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02/04/2012

RAP/RCha/TU/IV(2012)Add

EUROPEAN SOCIAL CHARTER

Comments from Kaos GL and the
ILGA (European Region) on the
4th National Report on the implementation of
the European Social Charter

submitted by

THE GOVERNMENT OF TURKEY

(Articles 1§2
for the period 01/02/2007 – 31/12/2010)

Report registered by the Secretariat on 30 March 2012

CYCLE 2012



European Social Charter

Submission by Kaos GL and the International Lesbian, Gay, Bisexual, Trans and Intersex Association (European Region) on the 4th National Report by Turkey on the implementation of the revised European Social Charter

Article 1.2: Prohibition of discrimination in employment on the grounds of sexual orientation and gender identity

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The European Social Charter

Submission by Kaos GL¹ and the International Lesbian, Gay, Bisexual, Trans and Intersex Association (European Region) on the 4th National Report by Turkey on the implementation of the revised European Social Charter

Article 1.2: Prohibition of discrimination in employment on the grounds of sexual orientation and gender identity

1 Executive Summary

Public attitudes towards lesbian, gay, bisexual and transgender (LGBT) persons in Turkey are generally negative. Hate crimes are a particularly serious problem, but there is also evidence of discrimination in employment. There is an official policy of discrimination on grounds of sexual orientation and gender identity in the case of employment in the Armed Forces.

The attitude of government officials towards the LGBT community betrays a degree of hostility, with discriminatory statements by public officials and agencies, and a repeated failure to take action to implement legislation explicitly combating discrimination on grounds of sexual orientation or gender identity, including in the field of employment.

Council of Europe standards in relation to discrimination on grounds of sexual orientation and gender identity have been much clarified in recent years. The Recommendation of the Committee of Ministers on combating discrimination on grounds of sexual orientation or gender identity discrimination, adopted in 2010, emphasises the obligation of member states to take positive action to combat such discrimination. The European Court of Human Rights ("the Court"), the Parliamentary Assembly, and the Commissioner for Human Rights, have all in their different ways underlined the requirement for such action.

The European Committee on Social Rights ("the Committee") has itself stated that under Article 1 (2) of the revised Social Charter legislation should prohibit discrimination in employment on grounds of sexual orientation.

In its 2008 Conclusions on Turkey, the Committee noted that this ground did not figure in the list of grounds for discrimination prohibited by legislation, and added that, as the national report did not contain information requested in previous conclusions, the Committee repeated its request, asking in particular whether "any other similar ground" included this ground, and what measures had been taken to combat this type of discrimination. The 4th National Report failed to respond to these questions.

If "sexual orientation" were covered by "any other similar ground", this should be evident from consistent application of this principle in employment-related case law. However, according to a recent report by Amnesty International, such evidence as there is leads to the opposite conclusion, namely that "in cases where the courts have examined instances when

¹ Kaos GL is a Turkish organisation working at the national level for lesbian, gay, bisexual and transgender rights

an employee has been dismissed explicitly due to his sexual orientation, such dismissals were not ruled unlawful." This report also comments that "Given the arbitrary and discriminatory justifications found in the decisions by elements of the judiciary there remains a real risk that lesbian, gay, bisexual and transgender individuals' access to justice will be compromised, in either civil or criminal proceedings where their sexual orientation or gender identity is known to the court."

The failure of the Turkish authorities to respond to questions raised by the Committee in its 2008 Conclusions, together with the evidence in this submission, lead to the clear conclusion that there is no legal protection from sexual orientation discrimination in employment. In view of this, and of official government sexual orientation discrimination in access to service in the Armed Forces, we urge the Committee to return a finding of non-conformity in relation to Turkey's obligations under article 1 (2).

The Committee has not, hitherto, laid down a position on gender identity discrimination in employment. However the Europe-wide nature of this problem is now well established. Given the adoption by the Committee of Ministers of a Recommendation to member states on combating such discrimination, and noting that some 33 member states already have an obligation to prohibit discrimination in employment either in relation to gender identity, or in relation to gender reassignment, we urge the Committee to adopt a general Conclusion that Article 1.2 should prohibit discrimination in employment on grounds of gender identity.

Moreover, in view of the serious concerns over the extreme social exclusion of transgender persons in Turkey, the evidence of their severe difficulties in gaining employment, and the absence of any action by the Turkish authorities to remedy these matters, we urge that the Committee return a finding of non-conformity with article 1.2 in relation to gender identity. Such a ruling should also cover the explicit exclusion of transgender persons from the Armed Forces.

2 Principal sources of data used in this submission

1. The principal sources of data used in this submission are as follows:
 - The Council of Europe Commissioner for Human Rights June 2011 report entitled "Discrimination on grounds of sexual orientation and gender identity in Europe - Background Document"² ("the Human Rights Commissioner's Report");
 - Two associated reports commissioned by the Office of the Human Rights Commissioner specifically addressing the situation in Turkey, respectively, the "Study on Homophobia, Transphobia and Discrimination on Grounds of Sexual Orientation and Gender Identity – Legal Report: Turkey"³ ("the Legal Report"), and the similarly titled "Sociological Report: Turkey"⁴ ("the Sociological Report")
 - "Not an illness, nor a crime" – lesbian, gay, bisexual and transgender people in Turkey demand equality – Amnesty International ("the Amnesty International Report")⁵

² Available at: http://www.coe.int/t/Commissioner/Source/LGBT/BackgroundDocument2011_en.pdf

³ Available at: http://www.coe.int/t/Commissioner/Source/LGBT/TurkeyLegal_E.pdf

⁴ Available at: http://www.coe.int/t/Commissioner/Source/LGBT/TurkeySociological_E.pdf

⁵ "NOT AN ILLNESS NOR A CRIME" Lesbian, gay, bisexual and transgender people in Turkey demand equality"

Amnesty International June 2011 Index: EUR 44/001/2011

Available at: <http://www.amnesty.org/en/library/info/EUR44/001/2011/en>

- The US State Department 2010 Human Rights Report: Turkey ("the US State Department Report")⁶

3 The general situation of lesbian, gay, bisexual and transgender (LGBT) people in Turkey

Public attitudes

2. The Sociological Report comments that "a few surveys and reports of existing attitudes towards LGBT persons and experiences of discrimination show generally conservative and very negative public attitudes towards LGBT persons."⁷ It cites a 2009 survey in which 87% of respondents replied that they would not want homosexuals as their neighbour.⁸
3. The Amnesty International Report summarises the situation as follows:

"Homophobic and transphobic views are common in the media. People are discriminated against on the grounds of their sexual orientation and gender identity both by the state and non-state actors in the workplace, in health services, in education and in housing. Such pervasive prejudice means that many lesbian, gay, bisexual and transgender men and women feel compelled to conceal their sexual orientation from employers, public officials and even their families, such is their fear of violence, discrimination and prejudice⁹..... Transgender women in particular face the greatest barriers to entering employment and are in a great many cases forced to engage in illegal sex work, adding another layer of prejudice against them and providing an additional subtext for their harassment by law enforcement officials."¹⁰

Freedom of assembly and association

4. While LGBT people are able to exercise freedom of assembly, freedom of association remains contested. The US State Department Report noted that "there were active LGBT organisations in at least seven cities in the country All groups complained of harassment by police and government authorities. Most had problems registering as an official organisation or maintaining their registration once granted."¹¹ It pointed to legislation which states that "no association may be founded for purposes against law and morality", continuing that "this article was applied in attempts to shut down or limit the activities of NGOs working on LGBT matters".¹²
5. The problems noted in the US State Department Report regarding registration involved objections raised by city authorities, which, when challenged in the courts, were overruled. In April 2009, in the most widely publicised of these cases, Turkey's Court of Cassation ruled against the closure of Lambda Istanbul Solidarity

⁶ 2010 Human Rights Report: Turkey - Bureau Of Democracy, Human Rights, And Labor - April 8, 2011
Available at: <http://www.state.gov/j/drl/rls/hrrpt/2010/eur/154455.htm>

⁷ op. cit., paragraph 2

⁸ op. cit., paragraph 21

⁹ Op. cit, pages 5/6

¹⁰ op. cit., page 6

¹¹ op. cit., page 39

¹² op. cit., page 38

Association. However, the court's ruling included the discriminatory condition that the association should not "encourage lesbian, gay, bisexual, transvestite and transsexual behavior with the aim of spreading such sexual orientations."¹³ A case is pending before the European Court of Human Rights challenging this ruling.

Hate crimes

6. The incidence of hate crimes against LGBT people is widely recognised as of great concern. The Amnesty International Report records that in 2010 alone LGBT associations documented 16 murders of individuals believed to have been killed due to their real or imputed sexual orientation or gender identity.¹⁴ It noted that "Transgender women in particular are targeted".¹⁵ The Human Rights Commissioner's Report echoes these concerns, setting out a variety of data on the extent of homophobic and transphobic murders in Turkey.¹⁶ The Legal Report gives information regarding cases involving the murder of individual transgender women.¹⁷
7. The Amnesty International Report stresses the consequences for the LGBT community of the widespread danger of hate crimes:

"Many of the people that Amnesty International spoke to reported being assaulted due to their sexual orientation or gender identity by private individuals In a survey of lesbian, gay, bisexual and transgender individuals over 70 per cent said that they feared that they would be attacked due to their sexual orientation or gender identity. The fear of hate crimes was particularly strong among transgender women sex workers all of whom told Amnesty International that they had been previously attacked by clients. Many told Amnesty International that they knew transgender women who had been murdered. In this way suspected hate crimes have traumatized not only their victims and friends and relatives but the entire LGBT community."¹⁸

Police behaviour towards LGBT people

8. The Amnesty International Report notes that: "Transgender women as a group have suffered a long history of violence by police in custody. Amnesty International was told that in many instances police officers view all transgender women in public places as sex workers and legitimate targets for arrest, harassment and in some cases physical abuse.... In a survey conducted in 2010, of the 104 transgender women who took part, more than 89 per cent said that they had been victims of physical violence in police pre-charge detention." It also records that in recent years cases of ill-treatment in police stations have dropped sharply, partly due to the activism of transgender women, although cases remain both in official places of custody and outside such places.¹⁹

¹³ Human Rights Watch – Universal Periodic Review – Turkey – Submission for the 8th UPR session (May 2010)

¹⁴ op. cit., page 30

¹⁵ op. cit., page 6

¹⁶ op. cit., pages 103/104

¹⁷ op. cit., paragraphs 65 – 70

¹⁸ op. cit. page 31

¹⁹ op. cit., pages 12/13

Discriminatory application and interpretation of the law

9. The Amnesty International Report notes that "individuals are routinely discriminated against in criminal and civil legal proceedings due to their sexual orientation or gender identity."²⁰ It notes that the concept of morality included in a number of areas of law have been used to dismiss civil servants due to their sexual orientation, to request the closure of LGBT associations, and to interfere with freedom of expression. It also notes discriminatory treatment in the criminal law, including reduced sentences in cases where perpetrators of a crime claim that they were provoked. Amnesty concludes "Given the arbitrary and discriminatory justifications found in the decisions by elements of the judiciary there remains a real risk that lesbian, gay, bisexual and transgender individuals' access to justice will be compromised, in either civil or criminal proceedings where their sexual orientation or gender identity is known to the court."²¹
10. In a positive development, in 2012 the Court of Cassation ruled that an attack in a newspaper column on a politician who supported LGBT rights, which spoke of his "pledge for faggots", and "choice for perverts", was an insult to homosexuals, awarding damages against the columnist and the newspaper, and overturning a judgement of the lower court.²²

4 Government hostility and refusal to take action to combat discrimination

11. The Amnesty International Report summarises the position as follows:

" ... no explicit protections of the right to non-discrimination on grounds of sexual orientation or gender identity exist in national law.²³ At the same time, certain criminal and civil law provisions are frequently applied by the judiciary in a discriminatory manner. Not only have senior politicians and government officials refused equality demands, they have also made explicitly homophobic statements likely to encourage discrimination against lesbian, gay, bisexual and transgender individuals. In another sign of their refusal to recognise the equal rights of all people irrespective of their sexual orientation or gender identity, at the international level, the Turkish authorities have consistently rejected recommendations to reform their non-discrimination provisions and have refused to sign up to resolutions calling for protections to the rights of lesbian, gay, bisexual and transgender people."²⁴

12. Appendix I sets out the section of the Amnesty International Report substantiating the above comments. In particular, it should be noted that:

- (i) There has been a history "of discriminatory statements by government officials from which the government has failed to distance itself or issue apologies for."
Examples cited include statements:

²⁰ op. cit., page 10

²¹ op. cit., page 11

²² "The Top Court of Turkey Addresses Insult to Homosexuals as Insult" – Kaos GL website – 1 February 2012 (accessed 13 March 2012)

²³ This general position is supported by the Human Rights Commissioner's Report (page 53), and the Legal Report (paragraph 3)

²⁴ op. cit., page 8

- in 2010 by the (then) Minister of State responsible for Women and the Family that "homosexuality is a biological disorder and should be treated";²⁵
 - in 2008 by the head of the Parliamentary Constitution Committee that "Gays have made requests during the negotiations on constitutional changes. Are we going to respond to their requests? It is not possible in the current conditions. The public is not ready for this."²⁶
- (ii) Opportunities to extend protections on grounds of sexual orientation and gender identity have not been acted on:
- Demands for protections against sexual orientation and gender identity discrimination in the new Penal Code in 2005 were rejected, reportedly on the request of the Minister of Justice.
 - In 2010, when amending the non-discrimination article of the Constitution, extending protections on grounds of sexual orientation and gender identity was not pursued;
 - In March 2011 the latest version of a new draft "Law to Combat Discrimination and Equality" was published at the website of the Ministry of the Interior, but following removal of explicit reference to "sexual identity" included in an earlier draft. This term was stated by the drafters to cover both sexual orientation and gender identity.

13. The US State Department 2010 Human Rights Report provided a further example of a discriminatory statement by government officials:

"In October 2009 the Directorate of Religious Affairs (Diyanet) under the authority of the Prime Ministry released a decision declaring that homosexuality is "a behavior disorder and has been spreading in a scary way within society. ...[H]omosexuality cannot be accepted." The decision went on to state that homosexuality "is against human nature, and it should be corrected without targeting homosexuals." "²⁷

14. In a rare positive development, in September 2011 the Minister of Family and Social Policy, Fatma Şahin, invited a representative of a transgender organisation, Pembe Hayat, to participate at a meeting with civil society organizations to discuss violence against women.²⁸ Whether this will have positive results remains to be seen. Unfortunately, it was followed in December 2011 by a speech in which the Minister of the Interior, Idris Naim Sahin, in a speech on terrorism, complained of "rancour against the state" and "an environment in which there are all kinds of dishonour, immorality and inhuman situations – from eating pork to Zoroastrianism, from whatever nation or brotherhood, and pardon me, to homosexuality".²⁹

15. The Amnesty International Report points out that at the United Nations Turkey has failed to support the rights of LGBT people:

²⁵ op. cit., page 9; see also the US State Department 2010 Human Rights Report, page 38

²⁶ op. cit. page 8

²⁷ The US State Department 2010 Human Rights Report, page 38

²⁸ LGBT gains recognition from government for first time - 21 September 2011 / *TODAY'S ZAMAN, İSTANBUL*

²⁹ "Islam and homosexuality – Straight but narrow" – *The Economist* – 4 February 2012; see also, "LGBT organisations demand the resignation of interior minister" – Kaos G.L. website, December 30, 2011, accessed 13 March 2012

- In December 2010 Turkey failed to vote in the UN General Assembly Resolution that condemns extrajudicial, summary or arbitrary executions and references those targeted due to their sexual orientation;
 - In 2011 Turkey failed to support a joint statement issued by Colombia with the support of 85 states at the UN Human Rights Council on ending acts of violence and related human rights violations based on sexual orientation and gender identity.³⁰
16. Turkey's responses in international institutions regarding its domestic policies on LGBT rights have been little better. At the Council of Europe, in 2009, in a reply to a Written Question by a member of the Parliamentary Assembly to the Committee of Ministers highlighting concerns over violence and discrimination, and asking, *inter alia*, for the implementation of non-discrimination legislation, Turkey would concede only a statement so general as to amount to avoiding the question: "Like all member states, Turkey has ratified the European Convention on Human Rights.... and is committed to guarantee respect for Convention rights, including freedom of association, to all individuals within its jurisdiction without any discrimination."³¹
17. In September 2010, during the United Nation's Universal Periodic Review process, recommendations were made by a number of states that Turkey adopt sexual orientation and gender identity as non-discrimination grounds, as set out in Appendix II. In its replies, Turkey relied on the inclusion in the draft anti-discrimination legislation of the term "sexual identity", on the basis that it was intended to cover both sexual orientation and gender identity. However only six months later, when the latest version of the draft "Law to Combat Discrimination and Equality" was published at the website of the Ministry of the Interior, "sexual identity" had been removed from the draft (see paragraph 12). At the date of the present submission, there is no evidence that the draft law has been taken any further by the Ministry of the Interior.

5 Council of Europe standards on sexual orientation and gender identity discrimination in employment

5.1 The Committee of Ministers

18. In March 2010 the Committee of Ministers adopted a comprehensive Recommendation on combating sexual orientation or gender identity discrimination.³² Paragraph 2 recommends that member states:

“ensure that legislative and other measures are adopted and effectively implemented to combat discrimination on grounds of sexual orientation or gender

³⁰ *op. cit.*, page 9

³¹ "End violence and discrimination on the basis of sexual orientation and gender identity in Turkey" – Written question No 557 to the Committee of Ministers – Reply from the Committee of Ministers adopted at the 1062nd meeting of the Ministers' Deputies (1 July 2009)

³² Recommendation CM/Rec(2010)5 of the Committee of Ministers to member states on measures to combat discrimination on grounds of sexual orientation or gender identity (*Adopted by the Committee of Ministers on 31 March 2010 at the 1081st meeting of the Ministers' Deputies*)

identity, to ensure respect for the human rights of lesbian, gay, bisexual and transgender persons and to promote tolerance towards them;”

19. The appendix to the Recommendation sets out principles and measures which member states should follow in implementing the relevant legislation, policies and practices. Paragraph 29 specifically addresses employment:

“Member states should ensure the establishment and implementation of appropriate measures which provide effective protection against discrimination on grounds of sexual orientation or gender identity in employment and occupation in the public as well as in the private sector. These measures should cover conditions for access to employment and promotion, dismissals, pay and other working conditions, including the prevention, combating and punishment of harassment and other forms of victimisation.”

20. Paragraph 30 of the appendix to the Recommendation goes on to address concerns relating to transgender persons:

"Particular attention should be paid to providing effective protection of the right to privacy of transgender individuals in the context of employment, in particular regarding employment applications, to avoid any irrelevant disclosure of their gender history or their former name to the employer and other employees."

21. The Recommendation's Explanatory Memorandum provides the following additional information:

"Discrimination in employment and occupation is a particular concern for transgender persons, who are hard hit by unemployment and social exclusion. The number of transgender persons made redundant, particularly during a gender reassignment procedure, who leave their jobs to avoid any forms of harassment or who decide against gender reassignment for the same reasons is also very high. Member states should therefore ensure that measures designed to combat discrimination in employment also apply to gender identity issues, take care to avoid unnecessary disclosure of a transgender person's gender background or previous name, both in recruitment procedures and during working life, and develop programmes focusing specifically on employment opportunities for transgender persons."³³

5.2 European Convention on Human Rights

22. The Explanatory Memorandum to the Committee of Ministers Recommendation on combating discrimination on grounds of sexual orientation or gender identity explains the position of the European Court of Human Rights regarding the margin of appreciation applicable in relation to these two grounds:

"The Court has furthermore held that the margin of appreciation left to the states in such cases, touching on one of the most intimate questions of private life, is narrow,

³³ Committee of Ministers Recommendation – Explanatory Memorandum – page 17

and there must be particularly serious grounds to justify interference by the public authorities."³⁴

23. Since the adoption of the Recommendation in March 2010, the Court has further clarified its position. In *Clift v. UK*³⁵ the Court used sexual orientation as an example of characteristics protected under article 14 that can be said to be "personal" in the sense that they are innate or inherent. In *Kyutin v. Russia*³⁶, the Court furthermore stated (§ 48): "In assessing whether a difference of treatment is justified, this Court had identified a number of **particularly vulnerable groups** – for instance, Roma, **homosexuals**, persons with mental disabilities – that suffered a history of prejudice and social exclusion, in respect of which the State has a narrower margin of appreciation." (Emphasis added)

24. Regarding the treatment of employment rights in relation to sexual orientation discrimination under the Convention, the Human Rights Commissioner's Report explains that:

"While the right to work is not directly protected in the European Convention on Human Rights, in the case of *Smith & Grady v. the United Kingdom*, and in the case of *Lustig-Prean & Beckett v. the United Kingdom*, the Court recognised that the dismissal from the army of gay and lesbian personnel based solely on their sexual orientation had been unlawful and had violated Article 8 of the Convention...."

25. The Court has not addressed discrimination on the basis of gender identity in the context of employment. However, in a recent judgment the Court made it clear that transsexualism is a ground which falls within the scope of Article 14.³⁷

5.3 Parliamentary Assembly

26. In its Resolution 1728 (2010) on Discrimination on the basis of sexual orientation and gender identity, the Parliamentary Assembly called on member states to:

"adopt and implement anti-discrimination legislation which includes sexual orientation and gender identity among the prohibited grounds for discrimination, as well as sanctions for infringements;"³⁸

5.4 Council of Europe Commissioner for Human Rights

27. The Human Rights Commissioner's Report recommends that member states

"Enact comprehensive national legislation on non-discrimination and include sexual orientation and gender identity among the prohibited grounds of discrimination".³⁹

³⁴ Explanatory Memorandum to the Council of Europe Committee of Ministers Recommendation on combating discrimination on the grounds of sexual orientation or gender identity – page 1

³⁵ *Clift v. UK* (appl. 7205/07, judgment 13 July 2010)

³⁶ *Kyutin v. Russia* (appl. 2700/10, judgment 10 March 2011)

³⁷ In *P.V. v. Spain* (appl. 35159/09, judgment 30 November 2010), the Court indicated that allowing a parent's gender reassignment as such to negatively influence that parent's visitation rights after divorce would amount to discrimination on grounds of transsexualism with regard to family life – in breach of articles 8 and 14 of the Convention.

³⁸ *op. cit.*, paragraph 16.5

³⁹ *op. cit.*, page 11

28. It also specifically recommends that states take measures to protect the rights of transgender persons in the labour market:

"Respect the right of transgender persons to access the labour market by guaranteeing the respect of their privacy concerning the disclosure of personally sensitive data related to their gender identity and by promoting measures aimed at ending the exclusion and discrimination of transgender persons in the workplace."⁴⁰

29. The Human Rights Commissioner's report notes that some 38 member states regard sexual orientation as a prohibited ground of discrimination.⁴¹

30. Regarding gender identity, the picture is, as the Human Rights Commissioner's report points out, more complex:

"Nine member states (Albania, Croatia, Czech Republic, Germany, Hungary, Montenegro, Serbia, Sweden and the United Kingdom) have included gender identity specifically in non-discrimination legislation. At least 11 member states treat discrimination on grounds of gender identity or gender reassignment as a form of sex or gender discrimination in comprehensive non-discrimination legislation (Andorra, Austria, Belgium, Denmark, Finland, France, Ireland, Netherlands, Norway, Slovakia and Switzerland), while one member state (Sweden) has chosen multiple formulations to describe the applicable grounds. However, there are significant differences as to the legal scope of these terms and the different laws, even though, as an effect of the Gender Recast Directive, EU member states should recognise discrimination in the field of employment with regard to gender reassignment of the person."⁴²

31. Thus, if obligations under EU law are taken into account, some 34 Council of Europe member states have an obligation to protect transgender persons from discrimination in employment either on the grounds of their gender identity, or gender reassignment.

6 The obligations of Contracting Parties under Article 1.2 of the Revised European Social Charter

32. Under Article 1.2 Contracting Parties undertake "to protect effectively the right of the worker to earn his living in an occupation freely entered upon".

33. Under Article E of the Charter, Contracting Parties undertake that the enjoyment of the rights set forth in the Charter "shall be secured without discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national extraction or social origin, health, association with a national minority, birth or other status".

⁴⁰ op. cit., page 15

⁴¹ op. cit., page 166

⁴² op. cit., page 166

34. The Committee has stated that it "considers that under Article 1§2 legislation should prohibit discrimination in employment at least on grounds of race, ethnic origin, religion, disability, age, sexual orientation and political opinion".⁴³
35. Moreover, it has determined that the discriminated acts and provisions prohibited by this provision are ones that may occur in connection with recruitment or with employment conditions in general (in particular, remuneration, training, promotion, transfer and dismissal or other detrimental action).⁴⁴
36. Although there is no European Social Charter case law in relation to employment discrimination on the grounds of gender identity, the serious and widespread nature of such discrimination, and the existing Council of Europe standards in this regard, leave no doubt that such discrimination should fall within the Article E ground of "other status".

7 Sexual orientation discrimination in employment in Turkey

37. The Amnesty International Report comments that

"Discrimination against lesbian, gay, and bisexual individuals remains routine. Amnesty International was told that almost all people from these communities feel compelled to hide their identity for fear of losing their job, irrespective of whether they work in the public or private sector. For transgender women there is very little access to employment, resulting in many being forced into sex work as the only means of survival." It notes that in a survey of LGBT individuals, 33% reported that they had not been hired for a job due to their sexual orientation or gender identity.⁴⁵

38. In the case of gay men who had been granted exemption from military service, a particular concern was the requirement to produce proof of having performed military service before being accepted into employment. Although the certificate of exemption does not state the grounds for exemption, it was reported to Amnesty International that a common suspicion that it was granted on grounds of sexual orientation could lead to employers refusing a job.
39. The Amnesty International Report cites two examples of gay men refused employment after their sexual orientation emerged following exemption from military service: the first a football referee;⁴⁶ the second was initially offered a job, which was later withdrawn, the applicant being told that "if the customers found out, you would make them uncomfortable".⁴⁷
40. Employment related laws containing morality provisions are another source of concern.

⁴³ Conclusions 2006 Albania

⁴⁴ Conclusions XVI-1 – Austria, p. 25

⁴⁵ op. cit., page 22

⁴⁶ Hearings in this case have been postponed repeatedly. The next hearing is currently set for June 5 2012

⁴⁷ op. cit., page 22

41. The Civil Servants Law, Article 125 E-g, provides for persons to be dismissed if found "to act in an immoral and dishonourable way which is not compatible with the position of a civil servant".⁴⁸
42. The Legal Report adds "there are many other special laws regulating the rights and duties of specialised civil servant such as judges, prosecutors, army officers, police officers etc. According to all of these special laws, "immoral behaviours" are reasons to receive disciplinary punishment. Those articles are also threatening specialised LGBT civil servants."⁴⁹
43. The Legal Report also draws attention to Article 27 of the Law on Elementary and High School Teacher's Promotion and Discipline according to which a teacher can be dismissed if his/her "behaviours are accepted as impure and cannot fit the teaching profession outside the school.... In other terms, impure behaviour by the teacher at any time – even private – can result in his/her dismissal. Since LGBT persons' sexual orientation or gender identity is easily accepted as "immoral" or "impure", there is a pressure of such discipline punishment on LGBT teachers."⁵⁰
44. The Legal Report documents cases where morality provisions have been used to dismiss individuals on the basis of their sexual orientation, involving a teacher, a civil servant, and three police officers.⁵¹
45. Amnesty International comment that "In cases where the courts have examined instances when an employee has been dismissed explicitly due to his sexual orientation, such dismissals were not ruled unlawful."⁵²
46. The Legal Report notes that in January 2010 the Prime Minister's Public Officials Ethics Committee prepared a draft regulation regarding ethical principles which have to be followed by inspectors in public institutions. A newspaper reported that this included a non-discrimination article which included sexual orientation.⁵³ However, according to the author of the Legal Report, this draft regulation has not been implemented.⁵⁴

The Armed Forces

47. The Human Rights Commissioner's Report comments: "In Turkey, Article 17 of the appendix of the Armed Forces Health Regulation,⁵⁵ states that gay men are "unfit to serve" in the army. The Turkish military uses the DSM II ("Diagnostic and Statistical Manual of Mental Disorders") dating from 1968 whereas the medical community currently uses DSM IV – 2000. According to DSM II, homosexuality is a psychosexual

⁴⁸ op. cit., page 23

⁴⁹ op. cit., paragraph 105

⁵⁰ op. cit., paragraph 98

⁵¹ op. cit., following paragraph 113. At the time of the Legal Report certain of these cases were still unresolved.

According to the author of the report, these cases remain unresolved. Message from Yasemin Öz dated 16 March 2012

⁵² op. cit., page 22

⁵³ op. cit., paragraphs 110 – 113

⁵⁴ Message from Yasemin Öz dated 16 March 2012

⁵⁵ Footnote 992 to the Human Rights Commissioner's report cites "Armed Forces Health Regulation, Paragraph 17, also quoted in national contribution (sociological report) on Turkey, page 15."

disorder and those who have this "pathology" are considered "unfit to serve" in the Turkish Armed Forces."

48. The US State Department Report describes the situation as follows: "Openly gay men were not allowed to perform military service for "health reasons" due to their sexual orientation; those requesting military exemption for reasons of sexual orientation had to undergo an invasive burden of proof and many times were denied even after proclaiming their sexual orientation and undergoing treatment and examination at several military medical facilities. LGBT groups complained that gay men were required to show photos of themselves in overtly sexual positions and to undergo thorough medical evaluations to prove their homosexuality to military officials. The groups further complained that military officials "outed" gay men to their families and communities."⁵⁶
49. A recent BBC World Service documentary, "The Pink Certificate", provides further evidence of the above concerns.⁵⁷
50. The Amnesty International Report confirms the above, providing detailed commentary on the abuse of gay men in the military. It notes that the proof of homosexuality needed in order to obtain exemption from service in the Armed Forces may consist of "a forced anal examination,..... or photographic evidence of the individual engaged in gay sex,.... Gay men who choose not to go through this humiliating process or those who are not granted an exemption are at risk of threats, humiliation and violence while performing military service."
51. Appendix III provides the full text of the Amnesty International Report on this question. It includes the detailed account of one young gay man's experiences which included verbal abuse, solitary confinement, threats of violence and humiliating and discriminatory medical examinations.

8 Gender identity discrimination in employment in Turkey

52. Commenting on the general employment situation of transgender people in Europe, the Human Rights Commissioner's report states:

"Transgender persons may experience significant obstacles in accessing the labour market and for this reason they may be subject to higher levels of discrimination and marginalisation. This situation of socio-economic vulnerability is reflected in the presence of transgender women working as sex workers in some member states of the Council of Europe. Their reason for entering sex work is often linked to systematic direct discrimination by employers, which in turn affects the possibility of gaining access to stable employment. However, in some cases transgender women may be pushed to enter sex work in order to pay for treatments they wish to undertake in order to have their preferred gender recognised, particularly in situations where health schemes do not reimburse such expenses."⁵⁸

⁵⁶ Op. cit. Page 41

⁵⁷ "Proving you're gay to the Turkish Army" by Emre Azizlerli – *BBC World Service* – 26 March 2012 – a commentary is available at <http://www.bbc.co.uk/news/magazine-17474967> - accessed 29 March 2012

⁵⁸ op. cit., page 171

53. The situation for transgender people in Turkey is perhaps as bad as anywhere in Europe, often involving social exclusion at its most extreme – with rejection by family, and impossibility of gaining employment, leading to sex work as a survival mechanism – and consequent vulnerability to health risks and violence both at the hands of state and private actors.

54. The Amnesty International Report comments as follows:

"With respect to the situation of transgender women, the vast majority of those interviewed told Amnesty International that the impossibility of finding other work had led them, either currently or in the past, to engage in sex work. Transgender women who were in employment during the time that they changed their gender also reported that they were forced out of their jobs as a result. These findings are mirrored by Lambdaistanbul's survey of transgender women living in that city. Of the 90 transgender women who were asked why they left their employment, 42 per cent said it was because they believed that they would be fired, 30 per cent said that they were fired, 29 per cent said that they were denied promotion and 24 per cent said that they were forced to resign.⁵⁹ Despite exhaustive efforts to find work for transgender women by activists, including advocacy with the local authorities in Istanbul for example, no positive results were reported. For example although one transgender woman attended state-provided vocational courses, gaining a professional qualification as a health worker, she was not able to find employment in any hospital. As a result of denial of access to employment, for the vast majority of transgender women the only option is to engage in unlicensed and dangerous sex work, the risks of which are indicated by the number of transgender women sex workers who have been killed or report suffering constant violence by customers..... Transgender women told Amnesty International that because the state does not regard them as women (who unlike men are able to legally work as sex workers), and therefore excludes them from licensed sex work, they were at a much greater risk of violence than women who worked in licensed brothels.⁶⁰ Amnesty International considers that the law concerning sex work, like any other law, should not discriminate on grounds of gender, sexual orientation or gender identity."⁶¹

55. The Sociological Report echoes the Amnesty International findings.⁶²

56. The Amnesty International Report includes a detailed account of a case, which illustrates graphically the extreme social exclusion faced by some transgender women. At 16, when she told her family that she felt that she was a woman, she was subjected to severe violence and death threats by family members and others over a prolonged period of time. She attempted suicide. At 18 she escaped the family house, and travelled to Istanbul, where she thought she would find acceptance and support. But she was shocked to find the levels of violence against transgender

⁵⁹ the Amnesty International Report endnote 43 cites *İt iti Isırmaz" Bir Alan Araştırması: İstanbul'da Yaşayan Trans Kadınların Sorunları*, Lambdaistanbul Solidarity Association, p34

⁶⁰ the Amnesty International Report endnote 44 comments that "The law requires transgender individuals to undergo gender reassignment operations as a prerequisite for changing their gender in law (see barriers to accessing other rights section below). The General Regulations regarding Brothels and Prostitution and the Fight Against Sexually Transmitted Diseases (No: 30/03/1961 - 5/984) (Genel Kadınlar ve Genelevlerin Tabi Olacakları Hükümler Ve Fuhuş Yüzünden Bulaşan Zührevi Hastalıklarla Mücadele Tüzüğü) only regulates women sex workers. Available at <http://www.mevzuat.adalet.gov.tr/html/5189.html> "

⁶¹ op. cit., pages 23/24

⁶² op. cit., paragraph 80

women there, and afraid for her own security, was persuaded to return home. The family violence against her continued, and after eight months of captivity, she escaped with the help of her mother, who said she had no doubt that threats to her daughter's life would be carried out. She gave up education due to problems of having the appearance of a woman yet the identity card of a man, which resulted in her not being able to enter university buildings. She was forced into illegal sex work due to the lack of any available form of employment. She experienced severe problems finding a place to live. Aged 25 at the time of the Amnesty International interview, she continued to receive death threats, and fears for her life if discovered by her family. The full Amnesty International account is included at Appendix IV.

57. Appendix V sets out case histories published in a Turkish magazine recounting the difficulties of transgender people in finding employment. They include two journalists, a teacher, a hairdresser and a singer. Unable to gain employment, almost all found themselves compelled to undertake sex work. While the date of the publication – 2005 – is not recent, there is, regrettably, little reason to believe that the situation has improved significantly in the meantime.

Employment of transgender persons in the Armed Forces

58. The Legal Report documents the fact that, "according to Article 17 of the appendix of the Turkish Army Forces Health Capability Regulations Number 19291, dated 24 January 1986, transgender persons are not allowed to enter the army. The Turkish military still uses DSM II (Diagnostic and Statistical Manual of Mental Disorders) dating from 1968 whereas the medical community currently uses DSM IV-2000. According to DSM II transsexuality is an exceeding psychosexual disorder and those who have this "pathology" are considered "unfit to serve" in the Turkish Armed Forces."⁶³

9 Areas of non-conformity with the provisions of the Social Charter

Sexual orientation - employment in general

59. In its 2008 Conclusions⁶⁴ on Turkey, the Committee noted that discrimination on the grounds of age and sexual orientation did not figure in the list of grounds for discrimination prohibited by the legislation, and added that, as the national report did not contain information requested in previous conclusions, the Committee repeated its request, asking in particular whether "any other similar ground" included these two grounds for discrimination, and what measures had been taken to combat this type of discrimination.

60. The 4th National Report fails to respond to these questions.

61. If, in practice, "sexual orientation" were covered by "any other similar ground", one would expect to find consistent evidence from case law supporting this. But this is not the case. Indeed, Amnesty International comments that "in cases where the courts have examined instances when an employee has been dismissed explicitly

⁶³ op. cit., paragraph 151

⁶⁴ European Committee of Social Rights - Conclusions XIX – 1 (TURKEY) Articles 1, 9, 10 and 18 of the Charter

due to his sexual orientation, such dismissals were not ruled unlawful." (See paragraph 45). And Amnesty International adds more generally: "Given the arbitrary and discriminatory justifications found in the decisions by elements of the judiciary ... there remains a real risk that lesbian, gay, bisexual and transgender individuals' access to justice will be compromised, in either civil or criminal proceedings where their sexual orientation or gender identity is known to the court." (See paragraph 9)

62. These concerns are illustrated by the Court of Cassation's inclusion of a discriminatory condition when supporting Lambda Istanbul's right to registration, to the effect that the association should not "encourage lesbian, gay, bisexual, transvestite and transsexual behaviour with the aim of spreading such sexual orientations." (See paragraph 5). The Court of Cassation's recent decision on homophobic language is a positive sign, but far from sufficient to establish that lesbian, gay, or bisexual persons challenging employment discrimination can rely on protection under the category of "any other similar ground".
63. It is difficult to escape the conclusion that "any other similar ground" does not in practice provide protection from discrimination in employment on the ground of sexual orientation. The Turkish Government's failure to respond to the Committee on this question would be entirely consistent with such a conclusion.
64. Moreover, the evidence presented in this submission leaves little doubt that there is no will within government to provide such protection. The government has had several opportunities in recent years to make explicit its support for providing protection from discrimination on grounds of sexual orientation, but has consistently failed to do so:
 - When implementing legislation, with the amendments to the Penal Code in 2005, to the non-discrimination article of the Constitution in 2010, and in 2011, when publishing the latest version of the draft "Law to Combat Discrimination and Equality" (see paragraph 12)
 - When responding to a Written Question to the Committee of Ministers in 2009 (see paragraph 16)
65. On the only occasion when it appeared to commit to providing protection from discrimination on the grounds of sexual orientation and gender identity, the proposed legislation was based on the term "sexual identity" which was later deleted from the published version of the proposal (see paragraph 17).
66. Such a conclusion is borne out by homophobic statements made by government agencies or officials over the years, and not repudiated; for example, those by the Directorate of Religious Affairs in 2009 (see paragraph 13), and by the (then) Minister of State responsible for Women and the Family in 2010 (see paragraph 12). It is supported by the continuing explicit discrimination on grounds of sexual orientation in the armed forces. The recent invitation to an LGBT organisation to participate in a meeting on addressing violence against women is of itself insufficient to alter this judgement. Moreover it was followed almost immediately, by a homophobic statement by the Minister of the Interior (see paragraph 14).

67. The Committee's 2008 Conclusions also raised the question "what measures had been taken to combat this type of discrimination". The sources available for the preparation of this report provide no evidence of any measures taken in this respect.

Sexual orientation – employment in the armed forces

68. The explicit discrimination on grounds of sexual orientation in relation to employment in the armed forces, the inhuman and degrading treatment required to gain exemptions from service, and the absence of measures to counter humiliation and violence against gay men in the armed forces, are serious breaches of Council of Europe human rights standards, particularly the principles inherent in Articles 3 and 8 of the European Convention on Human Rights.
69. However, any recommendation to the Turkish authorities supporting access by gay men to service in the armed forces should take account of the fact that a wide scale programme of awareness raising and strict enforcement of disciplinary measures are needed in order to ensure that they are able to serve without being at risk of violence and harassment.

Gender identity – employment in general

70. The extreme discrimination in employment experienced by transgender persons in Turkey is clearly in violation of the non-discrimination provisions of the Social Charter.
71. The scale of this discrimination leaves little doubt but that there is no effective protection for transgender people under any existing measures to counter discrimination. As in the case of sexual orientation, the omission of "sexual identity" from the revised draft of the "Law to Combat Discrimination and Equality" (see paragraphs 17 and 65) strongly suggests that there is likewise no will in government to tackle this discrimination.
72. The extreme social exclusion faced by transgender persons in Turkey calls for comprehensive measures to address the discrimination which lies behind it.

Gender identity – armed forces

73. The explicit discrimination on grounds of gender identity in the armed forces (see paragraph 58) is in clear breach of Council of Europe human rights standards, although as with sexual orientation, extensive awareness raising and enhanced disciplinary procedures would be required before insisting on compulsory service by transgender persons.

10 Finding of non-conformity with regard to sexual orientation and gender identity discrimination

74. In our opinion Turkey's legislation and practices on employment are not in conformity with the provisions of the Social Charter in relation to its obligations under article 1 (2) regarding discrimination on grounds of sexual orientation and gender identity. We urge the Committee to return findings of non-conformity on both grounds, both in relation to employment generally, and to employment in the

armed forces. We urge the Committee to recommend introduction of comprehensive anti-discrimination legislation and practical measures to combat discrimination, taking into account the relevant paragraphs of the Committee of Ministers Recommendation on combating discrimination on the grounds of sexual orientation or gender identity.

75. Given the recognition of gender identity discrimination in the aforementioned Committee of Ministers Recommendation, and in the Report of the Human Rights Commissioner, and noting that some 34 member states already have an obligation to prohibit discrimination in employment either in relation to gender identity, or in relation to gender reassignment, (see paragraph 31) we urge the Committee to adopt a general Conclusion that "under Article 1§2 legislation should prohibit discrimination in employment at least on grounds of race, ethnic origin, religion, disability, age, sexual orientation, **gender identity** and political opinion".

29 March 2012

Appendix I - Extracts from the Amnesty International Report addressing Government Hostility, and the refusal to implement laws providing protection from discrimination on grounds of sexual orientation and gender identity.

GOVERNMENT HOSTILITY⁶⁵

Following the entry of the Justice and Development Party (AKP) to government in 2002, legislative reforms strengthening some human rights protections were brought into law. In stark contrast to this, not a single provision has been brought before the Parliament to protect the right to non-discrimination based on sexual orientation and gender identity. Instead, there has been a long line of discriminatory statements by government officials from which the government has failed to distance itself or issue apologies for. Many activists spoke to Amnesty International about the damage caused by the statement by Aliye Kavaf, the Minister of State responsible for Women and the Family that “homosexuality is a biological disorder and should be treated”. The statement received widespread media coverage but was not rejected by the government and nor was an apology issued. Such homophobic remarks are not isolated incidents. In 2003 Prime Minister Recep Tayyip Erdoğan’s spokesperson said “homosexuals cannot be members” of the ruling party: “They can establish their own”. Statements by the Head of the Parliamentary Constitutional Commission and AKP Member of Parliament, Burhan Kuzu, (above quoted) that the government would not bow to pressure to proscribe discrimination on grounds of sexual orientation and gender identity, represented a mainstream view within the government. It was followed shortly after by another member of the Committee, AKP Member of Parliament Dengir Mir Firat who stated that the 21st century was too soon for such amendments, but maybe in the 22nd century LGBT rights would be protected. Such a view, that the public was not ready for such change, was also expressed by the Chairperson of the Parliamentary Human Rights Enquiry Commission, AKP Member of Parliament, Mehmet Zafer Üskül during a meeting with Amnesty International in February 2011. In the face of such resistance to change, those campaigning for reform have also faced censure: Kürşad Kahramanoğlu, one of the few national journalists to campaign for the LGBT rights, was prosecuted for an article in *Birgün* newspaper stating that “Burhan Kuzu is a politician of the last century, not this one.”

During consideration of Turkey’s human rights record under the United Nation’s Universal Periodic Review process in May 2010, Turkey rejected multiple recommendations from states to adopt the non-discrimination grounds of sexual orientation and gender identity, instead stating that the term gender identity (since removed) was included within the draft Law to Combat Discrimination and Equality.⁶⁶ In December 2010 Turkey also failed to register a vote during the historic adoption by the United Nations General Assembly of the Resolution that condemns extrajudicial, summary or arbitrary executions and references those targeted due to their sexual orientation. Underlining Turkey’s failure to support the protection of the rights of lesbian, gay, bisexual and transgender individuals at the international level, Turkey did not support a joint statement issued in March 2011 by Colombia with the support of 85 states at the United Nations Human Rights Council on ending acts of violence and related human rights violations based on sexual orientation and gender identity.

⁶⁵ op. cit., page 8

⁶⁶ in fact, the term removed was “sexual identity”, rather than “gender identity”.

LGBT RIGHTS REFORMS DENIED⁶⁷

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

Perhaps the most damning failure of the government to legislate for the protection of LGBT rights regards the draft “Law to Combat Discrimination and Equality”. The draft, finalized in March 2011 following collaboration by human rights civil society organizations in Turkey, was intended to be comprehensive non-discrimination legislation. It proposed the establishment of an independent institution to ensure the application of non-discrimination standards. However, in the most recent version of the law as published on the website of the Ministry of the Interior in March 2011, the protection against discrimination on the ground of sexual identity – stated by drafters to encompass gender identity and sexual orientation - had been removed. In this way, the most important advancement in prohibiting discrimination on grounds of sexual orientation and gender identity appears to have been rejected once again.

⁶⁷ op. cit., page 9

Appendix II – Human Rights Council – Universal Periodic Review – 2010

Set out below are the Recommendations⁶⁸ made by States to Turkey in respect of sexual orientation and gender identity during the Universal Periodic Review and the responses⁶⁹ made by Turkey

Recommendation 9

102.9. Enact comprehensive anti-discrimination legislation and uphold minority rights with a view to fully aligning law and practice with international human rights standards (Denmark);

Response to Recommendation 9

21. The constitutional system of Turkey is based on the equality of individuals before the law without regard to religion, race, color, gender, language or such characteristics (Article 10 of the Constitution). Discrimination is prohibited by law and constitutes a crime. In addition to judicial appeal there are also administrative and parliamentary remedies that individuals may apply for in order to fight against discrimination.

22. An independent “Council for Equality and Fight Against Discrimination” is planned to be established. It will monitor complaints regarding discrimination in the public and private sector. Work on the draft law is underway and includes comprehensive additional articles on discrimination.

23. Thus, the first part of the recommendation is accepted.

24. Since 2001, Turkey has taken great steps regarding the rights of groups defined as minorities in line with international standards. Turkey accepts the second part of the recommendation on the rights of non-Muslim minorities recognized according to certain bilateral agreements and the Lausanne Peace Treaty.

Recommendation 10

102.10. Review compliance of its national legislation with the principle of non-discrimination, in particular with regard to women and persons of minority ethnicity, sexual orientation and gender identity, to adopt a comprehensive antidiscrimination legal framework specifically protecting against discrimination on these grounds, and lead long-term awareness-raising campaign on these issues among the public (Czech Republic);

Response to Recommendation 10

25. The draft law on anti-discrimination refers to the issues of gender, ethnic origin and sexual identity. The part of the recommendation regarding “women” and “**gender identity**” **is accepted subject to the decision of the competent legislative authorities.** The concepts of “ethnic minority” and “sexual orientation” do not figure in our national legislation and a review is currently not on the agenda. **Thus this part of the recommendation isn’t accepted.**

⁶⁸ See Human Rights Council - Fifteenth session - Agenda item 6 - Universal Periodic Review Report of the Working Group on the Universal Periodic Review* Turkey - 17 June 2010 <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G10/144/95/PDF/G1014495.pdf?OpenElement>

⁶⁹ Human Rights Council - Fifteenth session - Agenda item 6 - Universal Periodic Review - Report of the Working Group on the Universal Periodic Review* Turkey – Addendum- Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review - 15 September 2010 - <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G10/160/66/PDF/G1016066.pdf?OpenElement>

Recommendation 11

102.11. **Take steps to eliminate any discrimination in the enjoyment of all human rights by lesbian, gay, bisexual and transgendered (LGBT) individuals, including by ensuring that their right to freedom of association is fully respected (Canada);**

Response to Recommendation 11

26. In principle, it is accepted to enable individuals to use their rights, especially that of the freedom of association, in light of their sexual identity. The recommendation is accepted with the understanding that the current legislation is applied for the exercise of the rights of these individuals, **without enacting any further legislation.**

Recommendation 12

102.12. **Revise laws still containing discriminatory provisions, enact comprehensive anti-discrimination legislation and expressly include the prohibition of discrimination on the grounds of sexual orientation or gender identity in such legislation (Netherlands);**

Response to Recommendation 12

27. Work regarding the first part of the recommendation will be carried out by the “Anti Discrimination Sub-Working Group” of the Reform Monitoring Group. Almost all legislation which included discriminatory provisions against Turkish citizens of Roma origin have been amended. Thus, the first part of the recommendation is being applied. The second and third parts of the recommendation are accepted, **with the understanding that the elements referred to concerning the ninth and tenth recommendations are equally valid.**

Recommendation 13

102.13. **Develop comprehensive anti-discrimination legislation including a clear definition of discrimination against women and racial discrimination in its legislation as well as prohibiting discrimination on the basis of sexual orientation and gender identity (Ireland);**

Response to Recommendation 13

28. Excluding the part on “sexual orientation”, this recommendation is accepted with the understanding that the elements referred to concerning the ninth and tenth recommendations are equally valid.

Appendix III - Abuse of gay men in the military – Extract from the Amnesty International Report

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

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

THREATS, ABUSE AND ISOLATION

Gay men recounting their experience of military service ranged from those who managed to withhold their identity and did not suffer negative treatment to those who suffered abuse and threats of violence for the duration of their military service. Amnesty International was told of many instances where gay men were kept in isolation by commanding officers due to a declared threat to their safety (see below, the case of Asil from İzmir). Others told Amnesty International that in addition they were required to do the dirtiest or otherwise most unappealing jobs as a *de facto* punishment for their sexual orientation. Others told Amnesty International that they had suffered homophobic abuse or threats of violence. Amnesty International was told that like conscripts identified as Kurds or leftists, those identified as gay were at risk of violence from superior officers or from fellow conscripts. Gay men also said that they feared – or were threatened with rape or other forms of sexual violence by fellow conscripts.

“UNFIT FOR MILITARY SERVICE”

In assessing possible exemption from military service the Turkish military uses the internationally recognized Diagnostic and Statistical Manual of Mental Disorders. However, they use the manual dating from 1968 (DSM II), which defines homosexuality as a psychosexual disorder, and considers that those who have this “condition” are “unfit to serve”. In contrast, the medical community uses DSM IV, which dates from 2000 and does not list homosexuality as a disorder. With regard to the “proof” needed to support such an exemption, Amnesty International considers that sexual orientation cannot be determined by physical examination or by viewing photographic evidence of sexual acts. The

organization further considers it unethical for a doctor to undertake an internal examination without the consent of the patient without a compelling reason (e.g. grave danger to the patient or others). Amnesty International would consider any such examination to violate the prohibition against torture and other cruel, inhuman or degrading treatment. Additionally, the parents of gay men applying for an exemption from military service may be called on to provide testimony supporting their application – which is prohibitive for the many gay men who are not open about their sexual orientation to their families. Once the exemption has been granted the local authorities are informed of the decision. If the man is from a village or small town where individuals are likely to be known by public officials, this may result in details of his refusal to perform military service or sexual orientation being made public – and putting him at risk of homophobic abuse or violence.

A certificate indicating that a man has completed military service is also routinely required at job interviews. The fact that an exemption certificate would have to be submitted in its place has led to job offers being removed. For those gay men who do apply for the exemption - it is not at all clear that it will be granted. Amnesty International spoke to gay men who were refused the exemption, but the fact that they had applied for it meant that the information remained in their file – and as a result they were at increased risk of violence (see below for example the case of Asil from İzmir). Another man told Amnesty International that he was denied an exemption and required to perform military service. Due to the threats against him he escaped from the army – and now faces arrest, detention, prosecution and imprisonment for desertion if caught.

ASIL FROM İZMİR

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

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

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

The situation changed however, when following the month of training he was transferred to the unit in Thrace where he was due to perform the rest of his military service. He told Amnesty International that while the first week passed without incident, fellow conscripts then began to verbally abuse him with homophobic language, calling him “top” or “ibne”. Asil said that he felt threatened but believed that nothing could be done to prevent it. At

around that same time, he was summoned to meet the officer in charge of the base . The officer asked whether there was anything that Asil wanted to explain to him. Asil told Amnesty International that it was apparent to him that the commanding officer knew from his file that he had attempted to be exempted from military service as a gay man, but that he could not say whether the homophobic abuse by conscripts was due to this information being shared with them or whether they perceived him as gay for another reason. Asil explained to the officer that he wanted to be exempted from military service but that he had been refused. The commanding officer responded that it would be very difficult for Asil to complete his military service due to the behaviour of the conscripts towards him and that something had to be done. He referred Asil to a military hospital for more tests to be done.

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

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

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

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

Appendix IV – The experience of a transgender woman – Extract from the Amnesty International Report

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

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

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

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

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

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

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

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

Despite being free from the violence of her older brother, Irmak told Amnesty International that she still struggles to live a normal life as a transgender woman. She gave up education due to the problems of having the appearance of a woman yet the identity card of a man, which she said resulted in her not being able to enter university buildings. She also described suffering harassment and discrimination whenever she had to show her identity card to state officials because her gender identity was different from that of her identity card, leading to intrusive questions and delays. In addition to this, verbal abuse from strangers on the street has meant that she leaves the house only when required and visits only a small number of trusted places. Her gender identity and the fact that she has been forced into illegal sex work due to the lack of any available form of employment has meant that she has experienced severe problems finding a place to live – with neighbours not wanting to share a building with her. Irmak told Amnesty International that neighbours in the apartment building where she was previously staying forced her out of the house resulting in a period of homelessness. Only with the help of a friend who was prepared to sign the lease to rent an apartment in a building where there are no other people living was she able to find housing.

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

Appendix V – Magazine article documenting difficulties faced by transgender persons attempting to find work

In an article published in Gacilstanbul Magazine in 2005 individual transvestite and transsexual persons recounted the problems experienced attempting to find work.⁷⁰ Some of the stories also touch on harassment by work colleagues and the police, and violence. The texts which follow are abbreviated.

Gönül / Singer

I started to sing as a soloist in several nightclubs in 1987 when child singers and arabesque songs were popular..... after child singers and arabesque songs lost their popularity, I could not find a job with my male identity card. In 1994 I became a transvestite. The nightclub owners who once told me that they did not want male soloists wanted me now. I was returned to the stage by a magic wand and I became fine both financially and psychologically.... this situation continued until 1998 when the illegal and meaningless practices of the police started... transvestites who had a male identity card were banned from the stage. I became unemployed again. **Because my appearance had changed, I could not find work in a factory. Because of this reason, I had to do sex in exchange for money for the first time. On that day, I had just an egg and a half bread which was in my refrigerator for two days.** I cried when doing sex in exchange for money with the first man. And we are now in 2005. The tears which do not fall from my eyes any more fall to my heart quietly. Long live the Turkish police!"

Deniz / Journalist

After graduating from the Faculty of Communication Department of Journalism of University, I started to work as a correspondent in a national newspaper. I worked there for five years. I was able to get the yellow press card during my second year. During the first years, I did not face many problems because I did not reveal my gender identity. Despite all my efforts, people could notice my effeminate identity..... so I started to say yes to the implied or direct question as to whether I was a transvestite. I had a job in which I was face to face with people and my existence became a problem..... I had to be silent because I did not want the newspaper, in which I was working, to know that my gender identity became a problem when I was working outside. I was working in a right-wing newspaper and when there was a change of management, I was not given another chance. **I searched for a job for one year after I was fired, but I did not get a positive response from the places I applied to. Now I do sex work, or in other words prostitution.**

Ceren / Journalist

I worked in three newspapers for more than five years. Two of them were local newspapers and the other one was a national newspaper. Although I was successful at my work, I was fired because of my gender identity. Despite my important contributions to my newspaper, I realised that my magnetic entrance card did not work one day. In the note that was sent to my house later, it was written that "**we cannot work with you any more because our lifestyles are different.**" I did not hide my gender identity at my workplace. I was very successful at my work. I always was the most successful journalist. **I worked in a nightclub for two years after I was fired. I do sex work now.**

⁷⁰ *Transvestite and transsexual individuals' experiences of the abuses toward their right to work* – Gacilstanbul Magazine, 2005, September – October issue. Gaci is a group of transvestites and transsexuals in Istanbul.

Esin /Teacher

I am a teacher in a school administered by the Ministry of Education..... I have a transsexual gender identity and I want to gain approval for the sex change operation. Because the hormones I take as part of the treatment caused several changes in my body, **I have experienced several problems at the school and also outside. Other teachers always make fun of me** because of my gender identity. Because my treatment continues, I rarely go out at night dressed up in female clothes. However, **although I stated that I was a teacher, I was held in custody by the police a couple of times because I was a transvestite. I was insulted and beaten. A criminal record about me was prepared by claiming that I did prostitution.** My only wish is continuing my profession in another school after changing my sex through legal ways. But the difficulties I have experienced up to now make me think that **continuing my profession will not be easy.**

Eylem / University Graduate

I graduated from Istanbul University Sociology Department in 2005 and started to work in a company named Profil Danismanlik. But there were only male workers at the company and my gender identity became the subject of their jokes. They were harassing me by swearing at homosexuality while I was working. **I could only work there for one year although I was one of the most successful workers. I experienced the same result in my other working attempts. I try not to do prostitution. I hope I will succeed.**

Özlem / Hairdresser

I was a hairdresser for men before I started to do sex work as a transvestite. **I was raped by my boss** at the last hairdresser's shop in which I worked in Kadiköy. While I was washing the dishes in the basement of the hairdresser's shop, my boss started to touch his penis after going out from the toilet. I tried to continue to wash the dishes as if I did not see him. But he attacked me suddenly. Because he threatened me with firing and telling everybody that I was a homosexual, I had to do sex with him. Then, other workers at the hairdresser's shop did also sex with me by threatening me. **I was fired later. My effeminate identity became a problem for me in other jobs in which I worked later. I do sex work now.**

Eylem

"I took my first steps to be a woman during the previous months. I had postponed this decision for years, as I feared that I would be unemployed and have to do sex work.... however, **after I was fired from the last job in which I was working in a male appearance, because of my identity,** I understood exactly that being fired or unemployed was not related to my appearance, in other words, whether I was seen as a male or a transgender person. Besides, I realised that I probably would not earn enough money to be a transgender person. So, I decided to take the first steps.... I took out my wig, my blouses for summer and my transgender type trousers. I shaved off my beard and powdered my face..... so, I got the appearance I dreamed of for years. I was the happiest person in the world. But this was just the beginning. **in short, the most important problem for me was finding a job in which I could work with my real identity. I was determined not to do sex work.**

I started to search for a job with my female identity. I prepared a CV with my transgender name Eylem, and I e-mailed it to the workplaces in which I thought that I would be able to or I wanted to work. I also want to emphasise that I wrote that I was a transvestite in the gender section in my CV. But of course, I received negative responses mostly. 90% of the people calling offered me sex. However, **I was determined to be motivated, not to be demoralised. My plan was making 50 job applications per day!** And I did them.

A publishing company invited me for a job interview within a couple of weeks. **I was accepted. I went home singing and dancing on that day."**