



**Kaos GL, Red Umbrella, SPoD and ERA – LGBTI Equal Rights Association for  
Western Balkans and Turkey**

**Written Contribution on the position of LGBTI persons to the  
3<sup>rd</sup> CYCLE OF THE UNIVERSAL PERIODIC REVIEW  
of  
REPUBLIC OF TURKEY**

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## Statement of Interest

1. ERA – LGBTI Equal Rights Association for Western Balkans and Turkey in close partnership with its members: Kaos GL, Red Umbrella and SPoD; is submitting this Written Contribution to the 3<sup>rd</sup> Cycle of the Universal Periodic Review of Republic of Turkey, which focuses on the position of lesbian, gay, bisexual, trans and intersex (hereinafter: LGBTI) persons in the country.
2. ERA – LGBTI Equal Rights Association for Western Balkans and Turkey<sup>1</sup>, is an umbrella regional association operating in 9 countries (Albania, Bosnia & Herzegovina, Croatia, Macedonia, Kosovo, Montenegro, Serbia, Slovenia and Turkey) with a current membership of 59 LGBTI organisations and objectives to strengthen capacities of LGBTI organisations in the region, lobby and advocate nationally, regionally and internationally for LGBTI rights and strengthen and improve the visibility of LGBTI movement and communities.
3. Kaos Gay and Lesbian Cultural Research and Solidarity Association<sup>2</sup> (hereinafter: Kaos GL) is CSO from Turkey established in 1994 that supports lesbian, gay, bisexual, trans and intersex individuals in embracing libertarian values, realizing their own existence, and in cultivating themselves in order to contribute to the development of social peace and welfare together with the development of their individual, social and cultural life and behaviour.
4. Red Umbrella<sup>3</sup> is a CSO from Turkey that combats violation of all kinds of rights that sex workers are subjected to, social exclusion, stigmatization and ignorance. Red Umbrella sees the rights of sex workers on the axis of human rights and labour rights, and believes that sex workers are their own first word on the problems of sex workers. It carries out advocacy and lobbying towards NGO and private sector, public institutions, ministries and local authorities and implement capacity building and awareness raising activities towards the trans and sex worker communities in Turkey.
5. Social Policies, Gender Identity, and Sexual Orientation Studies Association - SPoD<sup>4</sup> (hereinafter: SPoD) is an LGBTI+ rights organization focusing on social policies. Officially founded on 21 September 2011 in Istanbul, Turkey by a group of activists, academics and students, SPoD aims to develop and/or expand the rights and freedoms of LGBTI+ individuals both in terms of identity politics and social policies.

## Legal and Policy Framework

6. During the Cycle II of Turkey, the head of delegation of Turkey stated, *inter alia*: that hate crime was included in the Turkish Penal Code and the penalty for the offence of discrimination and hatred had been increased; that a comprehensive Anti-Discrimination and Equality Law had been drafted, that the action plan on preventing violations of the European Convention for the Protection of Human Rights and Fundamental Freedoms had entered into force on 1 March 2014, and the number of pending applications before the European Court of Human Rights against Turkey had been reduced considerably<sup>5</sup>. The head of delegation also stated that the absence of specific provisions in respect of LGBTI persons did not mean that their rights were not legally guaranteed<sup>6</sup>.

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<sup>1</sup> For more information about ERA, please visit the website: <http://www.lgbti-era.org>

<sup>2</sup> For more information about Kaos GL, please visit the website: <http://www.kaosgldernegi.org/home.php>

<sup>3</sup> For more information about Red Umbrella, please visit the website: <http://www.kirmizisemsiye.org/Tr/Anasayfa>

<sup>4</sup> For more information about SPoD, please visit the website: <http://www.spod.org.tr/>

<sup>5</sup> [Report of the Working Group on the Universal Periodic Review, A/HRC/29/15](#), 13 April 2015, paragraph 7.

<sup>6</sup> [Report of the Working Group on the Universal Periodic Review, A/HRC/29/15](#), 13 April 2015, paragraph 50.

7. During the Cycle II of Turkey, Turkey supported recommendations related to fulfilment of the internationally taken obligations, implementation of the ratified international treaties, legislative amendments related to human rights and their promotion and protection<sup>7</sup>, as well as to ensure that civil society actors, including marginalized groups like those representing LGBT persons, are included in the implementation and follow-up of human rights obligations, including UPR recommendations<sup>8</sup>.
8. The Turkish legal framework includes general guarantees of respect for human and fundamental rights, which have however been further challenged and undermined by a number of emergency decrees. The state of emergency in Turkey, declared in the wake of the attempted coup of 15 July 2016, remained in force until 18 July 2018. Fundamental rights have been considerably curtailed under the state of emergency and pursuant to the decrees issued under it<sup>9</sup>. Turkey is positioned almost at the bottom of ILGA-Europe's Rainbow Map 2019, with only 5% score<sup>10</sup>.

### Constitution of Turkey

9. Article 10 of the Constitution of Turkey<sup>11</sup> safeguards equality before the law without distinction as to language, race, colour, sex, political opinion, philosophical belief, religion and sect, or any such grounds. It does not specifically address sexual orientation, gender identity and expression or sex characteristics, but still is considered to have an open list due to phrase "or any such grounds".

### Antidiscrimination legislation

10. During the Cycle II of Turkey, Turkey supported recommendations on adopting a comprehensive anti-discrimination law and its effective implementation<sup>12</sup>. However, it did not accept recommendations to enact anti-discrimination legislation explicitly prohibiting discrimination on the basis of sexual orientation and gender identity<sup>13</sup>, claiming that the phrase within Article 10 of the Constitution of Turkey "or any such grounds" is not limited to those listed in the Article 10<sup>14</sup>.
11. However, The Constitutional Court of Turkey ruled in two cases that firing a soldier<sup>15</sup> and a teacher<sup>16</sup> from their jobs on the basis of their sexual orientation is not discrimination<sup>17,18</sup>.

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<sup>7</sup> Report of the Working Group on the Universal Periodic Review, A/HRC/29/15, 13 April 2015, paragraphs 148.1, 148.5, 148.6, 148.7, 148.8.

<sup>8</sup> Report of the Working Group on the Universal Periodic Review, A/HRC/29/15, 13 April 2015, paragraphs 148.128.

<sup>9</sup> Report on the Implementation of Committee of Ministers' Recommendation CM/Rec(2010)5 on measures to combat discrimination on grounds of sexual orientation or gender identity in Turkey, prepared by ERA, Kaos GL and SPoD, September 2018, p. 3: <https://www.lgbti-era.org/one-stop-shop/report-implementation-committee-ministers-recommendation-cmrec20105-measures-combat>

<sup>10</sup> [https://www.ilga-europe.org/sites/default/files/Attachments/rainbowmap2019online\\_0\\_0.pdf](https://www.ilga-europe.org/sites/default/files/Attachments/rainbowmap2019online_0_0.pdf)

<sup>11</sup> Constitution of Turkey is available here: [https://www.tbmm.gov.tr/anayasa/anayasa\\_2018.pdf](https://www.tbmm.gov.tr/anayasa/anayasa_2018.pdf), and its English translation is available here: [https://global.tbmm.gov.tr/docs/constitution\\_en.pdf](https://global.tbmm.gov.tr/docs/constitution_en.pdf)

<sup>12</sup> Report of the Working Group on the Universal Periodic Review, A/HRC/29/15, 13 April 2015, paragraphs 148.16, 148.17.

<sup>13</sup> Report of the Working Group on the Universal Periodic Review, A/HRC/29/15, 13 April 2015, paragraphs 150.24, 150.25, 150.27, 150.30, 150.32, 150.34, 150.46; [Report of the Working Group on the Universal Periodic Review, A/HRC/29/15, 10 June 2015, Addendum, Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review.](#)

<sup>14</sup> Article 10 of the Constitution of Turkey safeguards equality before the law without distinction as to language, race, colour, sex, political opinion, philosophical belief, religion and sect, or any such grounds.

<sup>15</sup> More information available in Turkish: <http://kaosgl.org/sayfa.php?id=25139>.

<sup>16</sup> More information available in Turkish: <https://t24.com.tr/haber/aymniin-escinsel-din-ogretmeni-kararina-iki-uyeden-karsi-oy-devletin-cinsel-yoneliimi-yoktur,576066>.

<sup>17</sup> More information in English available here: <https://lgbtinewsturkey.com/2018/03/23/a-lesson-on-discrimination-for-the-constitutional-court/>

<sup>18</sup> LGBTI Enlargement Review 2018, ILGA-Europe in cooperation with ERA and others, p. 32: <https://www.lgbti-era.org/one-stop-shop/lgbti-enlargement-review-2018>.

12. There are still no provisions of national law prohibiting or preventing discrimination against LGBTI persons or discrimination based on multiple grounds<sup>19</sup>. Hence, no court case-law that has protected LGBTI persons from discrimination is available.

#### Same-sex partnership and family rights

13. National legislation in Turkey does not confer rights and obligations on unmarried couples and no measures have been adopted so that the same rights and obligations apply to same-sex couples and different-sex couples. Same-sex couples have no access to registered partnerships and there are no measures in place to provide them with the possibility to address the practical problems related to the social reality in which they live. No legal measures have been adopted to ensure that the same-sex partner of a national may obtain a residence permit in Turkey for family reasons. There are no measures in place to ensure that decisions regarding parental responsibility and adoption of a child are taken primarily in the child's best interest without discrimination of LGBTI+ persons<sup>20</sup>.
14. It is not permitted for unmarried different-sex and same-sex couples to adopt each other's children. There is no assisted reproductive treatment for single women. Unmarried different-sex and same-sex couples cannot receive assisted reproductive treatment<sup>21</sup>.

#### LGBTI-related policies

15. Turkey has no specific policies regulating the position of LGBTI+ persons in the country. No changes have been introduced to the military disciplinary system and medical regulations define *homosexuality* and *transsexuality* as a psychosexual disorder/illness<sup>22</sup>.

### National Human Rights Institutions (NHRIs)

16. During the Cycle II of Turkey, it was stated that the office of the Ombudsman<sup>23</sup> had become operational in December 2012, a draft amendment its founding law had been prepared, with a view to ensuring the implementation of more recommendations and the settlement of complaints in a more effective way. In addition, it was stated that the National Human Rights Institution (NHRI) of Turkey had been established in 2012 in accordance with the criteria set out by the Paris Principles and that efforts were under way to enable the Institution to apply for accreditation<sup>24</sup>. The country supported recommendations to establish the NHRI in line with the Paris Principles<sup>25</sup>.
17. However, the Ombudsman and the National Human Rights and Equality institution, which provides an individual application mechanism for complaints in the field of alleged discrimination cases, does not have operational, structural or financial independence and their members are not appointed in compliance with the Paris Principles<sup>26</sup>.

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<sup>19</sup> Report on the Implementation of Committee of Ministers' Recommendation CM/Rec(2010)5 on measures to combat discrimination on grounds of sexual orientation or gender identity in Turkey, prepared by ERA, Kaos GL and SPoD, September 2018, p. 16: <https://www.lgbti-era.org/one-stop-shop/report-implementation-committee-ministers-recommendation-cmrec20105-measures-combat>

<sup>20</sup> *Ibid*, p. 11.

<sup>21</sup> *Ibid*, p. 11-12.

<sup>22</sup> *Ibid*, p. 4.

<sup>23</sup> Webpage of this institution is available here: <https://www.ombudsman.gov.tr/>

<sup>24</sup> Report of the Working Group on the Universal Periodic Review, A/HRC/29/15, 13 April 2015, paragraph 9.

<sup>25</sup> Report of the Working Group on the Universal Periodic Review, A/HRC/29/15, 13 April 2015, paragraphs 148.20, 148.23, 148.24, 148.25, 148.26.

<sup>26</sup> Report on the Implementation of Committee of Ministers' Recommendation CM/Rec(2010)5 on measures to combat discrimination on grounds of sexual orientation or gender identity in Turkey, prepared by ERA, Kaos GL and SPoD, September 2018, p. 4: <https://www.lgbti-era.org/one-stop-shop/report-implementation-committee-ministers-recommendation-cmrec20105-measures-combat>

18. Both institutions do not cover SOGIESC among recognized and protected grounds. The CSO Pembe Hayat submitted a complaint to the Ombudsman regarding the ban in Ankara<sup>27</sup>. The Ombudsman stated that it was out of their jurisdiction. The NHRI stated that “sexual identity” was out of their jurisdiction as well for an application of two transgender persons who were kicked out of a hotel. The NHRI’s are clearly homophobic/transphobic when we look at their council members, social media accounts and conferences<sup>28</sup>.

## Access to justice

### Law enforcement

19. Within the police, there are no units tasked specifically to investigate incidents against LGBTI+ individuals or a contact points for cooperation with LGBTI+ CSOs on the topic. No trainings on the position of LGBTI persons in Turkey have been provided to law enforcement.
20. Sexual orientation and gender identity are supposedly recognised under prison management regulations, but these are not written regulations. The Ministry of Justice published a chapter on sexual orientation and gender identity for their trainings toward psycho-social workers in prisons. However, LGBTI+ CSOs do not know the content of those trainings. There is no communication between the Ministry and LGBTI+ CSOs. In April 2019, the Ministry invited human rights organizations to a strategy meeting but did not invite LGBTI+ CSOs.
21. When open, LGBTI+ people are isolated either in singular cells or in separate group rooms where possible, they are isolated from the rest of the prisoners. They lack access to services and facilities in the prisons.
22. Kaos GL was threatened by ISIS and the police provided no protection on the matter.

### Protection from violence, hate speech and hate crimes

23. During the Cycle II of Turkey, the head of delegation of Turkey stated, *inter alia*, that the necessary investigations were conducted into cases of killings of and acts of violence against LGBTI persons and all types of hate crimes, in order to identify perpetrators and bring them to justice, and the legal process was conducted with diligence by the judicial authorities<sup>29</sup>.
24. Turkey stated that recommendation on ensuring the investigation, prosecution and punishment of any act of discrimination or violence motivated by the victim’s sexual orientation or gender identity is already implemented or in the process of implementation<sup>30</sup>.
25. Turkey did not accept recommendations to amend article 122 of Turkish Penal Code<sup>31</sup>, by prohibiting hate crimes and discrimination based on sexual orientation; to investigate and sanction those responsible of acts of violence against LGBTI persons; and publish disaggregated data on complaints - stating that relevant legislation has recently been strengthened and no further amendment are envisaged at this stage; that perpetrators of acts of discrimination and hate crimes against LGBTI persons are held to account and the judicial processes are diligently

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<sup>27</sup> See more here: <http://kaosgl.org/page.php?id=26759>

<sup>28</sup> See more here: <https://www.kaosgl.org/page.php?id=28210>

<sup>29</sup> Report of the Working Group on the Universal Periodic Review, A/HRC/29/15, 13 April 2015, paragraph 50.

<sup>30</sup> Report of the Working Group on the Universal Periodic Review, A/HRC/29/15, 13 April 2015, paragraphs 149 and 149.32.

<sup>31</sup> Turkish Penal Code is available here: <https://www.mevzuat.gov.tr/MevzuatMetin/1.5.5237.pdf>

carried out; and that there is no practice of publishing disaggregated data on complaints of violence against LGBTI persons<sup>32</sup>.

26. However, gender-based violence, hate speech against disadvantaged groups, hate crime and violations of human rights of LGBTI+ persons are still a matter of serious concern. In July 2018, leaflets and flyers including hate speech against LGBTI+ persons were disseminated in three cities: Ankara, İzmir and Osmaniye. Common points of those papers distributed in the post boxes or on the streets randomly were to promote homophobic hate crimes and to claim that *homosexuality* was a disease and a sin in some religions<sup>33</sup>.
27. Legislation on hate speech is not in line with the European Court of Human Rights case-law. Hate crime legislation is not in line with international human rights standards and does not cover hate offences based on sexual orientation, gender identity and expression or sex characteristics<sup>34</sup>. Although there is an increased level of hate speech towards LGBTI+ persons and CSOs, public prosecutors do not take *ex officio* action against hate speech towards LGBTI+ persons and groups in the mass media. Almost all applications of LGBTI+ CSOs against hate speech are responded with non-prosecution or acquittal decisions.
28. The Constitutional Court of Turkey ruled that naming LGBTI+s as “perverts” in the media constitutes “freedom of speech” and not hate speech<sup>35</sup>.
29. There are no independent and effective procedures to receive and investigate reports of hate crimes and hate speech against LGBTI+ persons, no measures to ensure that law-enforcement, judiciary and prison officials possess the knowledge and skills to identify and process hate crimes and hate speech and provide victim and witnesses with adequate assistance and support. There is no effective system to register complaints and collect data on hate crime and hate speech. No trainings, awareness raising activities or any other form of guidance is provided to public officials and state representatives to respect human rights of LGBTI+ persons<sup>36</sup>.
30. Trans persons are subject to hate crimes and Turkey ranks 1<sup>st</sup> in Europe when it comes to transphobic hate murders. According to local CSOs, trans individuals face all kinds of discrimination and violence in accessing justice. The transphobic attitudes and insensitivity of law enforcement officers, judges, and lawyers, helplessness, and increased violations of rights cause serious difficulties for trans individuals to access justice. The violence and lack of access to justice increases the suicide level as well. The police ignores complaints. They do not investigate properly the cases. Even if the person is a trans sex worker, they can write them administrative penalty even though they are the victim. They are also victims of arbitrary detention as they sometimes are detained arbitrarily for hours at the police station or in the police vehicles. The situation is also concerning even if the complaints are assessed at the Prosecutor’s office, as the victim easily becomes a suspect. The judges generally reduce the sentences of perpetrators and murderers on the basis of unjust provocation and/or good conduct time. The three-year follow-up of the CSO Red Umbrella shows that 786 violations of rights have been committed against trans individuals and trans sex workers. 10 suicides, 12 murders and 24 sexual abuse cases as a result of

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<sup>32</sup> Report of the Working Group on the Universal Periodic Review, A/HRC/29/15, 13 April 2015, paragraphs 150.28, 150.31, 150.33; Report of the Working Group on the Universal Periodic Review, A/HRC/29/15, 10 June 2015, Addendum, Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review.

<sup>33</sup> More information in English available here: <https://www.lgbti-era.org/news/hate-speech-leaflets-disseminated-unison-around-turkey>.

<sup>34</sup> Report on the Implementation of Committee of Ministers' Recommendation CM/Rec(2010)5 on measures to combat discrimination on grounds of sexual orientation or gender identity in Turkey, prepared by ERA, Kaos GL and SPoD, September 2018, p. 4: <https://www.lgbti-era.org/one-stop-shop/report-implementation-committee-ministers-recommendation-cmrec20105-measures-combat>

<sup>35</sup> More information (in Turkish) available here: <http://kaosgl.org/sayfa.php?id=26001>

<sup>36</sup> Report on the Implementation of Committee of Ministers' Recommendation CM/Rec(2010)5 on measures to combat discrimination on grounds of sexual orientation or gender identity in Turkey, prepared by ERA, Kaos GL and SPoD, September 2018, p. 6-7: <https://www.lgbti-era.org/one-stop-shop/report-implementation-committee-ministers-recommendation-cmrec20105-measures-combat>

transphobia is another detail in the records. The actual numbers of these violations are probably higher<sup>37</sup>.

## Access to Education

31. The right to education is regulated in Article 42 of the Constitution, stating that every citizen has a right to education. However, laws and policies do not provide any adequate protection for students, staff and teachers of different sexual orientations and gender identities<sup>38</sup>.
32. Discrimination, exclusion, bullying, hate speech and hate crimes in student dormitories are common according to the reports of local CSOs. Trans students whose gender identity does not match the sex on the given official ID may be expelled from dormitories.
33. During the Cycle II of Turkey, Turkey did not accept recommendation to ratify UNESCO Convention against Discrimination in Education<sup>39</sup>.

## School Curriculum

34. The school curriculum does not include sexual education or life skills lessons. Concepts of sexual orientation and gender identity are still not taught in many universities. Discussions on sexual orientation and gender identity started in some universities especially in Women's Studies, Physiology, Sociology Communication, Law and Human Rights departments. Absence of sexual education for children in Turkey causes the consideration of sexuality as a process that children discover by themselves. This might conduce children's experiencing bad sexual acts among themselves, which time to time turn into the peer bullying. Sexuality or sexual rights are not objectively discussed neither at schools nor in the household. And it is usually framed as a matter of honour and threat to public moral. LGBTI+ students are deprived from proper support mechanisms and resources for their empowerment at schools. LGBTI+ organizations and some student groups at Universities are trying to fill this gap and address this vital issue<sup>40</sup>.

## Violence, Bullying and Discrimination

35. The Partnership Network for Prevention of Violence against Children in Turkey, which has Kaos GL as a member, observed that attitudes of caregivers that witnessed same-sex intimacy between children may result in ostracizing the perceived effeminate boys, bullying of these boys are tolerated or encouraged. Non-conforming gender performances and expression of children is one of the reasons of bullying against and among children in Turkey. Strict of gender roles in a society also increases the legitimization of homophobic and transphobic behaviours towards and amongst children in Turkey, which happens by both peers and school staff<sup>41</sup>.

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<sup>37</sup> Written Contribution to the Report on Legal Gender Recognition of UN Independent Expert on Protection against Violence and Discrimination based on Sexual Orientation and Gender Identity, ERA and 15 other CSOs, June 2018, p. 24: <http://www.lgbti-era.org/sites/default/files/pdfdocs/Report%20on%20Legal%20Gender%20Recognition%20in%20the%20Western%20Balkans%20and%20Turkey.pdf>

<sup>38</sup> GALE European Report 2017 on the Implementation of the Right to Education for Students who are Disadvantaged because of their Expression of Sexual Preference or Gendered Identity, p. 333: <https://www.gale.info/doc/gale-products/GALE-European-report-2017.pdf>

<sup>39</sup> Report of the Working Group on the Universal Periodic Review, A/HRC/29/15, 13 April 2015, paragraph 151.7.

<sup>40</sup> GALE European Report 2017 on the Implementation of the Right to Education for Students who are Disadvantaged because of their Expression of Sexual Preference or Gendered Identity, p. 334-335: <https://www.gale.info/doc/gale-products/GALE-European-report-2017.pdf>

<sup>41</sup> *Ibid*, p. 333.



36. A large extent of students prefers not to come out, and in case they do, the rate of dropping out from schools increases due to the pressure. These dropping out applies to LGBTI+ individuals in sum although this rate is higher for trans individuals<sup>42</sup>.

## Position of Trans Individuals

37. Turkey continues to rank 1<sup>st</sup> in Europe and 9<sup>th</sup> in the world when it comes to transphobic hate murders. The families and relatives of trans individuals are more difficult to accept and cherish their children. Their families can repudiate them, can take away their inheritance rights, even commit hate crimes. High risk of suicide, violence, and murders continue being relevant. Faced with social exclusion and unemployment, trans individuals are in a much higher risk of poverty<sup>43</sup>.

38. Article 27 of the Civil Code<sup>44</sup> of Turkey defines the right to change the name. Article 40 of the Civil Code of Turkey also recognises rights associated with the legal gender recognition process, but pathologizes trans identities, asking for going through the medical process approved by a court as well as a state hospital. A person can start the legal gender recognition process with going to the Psychiatry department of a university hospital or a state hospital with sexual identity council, which regulates the whole medical process and sending the report to the court. No matter which one is the first - medical or legal part, the whole process goes hand in hand with legal process and compulsory medical process, including consultations with six different departments such as Psychiatry, Endocrinology, Gynaecology, Genetic, Plastic Surgery and Urology. In March 2018, the Constitutional Court of Turkey has decided to eliminate sterilisation as mandatory, but in practice, it is seen that this requirement is still valid<sup>4546</sup>.

39. Although trans identities are not criminalised, arbitrary rule and use of power by law enforcement officers continue criminalising trans people. Misdemeanour Act<sup>47</sup> is arbitrarily practiced on trans people (especially trans women) to file them administrative fines on causes such as disturbing public peace, blocking the traffic, etc. In 2018, the Constitutional Court overruled the practice of Misdemeanour Act Law on trans people and sex workers because it has no legal ground and it was unlawful. However, the court verdict was referring to administrative fines filed under article 37 of Misdemeanour Act Law. The police officers still continue filing administrative fines<sup>48</sup>.

40. A trans person who goes through gender reassignment surgery and has a granted court verdict on legal gender change, enjoys changing their legal documents except for birth certificate. Some

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<sup>42</sup> *Ibid*, p. 334.

<sup>43</sup> Written Contribution to the Report on Legal Gender Recognition of UN Independent Expert on Protection against Violence and Discrimination based on Sexual Orientation and Gender Identity, ERA and 15 other CSOs, June 2018, p. 23: <http://www.lgbti-era.org/sites/default/files/pdffdocs/Report%20on%20Legal%20Gender%20Recognition%20in%20the%20Western%20Balkans%20and%20Turkey.pdf>

<sup>44</sup> Civil Code of Turkey is available here: <https://www.mevzuat.gov.tr/MevzuatMetin/1.5.4721.pdf>

<sup>45</sup> Written Contribution to the Report on Legal Gender Recognition of UN Independent Expert on Protection against Violence and Discrimination based on Sexual Orientation and Gender Identity, ERA and 15 other CSOs, June 2018, p. 23: <http://www.lgbti-era.org/sites/default/files/pdffdocs/Report%20on%20Legal%20Gender%20Recognition%20in%20the%20Western%20Balkans%20and%20Turkey.pdf>

<sup>46</sup> As the second part of the Article 40 of the Civil Code of Turkey requires proper sex change operation which is ambiguous, it has been experienced in the field that most of the judges are asking for removing organs that are thought to be affiliated with being a man or woman, which mostly ends up with removal of womb, or testicles. Therefore, in theory, it might be said that sterilization is not compulsory anymore, but in practice, it is still being demanded by the court.

<sup>47</sup> Misdemeanour Act is available here: <http://www.mevzuat.gov.tr/MevzuatMetin/1.5.5326.pdf>

<sup>48</sup> Written Contribution to the Report on Legal Gender Recognition of UN Independent Expert on Protection against Violence and Discrimination based on Sexual Orientation and Gender Identity, ERA and 15 other CSOs, June 2018, p. 23: <http://www.lgbti-era.org/sites/default/files/pdffdocs/Report%20on%20Legal%20Gender%20Recognition%20in%20the%20Western%20Balkans%20and%20Turkey.pdf>

universities, high schools and elementary schools refuse re-arranging the diploma and the academic records on the request by the trans person after legal gender change granted. This is a big problem which breaches the right to privacy, among others, as it might expose trans individuals to employers, or any other person and institution. Besides, for any document renewal and change, trans persons have to make individual requests to each institution. The change is not automatically applicable<sup>49</sup>.

41. The fear of stigmatisation in access to health and the non-conformity of legal names on the ID and gender-specific names are causing difficulties in access to health due to fears such as "embarrassment and mocking". Trans individuals may prefer paying for healthcare services in private hospitals or clinics in order to avoid discrimination, long waits and stress caused by a risk of mockery and embarrassment. Trans people are sometimes refused to be served by gynaecologists (this problem is more common in state hospitals). Some trans people privately go through gender reassignment surgery without going through the legal procedures or medical procedures<sup>50</sup>.
42. Unfortunately, trans individuals are experiencing serious difficulties in accessing justice in Turkey. Trans individuals and trans sex workers already have no trust and do not believe in the justice system. Trans women are subject to hate crimes and Turkey ranks 1<sup>st</sup> in Europe when it comes to transphobic hate murders<sup>51</sup>.
43. The number of trans individuals at the universities in Turkey is low. Many of them start with legal gender recognition process at the end of the university studies, and some of them prefer to conduct it secretly if they have started the process. Although LGBT+ student communities exist, the impact and visibility are not enough in terms of trans individuals. The number of trans individuals who left their education at universities because of stigmatisation, discrimination and exposure to hate speech is quite large<sup>52</sup>.
44. According to local CSOs, unfortunately, neither the private sector nor the state has enough support for the employment of trans individuals in Turkey. Whilst most of trans individuals hold on to life by sex work, some of them are struggling in their everyday life with the remaining heritage share from their family, help of partners, or work as animators in touristic areas, beauty salons, pavilions, belly oriental dancing or LGBTI+ CSOs<sup>53</sup>.
45. Trans individuals couldn't rent a house before. According to local CSOs, nowadays the situation has changed. But this change was entirely brought by a system of exploitation. If the house rent is offered for a certain price, it is rented to a trans person for twice the price. Real estate "gangs" are making profits over trans individuals. The same situation occurs when trans individuals want to buy a house. Shelters and freight houses ignore trans individuals<sup>54</sup>.
46. The dormitories for students in Turkey are organized in accordance with the binary system and students are placed according to the gender mark on their IDs. Therefore, until a student changes the gender mark on it, they are located to the dormitory according to the mark on the ID. After the hormone replacement process, most of trans students are forced to leave these dormitories.

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<sup>49</sup> *Ibid*, p. 24.

<sup>50</sup> *Ibid*, p. 24.

<sup>51</sup> *Ibid*, p. 24.

<sup>52</sup> *Ibid*, p. 25.

<sup>53</sup> *Ibid*, p. 25.

<sup>54</sup> *Ibid*, p. 25.

## Position of Intersex Individuals

47. There is no specific legal coverage or legal protection for intersex persons within Turkish legislation. There is also no adequate number of intersex activists and no adequate information available on the life conditions of intersex persons, including medical treatment of intersex infants, children and youth<sup>55</sup>.

## Prevention of HIV and AIDS

48. Although Turkey is the country which has the fastest growing numbers of new HIV infections in the world, there is no national strategy, plan or awareness raising taking place. LGBTI+ CSOs are not invited by the Ministry of Health to the related meetings regarding HIV and there is no structured dialogue mechanisms for state authorities and LGBTI+ CSOs.
49. Stigmatization and discrimination towards people with HIV is common. There is no legal protection against discrimination, hate speech and hate crimes, and no data protection for people with HIV. Turkey does not have an overall law for patients' rights as well. Sexual health issues, including HIV, are inadequately covered by high school curricula<sup>56</sup>.

## Position of LGBTI+ refugees, migrants and asylum seekers

50. Turkey continues to be a host country for significant number of LGBTI+ refugees mostly coming from Syria, Iran, Iraq and Afghanistan, but they continue to be targets of hate crime and hate speech without any legal, political and procedural protection<sup>57</sup>.
51. A well-founded fear of persecution is not recognised as a valid ground for the granting of refugee status and asylum under Turkish national legislation for LGBTI+ persons. Turkey does not ensure that asylum seekers are not sent to a country where their life or freedom would be threatened because being LGBTI+. However, the Constitutional Court of Turkey recently halted the execution of *refoulement* of six Irani LBT women<sup>58</sup>. This is still just an individual case. There are no specific measures in place to prevent violence against LGBTI+ asylum seekers deprived of their liberty<sup>59</sup>.

## Freedom of Association and Peaceful Assembly

52. During the Cycle II of Turkey, Turkey supported recommendations to guarantee the right to freedom of expression, including freedom of the press, association and peaceful assembly and align its legislation with its obligations and commitments based on relevant international law<sup>60</sup>. Turkey stated that recommendations on facilitation of holding peaceful protests, protection of all peaceful demonstrators from violence and arbitrary arrest and fighting impunity for the use of excessive force against protestors by law-enforcement are already implemented or in the process of implementation<sup>61</sup>.

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<sup>55</sup> See more here: <https://intersexualshalala.wordpress.com/>

<sup>56</sup> LGBTI Enlargement Review 2018, ILGA-Europe in cooperation with ERA and others, p. 33: <https://www.lgbti-era.org/one-stop-shop/lgbti-enlargement-review-2018>.

<sup>57</sup> LGBTI Enlargement Review 2018, ILGA-Europe in cooperation with ERA and others, p. 31-32: <https://www.lgbti-era.org/one-stop-shop/lgbti-enlargement-review-2018>.

<sup>58</sup> More information (in Turkish) available here: <http://kaosgl.org/sayfa.php?id=23503>

<sup>59</sup> Report on the Implementation of Committee of Ministers' Recommendation CM/Rec(2010)5 on measures to combat discrimination on grounds of sexual orientation or gender identity in Turkey, prepared by ERA, Kaos GL and SPoD, September 2018, p. 15: <https://www.lgbti-era.org/one-stop-shop/report-implementation-committee-ministers-recommendation-cmrec20105-measures-combat>

<sup>60</sup> Report of the Working Group on the Universal Periodic Review, A/HRC/29/15, 13 April 2015, paragraphs 148.120, 148.124.

<sup>61</sup> Report of the Working Group on the Universal Periodic Review, A/HRC/29/15, 13 April 2015, paragraphs 149 and 149.35 and 149.39.

53. The state of emergency in Turkey, declared in the wake of the attempted coup of 15 July 2016, remained in force until 18 July 2018. Fundamental rights have been considerably curtailed under the state of emergency and pursuant to the decrees issued under it. Civil society came under increasing pressure, notably in the face of a large number of arrests of activists, including human rights defenders, and the recurrent use of bans of demonstrations and other types of gatherings, leading to a rapid shrinking space for fundamental rights and freedoms. Many rights-based organisations remained closed as part of the measures under the state of emergency and an effective legal remedy has not been available with respect to confiscations<sup>62</sup>.
54. There was further backsliding in the area of freedom of expression, assembly and association in Turkey. LGBTI+ march in Ankara was banned for security and “social sensitivity” reasons for the third year in a row<sup>63</sup>. CSO Pembe Hayat’s Pink Life Queerfest screenings were banned twice<sup>64</sup>, which eventually brought a generalised ban on LGBTI+ events and activities in greater Ankara Province area by Ankara Governorship<sup>65</sup>. Although there was legal request to Ombudsman and Administrative Court, the requests to stop the execution of ban was rejected. In February 2018, an Administrative Court rejected the request of two CSOs to lift the execution of this ban<sup>66</sup>. Public authorities have not publicly condemned any unlawful interferences and anti-LGBTI+ campaigns on the conventional and social media outlets with the exercise of freedom of expression and peaceful assembly by LGBTI+ persons or human rights organisations supporting the rights of LGBTI+ persons<sup>67</sup>.
55. Indefinite ban on LGBTI+ events in Ankara has remained even after the state of emergency was lifted. Ankara Governorship has declared a new ban on 3 October 2018 and indicated the Provincial Administrative Law No.5442<sup>68</sup> and Law No.2911<sup>69</sup> on Meetings and Demonstrations as the justification. Protection of “social sensitivities and sensibilities”, “public security”, “general public’s health and morality” and “protection of the rights of the others” have been shown as justification just as the previous ban in Ankara<sup>70</sup>.
56. Istanbul Governorship banned the Pride march for the fourth time in a row<sup>71</sup>. Police forces attacked demonstrators gathered in different districts of Istanbul with plastic bullets and tear gas. During the day, 11 demonstrators were taken into custody, and later released<sup>72</sup>.
57. In June 2018, the Rectorate declared a ban on an LGBTI+ Pride March at the Middle East Technical University (METU). A wave of investigations has been opened against the students who attended

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<sup>62</sup> As indicated in the [2018 EU Country report for Turkey](#).

<sup>63</sup> See more here: <http://kaosgl.org/page.php?id=26759>

<sup>64</sup> See more here: <https://lgbtinewsturkey.com/tag/kuirfest/>

<sup>65</sup> See more here: <https://www.independent.co.uk/news/world/europe/lgbt-events-banned-turkey-ankara-protect-public-security-governors-office-health-and-morality-a8063526.html>

<sup>66</sup> Written Contribution to the Report on Legal Gender Recognition of UN Independent Expert on Protection against Violence and Discrimination based on Sexual Orientation and Gender Identity, ERA and 15 other CSOs, June 2018, p. 26: <http://www.lgbti-era.org/sites/default/files/pdfdocs/Report%20on%20Legal%20Gender%20Recognition%20in%20the%20Western%20Balkans%20and%20Turkey.pdf>

<sup>67</sup> Report on the Implementation of Committee of Ministers' Recommendation CM/Rec(2010)5 on measures to combat discrimination on grounds of sexual orientation or gender identity in Turkey, prepared by ERA, Kaos GL and SPoD, September 2018, p. 9: <https://www.lgbti-era.org/one-stop-shop/report-implementation-committee-ministers-recommendation-cmrec20105-measures-combat>

<sup>68</sup> The law is available here: <http://www.mevzuat.gov.tr/MevzuatMetin/1.3.5442.pdf>

<sup>69</sup> The law is available here: <http://www.mevzuat.gov.tr/MevzuatMetin/1.5.2911.pdf>

<sup>70</sup> LGBTI Enlargement Review 2018, ILGA-Europe in cooperation with ERA and others, p. 32: <https://www.lgbti-era.org/one-stop-shop/lgbti-enlargement-review-2018>.

<sup>71</sup> See more here: <https://kaosgl.org/page.php?id=26178>, here: <https://www.hrw.org/news/2018/06/28/turkey-has-no-excuse-ban-istanbul-pride-march> and here: <https://www.amnesty.org.uk/actions/turkey-dont-ban-istanbul-pride-lgbti-rights>

<sup>72</sup> LGBTI Enlargement Review 2018, ILGA-Europe in cooperation with ERA and others, p. 32: <https://www.lgbti-era.org/one-stop-shop/lgbti-enlargement-review-2018>.

the METU Pride March and allegedly hung rainbow flags on the buildings<sup>73</sup>. In May 2019, students' LGBTI+ Pride March at METU was held despite the new ban, but has been violently broken up by police and 25 students were arrested<sup>74</sup>.

58. In May 2018, Ankara Bar Association's film screening with LGBTI+ content was banned by the Governorate<sup>75</sup>.

59. In May 2019, right after the first ban was lifted, Pembe Hayat Association's panel meeting was banned by the Governorate<sup>76</sup> on grounds of "public moral", "protection of human rights of others" and "public health". They referred to the Provincial Administrative Law No.5442 but not to the second ban which was introduced in October 2018.

## Position of LGBTI+ CSOs and Human Rights Defenders

60. Conditions surrounding the activities of human rights defenders have deteriorated even further. Many of them continue to be subject to intimidation, judicial prosecution, violent attacks, threats, surveillance, prolonged arbitrary detention, ill-treatment and smear campaigns in pro-government and extreme right media. There is limited protection given to LGBTI+ organisations who have been receiving threats<sup>77</sup>. The detention and release under judicial control of an LGBTI+ activist following his social media posts regarding the army operations in Syria is a testimony of the pressure exercised against human rights defenders<sup>78</sup>.

61. Despite serious backsliding, civil society remained active and involved in public life as far as possible. The map of civil society organisations has started to change significantly, with a more visible role given to the pro-government organisations. Administrative burdens, including for international non-governmental organizations (NGOs), continue to hamper civil society activities. Systematic and inclusive mechanisms for consulting a wide spectrum of civil society, notably on new legislation and policies, need to be put in place and used consistently<sup>79</sup>. No public funding is available for CSOs with the purpose of protection of the rights of LGBTI+ persons<sup>80</sup>.

## List of Recommendations

**62.1 Within one year, amend antidiscrimination, labour and criminal legislation to explicitly include protection from discrimination, hate crime and hate speech on the basis of sexual orientation, gender identity and expression and sex characteristics;**

**62.2 Within two years, remove all provisions and policies on local, regional and national level which define homosexuality and transsexuality as a psychosexual disorder or illness;**

**62.3 Within the next reporting cycle, ensure that Ombudsman and the National Human Rights and Equality institution of Turkey are working in line with the Paris Principles, that SOGIESC are among**

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<sup>73</sup> *Ibid*, p. 32.

<sup>74</sup> More information in English available here: <https://www.amnesty.org/en/latest/news/2019/05/turkey-appalling-violence-used-against-students-holding-pride-march/>

<sup>75</sup> <https://kaosgl.org/sayfa.php?id=25926>

<sup>76</sup> <http://www.pembehayat.org/haberler/detay/2142>

<sup>77</sup> Report on the Implementation of Committee of Ministers' Recommendation CM/Rec(2010)5 on measures to combat discrimination on grounds of sexual orientation or gender identity in Turkey, prepared by ERA, Kaos GL and SPoD, September 2018, p. 4: <https://www.lgbti-era.org/one-stop-shop/report-implementation-committee-ministers-recommendation-cmrec20105-measures-combat>

<sup>78</sup> More information available in English here: <https://www.lgbti-era.org/news/ali-erol-leading-turkish-lgbti-activist-detained>.

<sup>79</sup> Report on the Implementation of Committee of Ministers' Recommendation CM/Rec(2010)5 on measures to combat discrimination on grounds of sexual orientation or gender identity in Turkey, prepared by ERA, Kaos GL and SPoD, September 2018, p. 5: <https://www.lgbti-era.org/one-stop-shop/report-implementation-committee-ministers-recommendation-cmrec20105-measures-combat>

<sup>80</sup> *Ibid*, p. 8.

recognized and protected grounds and secure proper mechanisms for their cooperation with LGBTI+ CSOs;

- 62.4 Within the next reporting cycle, secure effective investigation, prosecution and fair trial in cases of homophobic and transphobic hate speech and hate crimes, including murders;
- 62.5 Within the next reporting cycle and in cooperation and consultation with international organizations and LGBTI+ civil society organizations, introduce trainings about LGBTI+ issues to police representatives in order to eliminate their homophobic and transphobic attitudes and introduce data collection regarding violence committed on the basis of SOGIESC;
- 62.6 Within the next reporting cycle and in consultation with LGBTI+ CSOs, introduce effective mechanisms, such as bylaws and security protocols, for equal treatment of LGBTI+ detainees and prisoners and their protection from violence, torture and inhumane treatment within the prison system;
- 62.7 Within the next reporting cycle, introduce effective mechanisms, such as trainings, bylaws and school and dormitory protocols, to combat homophobic and transphobic behaviour of peers, school and dormitory staff in the educational system and to eliminate drop-out of LGBTI+ pupils and students;
- 62.8 Within one year and in cooperation with trans civil society organizations, introduce precise protocols and guidance on legal gender recognition and trans affirming health care, based on person's self-determination and in line with international human rights standards and best practices;
- 62.9 Within the next reporting cycle, provide support to LGBTI+ civil society in raising visibility of intersex persons within Turkish society through public campaigning, online and traditional media;
- 62.10 Within one year, ensure provision of adequate medical, psychological and social support to intersex persons and their families and establish adequate protocols and annual data gathering on intersex related diagnosis and medical interventions in state medical centers and private practices;
- 62.11 Within the next reporting cycle and in cooperation with CSOs working closely on HIV/AIDS, combat unlawful stigma, exclusion and discrimination based on HIV/AIDS status, secure anonymous and free testing and availability of latest medical therapy to all persons living with HIV/AIDS, as well as PrEP as prevention method against HIV to all in need, including LGBTI+ refugees;
- 62.12 Within one year, introduce legal and policy measures, such as bylaws and security protocols, to ensure that asylum seekers are not sent back to any country where their life or freedom would be threatened for being LGBTI+;
- 62.13 Immediately remove all bans on public gatherings and events of LGBTI+ communities and introduce effective mechanisms that guarantee the right to freedom of expression, freedom of the press and freedom of association and peaceful assembly to LGBTI+ communities in Turkey;
- 62.14 Eliminate all arbitrary behaviour towards human rights defenders, such as arbitrary detention, ill-treatment and smear campaigns in media and secure their adequate protection from intimidation, threats and violence;
- 62.15 Within the next reporting cycle, ensure sustainable core and operational funding for LGBTI+ CSOs and secure adequate representation of LGBTI+ CSOs in decision-making and consultative processes related to human rights frameworks;

## ANNEX

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