
**Study on Homophobia, Transphobia and Discrimination on
Grounds of Sexual Orientation and Gender Identity**

Legal Report: Turkey

by lawyer Yasemin Öz

Disclaimer:

This report was drafted by an independent expert and is published for information purposes only. Any views or opinions expressed in the report are those of the author and do not represent or engage the Council of Europe or the Office of the Commissioner for Human Rights.

Table of Contents

A. EXECUTIVE SUMMARY	3
B. FINDINGS	6
B.1. Overall legal framework	6
B.2. Freedom of assembly and association	7
B.3. Freedom of expression	12
B.4. Hate crime - Penal Code	18
B.5. Family issues	24
B.6. Asylum and refugee issues	25
B.7. Social security, social care and insurance	28
B.8. Education	29
B.9. Employment	31
B.10. Housing	36
B.11. Health care	38
B.12. Access to goods and services	39
B.13. Media	41
B.14. Transgender issues	44
B.15. Intersex issues	48
B.16. Miscellaneous	48

A. Executive summary

1. In Turkish law, LGBT (lesbian, gay, bisexual, transgender) identities have never been outlawed. The law tends to ignore the existence of LGBT persons by not making any law in favour of or against LGBT persons.
2. However, there are few articles in Turkish law regulating the situation of gay men and transgender persons in the army as well as gender reassignment surgery of transgender persons.
3. Also there is no anti-discrimination law to protect LGBT persons from discrimination on the grounds of sexual orientation and gender identity. Although there is a draft law on the grounds of anti-discrimination that the government is still working on, it is not clear whether the law will address discrimination on the grounds of sexual orientation and gender identity. As a reflection of this, in practice, LGBT persons and groups face discrimination on the grounds of sexual orientation and gender identity on their fundamental and basic human rights. There are many cases where LGBT persons' human rights such as freedom of association, freedom of assembly, freedom of expression, employment, housing have been violated.
4. Although now there are five legally registered LGBT organisations, the rights to freedom of association of LGBT groups were violated many times and the government tried to close down all LGBT organisations when they were established and court cases were filed to close the organisations. But in none of the cases did the courts rule to close down the organisations.
5. Books on LGBT issues are confiscated and censored so that LGBT persons cannot use their right to freedom of expression equally. Internet access to LGBT websites is often censored by filter programmes used in internet cafes and some universities.
6. The law ignores hate crimes against LGBT persons. The number of hate crimes against LGBT persons is high. The courts tend to reduce the sentences of murderers by accepting their reasons to murder as unjust provocation.
7. LGBT persons do not have the equal rights of heterosexuals in family issues. There is no law on same sex partnerships.
8. LGBT refugees have no protection from discrimination on the grounds of sexual orientation and gender identity. They face harassment both from society and the police.
9. LGBT couples cannot receive each other's social security benefits as they do not have access to same sex marriage under Turkish law.
10. LGBT persons face discrimination in education and there is no protection from that. There are cases of gay teachers who are fired from work because of their sexual orientation.
11. Most LGBT persons do not come out because of the fear of not finding a job and/or losing their jobs. There are some cases of civil servants and gay people working in the private sector being fired from work because of their sexual orientation. Also, according to army regulations, gays and transgender persons are not allowed in the army because their sexual orientation and gender identity are accepted as "physiological disorder". This regulation is the only clear sample of discrimination on the grounds of sexual orientation

and gender identity in law. Most of the transgender persons who are unemployed are so because of transphobic prejudice against them and they are forced to prostitution.

12. LGBT persons hardly benefit from health care when it comes to the medical needs of their sexual orientation and gender identity. Gender reassignment surgeries are regulated in law. This can be accepted as a positive attitude towards transgender persons and it is the only regulation on transgender rights. But there are limitations to pass through gender reassignment surgery. Many psychologists and psychiatrists accept homosexuality and transsexuality as an illness and try to cure LGBT persons. There is no sanction of such treatment.
13. Housing is a big problem especially for transgender persons. They can only rent houses in certain areas of big cities. Since these areas are publicly known, transgender persons are continuously attacked by the people living around them and are forced to move to other places.
14. LGBT persons are not allowed to enter many public places. Transgender persons' access to goods and services especially is very limited in practice.
15. The media's attitude to LGBT persons changes in a positive way day by day but still homophobia and transphobia remains. TV channels showing LGBT movies receive fines.
16. Most of the transgender persons, especially male to female transgender persons are unemployed and they do not see any other way than to enter into prostitution. Transgender persons receive fines from the police for disturbing the peace in society simply because they are in a public place and there is no other reason. These fines are given according to Law on Misdemeanours.
17. Since there is virtually no law on LGBT issues, to understand the situation of LGBT persons in front of law, we can only apply to the court law. If we observe the court case samples in this report, it can be claimed that LGBT persons are about to receive their rights on freedom of association, freedom of assembly and freedom of expression according to court law.
18. But concerning rights such as housing, employment, family, education etc, it can be claimed that it does not seem easy for LGBT persons to use these rights as equally as any other citizen. So discrimination and persecution against LGBT persons are still prevalent.
19. When it comes to hate speech, the State Minister responsible for Woman and Family issues, Mrs. Selma Aliye Kavaf stated on 7 March 2010 that she sees homosexuality as illness and something that must be treated.
20. Although the situation of LGBT persons seems negative, there is absolutely a clear progression on LGBT rights in a positive way in last 15 years. Now there are five legally registered LGBT organisations in Turkey. Although the government applied to the prosecutor's offices to close down the organisations claiming that they are against morality, none of the organisations have been closed. There are also four informal organisations in different cities. LGBT issues began to be discussed in the media and academically. Some parliaments and political parties began to defend LGBT rights¹. An LGBT organisation was a project partner on HIV+ with the Ministry of Health between 2006 and 2007. The name of the project was the Rainbow Project and the project was financed by Global Fund.

¹ Kaos GL News, <http://news.kaosgl.com/item/2009/6/27/mp-tuncel-turkish-parliament-must-consult-lgbtt-organisations>, accessed 29 September 2010.

21. LGBT groups and their rights are not denied by human rights organisations and human rights institutions of the state. Parliament's Human Rights Monitoring Commission's President Zafer Üskül officially attended an anti-homophobia conference in 2008. Some parliamentarians gave questionnaires to the parliament on LGBT rights in the last two years.²

² Kaos GL News, <http://news.kaosgl.com/item/2009/5/15/birdal-seeks-transgender-safety-norm>, accessed 29 September 2010. Kaos GL News, <http://news.kaosgl.com/item/2009/5/10/turkish-mp-questions-government-on-lgbt-murders>, accessed 29 September 2010.

B. Findings

B.1. Overall legal framework

22. Fundamental human rights are guaranteed for every citizen in the Constitution. The nature of fundamental rights is described in Article 12 of the Constitution.³ Equality of citizens is stated in Article 10 of Constitution⁴ and discrimination among citizens is prohibited on some grounds.
23. Also according to Article 90 of the Constitution,⁵ in the case of a conflict between international treaties in the area of fundamental rights and freedoms duly put into effect and the domestic laws due to differences in provisions on the same matter, the provisions of international treaties shall prevail. According to this article, international human rights treaties ratified by the Turkish Government are more powerful than Turkish law (such as the European Convention on Human Rights).
24. But as explained below, in Turkey there are few arrangements on favour of or against LGBT persons. Existence of LGBT persons is almost ignored by the law. Also there is no anti-discrimination law to protect LGBT persons. There is also no national policy on LGBT rights. There is no institution in charge. The only LGBT rights defenders are LGBT organisations and some women's rights and human rights NGOs. LGBT organisations receive no funding from the government. In addition the government does not have any programmes on LGBT rights and there is no budget reserved for LGBT rights. There is only case law on LGBT issues. But case law differs when it comes to LGBT rights. It shows a positive way in some terms (such as freedom of associations, housing) and a negative way in other terms (hate crimes, freedom of expression).

3 Nature of Fundamental Rights and Freedom:

ARTICLE 12. Everyone possesses inherent fundamental rights and freedoms which are inviolable and inalienable. The fundamental rights and freedoms also comprise the duties and responsibilities of the individual to the society, his or her family, and other individuals.

4 ARTICLE 10. All individuals are equal without any discrimination before the law, irrespective of language, race, colour, sex, political opinion, philosophical belief, religion and sect, or any such considerations. Men and women have equal rights. The State shall have the obligation to ensure that this equality exists in practice. No privilege shall be granted to any individual, family, group or class.

State organs and administrative authorities shall act in compliance with the principle of equality before the law in all their proceedings.

5 Ratification of International Treaties (as amended on 22 May 2004):

ARTICLE 90. The ratification of treaties concluded with foreign states and international organisations on behalf of the Republic of Turkey shall be subject to adoption by the Turkish Grand National Assembly by a law approving the ratification. Agreements regulating economic, commercial and technical relations, and covering a period of no more than one year, may be put into effect through promulgation, provided they do not entail any financial commitment by the state, and provided they do not infringe upon the status of individuals or upon the property rights of Turkish citizens abroad. In such cases, these agreements must be brought to the knowledge of the Turkish Grand National Assembly within two months of their promulgation. Agreements in connection with the implementation of an international treaty, and economic, commercial, technical, or administrative agreements which are concluded depending on the authorisation as stated in the law shall not require approval of the Turkish Grand National Assembly. However, agreements concluded under the provision of this paragraph and affecting economic, or commercial relations and the private rights of individuals shall not be put into effect unless promulgated. Agreements resulting in amendments to Turkish laws shall be subject to the provisions of the first paragraph. International agreements duly put into effect bear the force of law. No appeal to the Constitutional Court shall be made with regard to these agreements, on the grounds that they are unconstitutional. In the case of a conflict between international agreements in the area of fundamental rights and freedoms duly put into effect and the domestic laws due to differences in provisions on the same matter, the provisions of international agreements shall prevail.

25. The government also does not undertake programmes of education and awareness to promote and enhance the full enjoyment of all human rights by all persons, irrespective of sexual orientation or gender identity.
26. The only legal documents on LGBT rights are the court cases, some of which are shown in this report.
27. While the law does not explicitly discriminate against homosexuals, organisations working with lesbian, gay, bisexual, and transgender (LGBT) individuals claimed that references in the law relating to "the morals of society" and "unnatural sexual behaviour" were sometimes used as a basis for abuse by police and discrimination by employers. (Sexual Orientation/Gender Identity References - U.S. Department of State Human Rights Reports for 2009 page 47).

B.2. Freedom of assembly and association

Freedom of association

28. Freedom of association is guaranteed for every citizen in the Turkish Constitution, Article 33.⁶
29. There is also the Associations Code Number 5253 dated 2004 which regulates the associations.
30. There are also some articles in Turkish Civil Code Number 4721 dated 2001 on freedom of association. Associations are defined in Article 56.⁷
31. As Article 56 of the Turkish Civil Code forbids the establishment of associations against laws and ethics, the Directory of Associations applied to the public prosecutors in all the cities where an LGBT association was established in order to close down the organisations. The Directory of Associations is affiliated with city governorships and the Ministry of Interior Affairs in a hierarchical way. According to Turkish law, any association can be established when it applies to the Directory of Associations of the city. But the Directory of Associations has the right to make a claim against the association in front of the city public prosecutor in order to close down the association if it is assumed that the association is against the law and ethics. If the public prosecutor agrees that the

⁶ *"Freedom of Association:*

ARTICLE 33. (As amended on 17 October 2001) Everyone has the right to form associations, or become a member of an association, or withdraw from membership without prior permission. No one shall be compelled to become or remain a member of an association. Freedom of association may only be restricted by law on the grounds of protecting national security and public order, or prevention of crime commitment, or protecting public morals, public health. The formalities, conditions, and procedures governing the exercise of freedom of association shall be prescribed by law. Associations may be dissolved or suspended from activity by the decision of a judge in cases prescribed by law. In cases where delay endangers national security or public order and in cases where it is necessary to prevent the perpetration or the continuation of a crime or to effect apprehension, an authority designated by law may be vested with power to suspend the association from activity. The decision of this authority shall be submitted for the approval of the judge in charge within twenty-four hours. The judge shall announce his decision within forty-eight hours, otherwise this administrative decision shall be annulled automatically. Provisions of the first paragraph shall not prevent imposition of restrictions on the rights of armed forces and security forces officials and civil servants to the extent that the duties of civil servants so require. The provisions of this article are also applicable to foundations."

⁷ ARTICLE 56. An association is defined as a society formed by unity of at least seven real persons or legal entities* for realisation of a common object other than sharing of profit by collecting information and performing studies for such purpose.

*/ Amended by Law No. 4963

No association may be formed for an aim contrary to the law and ethics.

association should be closed down, s/he can file a case on behalf of the public at the Civil Court of First Instance to close down the association. If the public prosecutor does not agree with the Directory of Associations on the closure of the association, s/he denies the claim. But Directory of Associations has the right to appeal against public prosecutor's decision in front of the High Criminal Court.

32. The Directory of Associations of four cities applied to public prosecutors in order to close down five legally registered LGBT organisations but none of the applications succeeded, and no organisations were closed.
33. As it has been observed, whenever an LGBT organisation has been established in Turkey, the Directory of Associations has requested the closure of the organisations. Although the prosecutor offices and the courts ruled in the favour of the organisations, the authorities went on filing charges against the newly opened organisations. All the organisations faced the same process. In all cases the authorities applied Article 56 of the Civil Code and in most cases applied Article 41 of the Constitution.⁸ The authorities claim that LGBT organisations are against morality and ethics and ruin the structure of family.⁹
34. It seems that to avoid such violation of freedom of associations of LGBT groups, an anti-discrimination law to stop discrimination based on sexual orientation and gender identity is necessary. Also, amendment of the Turkish Constitution in order to give equal rights to LGBT persons has a key role. Article 10 of the Turkish Constitution regulates the equality principle among citizens and contains an open ended list of groups that must be treated equally before the law. However, Article 10 does not explicitly refer to sexual orientation and gender identities. This list must be amended to specifically guarantee the equal rights of LGBT persons by adding the statement "sexual orientation and gender identity". Although Article 10 of the Constitution looks like guaranteeing equality among all citizens, since the equality among citizens regardless of sexual orientation and gender identity is not guaranteed explicitly, the LGBT community face discrimination in practice.

Case title	Kaos GL Association Closure Case
Decision date	10 October 2005
Reference details	The Press Investigation Office of Public Prosecutor of Ankara, Press Investigation No: 2005/2247, Press Verdict No: 2005/1491 (Ankara Cumhuriyet Başsavcılığı Basın Bürosu, Basın Soruşturma No: 2005/2247, Basın Karar No: 2005/1491).
Key facts of the case	In July 2005, Kaos GL, which was founded in 1994, applied to Ministry of Interior Affairs and attained legal status. It was the first LGBTTT association ever gaining legal status. Directory of Associations of Ankara made an official request to public prosecutor of Ankara in order to close down Kaos GL.
Main reasoning/argument	Directory of Associations of Ankara claimed that the association

8 Protection of the Family:

ARTICLE 41. (As amended on 17 October 2001) The family is the foundation of the Turkish society and based on the equality between the spouses.

The state shall take the necessary measures and establish the necessary organisation to ensure the peace and welfare of the family, especially where the protection of the mother and children is involved, and recognising the need for education in the practical application of family planning.

⁹ On 16 October, the Izmir prosecutor filed a case depending on the request of the Izmir governor to close Black Pink Triangle (BPT), an LGBT rights organisation in Izmir, on charges of forming an organisation that was "contrary to public morality." BPT claimed that their charter was identical to the charters of similar organisations in Ankara and Istanbul. (Sexual Orientation/Gender Identity References-U.S. Department of State Human Rights Reports for 2009 page 48).

ation	was against the law and ethics.
Key issues clarified by the case	The public prosecutor confirmed that the organisation was established in accordance with the law. It was mentioned in the decision that the words "gay" and "lesbian" found in the applicant's name and charter belong to everyday language that is also used in scientific research and that homosexuality does not amount to immorality.
Results and key consequences or implications of the case	Ankara Public Prosecutor's Office rejected the closure of the organisation.

Case title	Gökkuşuğu LGBTT Derneği (Rainbow LGBTT Association) Closure Case
Decision date	6 October 2006
Reference details	Bursa Public Prosecutor Office (Bursa Cumhuriyet Başsavcılığı)
Key facts of the case	On 3 March 2006, Gökkuşuğu LGBTT Derneği (Rainbow LGBTT Association), located in Bursa applied to Ministry of Interior Affairs and became the second LGBTT association in Turkey. Directory of Associations of Bursa requested the Public Prosecutor's Office to close down the Rainbow Solidarity and Research Cultural Association for Transgender, Gay and Lesbians.
Main reasoning/argumentation	Directory of Associations of Bursa claimed that the organisation violated Article 56 of Turkish Civil Code. The Governor argued in his request that the association's objectives are against the law and morality rules as well as in contradiction with constitutional clauses relating to the protection of the family.
Key issues clarified by the case	The Public Prosecutor's Office decided that the organisation is not against the law, relying on, amongst other authorities, Article 11 of the European Convention on Human Rights.
Results and key consequences or implications of the case	The Public Prosecutor's Office in Bursa denied the request.

Case title	Pembe Hayat LGBTT Derneği (Pink Life LGBTT Association) Closure Case
Decision date	1 November 2006
Reference details	Ankara Public Prosecutor Office (Ankara Cumhuriyet Başsavcılığı)
Key facts of the case	On 30 June 2006, Pembe Hayat LGBTT Derneği (Pink Life LGBTT Association), located in Ankara applied to Ministry of Interior Affairs and became the third LGBTT association in Turkey.

Main reasoning/argumentation	In July 2006, Directory of Associations of Ankara filed a petition with the Public Prosecutor's Office to close down the association claiming that the association was against "morality and family structure" without specifying the reasons for their assertion.
Key issues clarified by the case	The Public Prosecutor's Office decided that the organisation is not against the law.
Results and key consequences or implications of the case	The Public Prosecutor's Office in Ankara denied the request allowing the association to continue to operate.

Case title	Lambda Istanbul LGBTTT Association Closure Case
Decision date	30 April 2009
Reference details	Beyoğlu/Istanbul Civil Court of First Instance Number 3 Case Number; 2009/65, Decision Number: 2009/69 (Beyoğlu 3. Asliye Hukuk Mahkemesi Esas No: 2009/65, Karar No: 2009/69)
Key facts of the case	Lambda Istanbul LGBTTT Association gained legal status by applying to the Directory of Associations of Istanbul on 26 March, 2006. In early 2007, the Directory of Associations of Istanbul requested the closure of Lambda Istanbul. In July 2007, the Public Prosecutor's Office rejected the complaint. The Governor's Office brought an appeal against this decision with the Civil Court of First Instance No. 3 in Beyoğlu. On 29 May 2008, the court allowed the complaint and ordered the closure of Lambda Istanbul. The court took this decision based entirely on procedural grounds and failed to address the morality-based claims relied on by the Directory of Associations. This judgment was overturned on appeal by the Judicial Office No. 7 of Court of Appeals; a verdict upheld by the Supreme Court of Justice which ruled that Lambda Istanbul was not in contravention of the law and therefore could not be closed down on 25 November 2008 with Case Number 2008/4109.
Main reasoning/argumentation	Directory of Associations of Istanbul requested the closure of Lambda Istanbul, claiming that the name and objectives of the group are "against the law and morality" and therefore in breach of Article 56 of the Turkish Civil Code and Article 41 of the Constitution.
Key issues clarified by the case	Beyoğlu/Istanbul Court of First Instance decided that the organisation is not against the law according to Supreme Court Decision. This was the first court and also Supreme Court decision on the freedom of associations of LGBT organisations.
Results and key consequences or implications of the case	Beyoğlu/Istanbul Court of First Instance finally decided that the organisation is not against the law.

Case title	Black Pink Triangle İzmir LBTT Association Closure Case
Decision date	30 April 2010
Reference details	İzmir Civil Court of First Instance Number 6 Case Number; 2009/474, (İzmir 6. Asliye Hukuk Mahkemesi Esas No: 2009/474)
Key facts of the case	In November 2009, the Directory of Associations of İzmir requested the closure of Siyah Pembe Ucgen İzmir LBTT Association (Black Pink Triangle İzmir LBTT Association) by claiming that its charter goes against "public morality" and "Turkish family structure."
Main reasoning/argumentation	Directory of Associations of İzmir requested the closure of Black Pink Triangle, claiming that the organisation is "against the law and morality" and ruins the structure of the family.
Key issues clarified by the case	The court ruled that LGBT persons have the same right to establish associations as any other person.
Results and key consequences or implications of the case	Official request to ban Black Pink Triangle İzmir LBTT Association was denied by the court on 30 April 2010 depending on the Supreme Court decision of Lambda İstanbul LBTT Association case.

Freedom of assembly

35. Freedom of assembly is guaranteed in the Turkish Constitution, Article 34¹⁰ for every citizen. But there is no statement guaranteeing the freedom of assembly of LGBT persons. As a result of this, freedom of assembly of LGBT groups can easily be violated.
36. There is a certain sample of this violation. The Rainbow Association (Rainbow Solidarity and Cultural Association for Gay, lesbian and transgender persons) of Bursa called for a demonstration on August 6 2006 to protest at an attempt by the governor of Bursa to shut down the association under the "general morality" statute. But before the LGBT group could hold its march, a group of 500 counter-demonstrators gathered around the association's headquarters, which also served as a gay cultural centre, where the gay protesters had assembled. As they chanted, these counter-demonstrators started throwing stones, trapping 100 gay, lesbian and transgender persons inside the building. Following this incident, the police cancelled the planned demonstration and told the LGBT group that they were incapable of protecting them from the counter-demonstrators.
37. A documentary film was made about this attack in Bursa called "Yürüyoruz" (We March) by director Aykut Atasay in 2006. The film received many rewards both in Turkey and abroad.
38. It seems that to avoid such violation of freedom of associations of LGBT groups, an anti-discrimination law based on sexual orientation and gender identity is necessary. Also, amendment of the Turkish Constitution in order to give equal rights to LGBT persons has a key role.

¹⁰ *Right to Hold Meetings and Demonstration Marches:*

ARTICLE 34. (As amended on October 17 2001) Everyone has the right to hold unarmed and peaceful meetings and demonstration marches without prior permission. The right to hold meetings and demonstration marches shall only be restricted by law on the grounds of national security, and public order, or prevention of crime commitment, public health and public morals or for the protection of the rights and freedoms of others. The formalities, conditions, and procedures governing the exercise of the right to hold meetings and demonstration marches shall be prescribed by law.

	2004	2005	2006	2007	2008
Number of demonstrations in favour of LGBT persons / LGBT rights, gay pride parades, etc.	1	1	1	1	2
Number of demonstrations against LGBT persons / LGBT rights	None	None	1	None	None
Number of planned demonstrations / public events organised by LGBT persons denied	None	None	1	None	None

B.3. Freedom of expression

39. Freedom of expression is guaranteed for every citizen in the Turkish Constitution, Article 26.¹¹ But again there is no specific statement to guarantee for LGBT persons to use the right of freedom of expression without discrimination on the grounds of sexual orientation and gender identity. So publications on LGBT persons can easily be considered as “immoral”, “obscene” and are often censored.
40. There are samples of violation on freedom of expression of LGBT persons.
41. ECHR Case of Kaos GL Magazine: There is a case pending at the European Court of Human Rights on the alleged violation of freedom of expression of LGBT persons. Since this case has a special importance, the facts of the case should be examined in detail. This case shows clearly how Turkish law restricts the freedom of expression of LGBT persons.
42. In this case, The Press Division of the Ankara Public Prosecutor’s Office confiscated three copies of Issue 28 of Turkey’s only LGBT magazine, published by Kaos GL, just before its scheduled publication date. The measure, based on Article 25§1 of the Press Law,¹² was taken ostensibly in order to ascertain whether a crime had been committed. At the same

¹¹ *Freedom of Expression and Dissemination of Thought:*

ARTICLE 26. (As amended on 17 October 2001) Everyone has the right to express and disseminate his thoughts and opinion by speech, in writing or in pictures or through other media, individually or collectively. This right includes the freedom to receive and impart information and ideas without interference from official authorities. This provision shall not preclude subjecting transmission by radio, television, cinema, and similar means to a system of licensing. The exercise of these freedoms may be restricted for the purposes of protecting national security, public order and public safety, the basic characteristics of the Republic and safeguarding the indivisible integrity of the State with its territory and nation, preventing crime, punishing offenders, withholding information duly classified as a state secret, protecting the reputation and rights and private and family life of others, or protecting professional secrets as prescribed by law, or ensuring the proper functioning of the judiciary. The formalities, conditions and procedures to be applied in exercising the right to expression and dissemination of thought shall be prescribed by law.

¹² Article 25 - *Confiscation and Prohibition of Distribution and Sale:*

The state prosecutor may confiscate three copies for examination at most of all printed matter. If inconvenience results from delays in the examination, police may confiscate the printed matter.

So long as an examination or investigation is launched, all printed matter may be confiscated through a judge’s order under Law Concerning Crimes Committed Against Atatürk’s Principles No. 5816 dated 25.07.1951, the Reform Laws stated in Article 174 of the Constitution, paragraph 2 of Article 146, paragraphs 1 and 4 of Article 153, Article 155, paragraphs 1 and 2 of Article 311, paragraphs 2 and 4 of Article 312, paragraph (a) of Article 312 of Turkish Penal Code No. 765 and paragraphs 2 and 5 of Article 7 of Anti-Terror Law No. 3713 dated 12.04.1991.

Notwithstanding their language of publication, if there is strong evidence that periodicals and non-periodicals published outside of Turkey entail crimes stated in the afore-mentioned paragraph 2, their distribution or sale in Turkey may be prohibited upon the order of the Office of the State Chief Prosecutor through the verdict of the local criminal judge. If inconvenience results from delays in the examination, a decision of the State Chief Prosecutor will suffice. This order shall be presented for judicial approval within 24 hours at the latest. If a judge does not approve within 48 hours, the Chief Prosecutor shall consider the decision null and void. Those who intentionally distribute or sell publications or newspapers prohibited under the preceding paragraph shall be as responsible for the offense as the owner of the publication.

time the Public Prosecutor formally launched a criminal investigation against the editor of the magazine.

43. On 21 July 2006 the Public Prosecutor's Office applied to the Ankara 12th Criminal Court of Peace for authorization to confiscate all copies of the magazine, based on Article 28 of the Turkish Constitution¹³ and Article 162 of the Law on Criminal Procedure,¹⁴ for the duration of the investigation. The Public Prosecutor did not elaborate on the reasons for the application other than through an abstract reference to the publication's 'contents'.
44. On the same day, the 12th Criminal Court of Peace granted the application of the Public Prosecutor, without mentioning the legal grounds for that decision. It only stated that 'some articles and pictures' from the magazine interfered with "the protection of public morals".
45. On 24 July 2006, the police seized all 375 copies of the magazine from the association's office, immediately after their delivery from the printing house.
46. On 27 July 2006 the association filed an appeal against the decision of the 12th Criminal Court of Peace with the Ankara Criminal Court of First Instance. On 28 July 2006, the applicant's appeal was referred to the 15th Ankara Criminal Court of First Instance. On 28 July 2006 the 15th Ankara Criminal Court of First Instance endorsed the decision of the 12th Criminal Court of Peace without any additional reasons. This decision was final so the association applied to the European Court of Human Rights with Case Number 4982/07. The ECHR has accepted the application of the association. The Turkish Government gave a response to the application. The government's response stated that
47. "The freedom of expression is the cornerstone of a democratic society. However, as it is stated in Article 10/2 of the Convention the exercise of this right may be subjected to some restrictions.
48. The freedom of expression, constituting a fundamental right in a democratic society, is not an absolute or unlimited right. Although it is hard to determine the exact and undisputed limits of the concerned right, there is one definite fact: Freedom to destroy others' freedom

13 Article 28. (As amended on 17 October 2001) The press is free, and shall not be censored. The establishment of a printing house shall not be subject to prior permission or the deposit of a financial guarantee. The state shall take the necessary measures to ensure freedom of the press and freedom of information. In the limitation of freedom of the press, Articles 26 and 27 of the Constitution are applicable. Anyone who writes or prints any news or articles which threaten the internal or external security of the state or the indivisible integrity of the state with its territory and nation, which tend to incite offence, riot or insurrection, or which refer to classified state secrets and anyone who prints or transmits such news or articles to others for the above purposes, shall be held responsible under the law relevant to these offences. Distribution may be suspended as a preventive measure by the decision of a judge, or in the event delay is deemed prejudicial, by the competent authority designated by law. The authority suspending distribution shall notify a competent judge of its decision within 24 hours at the latest. The order suspending distribution shall become null and void unless upheld by a competent judge within 48 hours at the latest.

No ban shall be placed on the reporting of events, except by the decision of judge issued to ensure proper functioning of the judiciary, within the limits specified by law.

Periodical and non-periodical publications may be seized by a decision of a judge in cases of ongoing investigation or prosecution of offences prescribed by law, and, in situations where delay could endanger the indivisible integrity of the state with its territory and nation, national security, public order or public morals and for the prevention of offence by order of the competent authority designated by law. The authority issuing the order to confiscate shall notify a competent judge of its decision within 24 hours at the latest. The order to confiscate shall become null and void unless upheld by the competent court within 48 hours at the latest.

The general common provisions shall apply when seizure and confiscation of periodicals and non-periodicals for reasons of criminal investigation and prosecution takes place.

Periodicals published in Turkey may be temporarily suspended by court sentence if found to contain material which contravenes the indivisible integrity of the state with its territory and nation, the fundamental principles of the Republic, national security and public morals. Any publication which clearly bears the characteristics of being a continuation of a suspended periodical is prohibited; and shall be seized following a decision by a competent judge.

14 Article 162. The Public Prosecutor must ask for an authorisation to start an investigation from the first instance criminal court in those cases where investigations may only be initiated by courts.

cannot be tolerated. In some circumstances, the limitation on the freedom of expression is a "must" for a democratic society.

49. Article 10/2 of the Convention, as well Article 26/2 of the Turkish Constitution, recognise the limitation of the freedom of expression, under a number of specific circumstances.
50. In the present case, the applicant should be considered to have more "duties" and "responsibilities" than others in exercising its freedom of expression considering that it chooses to express its ideas to the whole community by publishing the magazine which is the subject matter of the instant application. The measures decided by domestic courts are those which were prescribed by the law.
51. Under the provisions of the Convention and domestic law, the State has the authority to limit publications, to protect national security, territorial integrity, public peace and public order and to prevent committing crimes (legitimate aim).
52. It is underlined that the measure at stake was taken by the decisions of independent and impartial tribunals, the applicant was entitled to question the lawfulness of the measures by way of making objection and the decision was aimed at public morality. Taking into account the content of the publication, the decision was proportionate to the aim pursued.
53. The Government is of the opinion that the measure imposed on the applicant was in compliance with Article 10/2 of the Convention.
54. The Government requests the Court to declare the applications inadmissible as the allegations of the applicants are ill-founded or to decide that there has been no violation of the Convention."
55. The case is still pending before the ECHR.
56. The investigation initiated by the Press Division of the Ankara Public Prosecutor's Office against Umut Güner, the vice-president of the Kaos GL Association and chief editor of the Kaos GL Magazine resulted in an indictment request, which was filed on 18 November 2006 with the Ankara Criminal Court of First Instance. The Public Prosecutor asked that the defendant be prosecuted for having committed the crime of 'broadcasting obscene images through the media' provided for by Article 226§2 of the Turkish Criminal Code¹⁵ in

¹⁵ Article 226, *Obscenity*:

- a) A person who shows or gives obscene images, printed or audio material to a child or who reads these to a child or makes someone read these to a child or make a child listen these,
- b) A person who exhibits the content of these in a place where children can enter or can see or who exhibits these to public or who reads or says these to a child or makes someone read or say these to a child,
- c) A person who sells or rents these in a way that everyone can know about their content,
- d) A person who sells or rents these in a place either then allowed,
- e) A person who gives these as a promotion when buying another thing as free of charge,
- f) A person who makes an advertisement about these, shall be sentenced to imprisonment for a term of six months to two years and a fine.

A person who broadcasts or publishes obscene images, printed or audio material or who acts as an intermediary for this purpose shall be sentenced to imprisonment for a term of six months to three years and five thousand days fine.

A person who uses children when producing obscene images, printed or audio material shall be sentenced to imprisonment for a term of five years to ten years and five thousand days fine. A person who takes these to country, multiplies or reproduces, sells, transports, stores, exports, owns or presents these to anyone's use shall be sentenced to imprisonment for a term of two years to five years and five thousand days fine.

A person who produces, multiplies or reproduces, sells, transports, stores, owns or presents to anyone's use obscene images, printed or audio material in which violence is committed, animals or dead bodies are used or unnatural sexual behaviours are acted and who brings these in to the country shall be sentenced to imprisonment for a term of one year to four years and five thousand days fine.

A person who commits the crimes described in third and fourth paragraphs by broadcasting or publishing these obscene materials or who acts as an intermediary for this purpose or who makes children see, read or listen these shall be sentenced to imprisonment for a term of six years to ten years and five thousand days fine.

conjunction with Article 11§2 of the Press Code.¹⁶ In addition, the Public Prosecutor asked that the print run of the magazine be permanently confiscated and placed in the State's repository in accordance with Article 54 of the Turkish Penal Code.¹⁷

57. The indictment request identified the photograph of the painting "Taner Taner" on page 15 of the magazine as the reason for the charges. According to the Public Prosecutor, the pornographic nature of the photograph was obvious, since it showed two males having sexual intercourse and their sexual organs were clearly visible; the photo did not qualify as a work of art; the magazine was available for sale to the general public and it was displayed without a protective cover in press outlets. Based on these allegations the Public Prosecutor took the view that the restriction on the defendant's freedom of speech was justified under Article 10§2 of the European Convention on Human Rights.
58. By a decision dated 27 February 2007, the Ankara 2nd Criminal Court of First Instance acquitted the defendant with Case Number 2006/580. The court ordered that the publication be made subject to the regime instituted under the Law on the Protection of Children from Harmful Publications¹⁸ and that it be distributed in a sealed envelope

Special security measures are put into practice for juristic personality for these crimes.
These jurisdictions are not effective for scientific works or art works and literary works except the third paragraph and on condition that children cannot reach these.
These jurisdictions are not effective for scientific works or art works and literary works except the third paragraph and on condition that children cannot reach these.

16 Article 11, Penal Liability:

Crimes committed by way of printed matter occur upon their publication. The owner of the publication shall be held responsible for crimes committed through periodicals and non-periodicals.

If the owner of a periodical is not specified or he/she does not hold penal liability during the publication or he/she cannot be tried by Turkish courts due to he/she being abroad during the publication process or if the punishment to be imposed does not influence another punishment previously imposed due to other crimes he/she committed, the responsible editor and the editor working beneath him/her, editor-in-chief, editor, press advisor shall be held responsible. However, if the publication is published despite the objection of the responsible editor and the editor working beneath him/her, the responsibility shall fall on the person who made the matter published. [...]

17 Article 54, Seizure of Property:

The court may adjudicate seizure of the property/tools used in or reserved for commission of felonious offense, provided that such property does not belong to third parties. The property/tools prepared for use in commission of offense is seized if it is determined to be dangerous for public safety, public health or oral principles.

In case of concealment, disposal, consumption of the property defined in the first subsection, or avoidance of seizure in any other manner, the court may adjudicate confiscation of a sum corresponding to the value of this property.

If it is understood that seizure of the property used in commission of offense will involve consequences heavier than the offense, then the court may refrain from adjudicating seizure of property.

The property of which the production, storage, use, transportation, purchase or sale constitutes an offense is subject seizure.

Where partial seizure is in question, the court may decide seizure of only that portion without giving damage to other parts of the property.

With regard to the property owned by more than one person, the court may adjudicate seizure of the part corresponding to the share of the person participating in the offense.

18 Law on Protection of Children from Harmful Publications:

Article 1; Periodic and non-periodic printed publications which are believed to have harmful effect on the morals of children are subjected to restrictions under the following articles.

Article 2; The restrictions may be imposed on the basis of a decision issued by a Committee on harmfulness of publications to children, subordinated to the Prime Minister's Office.

Article 4; The Committee shall notify the owners of the publications under examination (with regard to whom the decision on harmfulness has been rendered), managing directors, and copyright owners about the potential harm to the morals of children these publications represent; except for periodic publications of less than one month as well as cinema and all types of movie posters, advertisements, photographs, reliefs and all types of posters, picture-postcards, and calendars. The notification shall be made in accordance with the provisions of the Law on Notifications. In order to immediately notify the concerned persons about this decision the Committee shall take the necessary measures. At receiving the notification owners of publications, copyright owners, and managing directors shall place the "Harmful for children" mark or sign on the front cover of the said publications.

The mark "Harmful for children" must be of such a form and size that allows everyone to easily see and read it.

The works having such mark:

cannot be sold in open display and by mobile distributors.

cannot be displayed at shops, showcases and other similar places.

carrying a warning that it cannot be sold to underage persons. The court noted that since the magazine had been seized before being distributed, the requirements necessary for the crime of ‘obscenity’ were not met. Furthermore, the court ordered that the copies of the magazine, which had been seized by the Public Prosecutor’s Office, be returned to their owner after proceedings were completed.

59. The defendant appealed against this decision to the Supreme Court of Justice. In his appeal, the defendant argued against the designation of the magazine as pornographic and asked that the legal grounds for his acquittal be revised accordingly. That appeal is currently pending before the Criminal Office No 5 of the Supreme Court with Case Number 2008/9930.
60. Access to LGBT websites is also prohibited in some internet cafes and universities by filter programmes. To stop the prohibition, LGBT organisations made several complaints to Ministry of Interior Affairs and Telecommunication Committee Presidency (Telekomünikasyon Kurulu Başkanlığı) and also to Eskişehir Anadolu Üniversitesi (Eskisehir Anatolian University). The university accepted the complaint of MorEl Eskişehir LGBTT Oluşumu (PurpleHand Eskisehir LGBTT Initiative) and stopped the limitation to access to LGBT websites. But the complaints to the Ministry of Interior Affairs reached no point. The Ministry of Interior Affairs and Telecommunication Committee Presidency said that they have no role in the limitation of access to LGBT websites. There is still no access to LGBT websites from some internet cafes.¹⁹
61. There are examples of cases on the violation of the right to freedom of expression of LGBT persons in Annex 1. As it is observed, in all cases publications on gay relationships considered “obscene and against the morality”. There is no clear definition of “public morality” in the Turkish legislation system. So it can be used to censor publications on gay and transgender relationships. Since there is no law to guarantee the equal rights of LGBT persons and to stop discrimination based on sexual orientation and gender identity, LGBT persons can not apply to the freedom of expression right equally as any other group. in equal terms. Clarification of the definition of “obscenity” in Article 226 of the Turkish Penal Code and stating that expressing LGBT existence should not be considered as “obscenity” would avoid discrimination on the grounds of sexual orientation and gender identity. Also stating that expressions of LGBT existence should not be considered against “general morality” rules in law has great importance. And again, to avoid violation of the freedom of expression of LGBT persons, an anti-discrimination law based on sexual orientation and gender identity is necessary. In addition to this, amendment of Article 10 in the Turkish Constitution in order to give equal rights to LGBT persons has a key role.

Case title	Anıl Alacaoğlu/The Book “Third Class Woman” Case
Decision date	The appeal is currently pending before the Ankara Criminal Court of Peace.

cannot be transported openly from one place to another with the purpose of exposing them; and for these no order can be accepted by mobile distributors.

cannot be announced, propagated and advertised for sale through newspapers, magazines, wall advertisements and fliers, radio and TV, or in any other way.

cannot, either in exchange for money or for free, be shown, given to children or in any manner cannot be smuggled into schools or other similar places.

Such works can only be sold in a non-transparent envelope or plastic bag to persons over 18 years of age. No writing or picture other than the title of the work and the mark “Harmful for children” may be placed on the surface of such envelope or plastic bag.

Article 6; Works having intellectual, social, scientific and artistic value are excluded from the scope of this law.

19 Kaos GL News, <http://news.kaosgl.com/item/2009/10/7/access-denied-to-lgbt-social-networking-sites>, accessed 29 September 2010. Kaos GL News, <http://news.kaosgl.com/item/2009/10/7/gay-web-site-block-reveals-no-limit-to-censorship-in-turkey>, accessed 29 September 2010.

Reference details	Ankara Criminal Court of Peace (Ankara Sulh Ceza Mahkemesi)
Key facts of the case	The Prime Ministry Council of Protection of Children from Harmful Publications decided that the book named "Üçüncü Sınıf Kadın" (Third Class Woman) of the author Anıl Alacaoğlu is be distributed in a sealed envelope carrying a warning that it cannot be sold to underage persons on 31.07.2009 with Case Number B.02.0.MNK-572-02/01242.
Main reasoning/argumentation	The reason of the decision was that "In the book gay relationships which are not normal according to Turkish customs are told and it could harm the sexual health of the children". The author applied against the decision at the Ankara Criminal Court of First Instance on 17 August 2009 claiming that the freedom of expression is violated with the decision.
Key issues clarified by the case	
Results and key consequences or implications of the case	The appeal is currently pending before the Ankara Criminal Court of Peace.

Case title	Sel Yayıncılık (Sel Publications)- The Book "Aşkın L Hali" (The 'L' Aspect of Love) Case
Decision date	The investigation is currently pending.
Reference details	Press Division of Istanbul Public Prosecutor's Office with Case Number 2009/66795 (İstanbul Cumhuriyet Başsavcılığı Basın Bürosu Soruşturma No: 2009/66795).
Key facts of the case	The Press Division of Istanbul Public Prosecutor's Office confiscated three copies of the book named "Aşkın L Hali" (The 'L' Aspect of Love) which was published by Kaos GL Association and Sel Publications. The stories that won prizes in the Women To Women Story Contest organised by Kaos GL Association four years ago have been put together in the book. The public prosecutor of Istanbul took the testimony of the publisher.
Main reasoning/argumentation	The Press Division of Istanbul Public Prosecutor's Office reasoned the investigation by claiming that lesbianism is "an unnatural sexual relation" and "obscene". The defendant testified that the investigation violates the freedom of expression of lesbians.
Key issues clarified by the case	
Results and key consequences or implications of the case	The case is still being investigated by the Press Division of Istanbul Public Prosecutor's Office.

	2005	2006	2007	2008	2009
Number of court cases regarding violations of the right to freedom of expression of LGBT persons	None	2	None	None	2
Number of convictions regarding violations of the right to freedom of expression of LGBT persons (please indicate range of sanctions ordered)	None	1	1	None	None
Range of sanctions issued for the violation of the right to freedom of expression of LGBT persons.	None	None	None	None	None

B.4. Hate crime - Penal Code

Hate Speech

62. There is no specific law on hate speech in Turkey. There is only Article 216 of the Turkish Penal Code criminalising hostility.²⁰ The article bans provoking any social group against another social group in terms of the differences between them such as social class, religion, race, sect, or coming from another origin. Since LGBT groups are not stated in the article as a determined social class, it is not clear that LGBT groups can apply the article when they face hate speech or not. There is also no other specific law on hate speech against LGBT persons.
63. Despite this, there has been a sample case in Bursa in which a criminal case was filed citing Article 216 of the Turkish Penal Code against hate speech towards LGBT persons. The sample case details are shown in the table below.
64. On March 2010, the State Minister responsible for Woman and Family issues, Mrs. Selma Aliye Kavaf stated that she finds homosexuality a “biological disorder and sickness” and something that must be cured.²¹ This was the first hate speech ever coming from a minister.

Case title	Fevzinur DüNDAR-Hate Speech against LGBT persons Case
------------	---

²⁰ *Provoking people to be rancorous and hostile:*

ARTICLE 216,

(1) Any person who openly provokes a group of people against another group of people in terms of social class, religion, race, sect, or coming from another origin differences among them, to be rancorous or hostile against another group, is punished with imprisonment from one year to three years in case of such act causes risk from the aspect of public safety.

(2) Any person who openly humiliates another person just because he belongs to different social class, religion, race, sect, or comes from another origin, is punished with imprisonment from six months to one year.

(3) Any person who openly disrespects the religious belief of group is punished with imprisonment from six months to one year if such act causes potential risk for public peace.

Hate speech on the grounds of sexual orientation and gender identity is not mentioned in the article. But it can be claimed that the relevant article cover sexual orientation and gender identity through ‘social group’.

The Rainbow Association (Rainbow Solidarity and Cultural Association for Gay, lesbian and transgender persons) of Bursa - called for a demonstration on Sunday, August 6, 2006 to protest at an attempt by the governor of Bursa to shut down the association under the same “general morality” statute. But before the LGBT group could hold its march, a group of 500 counter-demonstrators gathered around the association’s headquarters, which also serves as a gay cultural centre, where the gay protesters had assembled. As they chanted, these counter-demonstrators started throwing stones, trapping 100 gay, lesbian and transgender persons inside the building.

²¹ Kaos GL News, <http://news.kaosgl.com/item/2010/3/8/homosexuality-is-a-disease-says-turkish-minister>, accessed 29 September 2010.

Decision date	April 2009
Reference details	Bursa 4 th Criminal Court of First Instance (Bursa 4. Asliye Ceza Mahkemesi).
Key facts of the case	The Rainbow Association of Bursa called for a demonstration on Sunday, 6 August 2006. But before the LGBT group could hold its march, a group of 500 counter-demonstrators gathered around the association's headquarters, where the gay protesters had assembled. As they chanted, these counter-demonstrators started throwing stones, trapping 100 gay, lesbian and transgender persons inside the building. Following this incident, the police cancelled the planned demonstration and told the LGBT group that they are incapable of protecting them from the counter-demonstrators. In February 2007, a criminal court case was filed against Fevzinur Dundar, the individual who led the counter-demonstrators.
Main reasoning/argumentation	The public prosecutor of Bursa has made Fevzinur Dundar the target of a criminal indictment under the Turkish Penal Code's Article 216, which criminalises incitement to hatred and hostility.
Key issues clarified by the case	This was the only case filed against hate speech towards LGBT persons.
Results and key consequences or implications of the case	Fevzinur Dündar was acquitted at the end of the trial at Bursa 4 th Criminal Court of First Instance in April 2009 because of the fact that there was not enough proof against him. Although his speech was recorded in the media and there was enough proof against him.

	2005	2006	2007	2008	2009
Number of court cases regarding homophobic/transphobic hate speech initiated	None	None	1	None	None
Number of convictions regarding homophobic/transphobic hate speech (please indicate range of sanctions ordered)	None	None	None	None	1
Range of sanctions issued for homophobic/transphobic hate speech	None	None	None	None	None

Hate Crimes

65. There is no specific law on hate crimes in Turkey. And there is no legislation mentioning hate crimes.
66. Every year many LGBT persons are murdered. Many of the murder cases stay anonymous. In most of the cases filed against these murderers, the courts reduce the sentences of defendants' and accept that the defendants committed murder under unjust

provocation. This is because the courts especially accept that being homosexual or transgender can easily provoke people in society since it is considered unacceptable.²²

67. On 18 December 2008 a transgender woman was killed in Gebze.²³ On 10 March 2009, prominent transgender rights activist Ebru Soykan was stabbed numerous times and killed in her home in Istanbul. Police arrested Birol Can Korkmaz for the murder. Soykan had made numerous complaints to the police and the prosecutor that Korkmaz had beaten her on several occasions and asked for protection. The criminal case is still pending.²⁴ On 29 March 2009 a transgender woman named Eda Yıldırım was killed in Bursa.²⁵ On 26 June 2009 a transgender woman named Hadise was killed in Istanbul.²⁶
68. On 16 February 2010 a transgender woman called Aycan Yener was killed in her apartment in the Fatih area of Istanbul. Yener's legal identification name was Fevzi. Her throat was slit, and she was stabbed 17 times. Assailants also stabbed her roommate, Seyhan Özmemiş, aged 32, who survived. According to Turkish media, witnesses reportedly observed three people fleeing the scene, but no one has been arrested. On 8 February, Derya Y., a 35-year old transgender woman, was killed in her home in the Altındağ district of Antalya. Police found Derya Y. in her bedroom with her throat cut and multiple knife stab wounds to her face and body.²⁷
69. It is also reported that there are "private gangs" in Turkey who are encouraged by the police to attack transgender women.²⁸
70. It is clear that a law on hate crime and hate speech against LGBT groups and many other disadvantaged groups would have vital importance in helping protect LGBT persons' and many other disadvantaged groups' lives.

Case title	Yelda Yıldırım Murder Case
Decision date	Unknown
Reference details	Istanbul 2 nd High Criminal Court (İstanbul 2. Ağır Ceza Mahkemesi).
Key facts of the case	Yelda Yıldırım, a lesbian, was killed by her girlfriend's husband by being stabbed 13 times in 2004. "Hüseyin Yardımcı, who was tried at for killing Yelda Yıldırım by stabbing her 13 times with the allegation that she had a lesbian relationship with his wife.
Main reasoning/argumentation	A lesbian relationship is an unjust provocation.
Key issues clarified by the case	The murder was committed with homophobic motivation and the court found the homophobic motivation as a reason of unjust provocation.

22 Kaos GL News, <http://news.kaosgl.com/item/2008/5/26/facing-hate-crime-in-turkey>, accessed 29 September 2010.

23 Liminalis, www.transrespect-transphobia.org/uploads/downloads/TMM/LIM2009-TMM-NameList2008-en.pdf, accessed 29 September 2010, page 181.

24 *Sexual Orientation/Gender Identity References-U.S. Department of State Human Rights Reports for 2009*, page 49.

25 Liminalis, www.transrespect-transphobia.org/uploads/downloads/TMM/LIM2009-TMM-NameListJanJune2009-en.pdf, accessed 29 September 2010, page 189.

26 *Ibid.* page 199.

27 Kaos GL News, <http://news.kaosgl.com/item/2010/2/23/turkey-stop-violence-against-transgender-people-multiple-murders-highlight-inadequate-state-protection>, accessed 29 September 2010.

28 Pembehayat [Pink Life Association], *Organizing Trans Struggle Against Violence in Turkey*, Presentation at the International Congress on Gender Identity and human Rights, Barcelona, Spain, 4-6 June 2010.

Results and key consequences or implications of the case	The penalty of the killer has been reduced from 24 years to eight years due to “the unjust provocation caused by Yelda Yıldırım”, and from eight years to six years and eight months due to good conduct of the murderer at the courtroom.
--	--

Case title	Abdlbaki Koşar Murder Case
Decision date	1 March 2007
Reference details	Istanbul 6th High Criminal Court (İstanbul 6. Ağır Ceza Mahkemesi).
Key facts of the case	Abdlbaki Koşar, a gay journalist, was stabbed to death in 22 February 2006. There were no eyewitnesses. The murderer was caught with the efforts of the security forces.
Main reasoning/argumentation	The murderer stated in the court that Abdlbaki Koşar offered him homosexual intercourse.
Key issues clarified by the case	The murder was committed with homophobic motivation and the court found the homophobic motivation as a reason of unjust provocation.
Results and key consequences or implications of the case	The Court decided that the murderer committed the crime 'under unjust provocation caused by Abdlbaki Koşar'. Therefore, the Court reduced the penalty of the murderer from life imprisonment to 18 years. In addition, because of the murderer's good conduct at the courtroom, the Court made an extra reduction and the penalty of the murderer was reduced from 18 to 15 years. The case is now it is in the process of appealing.

Case title	Melek K. Murder Case
Decision date	15 October 2009
Reference details	Ankara 6th High Criminal Court (Ankara 6. Ağır Ceza Mahkemesi).
Key facts of the case	Melek K., a transsexual woman, was stabbed to death in 11 April 2009 in her house in Ankara. The eyewitnesses confessed properly. The case was investigated, the evidences gathered from the crime scene were evaluated, and the murderer was caught by the General Directorate of Security in Ankara.
Main reasoning/argumentation	The murderer stated in the court that the victim offered him sex and he committed the crime under unjust provocation.
Key issues clarified by the case	The murder was committed with homophobic motivation and the court sentenced the murderer for homophobic motivation.
Results and key consequences or	The Court decided that the murderer committed the crime with homophobic motivation and sentenced to life time prison. This was

implications of the case	the first case where the perpetrator was punished on the grounds of homophobic motivation.
--------------------------	--

Case title	Ahmet Yıldız Murder Case ²⁹
Decision date	The court is still pending
Reference details	Uskudar (Istanbul) 1 st High Criminal Court (Üsküdar 1. Ağır Ceza Mahkemesi).
Key facts of the case	Ahmet Yıldız, a gay man, was shot to death on July 15 2008 in İstanbul. The victim's father is the suspect in the case for killing his son in the name of honour because of the son's sexual orientation. The victim's father is still fugitive.
Main reasoning/argumentation	The murder is an honour killing because of the sexual orientation of the victim.
Key issues clarified by the case	It is the first case on honour killing of LGBT persons.
Results and key consequences or implications of the case	The court is still pending.

Case title	Dilek İnce Murder Case
Decision date	The investigation is still pending
Reference details	Ankara Public Prosecutor's Office (Ankara Cumhuriyet Başsavcılığı).
Key facts of the case	Dilek İnce, a transsexual woman, was shot from her head with a pump action shotgun in Ankara on 10 November 2008 and died on 11 November 2008. The murderer has not been caught and due to the lack of evidence the suspects were released.
Main reasoning/argumentation	The victim was one of the plaintiffs against the gang sentenced in Eryaman case for offending the individuals living in their neighbourhood who characterise themselves as transsexuals based on the 'ideas which were triggered by their bias' with a definite motive, and forced the interveners to leave their living area. The murder could have been committed with transphobic motivation.

²⁹ On 9 August, the trial began for Yahya Yıldız, accused of killing his son, Ahmet Yıldız, in July 2008 in İstanbul. The case has been described as a gay "honour killing"; Yıldız allegedly killed his son because he had a boyfriend. Ahmet Yıldız had represented the country in an international gay gathering in San Francisco in 2007. (Sexual Orientation/Gender Identity References-U.S. Department of State Human Rights Reports for 2009 page 49).

Key issues clarified by the case	
Results and key consequences or implications of the case	The investigation is being carried out by the Ankara Public Prosecutor's Office.

Case title	Çağla Çağan Murder Case
Decision date	21 January 2010
Reference details	Ankara 5th High Criminal Court with Case Number: 2009/240 (Ankara 5. Ağır Ceza Mahkemesi Esas No: 2009/240)
Key facts of the case	Çağla Çağan, a transsexual woman, was stabbed to death on 22 May 2009 in her house, in Ankara. The case was investigated, the evidences gathered from the crime scene were evaluated, and the murderer was caught by the General Directorate of Security in Ankara.
Main reasoning/argumentation	The murderer stated in the court that the victim offered him homosexual intercourse and he committed the crime under unjust provocation.
Key issues clarified by the case	The claim that offering homosexual intercourse causes unjust provocation denied by the court.
Results and key consequences or implications of the case	The Court sentenced the murderer to life time prison and rejected the defendant's claims on unjust provocation

Case title	Mustafa Has (Transgender Name is Azra) Murder Case
Decision date	The court is still pending
Reference details	İzmir 7th High Criminal Court with Case Number: 2010/224 (İzmir 7. Ağır Ceza Mahkemesi Esas No: 2010/224)
Key facts of the case	Azra, a transsexual woman and a member of Black Pink Triangle LGBTT Association, was shot to death on 27 April 2010 in her car in İzmir. The murderer was caught by the General Directorate of Security in İzmir.
Main reasoning/argumentation	The murderer is a serial killer who killed three women in the same week in order to rob the women as reported by the media.
Key issues clarified by the case	The first court session will be held on 27 July 2010.

Results and key consequences or implications of the case	The Court is still pending.
--	-----------------------------

	2005	2006	2007	2008	2009
Number of criminal court decisions in which homophobic/transphobic motivation was used as an aggravating factor in sentencing	None	None	None	None	1

B.5. Family issues

71. According to Turkish law, civil marriage is not open to same-sex couples and there is no other alternative registration scheme similar to marriage. Also there is no other alternative registration scheme entailing less rights and responsibilities than marriage and same-sex partners are not recognised by the state and the state does not provide some/limited rights and obligations.
72. Besides this, in order for transgender persons to legally change their gender/name, they are required to divorce before the gender reassignment surgery and they must be deprived of their reproduction capacity according to Article 40 of Turkish Civil Code.³⁰
73. After the gender reassignment surgery and receiving a new citizen identity card pertaining to their preferred gender by court order, transgender persons are allowed to marry a member of the opposite sex.
74. In Turkish law, there is no law allowing or prohibiting adoption by LGBT persons. But adoption by same-sex couples is not recognized by law. Adoption by a single parent is allowed under some circumstances. And second parent adoption is also allowed.³¹
75. Assisted reproduction is allowed only for married couples and available for only married couples in Turkey according to Reproduction Assistance Treatment Centers Regulation dated 19 November 1996, Number 22822. Although there is no rule for access to these services by LGBT persons, it is impossible for LGBT persons to access these services because unmarried couples are not allowed to have assisted reproduction. Also a single and/or lesbian mother can not be assisted in reproduction because of the same reason. According to the regulation, if the person is known to be in a lesbian or gay relationship (although there is no regulation on this) it seems impossible to access assisted reproduction. There is also no law for transgender persons to store their own sperm/fertile eggs for future use.

³⁰ Article 40: "A person who wishes to undertake a gender change, may demand gender change from the court by applying personally. However, in order to be permitted, it is necessary that the applicant has to turn at least 18 years old, and s/he should not be married; besides, s/he has to have a natural tendency to transsexuality, and s/he has to certificate that sexual reassignment is a necessity for his/her mental health, and s/he is deprived of reproduction through a report taken from an official healthcare commission issued from a teaching and research hospital."

³¹ ARTICLE 306: A husband and wife may only together. Unmarried couples cannot adopt a child. For adoption, couples should have been married for five years and they must have reached the age of 31. The husband or wife, if the couple has been married for at least two years and s/he has reached the age of 31 may adopt the other's child.

III. *Alone adoption:*

ARTICLE 307: An unmarried person who has reached the age of 31 may adopt a child alone.

76. Since, same-sex marriage is not recognized in Turkish law, same-sex marriages which have been validly contracted in a foreign jurisdiction are considered as “null and void”. The legislation does not allow family reunification for unmarried partners-including same-sex partners.
77. A same-sex partnership law should come into force in order to allow LGBT persons to have equal rights with heterosexual couples.

B.6. Asylum and refugee issues

78. According to the Geneva Convention (1951) and the 1967 Protocol relating to the Status of Refugees and international refugee law, Turkey only accepts European refugees and gives them asylum status. Consequently, almost all non-European refugees must be resettled in a third country. They can stay in Turkey temporarily but Turkey does not give them asylum status. During their stay in Turkey, refugees are dependant on UNHCR’s assistance and can receive assistance from NGO’s (like Kaos GL Association and ASAM). Asylum seekers coming from near eastern countries, e.g. Iran or Palestine, should give the name of the third country in which they want to resettle and until they can resettle they must stay in one of the satellite cities as chosen by the government.
79. If the sexual orientation of this person is lesbian, gay, bisexual or transgender, UNHCR evaluates him or her as a particular social group and treats them sensitively. Sexual orientation and sexual identity is a valid reason for someone to escape his/her country due to facing persecution.
80. The adjudicators should also take into account the UNHCR’s guidance note on refugee claims relating to sexual orientation and gender identity published in 2008.
81. To provide guarantees for asylum applicants and refugees, concerning both their right to a fair procedure and protection from deportation to their country of origin, there are some human rights lawyers responsible for their cases.
82. Turkey’s UNHCR office accepts LGB partners as partners and their files are combined and evaluated together by UNHCR. The protection against discrimination is supported by NGOs. The Turkish government does not give the necessary precautions or legal support to ensure their protection against discrimination or harassment from other asylum seekers. Specific healthcare needs of transgender persons (such as hormone treatment etc) are not covered for the duration of their asylum procedure.
83. Below is part of the report of Helsinki Citizens Assembly published in June 2009 on LGBT refugees in Turkey:
84. “LGBT individuals are among the most vulnerable asylum seekers and refugees in Turkey today. Having escaped persecution in their countries of origin, they arrive in Turkey to confront significant new challenges to their safety, security and protection. Required to live in small towns in Turkey’s interior, they wait a year or more to be recognised as refugees by the United Nations High Commissioner for Refugees (UNHCR) and then to be “resettled” in third countries. During the wait, they often fear leaving their homes due to targeted violence from local communities. They enjoy very limited access to social support, employment and medical care. Conspicuous gaps exist in the level of response by local police to their complaints of violence and harassment. Moreover, staff at the UNHCR and the Turkish Ministry of Interior, the two institutions charged with adjudicating their refugee status, have sometimes conducted themselves inappropriately or counter-productively during the refugee adjudication process. While recent accounts indicate that the UNHCR has made significant strides to ameliorate these problems, there is still significant room for

improvement at both institutions. Most reported consistent, often violent harassment from local community members. They also described a lack of sufficient police protection in response to their complaints of violence, including admonitions that they stay home or dress “like a man” to avoid being targeted. Others reported being evicted from home on the basis of their sexual orientation or gender identity. The few able to secure work described being violently forced off the job when their LGBT status was exposed. Yet others reported identity-based barriers accessing social services and education. These LGBT asylum seekers and refugees are subjected to a particularly caustic mix of marginalisation in key areas of life, preventing them from obtaining assistance or employment, and depriving them of even the most basic security during their lengthy stay in Turkey. Most live out their time in Turkey in destitution and desperation.”³²

85. Kaos GL Association has been working in the field since 2007. The average number of LGBT refugees demanding help from the organisation in 2007, 2008 and 2009 is approximately 25 people per year. But considering the general situation in Turkey, every year approximately 120 people who enter the country in legal ways apply to UNHCR because they faced persecution based on sexual orientation or sexual identity³³.
86. Human rights group Amnesty International called on Turkey to completely overhaul its asylum procedures to bring them in line with international norms in a report published on 22 April 2009. The report also criticized the treatment of LGBT asylum seekers and refugees. Amnesty International also expressed its concern regarding the Turkish authorities’ treatment to LGBT asylum seekers and refugees.
87. Below is the excerpt from the report about the LGBT asylum seekers and refugees of Amnesty International published in 2009:
88. “A small but significant number of refugees and asylum-seekers in Turkey are those forced to flee their countries of origin due to a fear of persecution based on their sexual orientation or gender identity. In addition to sharing the problems of other refugee populations in Turkey, lesbian, gay, bisexual, same-sex practicing and transgender refugees told Amnesty International that they have faced additional discrimination and threats from private individuals in the cities where they live and that the authorities have not assisted them when called upon to do so. LGBT refugees and asylum-seekers’ experience of being dispersed to the 28 socially conservative Anatolian satellite cities is particularly harsh. LGBT refugees and asylum seekers in Van told Amnesty International that they suffered a double discrimination from the police and from the local population both as non-Turkish nationals and due to their sexual orientation or gender identity or expression. Amnesty International was told that asylum-seekers have been assaulted by groups of Turkish nationals in Van. According to the persons interviewed, police officers did not show any interest in investigating the claims when an incident was reported. Applications made by LGBT asylum-seekers to be transferred to another satellite city where they may be subjected to less hostility have apparently not been accepted by the police with applications pending in one case after eight months. In Kayseri, another Anatolian city that hosts a large number of LGBT asylum seekers and refugees, Amnesty International was told that they have been better treated by police. However, problems remain. LGBT refugees and asylum-seekers reported to Amnesty International that they were afraid of physical assault and of being raped. According to the reports of asylum seekers in Kayseri, there was an attack on Iranian gay and transgender asylum-seekers in March 2008. M, an Iranian gay man, now based in Kayseri, told Amnesty International that language barriers mean that LGBT asylum-seekers and refugees cannot communicate their fear or the

32 Helsinki Citizens Assembly, www.hyd.org.tr/staticfiles/files/unsafe_haven_report.pdf, accessed 29 September 2010.

33 Tips-Q, www.tips-q.com/1116964-lgbt-refugees-turkey-face-violence-inadequate-police-protection, accessed 29 September 2010. Kaos GL News, <http://news.kaosgl.com/item/2009/4/25/amnesty-international-refugees-in-turkey-deprived-of-rights>, accessed 29 September 2010.

details of these attacks to the police. He said that he was chased by two men: terrified, he called the police but was unable to make himself understood. He did not return home that night, fearful the men would follow him. One gay couple, who live together in an apartment in Kayseri, were initially called in to the apartment’s managing committee and told to stop looking the way they did - to generally “clean themselves up”, or they would be shot in the legs. One of the men changed his appearance through fear of reprisals. The caretaker of the building then came to the door with a letter signed by all 52 other residents of the apartment block, telling them to get out. “We were both so upset we cried all night.” They have been spat at and had stones thrown at them. One of the men said he has developed a stomach ulcer, and has nightmares. The couple says that the police have not intervened, despite being aware of the situation.”

89. Discrimination against LGBT asylum-seekers and refugees still further reduce their chances of supporting themselves financially while in Turkey. Like other refugees and asylum-seekers, they are not able to get permission to work in Turkey or obtain other means of support. However, due to their appearance, or prejudicial perceptions about their “lifestyle”, LGBT asylum-seekers and refugees are also excluded from the informal employment that many asylum-seekers are forced to rely on.³⁴

Case title	Nazenin M. Case
Decision date	
Reference details (type and title of court/body; in original language and English (official translation if possible)	
Key facts of the case (max. 500 chars)	There is a case from 2009 of a lesbian asylum seeker. Her case was denied by UNHCR. And the reason was the adjudicator did not believe her sexual orientation. She went to the court.
Main reasoning/argumentation (max. 500 chars)	
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	
Results (sanctions) and key consequences or implications of the	The case is still pending.

³⁴ Kaos GL News, <http://news.kaosgl.com/item/2009/4/25/turkey-fails-to-protect-asylum-seekers-including-lgbt-applicants>, accessed 29 September 2010.

case (max. 500 chars)	
-----------------------	--

	2005	2006	2007	2008	2009
Number of persons benefiting from asylum/ subsidiary protection due to persecution on the ground of sexual orientation or gender identity	No static found	No static found	No static found	No static found	No static found

B.7. Social security, social care and insurance

90. There is no law on social security, social care and insurance of LGBT persons in Turkey. LGBT persons are considered as single so LGBT couples can not access the benefits of married couples such as family benefits, funeral benefits etc. With the exception of benefits for married couples, there is no prohibition for LGBT persons to access the other social security rights. But since nearly all transgender persons are unemployed because of the prejudice against them, it is nearly impossible for transgender persons to access the state's social security. Transgender persons can only apply to private insurance firms. Paying for their own insurance is the only way for them to have insurance. There is no restriction policy for LGBT persons among private insurance firms. The cost of the private insurance depends on the client's request. For private retirement and life insurances, the cost is 130 Turkish Lira (approximately 65 Euros) per month minimum. For private health insurances, the cost is 120 Turkish Lira (approximately 60 Euros).
91. The social security system does not pay any expenses for gender reassignment treatment such as hormone treatment, hair removal, genital surgeries, chest/breast surgeries and facial surgeries.
92. Also there is no state policy, strategies or programme to access poverty reduction for LGBT persons.
93. There is no access to appropriate public or private social care and other services such as advice and personal help. Only LGBT NGOs in Turkey give legal advice to LGBT persons in Turkey.
94. To guarantee the social security rights of LGBT persons and couples, social security law has to be amended in a way that protects same sex partners.

	2005	2006	2007	2008	2009
Number of court cases raised where the right to social security and/or social care of LGBT persons has been violated due to homophobic/transphobic motivations	No information found	No information found	No information found	No information found	No information found
Number of convictions regarding the violation of the right to social	No information	No information	No information	No information	No information

security and/or social care due to homophobic/transphobic motivations	found	found	found	found	found
Range of sanctions issued for the violation of the right to social security and/or social care due to homophobic/transphobic motivations	No information found	No information found	No information found	No information found	No information found

B.8. Education

95. Right to education is regulated in Article 42 of the Constitution.³⁵ It has been stated that every citizen has a right to education. Besides this, laws and policies do not provide any adequate protection for students, staff and teachers of different sexual orientations and gender identities.
96. The school curriculum does not include sexual education or life skills lessons. Sexual orientation and gender identity are still not taught in many universities. But discussions on sexual orientation and gender identity started in some universities especially in Women's Studies, Physiology, Sociology and Human Rights departments.
97. After gender reassignment treatment it is impossible to change names/gender specifics on diplomas. This remains a problem for transgender persons.
98. Article 27 of the Law on Elementary and High School Teacher's Promotion and Discipline Number 1702³⁶ threatens LGBT teachers. According to this article, teachers whose behaviours are accepted as impure on two conditions, shall be unseated. In the first condition, if the teacher's behaviours are accepted as impure against the students in the school, s/he shall be unseated. In the second condition, if the teacher's behaviours are accepted as impure and can not fit the teaching profession outside the school (in relation to anyone), s/he shall be unseated. In other terms, impure behaviour by the teacher at any time - even in 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.
99. There is a case where a religion teacher was fired from a state school because of his sexual orientation but the applicant wishes to keep the information confidential.
100. In 2007 Bilgi University students established the country's first gay and lesbian university club. Approximately 15 parents lodged complaints with the university's administration, and the Turkish Higher Education Council opened an inquiry into the university. Bilgi University's Dean of students, Halit Kakinç, responded that closing the club would violate human rights. The club was operating normally at the end of the year 2009 (Sexual

³⁵ *Right and Duty of Training and Education:*

ARTICLE 42. No one shall be deprived of the right of learning and education.

The scope of the right to education shall be defined and regulated by law.

³⁶ Article 27: (1) The ones whose impurity in the school against the students or whose impurity out the school which can not fit the teaching profession is proved shall be unseated.

Orientation/Gender Identity References - U.S. Department of State Human Rights Reports for 2009 page 48).

101. To avoid such violation of the right to education of LGBT persons and the right to employment of LGBT teachers, articles punishing immoral or impure behaviours (such as Article 27 of Law on Elementary and High School Teacher's Promotion and Discipline) should be amended in order to clarify the definition of immorality in such a way that avoids discrimination on the grounds of sexual orientation and gender identity.

Case title	A.Ş. Case-Fired from work place because of sexual orientation
Decision date	The case is still pending at the court.
Reference details	Çorum Administrative Court (Çorum İdare Mahkemesi)
Key facts of the case	The plaintiff was working as a teacher in Ministry of Education. He was fired from work because of his sexual orientation.
Main reasoning/argumentation	The plaintiff was fired from work according to Article 125 of Civil Servants Code because his sexual orientation was considered as "Behaving in a dishonourable way in a degree that does not fit with being a civil servant". The administrative decision was given with a discriminative perspective on the grounds of sexual orientation.
Key issues (concepts, interpretations) clarified by the case	The plaintiff filed a case in order to be replaced to his job in 2009.
Results (sanctions) and key consequences or implications of the case	The case is still pending at the court. The information on the case is confidential.

	2005	2006	2007	2008	2009
Number of cases of homophobic/transphobic bullying and harassment of LGBT students and teachers your in schools	No information found	No information found	No information found	No information found	1
Number of convictions regarding homophobic/transphobic bullying and harassment of LGBT students and teachers your in schools (please indicate range of sanctions ordered)	No information found	No information found	No information found	No information found	No information found

Range of sanctions issued for homophobic/transphobic bullying and harassment of LGBT youth in schools	No information found	No information found	No information found	No information found	No information found
---	----------------------	----------------------	----------------------	----------------------	----------------------

B.9. Employment

102. The right to work is stated in Article 49 of the Constitution.³⁷ Also in Article 5 of the Labour Act, discrimination in employment is prohibited on some grounds.³⁸
103. There is no law on the rights of LGBT persons in the employment area. There is also no law to ensure that transgender employees can keep their job in the case of a gender transition, this includes changing diplomas and certificates. There is also no equality body, ombudsman, etc in Turkey dealing with discrimination on the ground of sexual orientation or gender identity.
104. According to Article 125 of Civil Servants Code,³⁹ civil servants whose behaviours are against the dignity of their profession or whose behaviours in the work place are immoral shall receive disciplinary punishment. Since LGBT persons' sexual orientation or gender identity are often accepted as "immoral or against dignity", there is the pressure of such disciplinary punishment on LGBT workers.
105. Besides this, there are many other special laws regulating the rights and duties of specialised civil servants 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.

37 A. *Right and Duty to Work:*

ARTICLE 49. (As amended on 17 October 2001)

Everyone has the right and duty to work.

The State shall take the necessary measures to raise the standard of living of workers, and to protect workers and the unemployed in order to improve the general conditions of labour, to promote labour, to create suitable economic conditions for prevention of unemployment and to secure labour peace.

38 *The Principle of Equal Treatment:*

ARTICLE 5. No discrimination based on language, race, sex, political opinion, philosophical belief, religion and sex or similar reasons is permissible in the employment relationship.

Unless there are essential reasons for differential treatment, the employer must not make any discrimination between a full-time and a part-time employee or an employee working under a fixed-term employment contract (contract made for a definite period) and one working under an open-ended employment contract (contract made for an indefinite period). Except for biological reasons or reasons related to the nature of the job, the employer must not make any discrimination, either directly or indirectly, against an employee in the conclusion, conditions, execution and termination of his (her) employment contract due to the employee's sex or maternity.

Differential remuneration for similar jobs or for work of equal value is not permissible.

Application of special protective provisions due to the employee's sex shall not justify paying him (her) a lower wage.

If the employer violates the above provisions in the execution or termination of the employment relationship, the employee may demand compensation up his (her) four months' wages plus other claims of which he (she) has been deprived.

Article 31 of the Trade Unions Act is reserved.

While the provisions of Article 20 are reserved, the burden of proof in regard to the violation of the above – stated provisions by the employer rests on the employee.

However, if the employee shows a strong likelihood of such a violation, the burden of proof that the alleged violation has not materialised shall rest on the employer.

39 Article 125: Civil servants whose behaviours are against dignity of their profession or whose behaviours in their work place are immoral shall receive disciplinary punishment.

106. Also according to Article 17 of the appendix of Turkish Army Forces Health Capability Regulations Number 19291, dated 24 January 1986,⁴⁰ gays 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 homosexuality is a psychosexual disorder and those who have this “pathology” are considered “unfit to serve” in the Turkish Armed Forces.⁴¹
107. In Turkey, transgender persons especially are not employed because of the prejudice against them. Most of them are forced into the sex industry. And although gays and lesbians apply to LGBT NGOs for legal advice when losing their jobs because of their sexual orientation, because of the fear of coming out, it has been observed that many of these people do not apply to the courts.⁴² So collecting data on court cases is very hard. There are two cases where officers were fired from their work because of their sexual orientation. The courts ruled on behalf of the plaintiffs but the plaintiffs wanted to keep the information confidential.
108. In Turkey four LGBT NGOs give LGBT persons support by giving legal advice for their cases. But these NGOs do not have the possibility to engage on behalf or in support of the complainants.
109. To avoid violation of the right to work of LGBT persons, amendment of Article 5 of the Labour Code in order to avoid discrimination based on sexual orientation and gender identity is necessary. Article 17 of the appendix of Turkish Army Forces Health Capability Regulations has to be removed in order to allow gays and transgender persons to enter the army and to avoid discrimination on the grounds of sexual orientation and gender identity. Also articles punishing immoral behaviours (such as Article 125 of Civil Servants Law) should be amended in order to redefine immorality in such a way that makes it impossible to use as a tool for discrimination on grounds of sexual orientation and gender identity.
110. In January 2010, the Prime Minister's Public Officials Ethics Committee drafted a regulation regarding ethical principles which have to be followed by inspectors in public institutions. According to “AKŞAM” newspaper, an article on 'sexual orientation' is also included in the draft article.⁴³
111. According to the draft, discrimination based on one's sexual orientation is prohibited. The “Equality” chapter in the draft Regulation on Ethical Behaviour Principles for Public Inspection provides assurances for gay civil servants who are not only excluded in society, but especially also in public institutions and offices.
112. The article of the draft text is as follows:

40 *Psychosexual disorder:*

Sexual behaviour disorders should be known in the military environment and cause problems and it has to be proved by official documents or field surveys.

41 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 must undergo an invasive burden of proof. LGBT groups complained that gay men were required to show photos of themselves in overt sexual positions and to undergo thorough medical evaluations to prove their homosexuality to military officials (Sexual Orientation/Gender Identity References-U.S. Department of State Human Rights Reports for 2009 page 48)

42 Kaos GL News, <http://news.kaosgl.com/item/2009/10/30/struggle-against-homophobic-discrimination-in-professional-life>, accessed 29 September 2010.

43 Aksam, www.aksam.com.tr/2010/01/21/haber/guncel/9199/kaos_gl_den_yonetmelige_destek_hukumete_cagri.html, accessed 29 September 2010.

113. "Inspectors perform their duties without considering differences based on language, religion, race, sex, nationality, social class, disability status, age marital status, sexual orientation, social and economic status, political opinions and other reasons alike."⁴⁴.

Case title	İlhan Kocabaş Case-Change of work place because of sexual orientation
Decision date	The case is still pending at the court.
Reference details	Istanbul Administrative Court No: 8 Case Number: 2009/775 (Istanbul 8. İdare Mahkemesi Esas No: 2009/775)
Key facts of the case	The plaintiff' works as a civil servant in Ministry of Finance Income Administration Presidency. The plaintiff's work position and place has been changed because of his sexual orientation.
Main reasoning/argumentation	The administrative decision was given with a discriminative perspective on the grounds of sexual orientation.
Key issues (concepts, interpretations) clarified by the case	
Results (sanctions) and key consequences or implications of the case	The case is still pending at the court. But the court has given a temporary decision on behalf of the plaintiff in order to replace him to his past position.

Case title	F.E. Case-Fired from work place because of sexual orientation
Decision date	The case is still pending at the court.
Reference details	Istanbul Administrative Court (Istanbul İdare Mahkemesi)
Key facts of the case	The plaintiff' was working as a policeman in Ministry of Interior Affairs. He was fired from work because of his sexual orientation.
Main reasoning/argumentation	The plaintiff was fired from work according to Article 125 of Civil Servants Code because his sexual orientation was considered as "Behaving in a dishonourable way in a degree that does not fit with being a civil servant". The administrative decision was given with a discriminative perspective on the grounds of sexual orientation.
Key issues (concepts, interpretations) clarified by the case	
Results (sanctions) and key consequences or	The case is still pending at the court. <u>The information on the case is confidential.</u>

44 Kaos GL News, <http://news.kaosgl.com/item/2010/1/28/sexual-orientation-discrimination-at-work-in-turkey-is-it-finally-in-law>, accessed 29 September 2010.

implications of the case	
--------------------------	--

Case title	Sedat Küçüközen Case-Fired from work place because of sexual orientation
Decision date	26 May 2009
Reference details	Istanbul Labor Court No: 4 with Case Number: 2009/195, Decision Number: 2009/295 (Istanbul 4. İş Mahkemesi Esas No: 2009/195, Karar No: 2009/295)
Key facts of the case	The plaintiff' was working in a bank named Akbank. He was fired from work because of his sexual orientation.
Main reasoning/argumentation	The plaintiff was fired from work because his sexual orientation. He has filed the case in order to be replaced to his job.
Key issues (concepts, interpretations) clarified by the case	The court denied the case.
Results (sanctions) and key consequences or implications of the case	The court denied the case. The plaintiff appealed to the Court of Appeal. The case is still pending at Civil Chamber No. 9 of Court of Appeal with Case Number 2009/27672 (Yargıtay 9. Hukuk Dairesi Esas No: 2009/27672).

Case title	A.Ş. Case-Fired from work place because of sexual orientation
Decision date	The case is still pending at the court.
Reference details	Çorum Administrative Court (Çorum İdare Mahkemesi)
Key facts of the case	The plaintiff' was working as a teacher in Ministry of Education. He was fired from work because of his sexual orientation.
Main reasoning/argumentation	The plaintiff was fired from work according to Article 125 of Civil Servants Code because his sexual orientation was considered as "Behaving in a dishonourable way in a degree that does not fit with being a civil servant". The administrative decision was given with a discriminative perspective on the grounds of sexual orientation.
Key issues (concepts, interpretations) clarified by the case	
Results (sanctions) and key consequences or implications of the case	The case is still pending at the court.

case	
------	--

Case title	Gay Police forced to resign
Decision date	
Reference details	
Key facts of the case	Two police chiefs had to resign after an investigation was launched regarding them after videos showing their gay relationship were revealed in 2009. Erzincan Police Academy's deputy director H.K. resigned on his own will after it was revealed that he had gay relationship with students last February. Also, police chief M.A., who was appointed to Karabuk, resigned after a video showing his gay relationship was revealed. (These cases were found in the media). http://www.todayszaman.com/tz-web/news-187859-101-turkey-press-scan.html
Main reasoning/argumentation	
Key issues	
Results (sanctions) and key consequences or implications of the case	

Case title	Halil İbrahim Dinçdağ Case ⁴⁵
Decision date	The case is still pending.
Reference details	
Key facts of the case	The referee Halil Ibrahim Dincdag was not allowed to enter a test to become a nation wide referee in May 2009 the reason being that he is gay. His lawyers applied to the Turkish Football Federation.
Main reasoning/argumentation	The decision was given with a discriminative perspective on the grounds of sexual orientation.
Key issues (concepts,	

⁴⁵ On 20 May Halil Ibrahim Dincdag, a soccer referee, lost his job because of his self-identification as gay. He had been hired and had a long career as a referee despite his not having done his military service. According to the national soccer league's regulations, anyone who fails to complete his military service for health reasons is unfit to perform as a referee. Since Dincdag was precluded from military service for being gay, he was declared unfit to act as a referee and was fired (Sexual Orientation/Gender Identity References - U.S. Department of State Human Rights Reports for 2009 page 49).

interpretations) clarified by the case	
Results (sanctions) and key consequences or implications of the case	The case is still pending in front of the Turkish Football Federation.

	2005	2006	2007	2008	2009
Total complaints of discrimination on the ground of sexual orientation	No information found	No information found	No information found	No information found	5
Total complaints of discrimination on the ground of sex/gender identity	No information found	No information found	No information found	No information found	No information found
Total finding of Discrimination confirmed on the grounds of sexual orientation	No information found	No information found	No information found	No information found	No information found
Total finding of Discrimination confirmed on the grounds of sex/gender identity	No information found	No information found	No information found	No information found	No information found
National number of sanctions/compensati on payments issued	No information found	No information found	No information found	No information found	No information found
National range of sanctions/compensati on payments	No information found	No information found	No information found	No information found	No information found

B.10. Housing

114. The right to housing is stated in Article 57 of the Constitution.⁴⁶ There is no law on the right to housing for LGBT persons. There is also no shelter for LGBT persons. Especially transgender persons generally live in certain neighbourhoods in big cities such as Istanbul, Izmir and Ankara.

⁴⁶ *Right to Housing:*

ARTICLE 57. The state shall take measures to meet the need for housing within the framework of a plan which takes into account the characteristics of cities and environmental conditions and supports community housing projects.

115. In 1996 the transgender persons living in Ulker Street in Istanbul were attacked by other people living in the same street because these people did not want to live with them. Sociologist Pınar Selek researched this case and wrote a book on the Ulker Street case called "Masks, Cavaliers, Transgender Women".⁴⁷ The state failed to protect the transgender women and all the transgender women were forced to move from Ulker Street. No case was filed against the violators and there was no charge against the violators.
116. In 2006 similar attacks happened in the neighbourhood called Eryaman in Ankara. The state again failed to protect the transgender women and all the transgender women were forced to move from Eryaman.
117. Although the legal system ensures equal rights to land and home ownership without discrimination on the basis of sexual orientation or gender identity, LGBT couples do not have the right to each other's inheritance.
118. Despite this, there is no law applicable to landlords upon the eviction of LGBT persons. There is also no restriction in the law against the resettlement of same-sex couples. There is no special arrangement in the law for people belonging to different social groups. There is no difference between citizens. When it comes to eviction, every citizen has the same rights.
119. To avoid violation of the right to housing of LGBT persons, a same-sex partnership law and a law on hate crimes have to enter into force and also, an amendment of Article 10 of the Turkish Constitution plays a key role in giving equal rights to LGBT persons.

Case title	Eryaman Case-Transgender Women forced to banishment
Decision date	17 October 2008
Reference details (type and title of court/body; in original language and English (official translation if possible))	Ankara 11 th High Criminal Court with Case Number: 2007/250, Decision Number: 2008/246 (Ankara 11. Ağır Ceza Mahkemesi Esas No: 2007/250, Karar No: 2008/246)
Key facts of the case (max. 500 chars)	Four people, who attacked transvestites and transsexuals between 7 - 12 April 2006 in Eryaman-Ankara and Esat and Kurtuluş respectively, were brought before the court for attacking the transgender women in the area and forcing them to move.
Main reasoning/argumentation (max. 500 chars)	The plaintiff's and prosecutor's argument was the crime committed based on hate to transgender women.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	The court sentenced the offenders with prison punishment. The ground of court's ruling, which sent the offenders to prison, was that: "... Accused, systematically and densely offended the individuals living in their neighbourhood who characterise themselves as transsexuals based on the 'ideas which were triggered by their bias' with a definite motive, and forced the interveners to leave their living area."
Results (sanctions) and key	It is the first court ruling mentioning hate crimes against transgender women and where the offenders received

⁴⁷ Third edition of the book is published by Istiklal Publications, 2007.

consequences or implications of the case (max. 500 chars)	punishment
---	------------

	2005	2006	2007	2008	2009
Number of court cases raised where the right to housing of LGBT persons has been violated due to homophobic/transphobic motivations			1		
Number of convictions regarding the violation of the right to housing due to homophobic/transphobic motivations				1	

B.11. Health care

120. The right to live in a healthy environment is stated in Article 56 of the Constitution.⁴⁸ This right is guaranteed for every citizen. But there is no law which provides explicit and specific protection to LGBT persons against discrimination on the basis of sexual orientation or gender identity.
121. It has been reported that some LGBT persons apply to LGBT organisations who are diagnosed as being sick because of their sexual orientation and the physiological therapy treatment prescribed to them. Some physiologists talk in the media about homosexuality and transsexuality as being illnesses that have to be treated.
122. Also gender confirming treatments, such as hormone therapy, permanent hair removal, genital surgery, chest/breast surgery, facial surgery and speech therapy are not covered by health insurance in the same way as other medically necessary procedures are covered. Although these treatments are available in Turkey, people have to cover the expenses themselves.
123. No measures have been taken to ensure that the individual's gender, gender identity, and sexual orientation are taken into consideration in order to provide effective health care services to LGBT persons.
124. Same sex partners are not recognised as next of kin - thereby they are not allowed to receive information about the patient's health if no contradicting interests of the patient can be identified.
125. In order to stop discrimination on the grounds of sexual orientation and gender identity in health care, determining homosexuality and transsexuality as an illness and treatment of these has to be prohibited.

⁴⁸ *Health Services and Conservation of the Environment:*

ARTICLE 56. Everyone has the right to live in a healthy, balanced environment.

It is the duty of the state and citizens to improve the natural environment, and to prevent environmental pollution.

To ensure that everyone leads their lives in conditions of physical and mental health and to secure cooperation in terms of human and material resources through economy and increased productivity, the state shall regulate central planning and functioning of the health services.

The state shall fulfil this task by utilising and supervising the health and social assistance institutions, in both the public and private sectors.

In order to establish widespread health services general health insurance may be introduced by law.

	2005	2006	2007	2008	2009
Number of cases where LGB persons have been deprived of the right to access to health care facilities due to homophobic motivations?	No information found	No information Found	No information Found	No information Found	No information Found
Number of cases where transgender persons have been deprived of the right to access to health care facilities due to transphobic motivations?	No information Found	No information Found	No information Found	No information Found	No information Found
Number of convictions regarding the violation of the right to access to health care facilities due to homophobic motivations?	No information Found	No information Found	No information Found	No information Found	No information Found
Number of convictions regarding the right to access to health care facilities due to transphobic motivations?	No information Found	No information Found	No information Found	No information Found	No information found
Range of sanctions issued for the violation of the right to access to health care facilities due to homophobic/transphobic motivations?	None	None	None	None	None
Number of persons receiving gender-confirming treatment	No information Found	No information Found	No information Found	No information Found	No information Found

B.12. Access to goods and services

126. Discrimination on access to goods and services is prohibited in Article 122 of the Turkish Penal Code.⁴⁹ Discrimination in many forms has been prohibited with this article and it can

⁴⁹ *Discrimination:*

ARTICLE 122-(1) Any person who makes discrimination between individuals because of their racial, lingual, religious, sexual, political, philosophical belief or opinion, or for being supporters of different sects and therefore;

a) Prevents sale, transfer of movable or immovable property, or performance of a service, or benefiting from a service, or bounds employment or unemployment of a person to above listed reasons,

be claimed that this article could be applied when discrimination on the grounds of sexual orientation and/or gender identity occurs. But from a different view, discrimination on the grounds of sexual orientation and/or gender identity has not been stated in the article and LGBT persons do not have protection from discrimination.

127. Although, discrimination on the grounds of gender is prohibited in the article, it is not clear whether gender discrimination includes sexual orientation or not. In the preparatory works of this article, the justification of the article states that; *“Article 122 criminalize discrimination in certain aspects. If one prevents people to access certain services in a discriminative way, it is criminalized by this article.*
128. The article stated the material elements of the crime separately in three paragraphs. These acts are: "Preventing sale, transfer of movable or immovable property, or performance of a service, or benefiting from a service, or bounds employment or unemployment of a person to above listed reasons, refusing to deliver nutriments or to render a public service, preventing a person to perform an ordinary economical activity".
129. The article criminalises the acts which prevent people to access certain services defined in law because of their racial, lingual, religious, sexual, political, philosophical belief or opinion, or for being supporters of different sects and therefore. For example, if business owners do not hire a person who they do not like, there will be no punishment for this. The purpose is to avoid discrimination between citizens because of group affiliation based on various factors. The article basically aims to prevent separatism between the persons of the nation.
130. In the justification of the article, since the purpose is stated as *“to avoid discrimination between citizens because of group affiliation based on various factors”*, there is no restriction of the “group affiliation” and “various factors”. In other terms, the justification of the article determines the group affiliation as “any group of people who come together for any factor”; it can be claimed that this article could be applied when discrimination on the grounds of sexual orientation and/or gender identity occurs.
131. In practice, many public places do not accept to serve LGBT persons, especially transgender persons. Since there is no case on the issue, we only have information from LGBT NGOs and their reports on human rights violations against LGBT persons.
132. To avoid violation of the right to access to goods and services of LGBTT people, amendment of the Article 122 of the Turkish Penal Code in order to give equal rights to LGBT persons is necessary.

	2005	2006	2007	2008	2009
Number of cases where LGBT persons have been deprived of the right to access goods and services due to homophobic/transphobic motivations?	No static found	No static found	No static found	No static found	No static found
Number of convictions regarding the violation of the right to goods and services due to homophobic/transphobic motivations?	No static found	No static found	No static found	No static found	No static found
Range of sanctions issued for the violation of the right to access to goods and services due to	None	None	None	None	None

b) Refuses to deliver nutriments or to render a public service,
c) Prevents a person to perform an ordinary economical activity,
is sentenced to imprisonment from 6 months to 1 year or imposed a punitive fine.

homophobic/transphobic motivations?					
-------------------------------------	--	--	--	--	--

B.13. Media

133. In Turkey, there is a governmental media council called Radio and Television Supreme Council that has been established with the purpose of monitoring the radio and television. There is also the Turkish Press Council that monitors whether or not journalists and newspapers act appropriately in accordance with the code of ethics. This is a non-governmental organisation of journalists.
134. There is a law on the public (state-run) TV channels⁵⁰ regulating the rules for broadcasting. In Article 5/d, discrimination on the grounds of race, religion and language etc is prohibited.
135. There is also the ethics code of the press. Article 2 of the ethics code of the press prohibits discrimination on some grounds.⁵¹
136. Discrimination based on sexual orientation and gender identity remains. Also no measures have been implemented in order to ensure the compliance of the media with the prohibition against discrimination on the basis of sexual orientation and gender identity.
137. As a result of this, TV channels can be fined for airing an LGBT movie or showing a same-sex kiss many times. The Radio and Television Supreme Council fined many TV channels such as CNBC-E, Movie-Max several times. LGBT NGOs made press statements against these kind of rulings several times.
138. There also was hate speech in the nation-wide newspaper Vakit towards LGBT persons many times. The Kaos GL Association made complaints against this newspaper twice in front of the Ankara Public Prosecutor Office but the complaints were denied.
139. Kaos GL Association also made a complaint against the journalist Engin Ardiç in front of the Media Council because of his hate speech against lesbians but again this complaint has been denied.
140. The authorities do not encourage media professionals in the fight against homophobia/transphobia and there is no policy or programme on the issue.
141. Clarifying the definition of “general morality” and stating that LGBT issues should not be considered as against “general morality” rules in law would have great importance to stop discrimination on the grounds of sexual orientation and gender identity in the media.

Case title	Engin Ardiç Case-Hate Speech Against Lesbians
Decision date	21 November 2007
Reference details	Turkish Press Council Case Number 2007/085 (Basın Konseyi Karar No: 2007/085)
Key facts of the case	The journalist Engin Ardiç wrote an article in newspaper Akşam insulting lesbians.

⁵⁰ Turkey Radio and Television Law number 2954, dated 1993.

⁵¹ Article 4/d: No one can be humiliated on the grounds of race, sex, age, health conditions, disability, social status and religion on the press.

Main reasoning/argumentation	The plaintiff claimed that the article of the journalist was a hate speech towards lesbians.
Key issues	Although the article was a clear hate speech towards lesbians, the Turkish Press Council accepted it as criticism.
Results (sanctions) and key consequences or implications of the case	The Turkish Press Council ruled that the arguments of the journalist have to be considered as criticism.

Case title	Serdar Arseven/Vakit Newspaper Case-Hate Speech Against LGBT persons
Decision date	21 May 2008
Reference details	The Press Division of Ankara Public Prosecutor Office with Press Investigation Number: 2008/1414, Press Decision Number: 2008/727 (Ankara Cumhuriyet Başsavcılığı Basın Bürosu Basın Soruşturma No: 2008/1414, Basın Karar No: 2008/727)
Key facts of the case (max. 500 chars)	In 2008, Parliament's Human Rights Monitoring Commission's President Zafer Üskül attended to Kaos GL Association's Anti-homophobia Conference The journalist Serdar Arseven wrote an article in newspaper Vakit saying that Zafer Üskül does not protect the rights of women wearing headscarf but the rights of sexually perverted people. Kaos GL Association made a complaint against the journalist at Ankara Public Prosecutor's Office.
Main reasoning/argumentation	The plaintiff claimed that the article of the journalist was a hate speech towards LGBT persons.
Key issues	Although the article was a clear hate speech towards the Kaos GL Association and LGBT persons represented by the organisation, the prosecutor ruled that there was no aspersion against the plaintiffs in the article.
Results (sanctions) and key consequences or implications of the case	The Press Division of Ankara Public Prosecutor Office ruled that the criticism in the article was about Zafer Üskül, not about LGBT persons so the LGBT Association has no right to complain against the journalist since there was no aspersion against the plaintiffs in the article.

Case title	Kaos GL Association Civil Suit for Damages against Vakit Newspaper
Decision date	30 December 2008
Reference details	Ankara Civil Court of First Instance No 19 with Case Number: 2008/224, Decision Number: 2008/465 (Ankara 19. Asliye Hukuk Mahkemesi Esas No: 2008/224, Karar No: 2008/465)
Key facts of the case (max. 500)	In 2008, Parliament's Human Rights Monitoring Commission's President Zafer Üskül attended to Kaos GL Association's Anti-homophobia Conference The journalist Serdar Arseven wrote an

chars)	article in newspaper Vakit telling that Zafer Üskül does not protect the rights of women wearing headscarf but the rights of sexually perverted people. Kaos GL Association filed a civil suit asking the damages for mental anguish
Main reasoning/argumentation	The plaintiff claimed that in the article of the journalist there was aspersion against LGBT persons and the Kaos GL Association and asked for damages for the pain and suffering.
Key issues	Although there was clear aspersion against the Kaos GL Association and LGBT persons represented by the organisation, the court ruled that there was no aspersion against the plaintiffs in the article.
Results (sanctions) and key consequences or implications of the case	The court ruled that the criticism in the article was about Zafer Üskül, not about the LGBT persons so the Association has no right to sue the journalist.

Case title	Kaos GL Association Civil Suit for Damages against Vakit Newspaper
Decision date	18 December 2008
Reference details	Ankara Civil Court of First Instance No 4 with Case Number: 2008/226, Decision Number: 2008/467 (Ankara 4. Asliye Hukuk Mahkemesi Esas No: 2008/226, Karar No: 2008/467)
Key facts of the case (max. 500 chars)	The journalist Serdar Arseven wrote another article in newspaper Vakit saying that Zafer Üskül (Parliament's Human Rights Monitoring Commission's President who attended the Kaos GL Association's Anti-homophobia Conference) and his political party AKP (Justice and Development Party) ruling the government has equal distance to honest people and sexually perverted people. Kaos GL Association filed a civil suit asking the damages for mental anguish
Main reasoning/argumentation	The plaintiff claimed that in the article of the journalist there was aspersion against LGBT persons and the Kaos GL Association and asked for damages for pain and suffering.
Key issues	Although there was clear aspersion against the Kaos GL Association and LGBT persons represented by the organisation, the court ruled that there was no aspersion against the plaintiffs in the article.
Results (sanctions) and key consequences or implications of the case	The court ruled that the criticism in the article was about Zafer Üskül, not about LGBT persons so the Association has no right to sue the journalist.

	2005	2006	2007	2008	2009
Number of court cases regarding noncompliance of the media with the prohibition against discrimination and/or the principle of equal	None	None	None	3	None

treatment and equal opportunity.					
Number of convictions of media by 'soft-law' institutions, such as a media council	None	None	1	None	None
Number of convictions regarding noncompliance of the media with the prohibition against discrimination and/or the principle of equal treatment and equal opportunity.	None	None	None	None	None

B.14. Transgender issues

142. There is no law explicitly and specifically prohibiting discrimination on the grounds of gender identity. Discrimination against transgender persons can only be considered as discrimination on the grounds of sex. Thus, judicial interpretation is needed. The rights of transgender persons such as freedom of assembly and association; freedom of expression, education, social security, social care and insurance; health care, access to goods and services, housing and employment are protected as with any citizen. There is no special protection for transgender persons and there is no anti-discrimination law for them. So, as a disadvantaged group, although transgender persons are accepted as equal citizens, this does not allow for transgender persons to access their same fundamental rights as any other citizen.
143. Transsexual people are legally recognised in Turkey. Gender reassignment surgery is stated in Article 40 of the Turkish Civil Code.⁵² Reassignment surgery is allowed only under these conditions;
- The person may demand gender change from the court by applying personally.
 - It is necessary that the applicant is at least 18 years old
 - The person should not be married.
 - The person has to have a natural tendency to transsexuality.
 - The person has to certify that gender reassignment is a necessity for his/her mental health.
 - And most importantly, the person should prove his/her infertility.
144. There was not such a restriction as the person has to prove that s/he is deprived of reproduction abilities in the previous civil code., however, a limitation has been put to the new law. According to this perspective, the law assumes that only people who are sterilised can change their legal gender. But transsexuality has no connection with the ability to reproduce. This causes many transgender persons not to have gender reassignment surgery.
145. After the legal gender recognition by court decision, the decision is sent to the Population Register Directory and the court decision is recorded in the person's file. The identity card changes after the legal gender recognition (in Turkey the identity card is blue for males and pink for females to show their gender). But the registration of birth of the person is not

⁵² Article 40: "A person who wants to have a gender change, may demand gender change from the court by applying personally. However, in order to be permitted, it is necessary that the applicant is at least 18 years old, and s/he should not be married; besides, s/he has to have a natural tendency to transsexuality, and s/he has to certificate that sexual reassignment is a necessity for his/her mental health, and s/he is deprived of reproduction through a report taken from an official healthcare commission issued from a teaching and research hospital."

altered after the legal gender change. In the person's identity file, it can be seen that the person has changed gender. And no documents which were set before the gender reassignment surgery can be changed after it.

146. Change of name is arranged in Article 27 of Turkish Civil Code.⁵³ Change of name can only be done with a justifiable reason and by the decision of a judge. "Justifiable reason" is not restricted in law so change of name after the legal gender recognitions, change of name without a legal gender recognition is possible.
147. The court expenses cost approximately 100 Euros. But since gender reassignment surgeries are not covered by the social security system, those surgeries cost nearly 10,000 Euros. And the person has to cover the expenses on her/his own. The gender reassignment surgery procedure generally takes between two and three years because of the physiological monitoring process.
148. After gender reassignment surgery, transgender persons apply to the court to receive a new identity card pertaining to their preferred gender. When they take their new identity card pertaining to their preferred gender, the transgender person is accepted with her/his preferred gender before the law. And the transgender person has all the rights of her/his preferred gender as any person has just as if the preferred gender is her/his birth gender. There is no restriction on transgender persons applying for the rights or her/his preferred gender such as an opposite sex marriage. As an example, prominent singer Bülent Ersoy who is a transsexual woman has had a few opposite sex marriages.⁵⁴ After gender reassignment surgery, a transgender person has all the rights to apply to the family law just as if her/his preferred gender is her/his birth gender. As a result of this, partners of transsexual persons have all the equal rights as any citizen would when it comes to family law and any other law related to the partnership.
149. However, after the change it is impossible to change names/gender specifies on educational diplomas. Although there is no law on the issue, it is reported that transgender persons' applications on diploma information changes have been denied by the relevant schools.
150. The gender of transgender persons who do not intend to undergo gender reassignment procedures is accepted as their birth gender.
151. Also according to Article 17 of the appendix of the Turkish Army Forces Health Capability Regulations Number 19291, dated 24 January 1986,⁵⁵ 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.
152. There is a clear harassment from police towards transgender persons. The police fine transgender persons continuously using the Law of Misdemeanours. The law gives security

53 2. Change of name

ARTICLE 27, Change of name may only be claimed from the judge.

Any change made in the name is registered in the birth record and announced officially.

Change of name does not result with change in the status of a person.

The person suffering damage due to change of name may litigate within one year as of the date of notification of this fact claiming abrogation of the judgement given for change of name.

54 Wikipedia, http://en.wikipedia.org/wiki/B%C3%BClent_Ersoy, accessed 29 September 2010.

55 *Exceeding psychosexual disorder:*

Sexual behaviour disorders should be highly significant throughout the whole life and it has to be proved by observation or documents that this behaviour causes or may cause problems in a military environment.

forces tremendous leeway to punish any noise, disobedience and disturbance, with virtually no oversight in how the law is applied or recourse to those who are penalized⁵⁶.

153. Transgender persons are routinely fined \$67 under the law's Article 32, which applies to anyone who disobeys an order issued "to protect public security, public order or commonweal," and they are fined \$34 under Articles 36 and 37, which targets anyone who "makes noise with a purpose of discomforting or breaking the peace of others" or "disturbs others to sell goods and services."⁵⁷
154. Transgender women who are members of the Pink Life Association were arrested after being brutally beaten up in Ankara on 17 May 2010. The car of five transgender activists was stopped by police cars. The police asked for their identification cards and despite the fact that they showed their identification cards, they were brutally pulled from their car for no specific reason. Using cudgels and pepper spray, the police attacked nearly 25 LGBT rights activists who came to police station to follow the situation of the transgender activists. Ankara police brutally attacked and dragged five transgender women to the Esat Police Station. Five transgender women were kept at the station all night until morning. The five arrested transgender women were later taken to forensics for medical check-up as a result of demanding that Pink Life and Kaos GL members and their lawyers show up at the police station. After forensics for medical check-up, the five transgender women were again taken to the police station, where they were released at 6:00 am.⁵⁸
155. Article 225 of the Turkish Penal Code punishes impudent acts.⁵⁹ Male to female transgender persons undergo criminal trials because of wearing women's clothes according to this article.
156. Clarification of the definition of "impudent acts" in Article 225 of the Turkish Penal Code and stating that the legal gender recognition of transgender persons should not be considered as "impudent acts" would avoid discrimination on the grounds of gender identity. Also Article 17 of the appendix of the Turkish Army Forces Health Capability Regulations has to be removed in order to avoid discrimination on the grounds of gender identity. An anti-discrimination law guaranteeing to stop discrimination based on gender identity is necessary for transgender persons to reach equal rights and to stop the fines they receive from the police according to the Law of Misdemeanours. Amendment of Article

56 LGBT groups claimed that transgender individuals were significantly persecuted during the year. Although police arrested many for unauthorised prostitution, NGOs claimed that during the year there was a significant rise in prosecutions for "offending public morals." One group reported that many transgender individuals were fined for frequenting stores or walking on city streets, officially for "disturbing the environment" or "disrupting traffic." Police claimed they were acting on complaints they had received. Transgender individuals filed a case in Istanbul court against the police in October 2009 for harassment, but there was no movement on the case by year's end.

The HRF and LGBT organisations reported that the former chief of police in Izmir had instituted a "points system" whereby officers were rewarded for fining transgender individuals. After the same chief of police took command in Istanbul, there was reportedly a large increase in the number of detentions and fines for "offending public morals." Similar cases were reported in Ankara and other municipalities as well. Many observers noted that this practice had contributed to an increase in the levels of abuse of transgender individuals by security forces. There was no government response to these allegations by year's end (Sexual Orientation/Gender Identity References - U.S. Department of State Human Rights Reports for 2009 page 49).

57 Kaos GL News, <http://news.kaosgl.com/item/2009/11/26/activists-target-turkish-law>, accessed 29 September 2010. Kaos GL News, <http://news.kaosgl.com/item/2009/11/24/turkey-change-law-of-misdemeanors-to-end-abuse-of-trans-people>, accessed 29 September 2010. Kaos GL News, <http://news.kaosgl.com/item/2009/10/28/transsexuals-complain-at-prime-ministry-about-police-violence>, accessed 29 September 2010. Kaos GL News, <http://news.kaosgl.com/item/2009/10/1/istanbul-police-is-hunting-trannies-and-transsexuals-for-earning-bonus>, accessed 29 September 2010. Kaos GL News, <http://news.kaosgl.com/item/2008/9/15/transvestites-under-police-pressure>, accessed 29 September 2010.

58 Kaos GL News, <http://news.kaosgl.com/item/2010/6/11/police-brutally-attacked-transgenders-in-ankara>, accessed 29 September 2010.

59 *Impudent acts:*

ARTICLE 225, (1) Any person who enters in sexual intercourse in public or indecently expose herself or himself is punished with imprisonment from 6 months to 1 year.

10 of the Turkish Constitution in order to give equal rights to LGBT persons has a key role again.

Case title	Şevket Memiş and Orhan Bayraktar Case-Acting impudent
Decision date	2006
Reference details	Şişli-Istanbul Criminal Court of Peace No 1 with Case Number: 2006/579, Decision Number: 2006/459 (Şişli 1. Sulh Ceza Mahkemesi Esas No: 2006/579, Karar No: 2006/459)
Key facts of the case (max. 500 chars)	The defendants were accused of acting impudent for wearing women clothes although they are men.
Main reasoning/argumentation	Wearing clothes of the opposite sex is an impudent act.
Key issues	The court decided that wearing clothes of the opposite sex cannot be considered an impudent act.
Results (sanctions) and key consequences or implications of the case	The court ruled on behalf of the defendants and the defendants acquitted.

Case title	Nevin Yaylacı Case-Disturbing Public
Decision date	2008
Reference details	Beyoğlu-Istanbul Criminal Court of Peace No 1 with Miscellaneous Number: 2008/1834 (Beyoğlu 1. Sulh Ceza Mahkemesi Müteferrik No: 2008/1834)
Key facts of the case (max. 500 chars)	The plaintiff received a fine from the police for disturbing the public. She applied to the court against the fine.
Main reasoning/argumentation	The plaintiff argued that she received the fine from the police under Article 37 of Law of Misdemeanours for no reason.
Key issues	The court decided that the police did not prove the reason of the fine and gave the fine with no reason.
Results (sanctions) and key consequences or implications of the case	The court ruled on behalf of the plaintiff and denied the fine.

Case title	Ece Dalaman Case-Disturbing Public
------------	------------------------------------

Decision date	2009
Reference details	Beyoğlu-Istanbul Criminal Court of Peace No 1 with Miscellaneous Number: 2009/229 (Beyoğlu 1. Sulh Ceza Mahkemesi Müteferrik No: 2009/229)
Key facts of the case (max. 500 chars)	The plaintiff received a fine from the police for disturbing the public. She applied to the court against the fine.
Main reasoning/argumentation	The plaintiff argued that she received the fine from the police under Article 37 of Law of Misdemeanours for no reason.
Key issues	The court decided that the police did not prove the reason of the fine and gave the fine with no reason.
Results (sanctions) and key consequences or implications of the case	The court ruled on behalf of the plaintiff and denied the fine.

	2005	2006	2007	2008	2009
Number of name changes affected due to change of gender/ the gender identity of the applicant	No statics found	No statics found	No statics found	No statics found	No statics found
Number of persons who changed their gender/sex in your country under the applicable legislation	No statics found	No statics found	No statics found	No statics found	No statics found

B.15. Intersex issues

157. Intersex people are registered as male or female after their birth according to their families' wishes. Parents can receive medical consultancy at state hospitals on the sex of their children.
158. But intersex people are allowed to consciously choose their gender and go through an operation. They can ask for the registration of their new gender under Articles 35 and 36 of Population Services Law Number 26153, dated 25 April 2006.
159. Gender registration of intersex people after the operation (if any operation is done) entails the same issues as for transsexual persons after gender reassignment procedures. But if no surgery is done, intersex people's gender is registered according to the wish of their families after birth.

B.16. Miscellaneous

- Discrimination in Blood Donation

160. In Turkey, if one wants donate blood, s/he has to fill out a form in the hospital. The form asks if the donor has had a homosexual affair in the past or not. If the donor has had a homosexual affair in the past, blood donation is not accepted. The original form is available online in the original language.
- HIV/AIDS
161. There is no legislation on HIV/AIDS. There is no word like HIV/AIDS in legislation, as if it does not exist. There is only the restriction in blood donation where AIDS is mentioned. If one wants to donate blood, s/he has to fill out a form. In the form, it is asked that if the donor has a suspicion that s/he has AIDS or has a suspicion of having had sexual intercourse with a person with AIDS. The form is the same form mentioned above and is available online in the original language.
- Implementation of EU Legislation
162. Turkey has not transposed any EU legislation prohibiting direct/indirect discrimination against LGBT persons yet. Draft regulation regarding ethical principles which have to be followed by inspectors in public institutions is the first piece of legislation referring to sexual orientation explicitly. However, so far the draft is neither finalized nor adopted.
163. The Turkish law system tends to ignore the existence of LGBT persons by not making any laws in favour of or against LGBT persons, but there is the case law on LGBT issues. When it comes to case law, although there are many court decisions violating the human rights of LGBT persons, there are still court decisions in favour of LGBT persons' human rights of which some good examples are shown below. Since there is no law on LGBT issues, court decisions are the only instruments for LGBT persons to apply.
164. Also the article for changing names in the Turkish Civil Code has no restriction on the change of name allowing transgender persons to apply.
165. Although there is no law on LGBT rights and no anti-discrimination law protecting LGBT persons against discrimination, in January 2010, the Prime Minister's Public Officials Ethics Committee drafted a regulation regarding ethical principles which have to be followed by inspectors in public institutions which will also prohibits discrimination based on sexual orientation according to "AKŞAM" newspaper.

B.16.1. Change of Name

166. The change of name is arranged in Article 27 of the Turkish Civil Code. Changing names can be only done with a justifiable reason as decided by a judge. "Justifiable reason" is not restricted in law so the change of name after the legal gender recognition, the change of name without a gender reassignment treatment is possible.

B.16.2. Freedom of Association

I-KAOS GL Association Case

167. The Kaos GL organisation existed as an informal group between 1994 and 2005. On 15 July 2005 it applied to the Ministry of Interior to be registered as a non-governmental organisation. Although the Ministry initially approved the request, the Ankara Deputy Governor filed a complaint with the Ankara Public Prosecutor's Office asking that the

organisation be closed for breach of Article 56 of section 4721 of the Civil Code which prohibits the establishment of any organisation that acts contrary to the law or morality.

168. On 12 October 2005 the Ankara Public Prosecutor's Office rejected the petition, thus confirming that the organisation was established in accordance with the law. It was mentioned in the decision that;
169. "The association was established on 15.07.2005 with registration number 06.074.083. Associations are established to achieve some ideals. They have to be established by the minimum number (which is obligatory due to the law) of volunteer natural or juridical persons who want to connect their information and work under a title. The associations are organised due to their regulations. And they consist of a group of people who are organised under the name of a juridical person.
170. As it has been mentioned at the general justification of Associations' Code Number 5253, if there is a hesitation in interpreting the law and interpreting the deficiencies of law related to the political criteria, Accession Partnership Statement for Turkey to EU, Annual Regular Reports on Turkey's Progress towards Accession to EU, European Convention on Human Rights, decisions of European Court of Human Rights, the International Human Rights Conventions which Turkey is a party of, the norms built by the organisations which Turkey is a member of and Reports of European Union Commission must be considered. And it must also be considered that the new Associations' Code's philosophy is not to exercise control over the associations and to provide associations act in a free way without the control of governmental offices and public. The new code is built with a process not allowing the state to have pressure on the associations; the state shall only exercise a protecting attitude on them.
171. Like the freedom of expression, freedom of assembly and association are the foundations of a democratic society which aims to promote freedom. This freedom is protected nationally and internationally by the national Constitution and laws as well as the international conventions.
172. In the 20th article of United Nations' Universal Declaration of Human Rights, adopted and proclaimed on 10 December 1948, it states, "Everyone has the right to freedom of peaceful assembly and association." In the 11th article of European Convention on Human Rights, it has been stated that "Everyone has the right to freedom of peaceful assembly and to freedom of association with others" With these articles, right to freedom of peaceful assembly and to freedom of association is protected. Beside these, in the 22/1 Article of International Covenant on Civil and Political Rights, it has been stated that; "Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests". In many decisions of European Court of Human Rights, it has been clearly stated that European Convention on Human Rights must be accepted as a living and dynamic statement. The 33rd article of Turkish Republic Constitution dated 1982 which cites freedom of peaceful assembly and association are in line with Article 11 of European Convention on Human Rights.
173. Associations that are civil society organisations have the right to gain legal personality freely and have the guarantee on principles of associations and activities. The right to freedom of association includes these elements.
174. Dissolution of associations which are contrary to law or morality are possible according to the Article 89 of Turkish Civil Code. Even though this reason for dissolution of associations is not stated in Associations' Code, according to the Article 36 of Associations' Code, the articles about the associations in the Turkish Civil Code are applicable.

175. In the dictionary of the Turkish Language Institution, homosexuality is described as “Having sexual affairs with the same sex”:
176. According to scientific analysis done before the modern scientific institutions were built, sexual function disorders were generally considered as a reason of immorality. According to the Diagnostic and Statistical Manual of Mental Disorders - Fourth Edition (DSM-IV) book published by the American Psychiatric Association which is generally accepted among mental health professionals and which is an official diagnosis system, homosexuality is not considered as a specific disorder. It has been stated in a sub group as “living in a continuous and evident stress because of sexual orientation” and there is no specific diagnosis for homosexuality (Gerald C.Davison-John M.Neale).
177. In the dictionary of the Turkish Language Institution and in other dictionaries, the word lesbian is used for homosexual woman and comes from the word “lesbien” which is originally French. The word gay is used for passive homosexual man and originally comes from English. These words are used commonly in daily life and in scientific discussions in a way suitable to their meaning.
178. If we study the morality concept, morality is something that is accepted by human societies at the time. Morality is the total of the rules, principles and faiths which organises the relations between the individuals themselves, individuals and the family, society, state and all human beings. The total of these positive behaviours is called morality. The aim of morality is to provide order in social life and to rule relationships between individuals. Morality changes from society to society; it is something relative. During discussions about the new Turkish Penal Code, “discrimination against sexual orientation” was one of the subjects. In such a period, homosexuality cannot be considered immoral. What has to be is a “Human’s will shall to be free” on which all those dealing with the morality sciences agree.
179. It has been determined that, in the 23 paragraphs which describe the aim and work area of the association in the 2nd article of the association’s regulations, there is no regulation which can be considered immoral.
180. It has been concluded that there is no need to file a public case against the association which was demanded to be dissolved claiming that the association’s name and some articles in the “Aim” part of its regulations are contrary to the 56th article of the Turkish Civil Code Number 4721 which cites “Associations against the law and morality shall not be established” according to the determinations above as well as the Article 11 of the European Convention on Human Rights and the Article 22 of the International Covenant on Civil and Political Rights. A duplicate is to be sent to the Ankara Governorship - Directorate of City Associations for information.

II-Rainbow LGBTTT Association Case

181. In 2006, the Governor’s Office of Bursa requested the Public Prosecutor’s Office to close down the second legally registered LGBT organisation in Turkey, Rainbow Solidarity and Research Cultural Association for Transgenders, Gays and Lesbians. The Governor argued in his request that the association’s objectives are against the law and morality rules as well as in contradiction with constitutional clauses relating to the protection of the family. On 24 May 2006, the Public Prosecutor’s Office denied the request relying on, amongst other authorities, Article 11 of the European Convention on Human Rights.

III-Pink Life LGBTTT Association Case

182. In July 2006 the Ankara Governor's Office filed a petition with the Public Prosecutor's Office to close the human rights group Pembe Hayat ('Pink Life'), claiming that the association was against "morality and family structure" without specifying the reasons for their assertion. Eventually, in December 2006, the Public Prosecutor dropped the charges.

IV-Lambda Istanbul LGBTTT Association Case

183. In early 2007 the Istanbul Governor's Office demanded the closure of Lambda Istanbul, another LGBT organisation, claiming that the name and objectives of the group are "against the law and morality" and therefore in breach of Article 56 of the Turkish Civil Code and Article 41 of the Constitution. In July 2007, the Public Prosecutor's Office rejected the complaint. The Governor's Office brought an appeal against this decision with the Civil Court of First Instance No. 3. on 29 May 2008, the court allowed the complaint and ordered the closure of Lambda Istanbul. The court took this decision based entirely on procedural grounds and failed to address the morality-based claims relied on by the Governor's Office. This judgment was overturned on appeal by the Court of Appeal No. 7, a verdict upheld by the Supreme Court of Justice which ruled that Lambda Istanbul was not in contravention of the law and therefore could not be closed down.

V-Black Pink Triangle İzmir LGBTTT Association Case

184. In November 2009, the Directory of Associations of İzmir requested the closure of Siyah Pembe Ucgen İzmir LGBTTT Association (Black Pink Triangle İzmir LGBTTT Association) by claiming that its charter goes against "public morality" and "Turkish family structure." This case was held with the Civil Court of First Instance No. 6 in İzmir with case number 2009/474. An official request to ban Black Pink Triangle İzmir LGBTTT Association was denied by the court on 30th of April, 2010 dependent upon the Supreme Court decision of Lambda Istanbul LGBTTT Association case. The court ruled that LGBT persons have the right to establish associations as any other person.

C-Employment

185. The Turkish government began to work on a law draft to prohibit discrimination on the grounds of sexual orientation among state officers. In January 2010, the Prime Minister's Public Officials Ethics Committee drafted a regulation regarding ethical principles which have to be followed by inspectors in public institutions. According to the "AKŞAM" newspaper, an article on 'sexual orientation' is also included in the draft the 16th article.⁶⁰

D-Housing

186. In 2006 the transgender persons living in the neighbourhood called Eryaman in Ankara have been attacked by the other people living in the same area because the people did not want to live with them. The state failed to protect the transgender women and all transgender women were forced to move from Eryaman.

⁶⁰ Kaos GL News, www.kaosgl.org/icerik/%E2%80%9Cetik%E2%80%9D_yetmez_kanun_sart_ayrimcilik_kanununda_yasaklansin, accessed 29 September 2010.

187. Four people, who attacked transvestites and transsexuals between April 7 and 12 of 2006 in neighbourhood called Eryaman, Esat and Kurtuluş in Ankara respectively, were brought before the court for attacking the transgender women in the area and forcing them to move out. The plaintiff's and prosecutor's argument was the crime committed based on hate towards transgender women. Ankara 11th High Criminal Court accepted the offenders as a gang and sentenced them with prison punishment. The ground of court's ruling was that: "... Accused, systematically and densely offended the individuals living in their neighbourhood who characterise themselves as transsexuals based on the 'ideas which were triggered by their bias' with a definite motive, and forced the interveners to leave their living area." on 17th of October, 2008 with Case Number: 2007/250, Decision Number: 2008/246. It was the first court ruling mentioning hate crimes against transgender women and in which the offenders received punishment.