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Turkey

Country Report for use in refugee claims based on persecution relating to sexual orientation and gender identity

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I: Introduction

This report reveals that while homosexuality in Turkey is not considered a criminal act, Turkey remains a society where discrimination and persecution based on sexual orientation and gender identity exists both in civil society and in the military. Lesbian, gay, bisexual, and transgender (LGBT) persons in Turkey face legal challenges not experienced by non-LGBT residents. This can be partially attributed to the conservative values embedded in Turkish society.

In civil society, there are numerous reports of persons who have been victim of violence based on sexual orientation. LGBT Turks are vulnerable to physical and verbal harassment and abuse from police officers. Judges and prosecutors also share a dismissive attitude toward reports of persecution. Numerous media outlets have reported incidences of persecution based on sexual orientation, including murder.

In the military context, Turkey has adopted a “don’t ask, don’t tell” policy, similar to that of the United States. Homosexuality is therefore permitted in the military context, so long as it does not pose a problem. When the “homosexual nature” of a person can no longer be ignored, a person may be prosecuted by a military court.

Homosexuality can also be grounds for exemption from military service. Some of the most striking findings on this matter are from the Immigration and Refugee Board of Canada, which has found that Turkish men can be exempted from mandatory military service if they can prove they are homosexual. As homosexuality is considered to be a mental disorder in Turkey, a claim to homosexuality must be established by a psychiatrist. As there are no specific guidelines for the psychiatrist’s decision and proving one’s homosexuality can include personal questioning, explicit photographs of men engaging in homosexual activities, and anal examinations.

II: Legislation

Turkey

1. General laws

Source: <http://www.interpol.int/public/Children/SexualAbuse/NationalLaws/csaTurkey.asp>

- **Gay sex is not explicitly criminalized. The age of consent for both homosexual and heterosexual relations is 18.**
- **Articles 426, 427 and 428 of the Turkish Criminal Code set out offences pertaining to obscenity.**

2. Military

Source: International Lesbian and Gay Association (ILGA) Euroletter 43, August 1996 (<http://www.france.qrd.org/assocs/ilga/euroletter/43.html#Turkey>)

- **“The Justice Commission of the Turkish Parliament accepted on July 31, 1996 a bill stating that those people who conduct "unnatural sexual intercourse" shall be expelled from the Army. However the bill does not state how to determine that a person actually conducts the act, whether it will be sufficient to conduct the act only once or regularly, and whether the act should be conducted in private or in public.”**
- *Note: No specific reference to the name of the Bill could be found, nor could any cases be found using English-language searches.*

III: Jurisprudence

Turkey

1. Supreme Court of Appeal, appeal by Lambda Istanbul challenging previous court decision ordering closure of the organization, as per KAOS GL in:

KAOS GL, *Press Declaration on the Reasoned Decision of Lambda's Court Case* (2009), online: <http://news.kaosgl.com/item/2009/1/26/press-declaration-on-the-reasoned-decision-of-lambda-s-court-case>>

- **Appeal successful**
- **“The Supreme Court of Appeals rejected the local court's decision on the grounds that reference to LGBT people in the name and the statute of the association did not constitute opposition to Turkish moral values. The Court's judgment also recognized the right of lesbian, gay, bisexual and transgender individuals to form associations.”**
- **“The case will now go back to the local court in Istanbul, which is expected to uphold the Supreme Court of Appeals' decision.”**
- **It should be noted, however, that Lambda issued a press release following the court decision pointing out that certain elements of the court's reasoning could lead to further discrimination.**

Canada

1. Kurtkapan v. Canada (Minister of Citizenship and Immigration) [2002] F.C.T. 1114

- **Federal Court allowed applicant's appeal on basis (among other things) that: “the failure to consider an objective basis for the Applicant's fear of persecution in Turkey amounts to an error in law.”**
- **However, the case does not provide any guidance on the matter.**

IV: Reports by Government Organizations

1. Immigration and Refugee Board of Canada, *Turkey: Treatment of homosexuals in the military; process to establish that a man is gay; consequence of refusing to undergo this process (2005 - 2007)* (5 April 2007), online:< http://www2.irb-cisr.gc.ca/en/research/rir/index_e.htm?action=record.viewrec&gotorec=451126>.

- **Men can be exempted from mandatory military service if they can prove they are homosexual**
- **Homosexuality is classified as a mental disorder, and a psychiatrist establishes a man's claim of homosexuality**
- **There are no specific guidelines for the psychiatrist's decision, however proof of homosexuality includes personal questioning, and may include explicit photographs of men engaging in homosexual activities and anal examinations**

Homosexual men can be deemed exempt from their mandatory military service upon diagnosis by the psychiatric unit of a hospital:

“In order to establish the sexual orientation of a recruit, the Turkish Army follows the guidelines established in the second revision of the Diagnostic and Statistical Manual of Mental Disorders (DSM-II) published by the American Psychiatric Organization in 1968 which reportedly regards homosexuality as a “psychosexual disorder” and deems homosexuals “unfit to serve”.”

In order to be exempt from military service on the basis of sexual orientation, a recruit must undergo evaluation by a psychiatrist. The psychiatrist's attitude is a key factor in determining if a recruit will be exempted. There is no standard procedure for evaluation, and has been reported to include photographic evidence and detailed questions about personal history.

There are reports that soldiers have been discharged once their homosexuality is disclosed, however these are not corroborated.

The Turkish Public Prosecutor's office has denied reports that homosexuality could be proven using photographic evidence or forced anal examinations. In March 2006, the gay rights group Lambda Istanbul conducted a survey of members of the Turkish LGBT community. Twenty seven male respondents stated they had applied for exemption from military service, and 29 percent stated they had to submit a photograph showing themselves engaging in homosexual activity, and 62 percent stated they were forced to undergo an anal examination.

In 2005, Mehmet Tarhan, a conscientious objector who is openly homosexual applied for a discharge on the grounds of his conscientious objection. The Turkish Army suggested he apply for a discharge due to his sexual orientation. In order to prove his homosexuality, it was requested that he provide evidence of his homosexuality, such as showing photographic evidence of himself engaging in homosexual activity, or undergoing an anal examination. Tarhan refused such request on the basis that they were discriminatory. He was incarcerated for evasion of

military service in April 2005 where he was reportedly physically and verbally harassed and assaulted.

2. Immigration and Refugee Board of Canada, *Turkey: Treatment of gay, lesbian and transgender people by Turkish society; treatment by authorities; legislation, protection and services available* (11 June 2007), online: < http://www2.irb-cisr.gc.ca/en/research/rir/index_e.htm?action=record.viewrec&gotorec=451311>.

- **LGBT Turks are unprotected by legislation and morality laws used to discriminate against them**
- **Homophobic attitudes which find homosexuals “disturbing” are the norm even with “liberal Turks”**
- **The overwhelming majority of LGBT Turks do not disclose their orientation because of fear of physical and verbal harassment, and losing their jobs**

While homosexuality is not illegal in Turkey, LGBT Turks have no specific legislative protection and morality laws are used to discriminate against them. For example, in August 2006, the city governor shut down a local homosexual association in the city of Bursa because of its non-compliance with “moral and family values.” A draft law prohibiting discrimination based on sexual orientation was cancelled in July 2004. Conservative and religious attitudes in Turkey, particularly within the government, have resulted in a lack of legal protections for homosexuals.

76% of respondents to survey by a Turkish newspaper in March 2006 felt homosexuals were “disturbing.” Even “liberal Turks”, according to the head of Amnesty International, do not want to protect this population.

In a 2005 survey by the gay rights group Lambda Istanbul, 83% of respondents stated they hid their sexual orientation from some members of their immediate family, and 88% of workers reported they hid their sexual orientation from their colleagues. 23% of respondents stated they had been victims of physical violence because of their orientation, and 87% had endured social and verbal harassment because of their sexuality.

Turkish homosexuals do not feel secure in their jobs, and employers face no repercussions if an individual is dismissed for his or her homosexuality. The Turkish military deems homosexuality a psychological disorder and suspected homosexuals face discharge and humiliation.

An Istanbul police official, according to *The New York Times*, stated that between 1996 and 2003, there were 36 motivated by homophobia. Activists suggest there is an underreporting of such violence because of familial reluctance to disclose the victim’s sexuality to courts. The head of AI Turkey, moreover, contends criminal prohibitions on hate crimes are “not used appropriately”. A gay Turkish reporter, for example, was murdered in February 2006. In response to the attacker’s allegations that the victim had propositioned him, a judge gave him a manslaughter conviction.

As of the date of this report, there are several legally registered LGBT organizations in Turkey which advance the interests of LGBT individuals: Kaos GL (Ankara), Lambda Association (Istanbul), Pink Life (Ankara), and the Rainbow Association (Bursa) (Kaos GL N.d).

3. UK Home Office Border Agency, *Country of Origin Information Report: Turkey* (20 October 2009), online: <<http://www.homeoffice.gov.uk/rds/pdfs09/turkey-201009.doc>>.

- **Homosexuality not illegal in Turkey**
- **LGBT Turks are vulnerable to physical and verbal harassment**
- **Police abuses of LGBT rights are the norm**
- **Judges and prosecutors share dismissive attitude toward reports of persecution**
- **Military service is mandatory in Turkey with criminal sanctions for its evasion**

Though homosexuality is not illegal in Turkey, the Muslim-majority's conservative values keep the subject of homosexuality a taboo topic in public discourse. NGOs allege that Turkey's desire to be admitted to the European Union has prevented any explicit legal sanctions against homosexuality. For LGBT Turks, this legislative silence exists in tension with their everyday experiences. Almost daily, they experience harassment and violence, and they fear going to the police for assistance because of a long history of harassment and persecution by the police. Judges and prosecutors share a dismissive attitude toward their complaints.

In 2003, the prime minister stated that homosexuals cannot be part of the government's ruling party.

The Constitution sets out national service as the right and duty of every Turk. The Law on Military Service specifies that all male citizens must receive armed military service, and refusal to perform service is punishable by the military penal code. The length of military service is 15 months, and all men between the ages of 19 and 40 are liable for military service. Deferment from military service may be granted with documents from an employer or university. Turkish citizens living abroad may also apply for deferment until the age of 38.

Monitoring of draft evasion and desertion is strict, and are punishable under the Law on Military Service and the Turkish Military Penal Code. Conscientious objection is considered draft evasion. Penalties range from imprisonment for one month for those who report themselves within seven days of evasion to up to ten years' imprisonment in the case of aggravating circumstances, such as self-inflicted injuries or using false documents.

4. U.S. Department of State Bureau of Democracy, Human Rights, and Labor, *2008 Human Rights Report: Turkey* (25 February 2009), online: <<http://www.state.gov/g/drl/rls/hrrpt/2008/eur/119109.htm>>.

- **2008 Supreme Court decision blocked an LGBT organization's closure for violating Turkish moral values**

Though Turkish law does not explicitly discriminate against homosexuals, vague references into the law relating to “the morals of society and “unnatural sexual behavior” are used in order to justify employers’ discrimination and charges against LGBT organizations.

On November 28 2008, the Supreme Court of Appeals overturned a lower court decision upholding the closure of an LGBT solidarity organization for violating Turkish “moral values and family structure.”

V: Reports by Non-Government Organizations

International Gay and Lesbian Human Rights Commission

1. International Gay and Lesbian Human Rights Commission, *Turkey: Drop Charges Against LGBT Group* (23 November 2009), online: < <http://www.iglhrc.org/cgi-bin/iowa/article/takeaction/resourcecenter/1027.html>>.

- **Turkish authorities attempt to shut down LGBT group**

Authorities have tried to close down the LGBT group called the Siyah Pembe Üçgen İzmir Association, claiming that its structure goes against "public morality" and "Turkish family structure". It is the fourth such case against an LGBT group, all others have been dismissed or rejected.

2. International Gay and Lesbian Human Rights Commission, *Turkey: Change Law of Misdemeanors to End Abuse of Trans People* (19 November 2009), online: <<http://www.iglhrc.org/cgi-bin/iowa/article/takeaction/globalactionalerts/1018.html>>.

- **Increased persecution of LGBT by police under poorly defined law**

Police in Turkey are using the Law of Misdemeanors (passed in 2005) to legitimize targeting LGBT with “daily fines, extortion, eviction, detention, and police brutality”. The law allows for the police to penalize Turkish citizens on a variety of charges that are not legally defined. Because the law prosecutes misdemeanors and not crimes, it is applied with virtually no oversight from the judiciary. In Ankara, transgender people report being regularly fined 140 lira (~\$100US), being taken into custody, and being kicked, slapped, punched, and physically brutalized.

Human Rights Watch

1. Human Rights Watch, *Turkey: Transgender Activist Murdered* (12 March 2009), online: <<http://www.hrw.org/en/news/2009/03/12/turkey-transgender-activist-murdered>>.

- **LGBT activist murdered, second such case within a year**

Ebru Soykan, a prominent transgender human rights activist, was stabbed and killed in her home on March 10, 2009. In July 2008, an unknown person shot and killed 26-year-old Ahmet Yildiz as he was leaving a café near the Bosphorus. No one has been charged with this crime.

2. Human Rights Watch, *Turkey: End Harassment of Gay Rights Groups* (15 April 2008), online: <<http://www.hrw.org/en/news/2008/05/21/turkey-homophobic-violence-points-rights-crisis>>.

- **Police raid LGBT group headquarters**

On April 7, 2008, the headquarters of Lambda Istanbul, an LGBT group, was raided by police on alleged suspicions that Lambda facilitates prostitution. On a separate charge from the Istanbul Governor's Office Lambda was charged with violating Turkish "moral values" and "family structure".

3. Human Rights Watch, *"We Need a Law for Liberation": Gender, Sexuality, and Human Rights in a Changing Turkey* (May 2008), online: <http://www.hrw.org/sites/default/files/reports/turkey0508_1.pdf>.

- **Gay men vulnerable to violence and robbery from informal gangs**
- **Gay men are not allowed to served otherwise mandatory military service, yet to be exempt they must undertake abusive "tests"**

Gangs prejudiced against gay men go to cruising areas and visit internet websites where gays meet "looking for chances to inflict violence or robbery". This behavior goes largely unsanctioned by authorities. Police rarely respond adequately and sometimes further harass gay victims. Courts lower sentences they impose on killers of gay men because they conclude that the men's homosexuality "provoked" the killers.

Turkey bans gay men from the military service because of their classification of homosexuality as a "high level psychological disorder". This military exemption excludes gays from possible state employment and compromises employment possibilities in the private sector as well.

Gay men seeking military exemptions are required to undergo psychological and, sometimes, humiliating anal, examinations based on mythologies about homosexuality. Anal examinations can involve being probed anally and then ordered to contract rectal muscles. Sometimes exemption seekers are also required to produce pornographic photographs showing themselves as passive partners in anal intercourse. In one case, 40-50 "very specific" pictures were required with two different partners.

Amnesty International

1. Amnesty International, *Amnesty International Report 2009: State of the World's Human Rights: Turkey* (2009), online: <<http://thereport.amnesty.org/en/regions/europe-central-asia/turkey>>

- **Laws interpreted prejudicially against LGBT**
- **Allegations persist concerning police violence against LGBT**

Brief summation of LGBT rights in Turkey. The prejudice of police and courts against LGBT were noted, as was a specific case of police brutality against a transgender person and an “honour” killing of a gay man by a member of his extended family.

KAOS GL (Turkish LGBT rights organization)

1. KAOS GL, *Situation of Gays in the Turkish Army* (2006), online: <<http://news.kaosgl.com/item/2006/10/23/situation-of-gays-in-turkish-army>>

- **According to KAOS GL, a Turkish LGBT rights organization, the Turkish military views homosexuality as an illness rendering one unfit for service.**
- **This is done through reliance on an outdated version of the Diagnostic and Statistical Manual of Mental Disorders.**
- **According to KAOS GL: “Exemption from military service on the grounds of homosexuality is an extremely difficult and humiliating process in Turkey: one is required to submit photographs or videos graphically displaying sexual intercourse with another man and/or submit to an anal examination that supposedly yields proof of passive anal sex.”**

VI: Media Reports

VII Media Reports:

1. Dan Bilefsky, “Soul-Searching in Turkey After a Gay Man Is Killed,” *The New York Times* (26 November 2009), online: <<http://www.nytimes.com/2009/11/26/world/europe/26turkey.html>>.

- **Mr. Yildiz, an openly gay man was shot in the summer of 2008 by his father in an honour killing.**
- **In 2008 a local Istanbul court ruled in favour of disbanding the offices of Lambda, the country’s leading gay rights group after a complaint that it offended public morality.**
- **Despite Turkey’s aspiration to join the EU, traditionalist attitudes toward sexuality and gender roles remain prevalent.**

This article discusses specifically the shame that was felt by Mr. Yildiz’s family over the fact that he was a homosexual. The killing is allegedly the first gay honour killing in Turkey to

surface publicly. Gay honour killings (as opposed to traditional honour killings of women) have remained underground because homosexuality is taboo. A woman who was accidentally shot during the killing was told not to press charges to avoid becoming involved “in what they called ‘a dirty crime.’” According to one witness “the police and local religious officials are trying to protect the killer because they think homosexuality is a sin.” The article notes that some argue that Turkish society is becoming more sexually liberated, and that gay bars and clubs have proliferated in big cities like Istanbul.

2. Jessica Geen, “Turkey blocks access to gay websites,” *Pinknews* (2 October 2009), online: < <http://www.pinknews.co.uk/2009/10/09/turkey-blocks-access-to-gay-websites>>.

- **Two of Turkey’s largest LGBT websites have been blocked.**

2007 legislation allows the Telecommunications Directorate to block pornographic and obscene web content. The administrative body is permitted to shut down web sites without a court order if it believes they violate the law. The article discusses that although homosexuality is not illegal, “discrimination practices and persecutions of LGBT people are commonplace.” According to the article, hate crimes have risen dramatically.

3. Susanne Fowler, “Istanbul’s Gay Pride Week Roundup,” *The New York Times* (23 June 2009), online: < <http://intransit.blogs.nytimes.com/2009/06/23/istanbuls-gay-pride-week-roundup/?pagemode=print>>.

- **Gay pride week takes place in Istanbul.**
- **Dance parties, panel discussions, movies screenings and a parade.**

This article highlights the week’s events and mentions that they are expecting 3,000 people to take part in the parade.

4. Daniel Steinvorth, “Gay Referee Cries Foul in Turkey,” *Spiegel Online* (22 July 2009), online: < <http://www.spiegel.de/international/world/0,1518,druck-637576,00.html>>.

- **Gay soccer referee diagnosed of “psychosexual disorder” by the military, and was rejected.**
- **He was also suspended from refereeing because of the report.**

For Mr. Dinçdag to be promoted, he would have had to complete his military service. The military doctors confirmed he was inclined to homosexuality and wrote of a “psychosexual disorder” in their report. Article states that homosexuality “isn’t forbidden in Turkey – in fact, it’s widely accepted in the TV and music business,” but just not in soccer. The referee was advised to leave the country and move to the relative safety of Istanbul.

5. Joseph Erbentraut, “For Gay Iranian Refugees, a Matter of Life or Death,” *Edge News* (20 July 2009), online: < <http://www.edgeboston.com/index.php?ch=news&sc=&sc3=&id=93938&pf=1>>.

- **In 2009, ten transgender and gay people were murdered in Turkey.**
- **Gay asylum seekers in Turkey face harassment.**

The article discusses primarily the situation of gay Iranian refugees in Turkey, noting that most “live out their time in destitution and desperation.”

VII: Scholarship

1. Nil S. Satana, “Transformation of the Turkish Military and the Path to Democracy” (2008) 34:3 *Armed Forces & Society* 357.

- **The trend of how the Turkish military has dealt with homosexuals in the military has evolved from punishment to discharge. Since the 1990s, homosexuals are ignored or exempted from service.**
- **When the homosexuality of a person in the military cannot be ignored, his behaviour is punishable by military courts.**

A small section of this article discusses issues specific to the Turkish military. It highlights that overtime, the Turkish military has moved from imprisoning homosexuals to the adoption of a “don’t ask don’t tell” policy. Prior to 1945, homosexuality in the military was punishable by military courts. Between 1945 and 1990, they were discharged from military service. Since then, homosexuals are either exempted from military service or their homosexuality is ignored. As homosexuality is not technically a criminal act, homosexuals in the Turkish military are mainly ignored, a “don’t ask don’t tell” policy similar to that of the American military. When the persons “homosexual nature” can’t be ignored, he is discharged; homosexuality then becomes punishable by military courts. The Turkish military is not democratic when dealing with the civil rights of homosexuals. It views homosexuality as a “mental or genetic illness” and is unlikely to welcome “overt” homosexuals to the armed forces in the near future.

2. Okan C. Cirakoglu, “Perception of Homosexuality Among Turkish University Students: The Roles of Labels, Gender, and Prior Contact” (2006) 146:2 *Journal of Social Psychology* 293.

- **Turkish men have more negative attitudes toward homosexuality in general than do women.**

This sociological article looked at the attitude of Turkish men and women toward homosexuality. It concluded that men’s attitudes are especially negative when the target is gay rather than lesbian; they had more negative attitudes toward male homosexuals than toward female homosexuals. People take the effects of gender-role violation more seriously when the violator is male. This can be partially explained by the fact that Turkey is a patriarchal society where the role of the male is seen as particularly important. Turks perceive homosexuality as being caused by factors such as a disorder, problems, modeling or sensation seeking, and preference.