

# Update Annual LGBTI Enlargement Review

*Edited by Marije Cornelissen and Daina Rudusa for ILGA-Europe, August 2016*

## **Albania - Aleanca/ProLGBT/ERA**

As noted in the Annual LGBTI Enlargement Review report submitted in June 2016, the mandate of the Commissioner for Protection from Discrimination ended in 2015 and no move was made to renew the mandate or replace her with a more pro-active Commissioner. The office remains in place, but in an uncertain position because a mandate is lacking.

Through ERA, news was received that despite this, a positive development has emerged from the office of the commissioner this summer. On 7 July 2016, Member of Parliament Mesila Doda used derogatory and discriminatory language in relation to LGBTI people in the Albanian Parliament when constitutional amendments regarding increased protection against discrimination based on sexual orientation and gender identity were being discussed. Pink Embassy filed a complaint about this to the Commissioner for Protection from Discrimination. On 2 August the Office of the Commissioner for Protection from Discrimination informed Pink Embassy that formal proceedings against MP Doda have been opened to address this case.

As already stated in the Annual LGBTI Enlargement Review report submitted in June 2016, Aleanca/ProLGBT reported that a National Action Plan outlining the strategic approach the country will take on LGBTI issues between now and 2010 was adopted at the end of May 2016. A working group will be set up to monitor its implementation.

In the coming year, the government should be urged to ensure implementation of the action plan 2016-2020 without delay, with a specific focus on:

- Improving collaboration between the government and civil society organisations in raising public awareness of LGBTI rights.
- Including mechanisms for budgeting, indicators of achievement, monitoring and reporting.
- Professionalising and improving the performance of the National Implementation Coordinating Group (NICG).
- Appointing Focal Points on LGBTI equality from all relevant government departments.

## **Bosnia and Herzegovina - Sarajevo Open Centre**

In Bosnia and Herzegovina, two positive developments happened over the summer:

1. In April of 2016, a Law on amendments to the Criminal Code of the Federation of BiH, developed by the Federal Ministry of Justice, was adopted in both of the Houses of Federation of BiH's Parliament. The law was published in the Official Gazette in June 2016. The Criminal Code of the Federation of BiH now regulates hate crime, and sexual orientation and gender identity are explicitly mentioned as protection grounds.

This is a very positive development because the adoption of these amendments has been advocated since 2010, after the two other administrative units, Brčko District and Republika Srpska, adopted them into their Criminal Codes. The adoption of these

amendments means that hate crime regulation now exists in the entire territory of BiH. The government should now be urged to ensure effective implementation of the law, with relevant training for enforcement agencies.

2. Amendments to the Anti-Discrimination Law, including the explicit prohibition of discrimination on the grounds of sexual orientation, gender identity and sex characteristics, were adopted in both of the Houses of the Parliamentary Assembly of BiH in July 2016. The Law on amendments to the Anti-Discrimination Law of BiH has yet to be published in the Official Gazette of BiH. These amendments represent a significant step forward in the protection of human rights of intersex persons in BiH.

The government should be urged to ensure swift publication of the amendments in the Official Gazette and consequent effective implementation of the law, with relevant training for enforcement agencies.

### **Kosovo - CSGD**

In Kosovo, unfortunately, there were two incidents of hate crime to report in June and July 2016:

1. On 12 June 2016, two gay men were victims of an attack in Ferizaj, Kosovo. One of them was injured on the body and face, and had to receive medical treatment. The incident began with verbal harassment and escalated to a physical attack towards the two gay men in their workplace. The case was reported to the police station in Ferizaj, Kosovo. The attackers, four adult men who were unknown to the victims, have been arrested by the police.

2. A gay couple was attacked on Saturday, July 2nd 2016 in Prishtina. They were attacked by the owner of the house they were renting, after the house owner discovered their sexual orientation. The victims were verbally and physically attacked with a knife and a shovel, locked out from the house and their personal belongings were kept from them. In order to escape the attack, they were forced to jump from the second floor balcony. The men were rendered homeless, with injuries to face and body. The case was reported to the police (police station Center (Qendra)) and police helped the victims to retrieve their personal belongings. However, it is of concern that the perpetrator was not arrested, despite having threatened the victims in the presence of the police and eyewitnesses. CSGD has asked the investigator of the case for an explanation, but he has not provided further information at this time. The case was reported to the Ombudsperson's office on Monday, July 4th and CSGD will closely cooperate with them to gain more information from the police.

In the 2015 progress report, the government was urged to adequately address cases of verbal and physical assaults against lesbian, gay, bisexual, transgender and intersex (LGBTI) persons. No progress was made concerning this action point in the past year. In light of these and other cases, this point should be strongly reiterated.

### **Macedonia - Subversive Front**

From Macedonia, an update of the developments around the complaint to the Commission for Protection against Discrimination was received:

On 13 July 2015, Subversive Front filed a complaint to the Commission for Protection against Discrimination regarding discriminatory, derogatory and openly homophobic content in some supplementary books at the University "Ss. Cyril and Methodius" in Skopje. On 1 July 2016, a response from the Commission for Protection against Discrimination was finally received, almost one year overdue, as the response time by law is 90 days. The response stated that in the Commission's opinion there is no discrimination in the compulsory university supplementary book. The book depicts homosexuality as a danger and a threat to human civilization and the survival of the human species and it states that homosexuals need psychological help, and that supporting homosexuality leads to approval of incest, bestiality and paedophilia.

The fact that The Commission for Protection against Discrimination does not consider the book to be discriminatory is of concern as it calls into question the commission's commitment to protection of LGBTI rights. In light of this the government should be urged to not only raise public awareness of the Commission, increase its resources and guarantee its independence, but also ensure that sexual orientation and gender identity are considered as grounds for discrimination by the Commission, as per the Commissions guiding Protocol.

### **Montenegro**

No further updates to the Annual Enlargement Review have been submitted from Montenegro.

### **Serbia - Labris**

Labris reported that there are no further updates to the Annual Enlargement Review from Serbia.

### **Turkey - Kaos GL**

From Turkey, a full updated country report was received, addressing, among other developments, the alarming events surrounding planned Prides in Istanbul and Izmir in the summer of 2016 and the recent murder of Hande Kader.

### **Contribution from Kaos GL, SPoD, Pembe Hayat, ILGA-Europe and ERA to Turkey's Report 2016**

*Submitted: 31 Jul 2016*

#### **Summary of key developments and trends**

Today in Turkey the Turkish Government still refuses to recognize sexual orientation, gender identity and intersex status (SOGII) at legislative and policy levels and its human rights discourse; and jurisprudence of the Turkish justice system is still inconsistent and many times not compatible with international law, as well as the EU criteria.

2015 and the first half of 2016 were also very difficult year for the LGBTI movement in Turkey. On-going authoritarianism, polarisation and lack of checks and balances on the government have continued. This year, the principals of rule of law and democracy were violated directly by the President and the ruling-party authorities. The ruling party and the President used hate and/or discriminatory speeches and oppressive legislative, executive and legal motions to polarise society. As a new development for this year,

during the June 2015 Elections, President Erdoğan and AKP leadership and pro-AKP opinion leaders used explicit hate speech against LGBTI persons.

There have been several attacks and bans on the freedom of assembly of LGBTI people. The Pride marches in many cities were banned by the local authorities and broken up with police brutality. No steps have been made to prevent homophobic and transphobic hate crimes and discrimination against LGBTI people. Turkey's Human Rights and Equality Law, which does not include discrimination based on sexual orientation and gender identity, was issued in the Official Newspaper of State. The law that was negotiated and accepted on 6th of April in Turkish Grand National Assembly has officially come into force with the approval by President. Hate crime against the community, especially against trans people, is still a grave worry.

LGBTI issues have been creating controversies in political and public debates since the start of the EU accession process, and especially from the first round of constitution reconciliation process in the Parliament. Positively, LGBTI issues gained more visibility, importance and allies last year. Many key civil society and political actors, including two political parties from the Parliament (CHP and HDP) and their municipalities show explicit support to LGBTI rights. Discriminatory and hate speech has substantially decreased on mainstream media. Also, academic involvement, research and production enhanced both in quantitative and qualitative terms.

However, LGBTI persons in Turkey are still subjected to the most severe and vicious human rights violations including domestic violence, hate crimes, hate murders, suicides, hate speech, social exclusion and all types of discrimination. Neither legislation, nor implementation of legislation in Turkey is LGBTI sensitive. The only exception may be the Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence, which was ratified by Turkey and came into force in August 2014. The Convention, also known as Istanbul Convention, explicitly includes protection on grounds of sexual orientation and gender identity.

### **Main action points for the coming year**

The government should be urged to:

- Include the terms “sexual orientation” and “gender identity” in constitutional clauses on equality and non-discrimination, as well as in hate crime legislation.
- Develop a plan to adopt a legal framework for the protection of LGBTI people and to prevent homophobic and transphobic hate crimes and discrimination.
- Take all administrative measures, both on the national and local level, to prohibit and prevent discrimination on the basis of sexual orientation and gender identity, in order to provide effective protection to LGBT people in Turkey.
- Conduct full and independent investigations into all allegations of harassment, violence or abuse of LGBTI persons, and prosecute perpetrators.
- Ensure the freedom of assembly and secure the social events of LGBTI organizations, such as Pride marches and other public events.
- Develop a plan to improve conditions for LGBTI prisoners in cooperation with Ministry of Justice.

### **Bias motivated violence, hate speech, hate crimes In the coming year,**

The government should be urged to:

- Add the terms ‘sexual orientation’ and ‘gender identity’ to hate crime legislation;
- Stop discriminatory language and hate speech against LGBTI people by politicians;
- Systematically collect and track information on hate crimes;
- Give training to police officers and prosecutors on hate crime against LGBTI persons;
- Promote reporting of incidents of violence, attacks and threats towards LGBTI persons;
- Stop impunity for the court cases for LGBTI murders.
- Regulate the arbitrary interpretation of “unjust provocation”.

In the general elections of 2015, several LGBTI people were candidates, which prompted hate speech by several media institutions. Some homophobic and transphobic posters appeared on the streets of Ankara, including a call to kill LGBTI people by the members of the Young Islamic Defence in Ankara. Moreover, an important hate crime case, that of Ahmet Yıldız, has remained open for 8 years with no developments so far. In July, LGBTI activist and chair of the Red Umbrella Organization Kemal Ördek was raped and robbed at her home in Ankara. Two men entered Kemal’s home; one of them raped Kemal and the other took her mobile phone. When she told the police about the incident, the officers were aggressive towards her. At the police station, she was told to drop charges and officers also did not believe the rape allegation. The two assailants continued to contact Kemal via phone after their release. A young trans woman and a sex worker living in Avclar, Istanbul, first became the victim of the Meis Site hate campaign against trans women where she was living and working. Later, she became target of a mob forcing trans sex workers to pay “protection money”.

An organization named "Muslim Anatolian Youth" (Müslüman Anadolu Gençliği) invited people to lynch the Pride March through an event opened through Facebook. The event, titled "We Will Not Let Prideless Perverts March," was a call to rally at Taksim Square on the 19th of June. The event was also shared on Twitter. In the Facebook Event page, messages and images inviting others to attack the Pride March were being shared. Two reporters known for their news stories containing hate speech against LGBTI, Yeni Akit reporter Harun Sekmen and Millet reporter Enes Babacan, sent the group messages in support. Images purportedly belonging to ISIS and photos of people being tortured continue to be shared on this page. LGBTI activists reported the event to Facebook staff. Facebook initially sent the message “We reviewed the page you reported and found it does not violate community standards” to LGBTI activists. However, after continuing reports the page was deleted.

### **Freedom of assembly, association and expression**

In the coming year, the government should be urged to:

- Improve the institutional and political environment to create conditions for full freedom of expression;
- Ensure the security of parades and demonstrations for freedom and equality by the LGBTI movement as well as ensure freedom of assembly in general;
- The law regulating the right to association should be revised and improved in order to enable an easier access and less bureaucratic procedure for LGBTI initiatives and trans self-organizations.

In the last year, there have been attacks by religious groups against assemblies by LGBTI organizations in Bursa in July 2015 and in Diyarbakır in April 2016. Both of the events were subject to a hate campaign started prior to the event.

Keskesor LGBT, an LGBT organization based in Diyarbakır, planned to have a panel and assembly which had to be cancelled as a result of an LGBT homophobic and transphobic hate campaign by Hüda-Par, an Islamist pro-Kurdish party.

Pembe Hayat organized a football match on 6 March 2016 as part of their International Sex Workers' Day events to raise awareness. The mediary firm running the football field inside Ankara University, Cebeci, cancelled the agreement and told Pembe Hayat that they did not approve of such kind of an event by transvestites.

On March 24 and 25 2016, the Youth Films Festival took place in the Bülent Ecevit University. Kaos GL organized the event "Love Zeki Müren / Gender and Discrimination" with a gay singer on the panel on the second day of the festival. The authorities of the university cancelled the event for morality reasons.

On the 4th of May, SES (Union for Health and Social Services Workers) organized an event on "Accessing Social Services for LGBTI people". Hospital staff tore up the poster for that event.

Kaos GL Association was targeted by ISIS. An intelligence document from a military institution, Gülhane Military Medical Academy, that shows ISIS's threat to Kaos GL was spread on social media. Kaos GL Association made written applications to the Governorship of Ankara, Provincial Police Department, Prime Ministry and General Staff of Turkish Armed Forces after the document was spread. The Association is awaiting a response from the General Staff of Turkish Armed Forces and the Prime Ministry.

In May 2016, Ankara Governorship didn't approve the application of Kaos GL with regard to providing security of the March against Homophobia and Transphobia at 17th of May because "some groups might react and it may cause provocations." After the banning of the march, Kaos GL applied to the Administrative Court and the Court ordered a stay of execution. Wanting to prevention the March against Homophobia and Transphobia at all costs, the Ankara Governorship had the stay of execution to their decision to ban the IDAHOT march revoked with a decision of the District Administrative Court at midnight.

In June 2016, the police attacked the 7th Trans Pride Parade. "The right to organize meetings and demonstration marches" was not upheld by the Istanbul Governor's Office. Thousands of police officers under orders of the Istanbul Police Headquarters violated the right to assembly of those who wanted to march, took part in homophobic and transphobic hate speech and harassed the activists. The police also remained silent to the attacks of transphobic groups disguised as civilians. Even though the police detained some of the groups that planned to attack the march, in many other cases they stood by and watched the groups attack LGBTI participants. Istanbul LGBTI activist and member of Trans Pride Week Committee Kivilcim faced direct threats and physical violence by police officers during this process. The police detained 11 activists.

The Istanbul Governor's Office banned the 14th Istanbul LGBTI Pride Parade as well. The Pride Committee took the decision to cancel the event, but organised a press conference in Tunel Square, which was again banned by the Istanbul Governor's Office. However, many activists and politicians were present that day in the Beyoglu area, where the Parade was supposed to take place. The Istanbul Pride committee was not allowed to hold a press conference and police did not let journalists stand in the planned Pride area. Seven people from the LGBTI+ Pride Week Committee were battered while being detained. Member of German Federal Assembly Volker Beck and Member of the European Parliament Terry Reintke were briefly taken into custody but then released. Two of Reintke's aides, Felix Banaszak and Max Lucks, were also among the 27 detained people.

The 4th Izmir LGBTI Pride March was also banned by the Izmir Governor Office, one night before the event. Although the police did not use violence against the protestors on the day of the Parade, they did not let the group march.

The Second Mersin Pride Parade was not banned in the city of Mersin, a Mediterranean province, and became the only successful pride parade of this year in Turkey.

### **Equality and non-discrimination**

In the coming year, the government should be urged to:

- Develop the capacities of the bar associations on anti-discrimination legislation on the ground of gender identity and sexual orientation;
- Introduce an effective free legal aid system to guarantee efficient access to justice
- Develop a systematic procedure of reporting and monitoring of human rights violations based on sexual orientation, gender identity and sex characteristics.
- Develop a strategy for the LGBTI prisoners and give trainings on LGBTI issues for the prison workers.

Turkey's Human Rights and Equality Committee Law, which does not include discrimination based on sexual orientation and gender identity and discriminates against LGBTI people itself, was issued in Official Newspaper of State. The law was negotiated and adopted on the 6th of April in the Turkish Grand National Assembly and officially came into force with the approval of the President. During Turkey's UPR session at the UN Human Rights Council in Geneva, Deputy Prime Minister Bülent Arınç (AKP) stated that the lack of any legal protection for LGBTI people did not mean that their rights were ignored. A final report under the UN's Universal Periodic Review process was adopted for Turkey.

LGBTI prisoners face many violations of their rights and discrimination, such as access to justice and law, the practice of insularity, access to health services, and economic problems. There are 137 LGBTI prisoners in several prisons throughout the country, who, due to security reasons cited by prison administrations, are predominantly kept in solitary confinement, have no access to services of the prison, have almost no access to lawyers, and no access to visitation days. The government declared that they would open a special prison for LGBTI people, which was found unnecessary and dangerous by the LGBTI civil society. The prison has not been established yet.

### **Rights and equal treatment of trans and intersex persons**

In the coming year, the government should be urged to:

- Pass a law that allows trans people to undergo a gender reassignment procedure without demands of sterilization, unmarried status, and other discriminatory points of the Civil Code.
- Introduce legal regulations to recognize the preferred gender identity based on self-determination
- Apply the ECtHR decision on *Y.Y. vs. Turkey* case to reform Article 40 of Turkey's Civil Code
- Develop inclusive social policies and national employment strategies in order to provide equal opportunities in social services, benefits and employment opportunities for trans and intersex persons
- Report and monitor a nationwide consensus on school drop-outs of trans and intersex children; hence, to come up with national strategies about how to solve the relevant problems
- Apply European Directives on Goods and Services, and Employment to provide equal access and treatment, also for trans and intersex persons
- End arbitrary implementation of the Misdemeanor Act Law against trans persons  
Trans and intersex individuals face hardships in accessing health care due to discriminatory attitudes of the hospital staff.

In a legal case concerning discrimination in access to health care against trans individuals, a doctor refused to examine a trans woman patient because of her gender identity. There has been no investigation into the doctor's conduct, but the victim was punished for allegedly insulting the doctor. An intersex person was also faced with ill treatment and discrimination when they applied to be examined for a physical ailment.

A trans individual was refused by the university from which he graduated, when he asked them to reissue his diploma with his new name. He filed a complaint against the university's decision, but the court upheld it. He cannot practice his profession due to this. <sup>5</sup> The Turkish Constitutional Court will review the country's Article 40/2, which requires trans people to undergo gender reassignment surgery in order to get legal recognition of their gender identity. According to a judgment by the Supreme Court in 2014, apart from 'sexual intercourse by the connection of a man and woman's genitals', all other sexual intercourse types are identified as unnatural.

Hate crimes against trans persons continue to take place in Turkey. According to statistics about Turkey remains to be the top country in wider Europe region with the highest level of transphobic hate murdering. The numbers are alerting also for suicide attempts among trans individuals. Trans men are often forced to get married and there are reports of "corrective" rapes within their families. Social services refuse to establish a specific procedure when handling such cases with trans youth.

Hande Kader, a transgender sex worker and LGBTI activist, disappeared for a week and her body was found raped and burned in a district of Istanbul. The case received much attention from media and from politicians. The Istanbul LGBTI Association and many other LGBTI organizations in Istanbul visited the National Parliament and made a press statement together with the CHP members of the parliament. The same organisations organised a press statement demonstration at the Tunel Square in Istanbul. The attendance was high, with around 300 people, and police protected the crowd.



Although the government accepted some suggestions during the last UPR session of Turkey in the UN, and are bound by the decisions given by ECtHR as well as international agreements, public authorities and institutions still refuse to cooperate with trans organisations regarding shelter, employment, healthcare, and protection from physical and psychological abuse.

**A supportive and enabling environment for civil society**

One more municipality, Nilüfer from the city of Bursa, which had been helping the local LGBTI, signed SPoD's pledge of LGBTI-friendly municipalities. The municipalities that already signed SPoD's pledge, such as Şişli, Beşiktaş, Akdeniz and Kadıköy, developed their services and policies aiming at LGBTI equality. More LGBTI activists participated in decision-making at the local administration levels. LGBTI persons are increasingly represented in city councils, and some municipalities are establishing stable institutions for equality on gender identity and sexual orientation, such as the Equality Units in Şişli, Beşiktaş and Çankaya municipalities.