



WHOSE MORALS?

EQUALITY NOW FOR LESBIANS, GAY MEN,
BISEXUAL AND TRANSGENDER PEOPLE
IN TURKEY

AMNESTY
INTERNATIONAL





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Discrimination blights the lives of lesbians, gay men, bisexual and transgender people in Turkey. Successive governments have, at best, ignored these communities' demands for their rights; at worst, they have publicly announced their prejudices, which has compounded negative stereotyping in the media, and tolerated homophobia and transphobia by public officials.

Many people in Turkey hide their sexual orientation or gender identity from their employers, public officials and even their families due to fear of violence or other negative treatment. They have no legal protection against discrimination based on their sexual orientation or gender identity. Turkey must introduce constitutional change creating these protections and paving the way for comprehensive non-discrimination legislation.

DAILY DISCRIMINATION

Gay and bisexual men are often accused of violating narrow definitions of masculinity while lesbian and bisexual women suffer discrimination because of both their gender and their sexual orientation. Transgender people often have greater visibility – which means they are more likely to be subjected to violence at the hands of public officials.

Arbitrary fines are routinely handed out to transgender women going about their daily lives by police officers, in a way that amounts to systematic harassment and a punishment due to their gender identity. Transgender women have been fined thousands of euros for “obstructing traffic” or “breach of the peace” while simply walking on the street. If they challenge the fine, they may face a more violent reaction.

Many gay men performing their compulsory military service talk of widespread abuse.

“After I talked with my commander the whole squadron found out everything. I was sworn at, harassed and beaten as well as other unbearable things. Then perhaps

as a precaution, which I think was unfair, they locked me in a room for seven days. They guarded the room. I was only able to go to the toilet once a day when the rest of my squadron was away. I was only able to eat when they brought food. Otherwise I spent 24 hours in that cell.”

Young gay man who was in the army in Thrace, western Turkey, January 2010.

In the face of government hostility and discrimination, lesbian, gay, bisexual and transgender (LGBT) rights groups play a vital role in providing support and advice. However, these organizations are also targeted: the authorities attempt to close them down, and violate their members' right to freedom of association. While the groups

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Young gay man who was in the army in Thrace, western Turkey, January 2010.



have successfully challenged the Civil Code cases against them in court, the judgement from the highest appeal court provides a loophole for further cases to be opened.

Ultimately, continued and accepted discrimination can be used to justify hate crimes against lesbians, gay men, bisexual and transgender people. In 2010, LGBT associations documented 16 cases where people were murdered, apparently because of their perceived sexual orientation or gender identity. Crimes such as these continue. On 31 July 2011 Didem Soral, a transgender woman living in Istanbul was murdered. According to press reports, the alleged perpetrator told police that he killed her because of her identity as a transgender woman.

The authorities' current policies and practices are not effective in combating suspected hate crimes. Urgent steps are needed to prevent further hate crimes and to ensure that past crimes are effectively investigated, and the perpetrators are brought to justice.

PUBLIC ATTITUDES, LEGAL PROTECTION

Since the Justice and Development Party (AKP) came to power in 2002, there have been some improvements to the protection of human rights in Turkey. However, legal changes so far have not included protection of the right not to be discriminated against on grounds of sexual orientation or gender identity. Without protection in domestic law, widespread discrimination against the rights of lesbian, gay, bisexual and transgender people continues, not only within the courts but also in everyday life.

The absence of protection in law, together with government failure to take a stand against discrimination also sends a message to public officials, the media and wider civil society: that homophobia and transphobia are tolerated. When the former Minister for Women and the Family, Aliye Kavaf, said in 2010 that "homosexuality is a biological disorder, an illness and should be treated" the government reinforced the prejudice by failing to distance itself from the statement or issue an apology.

Left: Transgender activist kissing her partner at the Pride march, Istanbul 2009.

Above: Pride March in Istanbul, 2009.

The government must break with its past record and ensure that its officials do not make statements that are likely to increase discrimination. In June 2011, a significant number of members of parliament who supported the human rights of lesbian, gay, bisexual and transgender people during their campaign for election were elected to Parliament. The draft Law to Combat Discrimination and Equality is scheduled to come before Parliament in this current session. If it is amended in line with international standards and it becomes law without delay, there would be comprehensive protection in law against all forms of discrimination in Turkey.

"Homosexuality is a biological disorder, an illness and should be treated."

Former Minister for Women and the Family, Aliye Kavaf, 2010



© Black Pink Triangle Izmir

The legal changes together with the political will to combat discrimination should help to put an end to the discriminatory use and interpretation of law. For example, Article 125 of the Civil Servants Law, prohibiting “immoral and dishonourable behaviour” has been used to dismiss civil servants on grounds of their sexual orientation.

The concept of morality in the Civil Code is used in different fields of public life. Coverage of LGBT issues in broadcast and print media has also led to legal proceedings against media outlets for allegedly violating obscenity and public morals provisions. In March 2011, the Radio and Television Supreme Council (RTÜK), the state agency for regulating radio and television broadcasts, started legal proceedings against 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 liras (€4,500).

FREEDOM OF ASSOCIATION

The concept of morality in the Civil Code has also frequently been used by prosecutors to request the closure of LGBT associations.

LGBT associations work to combat discrimination, campaign for equality and raise awareness in Turkish society. But the rights of their members to freedom of association have been attacked. The authorities have attempted to close down every LGBT association founded before 2010.

LGBT support associations in the larger cities in Turkey provide solidarity and a secure space for lesbian, gay, bisexual and transgender individuals while campaigning against hate crimes and discrimination. In addition, civil society networks – known as “initiatives” – have been established in Diyarbakır and Eskişehir, and initiatives in other provincial towns and cities are set to follow.

Far from facilitating the work of these groups, however, the authorities have threatened them with closure, accusing

them of violating administrative codes and receiving irregular funding. Such threats to the right to freedom of expression and association violate Turkey’s obligations under the European Convention on Human Rights.

Prominent activists in Izmir have been threatened by police officers in their own homes, telling them that the police would not allow them to live there if they continued with their campaigning.

Pembe Hayat (Pink Life) 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 an office of the Ministry of the Interior, in an apparently arbitrary application of the rules regarding receiving funds from abroad. Kaos-GL also told Amnesty International that they had been audited eight times by this office between 2006 and 2009 – a far greater number than other human rights associations were subjected to.



Left: Protest at the closure case against Black Pink Triangle LGBT Association in İzmir, during the “Struggle against hate crimes” week 2009.
Above: March in Ankara on Anti-Homophobia Day, 2010.

There are continued threats of violence and other forms of harassment against LGBT rights activists, but online activism has provided a safe space in which to campaign and share information. Yet this too has been threatened. LGBT groups run by activists in Diyarbakır and İzmir on the social networking site Facebook were shut down by Facebook’s site administrators following complaints from unidentified individuals, resulting in the groups losing hundreds of contacts. Facebook stated that the groups had been shut down in error, but that they were later re-opened.

The most frequent method used by local authorities to suppress the work of LGBT rights associations has been to open civil law closure cases on the grounds that the

associations violate “Turkish morals and family structure”. Complaints by local Governors’ offices 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. Apart from the costs of defending these actions, which divert financial and other resources from the associations’ core work, some of the cases have been drawn out over years, leading to uncertainty over their future.

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 (Black Pink Triangle) association in 2009 following a complaint by the local authorities. The closure case was rejected by the local court in İzmir on 30 April 2010.

SUPREME COURT RULING

Lamdalistanbul faced a closure threat from the Istanbul Governor’s office in 2006. The complaint was rejected by the Istanbul State Prosecutor’s Office in 2007 only for the local authorities in Istanbul to appeal this decision. The decision was overturned and a closure case opened. In 2008, the local court upheld the complaint and ordered the closure of the association. That 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.

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, but 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. There is a danger that this ruling could be used to open future closure cases against LGBT associations.

AHMET YILDIZ, ISTANBUL

Ahmet Yıldız, an openly gay man, was shot on 15 July 2008 in what many believe to be an “honour killing”. This killing has come to symbolize the authorities’ failure to prevent violence based on an individual’s sexual orientation or gender identity.

Ahmet Yıldız was shot dead outside the house that he and İbrahim Can shared in Üsküdar, Istanbul. As in other suspected “honour killings”, the family failed to collect the body for burial as a gesture of their rejection.

In the months before the murder, Ahmet Yıldız had asked state prosecutors for protection as he had received violent threats from his family. These threats were never investigated. The failure to investigate continued after the murder. Most critically of all, despite the fact that Ahmet Yıldız’ family had been making threats against him, no attempt was made to interview his father, the only suspect, until October 2008, when an arrest warrant was issued. By this time Ahmet Yıldız’ father could not be found. Telephone records indicate that by this time he may have travelled to Iraq.

Nearly three years later, a new judge was assigned to the case, and at the sixth hearing on 14 March 2011, an international arrest warrant was ordered for the father of Ahmet Yıldız. At the same hearing, the Court ordered an investigation into the threats made against Ahmet Yıldız by the family before his death. However, at the following hearing on 16 June 2011, no international arrest warrant for the father of Ahmet Yıldız had been issued by the police. Amnesty International members are campaigning for justice for Ahmet Yıldız.

“The state has failed to protect Ahmet’s right to life and prevent his killing” said his partner, İbrahim Can *“This is compounded by the fact that, three years on from his murder, those responsible have yet to be caught and brought to justice... I demand that those who killed Ahmet are brought in front of the courts.”*



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HATE CRIMES

Violent crimes against lesbians, gay men, bisexual and transgender people are far from isolated incidents, and are frequently reported. No official statistics are available but, in 2010 alone, LGBT associations documented 16 murders of individuals believed to have been killed because of their real or imputed sexual orientation or gender identity.

Hate crimes are defined 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.”*

Organization for Security and Co-operation in Europe

“The state has failed to protect Ahmet’s right to life and prevent his killing.”

İbrahim Can, partner of Ahmet Yıldız

Although there is a high number of suspected hate crimes in Turkey, which include those suspected to have been carried out with homophobic or transphobic intent, the authorities lack effective policies or practices to combat such crimes.

The failure to prevent and effectively investigate suspected hate crimes violates the authorities’ human rights obligations. As a state party to the European Convention on Human Rights, Turkey has an obligation to protect the right to life. As part of this obligation the authorities are required to ensure that effective investigations are carried out in cases of alleged violations to the right to life. The same Convention also requires that investigations take all reasonable steps to uncover a hate motive in order to satisfy the requirements of the right to life.

Obtaining detailed information in relation to the suspected hate murders is difficult. In many cases information is obtained solely through media reporting, while LGBT rights associations and in some cases partners of



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Far left: Protest against the killing of Ahmet Yıldız at the Gay Pride march, Istanbul, 2011.

Left: Event against homophobia, with portraits of people murdered in homophobic hate crimes, Ankara University Campus, Turkey, May 2010.

EYLÜL, ESKİSEHİR

Eylül is a 24-year-old transgender woman sex worker and founder member of MorEL (Purple Hand), 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 threats of violence, Eylül was allegedly raped by the man.

"My whole body was shaking. My sister and friends were also very frightened. I don't know how to explain the sheer terror I felt. After he left, he continued to call on the phone. He kept saying 'you are mine now; I will never leave you alone'. I am really very scared and don't know what to do. I need some kind of help."

Eylül, August 2011.

On 17 February 2011, Eylül reported that another transgender woman sex worker had been assaulted by the same man and had needed six stitches to her stomach after being attacked with a knife. The other transgender woman was too afraid to make a complaint to the police.

A criminal prosecution has been started on grounds of "threats", "basic sexual assault" and "violation of the home". The first hearing is in December 2011.



See Amnesty International's report: *"Not an illness nor a crime": Lesbian, gay, bisexual and transgender people in Turkey demand equality* (Index: EUR 44/001/2011).

the victims are denied access to information about the investigation. In 2011, Amnesty International made an Information Law request that the authorities provide statistics regarding the number of murders of lesbian, gay, bisexual and transgender individuals for each year since 2006 and whether the perpetrators had been brought to justice. In reply, the authorities stated that no such information was available – which suggests that even the most basic steps to combat hate crimes, such as effective data collection, are not being taken.

Despite the lack of detailed information from the authorities, some facts do emerge. Activists point to the manner in which many of the victims have been killed as an indication of a hate motive. On occasion, the perpetrators confess to a hate motive for murders and other violent crimes against people with a different sexual orientation or gender identity. However, shortcomings in the investigation and prosecution of these crimes means that in many cases those responsible are not brought to justice.

Amnesty International is concerned that in cases of suspected hate murders the Turkish authorities are not upholding their obligations under international law. By failing to involve the next-of-kin of the deceased in the investigation of suspected hate murders, the authorities do not meet their obligations to conduct effective investigations as set out in 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 by courts due to the identity of the victim. Finally, the absence of specific procedures to investigate hate crimes raises concerns that the investigations are not effective.

"I am really very scared and don't know what to do. I need some kind of help."

Eylül, Eskişehir, August 2011



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CONCLUSION

Following the re-election of the AKP government in June 2011, there is a real opportunity to make progress towards equality for all. There is a growing political consensus on the need for fundamental constitutional change, including non-discrimination provisions at every level of the law.

The authorities' current policies and practices are not effective in combating suspected hate crimes. Urgent steps need to be taken to prevent further hate crimes and ensure that past crimes are effectively investigated and that the perpetrators are brought to justice.

Above: Collage of some of the people who supported LGBT rights in Turkey at different Pride events in 2011.

Front cover: Metal Tower with Pride Flags in Istanbul Pride, 2011. © Amnesty International

ACT NOW

Please write to your Ministries of Foreign Affairs, asking them to call on the Turkish government to fulfil their obligations under international law:

- Extend Constitutional protections of the right to non-discrimination to include sexual orientation and gender identity by amending Article 10 of the Constitution. Introduce comprehensive non-discrimination legislation that includes prohibition of discrimination on grounds of sexual orientation and gender identity.
- Ensure that notions of “public morals” are not used to restrict the exercise of the right to freedom of association on the basis that the human rights group affirms diverse sexual orientation or gender identities. Remind

provincial governorships of their obligations to respect and protect the rights of all people to freedom of association, without discrimination.

- 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 that discriminatory comments by public officials, including law enforcement officials, are not tolerated.
- Bring perpetrators of suspected hate crimes to justice promptly and implement measures to encourage reporting of homophobic and transphobic incidents, such as specialized agencies with trained personnel to which hate crimes can be reported, in co-operation with LGBT rights groups.

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Our vision is for every person to enjoy all the rights enshrined in the Universal Declaration of Human Rights and other international human rights standards.

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