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Responses to Information Requests

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26 November 2020

TUR200360.E

Turkey: Treatment of persons with diverse sexual orientation and gender identity and expression (SOGIE) by society and state authorities, including state protection and support services (2018–November 2020)

Research Directorate, Immigration and Refugee Board of Canada

1. Legislation

Sources report that there is no legislation prohibiting sexual acts between people of the same sex in Turkey (Australia 10 Sept. 2020, para. 3.83; ILGA World Dec. 2019, 176). According to a September 2020 Australian Department of Foreign Affairs and Trade (DFAT) country information report on Turkey, the Ottoman Empire decriminalized sodomy in 1858 (Australia 10 Sept. 2020, para. 3.83). Similarly, a country information report by the Netherlands' Ministry of Foreign Affairs indicates that the Ottoman Empire legalized " [h]omosexual contact" in 1858 and that homosexuality has been legal since the creation of the Turkish Republic in 1923 (Netherlands Oct. 2019, 42-43).

According to sources, the legal age of consent is 18 for all sexual acts, including sexual acts between people of the same sex (Australia 10 Sept. 2020, para. 3.83; Stonewall Aug. 2018).

In its *Global Workplace Briefings 2018* on Turkey, Stonewall, a UK-based organization whose work includes collaborating with institutions "to ensure they offer inclusive, equal and inspiring environments for LGBT people" and improving legal protections for LGBT people in Britain and abroad (Stonewall 10 Aug. 2015), writes that same-sex marriage is not legal in Turkey, same-sex relationships are "not otherwise recognized by law," and same-sex couples do not have a legal right to adopt children (Stonewall Aug. 2018).

According to sources, openly LGBT individuals are prohibited from serving in the military (Freedom House 4 Mar. 2020, Sec. F4; Netherlands 11 July 2019, 16).

Sources report that there is no legislation to protect people from discrimination based on their sexual orientation or gender identity (Freedom House 4 Mar. 2020, Sec. F4; Australia 10 Sept. 2020, para. 3.83). In correspondence with the Research Directorate, an associate professor at Butler University in Indiana, who wrote a book on LGBTI Rights in Turkey, noted that

[o]ne of the biggest problems with existing law in Turkey is that the constitution does not specifically state language regarding it being prohibited to discriminate against the LGBTI community. Article 10 prohibits discrimination, although sexual orientation is not a noted category within Article 10. (Associate Professor 25 Oct. 2020)

Regarding equality before the law, Turkey's constitution provides the following:

ARTICLE 10- Everyone is equal before the law without distinction as to language, race, colour, sex, political opinion, philosophical belief, religion and sect, or any such grounds. (Paragraph added on May 7, 2004; Act No. 5170) Men and women have equal rights. The State has the obligation to ensure that this equality exists in practice. (Sentence added on September 12, 2010; Act No. 5982) Measures taken for this purpose shall not be interpreted as contrary to the principle of equality. (Paragraph added on September 12, 2010; Act No. 5982) Measures taken for this purpose shall not be interpreted as contrary to the principle of equality. (Paragraph added on September 12, 2010; Act No. 5982) Measures to be taken for children, the elderly, disabled people, widows and orphans of martyrs as well as for the invalid and veterans shall not be considered as violation of the principle of equality. No privilege shall be granted to any individual, family, group or class. State organs and administrative authorities are obliged to act in compliance with the principle of equality before the law in all their proceedings. (Turkey 1982)

According to sources, there is no hate crime legislation protecting LGBTI persons (Australia 10 Sept. 2020, para. 3.84) or "sexual orientation, gender identity, and sex characteristics" are not protected by the hate crimes legislation in Turkey's Penal Code (Kaos

GL July 2020, 20). Regarding hate crimes and discrimination, Turkey's Penal Code provides the following:

Article 122 – (Amended on 2 March 2014 – By Article 15 of the Law no. 6529)

- 1. Any person who
 - a. Prevents the sale, transfer or rental of a movable or immovable property offered to the public,
 - b. Prevents a person from enjoying services offered to the public,
 - c. Prevents a person from being recruited for a job,
 - d. Prevents a person from undertaking an ordinary economic activity

on the grounds of hatred based on differences of language, race, nationality, colour, gender, disability, political view, philosophical belief, religion or sect shall be sentenced to a penalty of imprisonment for a term of one year to three years. (Turkey 2004)

1.1 Transgender Persons

Sources report that people in Turkey have legally been permitted to change their gender since 1988 (Netherlands Oct. 2019, 43; Al Jazeera 30 Apr. 2020). Additionally, Stonewall reports that transgender people are able to change their legal name on all identification documents; however, a legal name change requires an application to the National Registration Office, a "valid reason" for the name change, and a witness (Stonewall Aug. 2018). Sources state that transgender people [who are over 18 (Stonewall Aug. 2018; ILGA World Sept. 2020, 169)] can change their legal gender with court authorization and a medical assessment (Stonewall Aug. 2018; Australia 10 Sept. 2020, para. 3.83), but only to male or female (Stonewall Aug. 2018). This is according to Article 40 of the Civil Code (Stonewall Aug. 2018). The individual must also undergo sterilization (Australia 10 Sept. 2020, para. 3.83; ILGA World Sept. 2020, 169; Stonewall Aug. 2018) and [be unmarried (ILGA World Sept. 2020, 169)], [remain unmarried (Australia 10 Sept. 2020, para. 3.83)] or [obtain a divorce (Stonewall Aug. 2018)]. According to an August 2020 article by the Guardian, gender affirmation surgery was introduced free of charge under Turkey's national health system in 2002 (The Guardian 29 Aug. 2020). A December 2017 article by the Daily Sabah, an Istanbulbased newspaper, reports that in November 2017, the Constitutional Court struck down a law that required transgender individuals to demonstrate they are "unable to procreate" in order to receive gender affirmation surgery (Daily Sabah 1 Dec. 2017). A 2020 International Lesbian, Gay, Bisexual, Trans and Intersex Association - Europe (ILGA-Europe) report on the human rights situation of LGBTI persons in Europe and Central Asia notes that "[a]Ithough the Supreme Court previously ruled that sterilisation is no longer a requirement of [legal gender recognition], doctors continued to require sterilisation this year" (ILGA-Europe Feb. 2020, 111).

Treatment of People of Diverse SOGIE 1 Treatment by Society 1 Violence

Freedom House reports that LGBT+ persons face discrimination, police harassment, and "occasional violence" (Freedom House 4 Mar. 2020, Sec. F4). According to the Associate Professor, "[t]here are numerous cases throughout the past decade of LGBI and transgender individuals being threatened, as well as physically attacked" (Associate Professor 25 Oct. 2020). A May 2020 report on the human rights of LGBTI+ persons in Turkey by Kaos Gay and Lesbian Cultural Research and Solidarity Association (Kaos GL), an LGBTI+ association in Turkey (Kaos GL n.d.) indicates that according to data acquired from judicial authorities and the press, five "hate murders" were committed against LGBTI+ persons in 2019 (Kaos GL May 2020, 8). According to a Kaos GL survey of 150 victims and witnesses of transphobia- and homophobia-motivated hate crimes that occurred in 2019, of the 150 cases reported by the respondents, 56 were attacks on individuals, including attempted murder, violence, gunshot injuries, rape, or sexual assaults (Kaos GL July 2020, 8, 11).

2.1.2 Violence Against Transgender Persons

The 2020 ILGA-Europe report notes that "several" trans women were murdered in 2019 (ILGA-Europe Feb. 2020, 109). Transrespect Versus Transphobia Worldwide (TvT), a comparative research project by the advocacy network Transgender Europe (TGEU) that collects and analyzes information on "reported killings of gender-diverse/trans people worldwide" (TGEU n.d.), states that between October 2018 and September 2019, there were 3 reported murders of trans and gender-diverse people in Turkey (TGEU 20 Nov. 2019). According to sources, in January 2019 a transgender woman was shot and killed by a police officer in Izmir (Demirören News Agency 9 Jan. 2019; Bianet 15 Jan. 2019). According to the 2020 ILGA-Europe report, a "group of trans women were attacked in a park in Antep in June [2019] and were then detained and verbally abused by police officers" (ILGA-Europe Feb. 2020, 109).

2.2 Treatment by Authorities 2.2.1 Freedom of Assembly

Freedom House reports that the government has targeted LGBT+ events "in recent years" (Freedom House 4 Mar. 2020, Sec. E1). Sources indicate that, in 2019, Istanbul's pride parade was banned for the fifth consecutive year (Freedom House 4 Mar. 2020, Sec. E1; Amnesty International 16 Apr. 2020, 82). Sources add that police used tear gas and rubber bullets to disperse participants who gathered in Istanbul despite the ban (Freedom House 4 Mar. 2020, Sec. E1; Reuters 30 June 2019). Freedom House reports that pride rallies were also banned in Ankara and Izmir (Freedom House 4 Mar. 2020, Sec. E1). Similarly, Amnesty International notes that the governorates of Izmir, Antalya, and Mersin banned pride week events by issuing "[b]lanket bans" on all LGBTI events in June 2019 (Amnesty International 16 Apr. 2020, 82).

Sources report that a ban on all LGBTI events that had been imposed by the Ankara governorate in November 2017 was lifted by a court order in April 2019 (Amnesty International 16 Apr. 2020, 82; HRW 25 Apr. 2019). However, Amnesty International states that LGBTI events in Ankara were banned individually after this court order, including a pride march at the Middle East Technical University (METU) in May 2019, which was banned by the university administration and broken up by police "using unnecessary and excessive force" (Amnesty International 16 Apr. 2020, 82). The same source reports that eighteen students and an academic staff member from METU faced prosecution for their participation in the banned pride march (Amnesty International 16 Apr. 2020, 82). The Dutch Ministry of Foreign Affairs report notes that the ban on public LGBTI activities in Ankara "remains in force [as of 2019]" (Netherlands Oct. 2019, 43). The Australian DFAT reports that "in practice the ban in Ankara and many other provinces persists as officials refuse permission on a case-by-case basis, citing security concerns" (Australia 10 Sept. 2020, para. 3.89). The same source notes that in the months after the ban was reversed, police used water cannons, rubber bullets, and tear gas to disperse Pride Month gatherings (Australia 10 Sept. 2020, para. 3.89).

3. Access to Employment and Education 3.1 Access to Employment

The Associate Professor noted that persons with diverse SOGIE have been discriminated against in Turkey in terms of employment (Associate Professor 25 Oct. 2020). The Dutch Ministry of Foreign Affairs report indicates that LGBTI people are treated "negatively" in the workplace "on a regular basis" (Netherlands Oct. 2019, 43). Stonewall notes that according to a board member of the Social Policy, Gender Identity and Sexual Orientation Studies Association (SPoD), a group of academics, lawyers, and activists that "has been working to find lasting and comprehensive solutions to the violence, oppression, and discrimination experienced by members of the LGBTI+ community" (SPoD n.d.), LGBT individuals often conceal their sexual and gender identity at work and those who do not "may face repercussions" (Stonewall Aug. 2018). The same source reports that because of transphobia and the absence of anti-discrimination laws, there are few employment opportunities for transgender people and, as a result, many transgender women become sex workers (Stonewall Aug. 2018). According to the SPoD board member, the private sector is

becoming more aware of LGBTI employees and has been working with NGOs advocating for LGBTI rights to, for example, provide LGBT-rights training to employees (Stonewall Aug. 2018).

3.2 Access to Education

According to the Kaos GL survey on transphobia- and homophobia-motivated hate crimes, of the 150 cases reported in 2019, 37 victims were children, and 21 cases occurred in schools (Kaos GL July 2020, 31-32). According to a report on the situation of LGBTI persons in Turkey by the LGBTI Equal Rights Association for Western Balkans and Turkey (ERA) [1], with co-authors including Kaos GL, "[d]iscrimination, exclusion, bullying, hate speech and hate crimes in student dormitories are common according to the reports of local [civil society organizations]. Trans students whose gender identity does not match the sex on the given official ID may be expelled from dormitories" (ERA, et al. 2 July 2019, 8).

4. State Protection 4.1 Judiciary and Police

A July 2020 article by *Politico*, a weekly newspaper focused on politics and policy based in Europe (*Politico* n.d.), reports that according to an LGBTQ activist and lawyer, "a lack of legal protections has created a culture of impunity around hate crimes directed at LGBTQ people" (*Politico* 24 July 2020).

The Associate Professor stated that "[t]here are many instances where crimes against the LGBTI community are not fully prosecuted" (Associate Professor 25 Oct. 2020). The July 2020 Kaos GL report notes that perpetrators of homophobic or transphobic hate crimes "can be rewarded by Turkish courts with penalty discounts such as 'unjust provocation' or 'good conduct'" (Kaos GL July 2020, 21). Similarly, the Associate Professor stated that some individuals who have perpetrated crimes against LGBTI individuals may be able to cite Article 29 of the Penal Code, which states that actions out of "anger" could lead to a reduced sentence (Associate Professor 25 Oct. 2020). According to the Australian DFAT report, " [h]uman rights groups claim judges have used Article 29 to mitigate sentences in cases of murder of LGBTI individuals" (Australia 10 Sept. 2020, para. 3.84). Turkey's Penal Code provides the following on "unjust provocation":

Article 29

 Any person who commits an offence in a state of anger or severe distress caused by an unjust act shall be sentenced to a penalty of imprisonment for a term of eighteen to twenty four years where the offence committed requires a penalty of aggravated life imprisonment and to a penalty of imprisonment for a term of twelve to eighteen years where the offence committed requires a

penalty of life imprisonment. Otherwise the penalty to be imposed shall be reduced by one-quarter to three[-]quarters. (Turkey 2004)

According to the Associate Professor, many LGBTI individuals "have expressed their concerns with whether they feel safe going to the police to protect them from discrimination" (Associate Professor 25 Oct. 2020). The ERA et al. report notes that there are no special units within the police tasked with investigating incidents against LGBTI+ individuals (ERA, et al. 2 July 2019, 6). According to the July 2020 Kaos GL report, 26 of the 150 hate crimes documented were reported to police, 8 were brought to court, and 4 were deemed hate crimes by the police (Kaos GL July 2020, 12). The same survey found that of the 26 cases that were reported to the police were supportive in 2, disinterested in 12, cynical or humiliating in 8, and standard in 4" (Kaos GL July 2020, 34). The same source further stated that among respondents who did not report the incident to the police, 70 individuals "didn't believe it would do any good," 46 "didn't want to be disclosed by the police" (Kaos GL July 2020, 35).

The May 2020 Kaos GL report indicates that there was an "increase" in rights violations against LGBTI+ individuals "that originated directly from authorities and law enforcement" in 2019 (Kaos GL May 2020, 6). The ERA et al. report states that "[t]he transphobic attitudes and insensitivity of law enforcement officers, judges, and lawyers" as well as a sense of helplessness and an increase in rights violations combine to "cause serious difficulties for trans individuals [in] access[ing] justice" (ERA, et al. 2 July 2019, 7). The *Politico* article states that an LGBTQ activist and lawyer reported that his clients have "accused police of mistreatment, including being forced to listen to recitations of the Quran while in custody" (*Politico* 24 July 2020). The Associate Professor noted that "there have been cases where police in Turkey themselves mistreated transgender individuals" (Associate Professor 25 Oct. 2020).

The Australian DFAT reports that LGBTI detainees "are vulnerable to physical violence, harassment, and denial of medical services" and have "complained about the use of solitary confinement as inhumane treatment" (Australia 10 Sept. 2020, para. 3.90).

4.2 Human Rights Institutions

According to the July 2020 Kaos GL report, the legislation governing the Ombudsman Institution of Turkey does not explicitly authorize it to conduct work on sexual orientation and gender identity (Kaos GL July 2020, 20). The May 2020 Kaos GL report indicates that the law that established the Human Rights and Equality Institution of Turkey (TIHEK), whose mandate is to "protect and develop human rights'," does not include discrimination based on sexual orientation and gender (Kaos GL May 2020, 77). The ERA et al. report similarly indicates that SOGIE are not recognized as protected grounds by the TIHEK and the Ombudsman Institution (ERA, et al. 2 July 2019, 5-6). The May 2020 Kaos GL report notes that both the TIHEK and the Ombudsman Institution "implemented discriminatory decisions and practices" on LGBTI+ issues (Kaos GL May 2020, 5). The Dutch Ministry of Foreign Affairs report states that "some" of the institutions that are intended to protect the rights of LGBTI individuals "turn out in practice to be ineffective or even counterproductive" (Netherlands Oct. 2019, 44). For example, the May 2020 Kaos GL report indicates that in the final declaration of the "Symposium on the Right to the Protection of the Family" TIHEK "[m]ade a hostile statement against LGBTI+ rights" (Kaos GL May 2020, 79). According to the same source, in the final declaration TIHEK stated that same-sex partnerships are not equivalent to a family founded by a "legitimate marriage" between a man and a woman, which forms the "foundation of a healthy society," and added that same-sex partnerships harm "the family institution" (Kaos GL May 2020, 79).

5. Support Services

In correspondence with the Research Directorate, a representative from Kaos GL indicated that there are no "functional" support services provided by the state (Kaos GL 23 Oct. 2020). Corroborating information could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

5.1 Examples of Non-Governmental Advocacy and Support Services

The Associate Professor stated that there are "many" LGBTI NGOs that provide services and support to LGBTI individuals in Turkey (Associate Professor 25 Oct. 2020). According to ERA's country profile on Turkey, there are thirteen legally registered LGBT organizations in Turkey and "several informal organizations in different cities" (ERA 8 Mar. 2017). The Kaos GL representative noted that LGBTI+ organizations such as Kaos GL have networks of lawyers and psychologists and can provide legal support to victims (Kaos GL 23 Oct. 2020). According to SPoD's website, it "provides legal, social, and psychological consulting" as well as training for social workers, lawyers, mental health workers, organizations and municipalities (SPoD n.d.).

This Response was prepared after researching publicly accessible information currently available to the Research Directorate within time constraints. This Response is not, and does not purport to be, conclusive as to the merit of any particular claim for refugee protection. Please find below the list of sources consulted in researching this Information Request.

Note

[1] The report was submitted for the Universal Periodic Review of Turkey by the LGBTI Equal Rights Association for Western Balkans and Turkey (ERA), "a [r]egional [a]ssociation of lesbian, gay, bisexual, trans, intersex and queer organizations" from the Western Balkans and Turkey (ERA n.d.), in partnership with Kaos GL, SPoD and Red Umbrella, a civil society organization in Turkey that advocates for the rights of sex workers (ERA, et al. 2 July 2019, 3).

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Oral sources: Independent researcher who has written on LGBT politics in Turkey; Istanbul LGBTI Dayanışma Derneği; LGBTI Equal Rights Association for Western Balkans and Turkey; Pembe Caretta LGBTQ.

Internet sites, including: Anadolu Agency; Astraea Lesbian Foundation for Justice; Austrian Red Cross – Austrian Centre for Country of Origin and Asylum Research and Documentation; BBC; Bertelsmann Stiftung; Council of Europe; ecoi.net; EU – European Asylum Support Office, European Commission; Factiva; Fédération internationale pour les droits humains; Organization for Security and Co-operation in Europe; PinkNews; Pride Istanbul; UK – Home Office; UN – Office of the UN High Commissioner for Human Rights, Refworld.

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