In the case of a heterosexual male murdered in 2010, the victim was previously subjected to homophobic abuse by the alleged perpetrators of the murder.

## INTERNATIONAL LAW ON HATE CRIMES

Turkey as a party to the European Convention on Human Rights has an obligation to protect the right to life without discrimination for all people within its jurisdiction. As part of this obligation the authorities are required to ensure that prompt, impartial and effective investigations are carried out in cases of alleged violations to the right to life, whether the alleged perpetrators are state or non-state actors.

The European Court of Human Rights has clarified that the duty to protect the right to life not only enjoins authorities of the state to refrain from the intentional and unlawful taking of life but also to take appropriate steps to safeguard the lives of those within its jurisdiction.<sup>67</sup> This includes the duty to put in place effective criminal law provisions punishable by appropriate penalties to deter the commission of offences against the person, which are backed up by law enforcement machinery for the prevention, suppression and sanction of breaches of such laws. It also requires the authorities in certain well-defined circumstances to take preventative measures to protect an individual whose life is at risk from another individual.<sup>68</sup>

The European Convention on Human Rights also requires that investigations take all reasonable steps to uncover a hate motive in order to satisfy the requirements of the right to life. These obligations have been clarified in several judgments including *Nachova and others vs. Bulgaria* where the court found that the state failed in its obligation to investigate a racial motivation in the killing of a woman of Roma origin.<sup>69</sup>

## FAILURE TO UPHOLD INTERNATIONAL AND NATIONAL LAW OBLIGATIONS

Amnesty International is concerned that in cases of suspected hate murders the Turkish authorities by failing to involve the next-of-kin of the deceased in the investigations are not upholding their obligations to conduct effective investigations of suspected hate murders as required by the case law of the European Court of Human Rights. Amnesty International is also concerned that through the discriminatory application of legal provisions for “undue provocation” this mitigating circumstance is effectively accepted due to the identity of the victim.<sup>70</sup> Finally, the absence of specific procedures to investigate hate crimes raises concerns that the investigations are not effective.



## FLAWED INVESTIGATIONS INTO POSSIBLE HATE CRIMES

*"In any case you are gay, you are open to rape"*

LGBT rights activists in Eskişehir recount statement by a police officer following the reporting of an alleged rape of a gay man – one of a number against gay men and transgender women in the city

Lawyers representing the families of individuals killed in suspected hate murders due to their sexual orientation or gender identity told Amnesty International that on many occasions the police failed to share details of the ongoing investigation and did not provide documentation to lawyers working on behalf of the families. Lawyers noted that in many instances transgender women were not in contact with their families and that support was provided to them by a partner or friends within the LGBT community and by LGBT associations. Despite this, the authorities refused to accept that they were an injured party and have the right to intervene as such in the case (*müdahil*).<sup>71</sup> Lawyers told Amnesty International that in this way courts were also far less likely to grant injured party status to same-sex partners than opposite sex partners.

Activists also point to the inability to solve murders apparently linked to the sexual orientation or gender identity of the victim as evidence for the need for a specialized unit to combat suspected hate crimes. Among the many examples of such murders is that of Dilek, a transgender woman who was shot dead with a pump action shotgun in November 2008. Dilek was a plaintiff and witness in the groundbreaking prosecution for the murders of transgender women brought against an organized crime network in Ankara. The killing, which came weeks after the guilty verdicts were pronounced, remained unsolved as of March 2011.

In the case of the killing of a gay man, Ahmet Yıldız (see p.30), the investigating authorities failed to conduct an effective investigation into the murder, to examine all the available evidence and critically to issue arrest warrants for a family member despite strong *prima facie* evidence of his involvement in the crime. As of March 2011, the main suspect has yet to be apprehended.

Investigations into other suspected hate crimes have been flawed and compromised by the prejudicial attitudes of police officers. Activists in Eskişehir told Amnesty International that they went to report the alleged rape of a gay man in the city – one of several allegedly committed by the same perpetrator against other gay men and a transgender woman but not brought to justice. However the police told them "in any case you are gay, you are open to rape" and questioned that a rape had taken place at all, asking "if you were raped, why are your clothes not torn?"

Activists described further examples where the police showed reluctance to investigate crimes due to the sexual orientation or gender identity of the victim or where the authorities showed leniency towards the accused based on the identity of the victim.

In Diyarbakır, activists told Amnesty International of the case of a gay male who was stabbed in an attack with possible homophobic motivation. Police officers reportedly called the victim's family and told them that their son was gay – despite his requests that they not be contacted, which resulted in him being subjected to further violence by family members. As of March 2011, the perpetrators of the attack had not been apprehended.

In İzmir, an activist and lawyer told Amnesty International that following his violent assault and robbery “the police treated me as if I was the guilty one”. Reporting the incident after the attack, investigating officers reportedly asked questions about his personal life, implying that he may have been responsible for “encouraging” the attack after the alleged perpetrators stated that he had requested sex from them so motivating them to attack him. The activist told Amnesty International that following this the prosecutor did not seek the pre-trial detention of the suspects and that they were charged with a lesser offence suggesting that the authorities believed that they had been “provoked”.

## PROSECUTIONS

In cases of suspected hate crimes alleged perpetrators have routinely stated that the victim requested or initiated sex and that this amounted to an “undue provocation”. In many such instances the prosecuting authorities have not sought to challenge the claim and have lowered the sentence effectively accepting this as a mitigating circumstance due to the identity of the victim. In the cases in 2010 referred to above, where a suspect was apprehended in eight out of the 10 cases it was alleged that the victim requested or initiated an unwanted sex act. In one of the cases, the murder of İrem, a transgender woman in the western city of Bursa, the claim that she had requested to be the “active” partner in sex was contested due to the fact that she had recently undergone surgery as part of a gender-reassignment operation. The fact that such a defence is attempted despite the fact that it appears likely to be factually inaccurate is testament to the broad and discriminatory application of the provision. As of March 2011, the trial for the murder continued. In past cases courts have been willing to accept that requests of homosexual sex or the existence of a homosexual relationship amount to an “undue provocation”. In the prosecution of a man for the murder of a woman who was alleged to have been having a relationship with his wife, the court agreed that the existence of a homosexual relationship amounted to an “undue provocation” and could be taken as a mitigating factor in the sentence.<sup>72</sup> In the case of the murder of Abdülbaki Koşar', a gay journalist, the perpetrator of the attack stated that he acted after the deceased had requested sex. The Court accepted the argument that the request amounted to an undue provocation warranting mitigation of the sentence. The case remains pending on appeal.<sup>73</sup>

## PROTECTION MECHANISMS NOT APPLIED

Lesbian, gay, bisexual and transgender individuals who spoke to Amnesty International consistently stated that they did not seek the assistance of the authorities to offer protection in the case of threats of violence or to report violent offences because they believed that due to their sexual orientation or gender identity the authorities would not assist them. Cases such as that of Ahmet Yıldız serve as an example of why this lack of trust exists. In this case Ahmet Yıldız *did* seek the assistance of the authorities in 2007, many months ahead of the attack that claimed his life. In the criminal complaint made to the State Prosecutor's office Ahmet Yıldız stated that he was receiving threats of violence from family members and requested that the threats be investigated and he be provided with protection. However, no investigation into the threats was launched and the prosecutor (erroneously) transferred the complaint to another prosecutor's office on the grounds that it fell outside his area of jurisdiction (see p.30, Ahmet Yıldız case).

In cases of violence within the family, protection mechanisms are not available for many individuals due to their sexual orientation or gender identity. It was frequently reported by

activists that transgender women and men, gay men, but most frequently lesbian and bisexual women were subjected to various forms of violence within the family. Forms of violence were reported to include: beatings, being imprisoned in the family home (see case of Irmak below) and forced marriage.

Protection mechanisms for all victims of violence within the family remain inadequate, with the law requiring the authorities to provide shelters remaining unimplemented and law enforcement institutions still reluctant to address crimes involving violence within the family.<sup>74</sup> For example, in 2009 the European Court of Human Rights ruled in the case of *Opuz vs. Turkey* that the authorities had failed in their obligation to protect the applicant and her mother from violence. The court found violations of the rights to life and the prohibitions on torture and of discrimination. It ruled that the state's failure - even if unintentional - to protect women against domestic violence breached women's right to equal protection of the law, and that general and discriminatory judicial passivity in Turkey created a climate conducive to domestic violence.<sup>75</sup>

No shelters exist for gay men or transgender individuals who are victims of violence within the family. Amnesty International was also told by activists that lesbian and bisexual women were prevented from accessing shelters when their sexual orientation was known.

## IRMAK FROM DİYARBAKIR

A delegate for Amnesty International spoke to 25-year-old "Irmak" (not her real name) regarding the persecution she had suffered as a transgender woman living first in Diyarbakır and later in other parts of eastern Anatolia.

Originally from Diyarbakır in south-east Turkey she was forced to flee her family home due to severe violence and death threats from family members and others. She requested that her current location in Turkey and her real name was not revealed for security reasons due to continuing threats against her life.

Irmak told Amnesty International that during her childhood she had had a lot of problems due to her effeminate appearance, for example when she went into a shop the shopkeeper would ask her whether she was a boy or a girl and as a result she felt very uncomfortable. On the street she was abused by strangers calling her "top" or "ibne", and physically assaulted because of her appearance and her apparent failure to conform to established gender norms. Finally, at the age of 16 she told her family that she felt that she was a woman and that she was sexually attracted to men.

The reaction of her older brother in particular was hostile and violent; he beat Irmak relentlessly breaking her jaw and her nose. Irmak told Amnesty International that her mother wanted to intervene but was afraid of her son and powerless to stop him. As a result of the injuries Irmak was taken to hospital in Diyarbakır where she was treated and released. As a result of the beating, her family's refusal to accept her and the feeling of hopelessness that it brought, Irmak attempted to commit suicide by taking a large number of different pills. Her mother found the empty packets of medicine and took her while she was unconscious to the hospital where she woke up, had her stomach pumped and was put on a drip. The police came to interview her there but she did not tell them what really happened to her, saying instead that she had fought with friends. Although the police did not believe the story they were unable to convince her to tell the truth. Irmak told Amnesty

International that she did not explain to the police the reason for the assault and her suicide attempt because she did not want her mother to suffer any more than she had already. After spending one night in the hospital she was released to return to the family home.

Irmak said that she was miserable after returning to the family house, with her family keeping a close check on how she dressed, where she went and whom she socialized with. At the age of 18 and unable to be herself, Irmak was not able to stand the situation any longer and "escaped" the family house and travelled to the Beyoğlu district of Istanbul where she thought she would find acceptance from other transgender women away from the pressure and threats of persecution from her family.

Irmak told Amnesty International that what she found in Beyoğlu was not the secure environment that she had hoped for. Living in a hotel, and in contact with other transgender women living in the area, Irmak began to take hormone treatments for the first time. Despite the respite from threats of violence from her brother, she was shocked by reports of violence against transgender women in the area and afraid for her own security. After 10 days, her uncle who had been able to discover her location, came the hotel and persuaded her to return the family home in Diyarbakır.

Her uncle stayed with the family on the first day and that as a result Irmak did not suffer any threats, intimidation or violence. However, the day after her uncle left, her older brother beat her severely, punching her in the face and kicking her relentlessly until he became tired. Irmak told Amnesty International that he also threatened to kill her, confiscated her identity card and refused to let her leave the house. Later her older brother chained her to the radiator in her bedroom that allowed her to move as far as to go to the bathroom but no further. Irmak remained chained and imprisoned in the house for eight months under constant threat of violence from her older brother. She said that her mother was against this violence but was afraid of Irmak's brother and did not oppose him. During this time Irmak did not leave the house and had no contact with her friends.

After around eight months of captivity in the house, Irmak's mother helped her to escape while her older brother was out. Irmak told Amnesty International that she and her mother left the house and stayed with her relatives on her mother's side of the family, and that due to the fear that her brother would find them they frequently moved to different relatives' houses to avoid discovery. At this time Irmak's mother told her that the reason she helped Irmak to escape was because of threats to Irmak's life by friends of her brother which she did not doubt would be carried out, and that the day before they left the family house in Diyarbakır four cars arrived at the house full of men who were friends of her older brother. Irmak said that they were members of a radical religious group that he was close to. They stated that it had been decided that Irmak would be killed. Although her mother returned to the family house in Diyarbakır, she warned Irmak that it would never be safe for her to return and that her life would be at risk if she ever did so. To this day Irmak has not returned to her family house or had contact with her family.

Despite being free from the violence of her older brother, Irmak told Amnesty International that she still struggles to live a normal life as a transgender woman. She gave up education due to the problems of having the appearance of a woman yet the identity card of a man, which she said resulted in her not being able to enter university buildings. She also described suffering harassment and discrimination whenever she had to show her identity card to state officials because her gender identity was different from that of her identity card, leading to intrusive questions and delays. In addition to this, verbal abuse from strangers on the street has meant that she leaves the house only when required and visits only a small number of trusted places. Her gender identity and the fact that she has been forced into illegal sex work due to the lack of any available form

of employment has meant that she has experienced severe problems finding a place to live – with neighbours not wanting to share a building with her. Irmak told Amnesty International that neighbours in the apartment building where she was previously staying forced her out of the house resulting in a period of homelessness. Only with the help of a friend who was prepared to sign the lease to rent an apartment in a building where there are no other people living was she able to find housing.

Irmak continues to receive threats of violence from unknown individuals on her telephone and she fears for her life if discovered by her family. She is afraid to seek protection from the state authorities, fearing that they would not offer her protection due to the fact that she is a transgender woman and that they may reveal her location to her family.

## **EYLÜL FROM ESKİŞEHİR**

The following incident was related to Amnesty International by Eylül, a 24-year-old transgender sex worker who is also a founder member of MorEL, a local network of LGBT activists. On 1 February 2011, at around 9.30pm, Eylül received a call from a man claiming to be a client and giving what turned out to be a false name. After agreeing on a price, the man arrived at Eylül's house. When he disclosed his real name, Eylül recognized him as the man who had been allegedly involved in assaults and thefts on other transgender women sex workers. She asked him to leave but the man refused.

After many threats including threats of violence by him and others that he would organize to attack her, Eylül was raped by the man. On 11 February 2011, Eylül made a criminal complaint. She was referred to a forensic medicine department for a physical and psychological assessment. When Amnesty International delegates spoke to Eylül about the progress of the case on 17 February 2011, she reported that another transgender woman sex worker had been assaulted by the same man and had needed six stitches on her stomach after being attacked with a knife. The other transgender woman was too afraid to make a complaint to the police. Eylül described how she was very worried, and afraid of going out on her own. She was considering having CCTV cameras placed in her home.

# CONCLUSIONS AND RECOMMENDATIONS

This report aims to show how the state's failure to uphold the right of non-discrimination on the grounds of sexual orientation and gender identity has led to abuses of the rights of lesbian, gay, bisexual and transgender people in their daily lives. Abuses have included violence, harassment and a refusal of access to a range of social and economic rights. Accordingly, the government must take urgent steps to protect individuals against discrimination on these grounds including through legislative change but also by prohibiting the use of discriminatory language by public officials and taking a range of positive steps to promote equality.

The report also demonstrates that the authorities' current policies and practices are not effective in combating suspected hate crimes. In cooperation with LGBT rights organizations the authorities must develop and implement measures to prevent and effectively investigate suspected homophobic and transphobic attacks.

Likewise, the authorities must end the arbitrary and discriminatory violations of the rights to freedom of expression and association for lesbian, gay, bisexual and transgender people, as documented in this report. Instead, they must ensure that these universal rights are respected for all without discrimination.

Amnesty International believes that implementation of the following recommendations, in cooperation and consultation as appropriate with LGBT rights groups, would contribute significantly to building a robust institutional and legislative framework to respect, protect and promote the right to live free from discrimination, including on grounds of sexual orientation and gender identity.

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

- Ratify Protocol 12 of the European Convention on Human Rights and Fundamental Freedoms, which provides a free-standing non-discrimination provision.
- Extend Constitutional protections of the right to non-discrimination to include sexual orientation and gender identity:
  - Amend Article 10 of the Constitution to prohibit discrimination on grounds of sexual orientation and gender identity and undertake positive action to ensure equality;
  - Extend non-discrimination provisions in domestic law to include the grounds of sexual orientation and gender identity.
- Introduce comprehensive non-discrimination legislation:

- Amend the draft Law to Combat Discrimination and Equality with protection on grounds of sexual orientation and gender identity;
- Ensure that the draft law contains necessary guarantees for the independence and effective functioning of the Equality and Non-Discrimination Commission.
- 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**

- Employ preventative mechanisms to combat human rights violations by state officials:
  - Ensure the installation and functioning of video and audio recording equipment in police stations and interview rooms;
  - Ratify the Optional Protocol to the Convention against Torture, and implement the Protocol through the creation of an independent monitoring mechanism to carry out regular and ad-hoc unannounced visits to all places of detention;
  - Carry out effective and impartial investigations into all cases of alleged torture or ill-treatment by state officials; and bring suspects of such violations to justice.

**Bring policing in line with international standards**

- Ensure that police only use such force as is consistent with international human rights standards:
  - Ensure that law enforcement officials respect the absolute prohibition of torture and other ill-treatment, including arbitrary or abusive use of force;
  - 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 individuals sexual orientation or gender identity by law enforcement officials:

- 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;
- Monitor the use of Penal Code provisions for resisting arrest and ensure that counter charges are not used to deter legitimate complaints against law enforcement officials.

#### **End violence and harassment of gay men in the military**

- Recognize the right to conscientious objection and introduce an alternative civilian service to military service, in line with European and international human rights standards and recommendations;
- 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.

#### **Remove barriers that prevent access to rights**

- Provide training to public service personnel in the application of non-discrimination standards and ensure that discriminatory behaviour or language by public officials is not tolerated;
- Develop expeditious and transparent procedures for changing the name and sex of a transgender person on birth certificates, identity cards, passports, educational certificates and other similar documents;
- 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;



- Facilitate the prompt transfer of refugees and asylum-seekers from cities where they have expressed concerns regarding their security due to their sexual orientation or gender identity and expedite their asylum claims and resettlement to a third country;
- Ensure that state officials involved in the reception of refugees and asylum-seekers are trained in assessing asylum claims based on sexual orientation and gender identity.

#### **Protect the right to freedom of association**

- 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.

## ENDNOTES

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<sup>1</sup> From "I am a mother" testimony on website of LISTAG (Lambdaistanbul Family Group) a voluntary group that has been working to support the family members of LGBT individuals since January 2008. The full testimony is available at <http://listag.wordpress.com/2009/02/09/ben-bir-anneyim/>

<sup>2</sup> From an interview with Hürriyet newspaper *Eşcinsellik hastalık, tedavi edilmeli*, Hürriyet, 7 March 2010 available at <http://www.hurriyet.com.tr/pazar/14031207.asp>

<sup>3</sup> The right to non-discrimination a fundamental principle underpinning all human rights is protected by various conventions to which Turkey is a party including the International Convention on Civil and Political Rights (Article 2(1)), the International Covenant on Economical, Social and Cultural Rights (Article 2 (2)) and the European Convention on Human Rights and Fundamental Freedoms (Article 14) which all prohibit discrimination in the enjoyment of other rights set out in the conventions. Article 26 of the International Covenant on Civil and Political Rights also contains prohibition against discrimination in all areas and in respect of all rights. It reads "All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status." Protection against discrimination on grounds of sexual orientation and gender identity forms part of other status. This has been stated by the Committee on Economic, Social and Cultural Rights: "Other status" as recognized in article 2(2) includes sexual orientation<sup>3</sup>. States parties should ensure that a person's sexual orientation is not a barrier to realising Covenant rights, for example, in accessing survivor's pension rights. In addition, gender identity is recognized as among the prohibited grounds of discrimination; for example, persons who are transgender, transsexual or intersex often face serious human rights violations, such as harassment in schools or in the work place (General Comment 20, para. 32). The Human Rights Committee and the European Court of Human Rights have also consistently applied non-discrimination standards to include sexual orientation and gender identity.

<sup>4</sup> The Minister was quoted during a media interview as saying "I believe homosexuality is a disorder, an illness and should be treated" *Eşcinsellik hastalık, tedavi edilmeli*, Hürriyet, 7 March 2010 available at <http://www.hurriyet.com.tr/pazar/14031207.asp>

<sup>5</sup> Kaos-GL Association, Lambdaistanbul LGBTT Association, Siyah Pembe Üçgen İzmir LGBT Association, Hevjin LGBTT Initiative, MorEl Eskişehir LGBTT Initiative and Pembe Hayat LGBTT Solidarity Association

<sup>6</sup> The Organization for Security and Co-operation in Europe (OSCE) defines hate crimes as "criminal offences, including offences against persons or property, where the victim, premises, or target of the offence are selected because of their real or perceived connection, attachment, affiliation, support or membership of a group." OSCE: "Combating Hate Crimes in the OSCE Region". OSCE Office for Democratic Institutions and Human Rights, Warsaw, 2005. p.12.

<sup>7</sup> *Eşcinseller de eşitlik istiyor, verecek miyiz?* Milliyet, 28 January 2008, available at <http://www.milliyet.com.tr/2008/01/28/siyaset/asiy.html>

<sup>8</sup> LGBTT Constitutional Committee is composed of Antalya Gökkuşluğu LGBT Initiative, Kaos GL Association, Kaos GL İzmir, KAOSİST LGBT Civil Society Initiative, Lambda,stanbul LGBTT Association,

MorEl Eskişehir LGBTT Initiative, Pembe Hayat LGBTT Association.

<sup>9</sup> Legislative reforms regarding human rights includes the introduction of the new Turkish Penal Code (Law 5237) and Code of Criminal Procedures (Law 5271) which came into force on 1 June 2005. For details please see, Amnesty International, Turkey: The Entrenched Culture of Impunity Must End, 5 July 2007 (*AI Index: EUR 44/008/2007*)

<sup>10</sup> From an interview with Hürriyet newspaper *Eşcinsellik hastalık, tedavi edilmeli*, Hürriyet, 7 March 2010 available at <http://www.hurriyet.com.tr/pazar/14031207.asp>

<sup>11</sup> Hüseyin Özalp, “May homosexuals be members of AKP?” *Sabah*, April 15, 2003, cited in *We need a law for liberation*, Human Rights Watch, May 2008 available at <http://www.hrw.org/en/reports/2008/05/21/we-need-law-liberation>

<sup>12</sup> “Anayasanın eşitlik ilkesine cinsel yönelim eklensin”, 10 February 2011, available at <http://www.farklihaber8.com/haber/tartisma/anayasanin-esitlik-ilkesine-cinsel-yonelim/2277.aspx>

<sup>13</sup> Interview with Amnesty International delegates, 23 February 2011.

<sup>14</sup> As of March 2011, the criminal prosecution for defamation initiated following a criminal complaint by lawyers representing Burhan Kuzu continued.

<sup>15</sup> A full list of the recommendations can be found within the report of the Universal Periodic Review Working Group on Turkey adopted at the 15<sup>th</sup> session of the United Nations Human Rights Council, A/HRC/15/13/Add.1, available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G10/160/66/PDF/G1016066.pdf?OpenElement>

<sup>16</sup> Resolution A/RES/65/208 condemned all extrajudicial, summary or arbitrary executions and demanded that all States ensure the practice is brought to an end by a recorded vote of 122 in favour to 1 against, with 62 abstaining. Prior to action, an amendment offered by the United States, which added the words “or because of their sexual orientation” to an operative paragraph, was adopted by a recorded vote of 93 in favour to 55 against, with 27 abstaining, with some 16 delegations taking the floor to explain their position. Text of the resolution available at <http://www.un.org/en/ga/65/resolutions.shtml>

<sup>17</sup> Text of the statement available at <http://www.iglhr.org/binary-data/ATTACHMENT/file/000/000/491-1.pdf>

<sup>18</sup> Article 122 of the Turkish Penal Code (Law no. 5237) establishes criminal liability for discrimination.

<sup>19</sup> Article 10 of the constitution prohibits discrimination due to “language, race, colour, gender, political thought, philosophical belief, religion, denomination or similar ground”.

<sup>20</sup> Article 3 of the draft previously included the ground of sexual identity, intended to encompass sexual orientation and gender identity. As of March 2010 the draft law was available on the website of the Ministry of the Interior, [http://www.icisleri.gov.tr/default.icisleri\\_2.aspx?id=5692](http://www.icisleri.gov.tr/default.icisleri_2.aspx?id=5692)

<sup>21</sup> The law makes no mention of same-sex couples but refers to men and women.

<sup>22</sup> Article 10, h, 8 of the Military Service Law (no. 1520) exempts persons deemed by the Regulation on health ability in the armed forces to be unfit for military service. Article 17, D/4 lists “advanced sexual disorders” among a list of illnesses making men unfit to perform military service.

<sup>23</sup> Article 125 E/9 of the Civil Servants Law (no. 657) allows for persons to be dismissed if found “to act in an immoral and dishonourable way which is not compatible with the position of a civil servant”. Court

documents seen by Amnesty International but names withheld on the request of the individuals concerned. Decisions confirmed the dismissal of a police officer and a teacher at administrative courts in Istanbul and Çorum respectively. The dismissal decision in the case of the police officer was confirmed by Istanbul 8th Administrative Court on 25 December 2009 while the case of the teacher case remains pending on appeal.

<sup>24</sup> *Kaos GL vs. Turkey*, Application no. 4982/07, Admissibility decision 19 June 2009

<sup>25</sup> *Sex and the RTÜK*, Hürriyet, 23 March 2011. Available at <http://www.hurriyet.com.tr/gundem/17346740.asp?gid=373>

<sup>26</sup> Article 90/5 of the Constitution reads: International agreements duly put into effect bear the force of law. No appeal to the Constitutional Court shall be made with regard to these agreements, on the grounds that they are unconstitutional. In the case of a conflict between international agreements in the area of fundamental rights and freedoms duly put into effect and the domestic laws due to differences in provisions on the same matter, the provisions of international agreements shall prevail.

<sup>27</sup> The final decision in the case was suspended during the period of statute of limitations in accordance with the Law on Release on Probation and the Suspension of Cases and Sentences for the Offences Committed until 23 April 1999. ('23 Nisan 1999 Tarihine Kadar İşlenen Suçlardan Dolayı Şartla Saliverilmeye, Dava Ve Cezaların Ertelenmesine Dair Kanun'). According to the Article 4 of the Law, for the offences requiring maximum 10 years or less prison sentence which were committed before 23 April 1999, the investigation, the case or the final judgment in the case shall be suspended. The files and evidences in relation to these offences are retained until the statute of limitations runs out. In case a similar or more severe offence is committed during the statute of limitations period, the suspended case shall be re-opened. If no similar or more severe offence is committed, the case shall be dropped.

<sup>28</sup> *İt iti Isırmaz" Bir Alan Araştırması: İstanbul'da Yaşayan Trans Kadınların Sorunları*, Lambdaistanbul Solidarity Association, p37.

<sup>29</sup> Amnesty International has long held concerns regarding the inability of persons alleging ill-treatment by law enforcement officers to access medical assistance and the lack of accurate official medical reports contributing to impunity for violations of human rights by law enforcement officials. See for example *Amnesty International; Briefing to the Committee Against Torture*, October 2010, Index: EUR 44/023/2010, available at <http://www.amnesty.org/en/library/info/EUR44/023/2010>. The question of whether transgender individuals are additionally discriminated against on the grounds of their gender identity when seeking medical documentation following alleged ill-treatment was not examined in the scope of this document.

<sup>30</sup> Misdemeanour Law (no.5326) is used to issue fines for breach of the peace, or for disrupting traffic, the Road Traffic Law (no. 2918) is used to issue fines for (in this case pedestrians) disrupting traffic.

<sup>31</sup> As of March 2011 regulations allow for reductions to the 15 month period for university graduates for persons aged 30 or over, payment in lieu of time served.

<sup>32</sup> The right to refuse military service for reasons of conscience is inherent in the notion of freedom of thought, conscience and religion as laid down in a number of international human rights instruments, including the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights (ICCPR) to which Turkey is a party. As far back as 1998, in its Resolution 1998/77 the UN Commission for Human Rights has stated that the right to conscientious objection to military service is protected by Article 18 of the International Covenant on Civil and Political Rights (ICCPR, right to

freedom of religion, conscience and belief),. "The right of everyone to have conscientious objections to military service [constitutes] a legitimate exercise of the right to freedom of thought, conscience and religion, as laid down in Article 18 of the Universal Declaration of Human Rights and Article 18 of the ICCPR." In the resolution, the Committee also repeated its call on states to "provide for conscientious objectors various forms of alternative service which are compatible with the reasons for conscientious objection, of a non-combatant or civilian character, in the public interest and not of a punitive nature" and emphasised that states must "refrain from subjecting conscientious objectors to imprisonment and to repeated punishment for failure to perform military service," recalling "that no one shall be liable or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country." On 3 November 2006, the Human Rights Committee ruled that the prosecution and conviction of two conscientious objectors by the Republic of Korea for their refusal to perform compulsory military service had breached Article 18 of the ICCPR as no civilian alternative was available (Communication nos. 1321/2004 and 1322/2004).

<sup>33</sup> The European Court of Human Rights has found bans on gay men serving in the armed forces to violate Article 8 of the European Convention on Human Rights (Right to respect of private and family life). See for example *Lustig-Prean and Beckett vs. UK*, judgment of 27 September 1999, application nos. 31417/96 and 32377/96

<sup>34</sup> Article 66/1 of the Military Penal Code (no. 1632) provides for imprisonment of between one and three years for the crime desertion.

<sup>35</sup> Article 122 of the Penal Code criminalizes discrimination based on language, race, colour, gender, disability, political opinion, philosophical belief, religion, denomination or similar grounds in circumstances including buying, selling, or transferring a property; providing or using a service and in employment.

<sup>36</sup> For example, The Committee on Economic, Social and Cultural Rights in its General Comment 20 explicitly states discrimination on grounds of sexual orientation and gender identity to be prohibited under the International Covenant on Economic, Social and Cultural Rights. Paragraph 32 of the General Comment reads: "Other status" as recognized in article 2, paragraph 2, includes sexual orientation. States parties should ensure that a person's sexual orientation is not a barrier to realizing Covenant rights, for example, in accessing survivor's pension rights. In addition, gender identity is recognized as among the prohibited grounds of discrimination; for example, persons who are transgender, transsexual or intersex often face serious human rights violations, such as harassment in schools or in the workplace.

<sup>37</sup> Başaran, Y (1996), *Ülker Sokak Sakinleri ve Travestiler*, Kaos GL Journal, 27. Available at [www.kaosgl.com/resim/Dergi/PDF/KaosGLD27.pdf](http://www.kaosgl.com/resim/Dergi/PDF/KaosGLD27.pdf)

<sup>38</sup> According to a Cabinet decision (no. 2006/10172, published in the Official Gazette 28 March 2006), Tarlabası, along with several other areas within the Beyoğlu district was declared by the state a "regeneration area" giving the local authorities special powers to gain possession of the buildings.

<sup>39</sup> Home owners within the project area also told Amnesty International that they were not consulted properly regarding the possession of their homes, that they were subjected to coercion in order that they vacate their homes and that the level of compensation and or alternative housing offered to them was unfair.

<sup>40</sup> Amnesty International sought a meeting with the Beyoğlu district authorities however they told Amnesty International that they were not available during the period.

<sup>41</sup> Article 5 of the Employment Law (no. 4857) prohibits discrimination on the basis of language, race, gender, political opinion, philosophical belief, religion, religions denomination or similar grounds. However there is jurisprudence of the Supreme Court of Appeals ruling that discrimination cannot be made on the basis of "sexual preference" (cited in *Never Again project: A survey of legislation*, Kaos-GL, p.4

<sup>42</sup> *Türkiye'deki LGTT Bireylerin Günlük Yaşamında Maruz Kaldığı Heteroseksist Ayrımcı Tutum ve Uygulamalar*, Kaos-GL, p21

<sup>43</sup> *İt iti Isırmaz" Bir Alan Araştırması: İstanbul'da Yaşayan Trans Kadınların Sorunları*, Lambdaistanbul Solidarity Association, p34

<sup>44</sup> The law requires transgender individuals to undergo gender reassignment operations as a prerequisite for changing their gender in law (see barriers to accessing other rights section below). The General Regulations regarding Brothels and Prostitution and the Fight Against Sexually Transmitted Diseases (No: 30/03/1961 - 5/984) (Genel Kadınlar ve Genelevlerin Tabi Olacakları Hükümler Ve Fuhuş Yüzünden Bulaşan Zührevi Hastalıklarla Mücadele Tüzüğü) only regulates women sex workers. Available at <http://www.mevzuat.adalet.gov.tr/html/5189.html>

<sup>45</sup> 79% of transgender women surveyed in Istanbul by Lambdaistanbul said that they had no health insurance. *İt iti Isırmaz" Bir Alan Araştırması: İstanbul'da Yaşayan Trans Kadınların Sorunları*, Lambdaistanbul Solidarity Association, p41

<sup>46</sup> Article 40 of the Turkish Civil Code regulates the gender reassignment which is as follows; "A person who wants their sex reassigned can demand permission from the court for the reassignment of the sex by applying to the court in person. However, for the permission, the person should be above the age of eighteen, [and] not married. Furthermore the person should have a transsexual nature and the person must document this with a formal report issued by a health council at an educational and research hospital stating that the sex reassignment is necessary for the mental health and that the person must be have a permanent loss of reproductive capacity.

When the sex reassignment operation is proved to have taken place with permission [from the court] and conducted in accordance with the aim and medical methods, the court makes the decision to make necessary corrections in the population registry."

<sup>47</sup> It was consistently and credibly alleged by various individuals that they were unable to access university buildings on various occasions. The findings are also consistent with Amnesty International's research documenting a pattern of public officials' refusal to accept identity documents not corresponding to a transgender individual's gender.

<sup>48</sup> ID cards in Turkey are colour coded, pink for women and blue for men.

<sup>49</sup> Regarding the situation of refugees and asylum-seekers in Turkey see *Stranded: Refugees in Turkey denied Protection*, Amnesty International available at <http://www.amnesty.org/en/library/info/EUR44/001/2009>. See specifically p.23 regarding the situation of LGBT refugees and asylum-seekers.

<sup>50</sup> For more information on the security concerns of LGBT refugees and asylum-seekers in Turkey see Helsinki Citizens Association Turkey, *Unsafe Haven: The Security Challenges Facing Lesbian, Gay, Bisexual and Transgender Asylum Seekers and Refugees in Turkey*. Available at <http://www.hyd.org.tr/?pid=752>

<sup>51</sup> Kaos-GL Association ([www.kaosgl.org](http://www.kaosgl.org)); Pembe Hayat LGBT Solidarity Association ([www.pembehayat.org](http://www.pembehayat.org)); Lambdaistanbul ([www.lambdaistanbul.org](http://www.lambdaistanbul.org)); LGBTT Istanbul Solidarity Association ([www.lgbtt-istanbul.org](http://www.lgbtt-istanbul.org)); Siyah Pembe Üçgen İzmir ([www.siyahpembe.org](http://www.siyahpembe.org)),

<sup>52</sup> MorEl Eskişehir LGBTT Initiative (<http://moreleskisehir.blogspot.com/>); Hevjin LGBT Initiative ([www.hevjin.org](http://www.hevjin.org))

<sup>53</sup> See Amnesty International, *Amnesty International criticizes judicial harassment of LGBT association*. Available at <http://www.amnesty.org/en/library/asset/EUR44/003/2010/en/73cd6f61-9a2d-4fa2-a8d4-53ce87dd7e1d/eur440032010en.pdf>

<sup>54</sup> In June 2011 Amnesty International contacted Facebook regarding the closures however, no response was received by the time that the report went to print.

<sup>55</sup> The following Articles of the Civil Code (no. 4721) provide for associations to be closed for violating public morals: Article 47 – Group of persons organized to create a single body and independent property groups constructed for special object, are defined as legal entity as per the provisions contrasting its qualities, relations etc. The groups comprising persons and properties of which the object is contrary to the laws and morality may not be entitled to possess the status of legal entity.

Article 56 – An association is defined as a society formed by unity of at least seven real persons or legal entities for realisation of a common object other than sharing of profit by collecting information and performing studies for such purpose. No association may be formed for an object contrary to the laws and morality.

Article 89 – If the objects of the association are not compatible with the legislation and morality, the court may give judgement for the dissolution of the association upon request of the Public Prosecutor or any other concerned person. The court takes all the necessary measures during the proceeding of the case, including suspension of activity.

<sup>56</sup> The complaint, filed on 15 August 2005 was rejected by the Ankara State Prosecutors office noting Turkey’s obligations to uphold the freedom of association under Article 11 of the European Convention on Human Rights and Article 22 of the International Covenant on Civil and Political Rights.

<sup>57</sup> Amnesty International launched a web action urging the authorities to respect LGBT peoples right to freedom of association. The text of the action is available at <http://www.amnesty.org/en/appeals-for-action/turkey-urged-respect-lgbt-right-freedom-of-association>

<sup>58</sup> The verdict of the 7<sup>th</sup> Chamber of the Supreme Court of Appeals decision (No: 2008/5196) reads that “In case the defendant association acts in a way to encourage lesbian, gay, bisexual and transgender relationships in violation of its Constitution, the articles 30 and 31 of the Law on Associations can be applied and the closure of the association can be requested”. This decision was also repeated in the reasoned judgment of the 6<sup>th</sup> Izmir First Instance Court (2010/186) in the Siyah Pembe Üçgen İzmir LGBT Association closure case. The judgment states that what is deemed to be violating public morality is not to be lesbian, gay, bisexual and transgender or to use these words, but to act in a way to encourage others to be so.

<sup>59</sup> See Amnesty International, *Activist group will not be closed for violating Turkish moral values*. Available at <http://www.amnesty.org/en/library/info/EUR44/009/2010/en>

<sup>60</sup> Regarding crimes carried out in the name of “honour” in Turkey see *Amnesty International, Turkey: Women confronting family violence*. 1 June 2004, Index: EUR 44/013/2004. Available at

<http://www.amnesty.org/en/library/info/EUR44/013/2004>

<sup>61</sup> *Nefret suclari raporu 2010*, Kaos-GL, Pembe Hayat and Siyah Pembe Ucgen LGBT associations

<sup>62</sup> "Lezbiyen ilişki yaşıyordu, öldürdüm" [cnnurk.com](http://www.cnnurk.com), available at <http://www.cnnurk.com/2011/turkiye/03/07/lezbiyen.iliski.yasivyordu.olderdum/609154.0/index.html>

<sup>63</sup> *Bir Travesti Daha Vahşice Öldürüldü*, Bianet, available at <http://www.bianet.org/bianet/toplumsal-cinsiyet/128803-bir-travesti-daha-vahsice-olderuldu>

<sup>64</sup> *OSCE: Combating Hate Crimes in the OSCE Region*. OSCE Office for Democratic Institutions and Human Rights, Warsaw, 2005. p. 12.

<sup>65</sup> *Türkiye'deki LGBTT Bireylerin Günlük Yaşamında Maruz Kalığı Hetroseksist Ayrımcı Tutum ve Uygulamalar*, Kaos-GL, p33

<sup>66</sup> On 18 February 2011, Amnesty International requested information under the Freedom of Information Law, on the number of murders of lesbian, gay, bisexual and transgender people, whether they were investigated, the number of prosecutions and convictions, whether there were any reductions, the number of fines issued against LGBT people, disaggregated according to region, gender, age, sexual orientation, gender identity and ethnic origin during 2007, 2008, 2009, 2010, 2011.

<sup>67</sup> *LCB v the United Kingdom*, judgment of 9 June 1998 at para 36.

<sup>68</sup> *Osman v The United Kingdom*. judgment of 28 October 1998 at para 115.

<sup>69</sup> *Nachova and Others v. Bulgaria [GC]*, nos. 43577/98 and 43579/98

<sup>70</sup> Article 29 /1 of the Turkish Penal Code provides undue provocation allowing for reduction in sentence: "Anyone who commits an offence in a state of anger or severe distress provoked by a tort shall be sentenced to imprisonment for a term of eighteen to twenty four years instead of aggravated life imprisonment and to imprisonment for a term of twelve to eighteen years instead of life imprisonment. The sentences in other cases shall be reduced by from one quarter to three quarters."

<sup>71</sup> Article 237/1 of the Criminal Procedures Law reads that "The victim, real persons and legal entities, who have been damaged by the crime, as well as the individuals liable for pecuniary compensation, are entitled to intervene in the public prosecution during the prosecution phase at the court of the first instance at any stage, until the judgment has been rendered, announcing that they are putting forward their claim."

<sup>72</sup> Judgment issued by Istanbul 2<sup>nd</sup> Heavy Penal Court following the case of the 2004 killing of Yelda Yıldırım

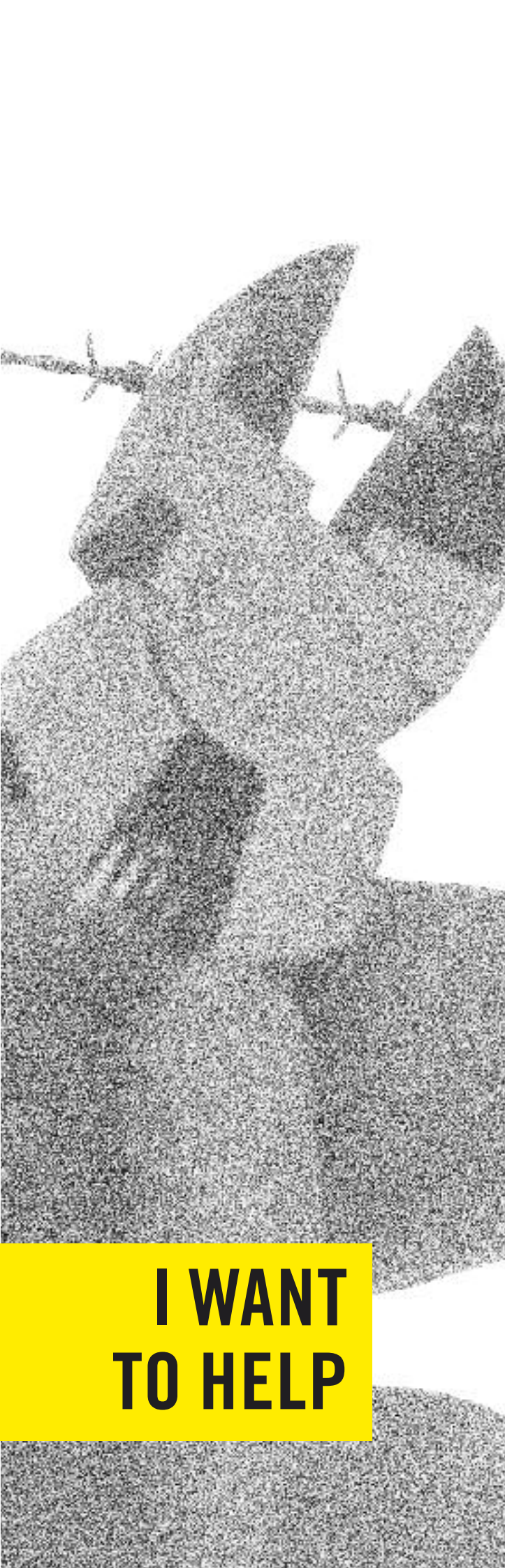
<sup>73</sup> 27 February 2007; Istanbul 6<sup>th</sup> Heavy Penal Court

<sup>74</sup> See *Women confronting violence within the family*, Amnesty International EUR 44/013/2004 June 2004. Available at <http://www.amnesty.org/en/library/info/EUR44/013/2004>

Law requires that shelters for women victims of domestic violence are available in all settlements with a population of 10,000. However at the end of 2010 the number of shelters for women victims of domestic violence remained far below the number required in domestic law. According to official records 57 existed in Turkey, an increase of 8 over the previous year.

<sup>75</sup> *Opuz vs. Turkey*, Application no. 33401/02, judgment 8 June 2009





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## **‘NOT AN ILLNESS NOR A CRIME’**

### **LESBIAN, GAY, BISEXUAL AND TRANSGENDER PEOPLE IN TURKEY DEMAND EQUALITY**

Lesbian, gay, bisexual and transgender (LGBT) solidarity organizations in Turkey have fought a long campaign for equality before the law. There is no law in Turkey which explicitly prohibits discrimination on the grounds of sexual orientation or gender identity.

Lesbian, gay, bisexual and transgender people in Turkey suffer discrimination in employment, housing and access to public services. The rights of LGBT solidarity organizations to freedom of expression and association have been repeatedly threatened.

Discriminatory statements by public officials and in the media lead to an official toleration of homophobia and transphobia. In this discriminatory climate, violence and harassment against lesbian, gay, bisexual and transgender individuals by police officers and in the military remains unchecked. Effective measures are also lacking to prevent and investigate suspected hate crimes targeting people on the basis of their sexual orientation or gender identity. In this report, Amnesty International shows what the lack of anti-discrimination legislation means in the daily lives of people from this community in Turkey.

Amnesty International calls on the Turkish authorities to explicitly prohibit discrimination on grounds of sexual orientation and gender identity, to take immediate steps to counter hate crimes and to protect lesbian, gay, bisexual and transgender people’s rights to freedom of expression and association.

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