



Kaos GL, SPoD

and

ERA – LGBTI Equal Rights Association for Western Balkans and Turkey

REPORT

on the

**Implementation of Committee of Ministers' Recommendation CM/Rec(2010)5
on measures to combat discrimination on grounds of sexual orientation or
gender identity in Turkey**

September 2018

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Statement of Interest

Kaos GL, SPoD and ERA – LGBTI Equal Rights Association for Western Balkans and Turkey are submitting this Report on the Implementation of Committee of Ministers' Recommendation CM/Rec(2010)5 on measures to combat discrimination on grounds of sexual orientation or gender identity (hereinafter: the Recommendation) in Turkey, with the purpose of providing necessary information to the Council of Europe on the position of LGBTI rights in Turkey, in accordance with the [Questionnaire on the implementation of Committee of Ministers' Recommendation CM/Rec\(2010\)5 on measures to combat discrimination on grounds of sexual orientation or gender identity](#).

Kaos GL¹ was founded in 1994 in Ankara, Turkey, when the first issue of Kaos GL Magazine was published, dedicated to fighting against homophobia, transphobia, sexism, nationalism and militarism. The purpose of the Kaos Gay and Lesbian Cultural Research and Solidarity Association (Kaos GL) is to support Lesbian, Gay, Bisexual and Trans individuals in embracing libertarian values, realizing their own existence, and in cultivating themselves in order to contribute to the development of social peace and welfare together with the development of their individual, social and cultural life and behavior.

Social Policies, Gender Identity, and Sexual Orientation Studies Association - SPoD² - is an LGBTI+ rights organization focusing on social policies. Officially founded on 21 September 2011 in Istanbul, Turkey by a group of activists, academics and students, SPoD aims to develop and/or expand the rights and freedoms of LGBTI+ individuals both in terms of identity politics and social policies.

ERA – LGBTI Equal Rights Association for Western Balkans and Turkey³ (hereinafter: ERA), is an umbrella regional association operating in 9 countries (Albania, Bosnia & Herzegovina, Croatia, Macedonia, Kosovo, Montenegro, Serbia, Slovenia and Turkey) with a current membership of 58 LGBTI organisations. It was established in September 2015 with the objectives to: a) strengthen capacities of LGBTI organisations in the region, b) lobby and advocate nationally, regionally and internationally for LGBTI rights by utilizing empirical findings and up to date research and c) strengthen and improve the visibility of LGBTI movement and communities across the region and beyond.

Background

Republic of Turkey joined Council of Europe on 9 August 1949 and is one of the oldest members. The Council of Europe has a well-established large-scale country-specific co-operation in Turkey mainly in the field of rule of law and fundamental freedoms. The Council of Europe is represented by a [Programme Office in Ankara](#). Most of the co-operation activities with Turkey have been undertaken via Council of Europe/European Union joint programmes and Turkey was for many years the biggest beneficiary of the technical co-operation with the European Union⁴.

However, the country has been facing some major challenges in the past years, especially in the field of human rights and freedoms, including the overall protection of the rights of LGBTI persons.

The state of emergency

The state of emergency in Turkey, declared in the wake of the attempted coup of 15 July 2016, remained in force until 18 July 2018. Fundamental rights have been considerably curtailed under the state of emergency and pursuant to the decrees issued under it. Civil society came under increasing

¹ For more information about Kaos GL, visit the website: <http://www.kaosgilderneji.org/home.php>

² For more information about SPoD, please visit the website: <http://www.spod.org.tr/en>

³ For more information about ERA, please visit the website: <http://www.lgbti-era.org>

⁴ More information is available here: <https://www.coe.int/en/web/programmes/turkey>

pressure, notably in the face of a large number of arrests of activists, including human rights defenders, and the recurrent use of bans of demonstrations and other types of gatherings, leading to a rapid shrinking space for fundamental rights and freedoms. Many rights-based organisations remained closed as part of the measures under the state of emergency and an effective legal remedy has not been available with respect to confiscations⁵.

Concerns on protection of LGBTI rights

There are serious concerns on the protection of the fundamental rights LGBTI people. No changes have been introduced to the military disciplinary system and medical regulations which define homosexuality as a 'psychosexual disorder/illness'. Discrimination towards the LGBTI community is still widespread.

Legal framework

The Turkish legal framework includes general guarantees of respect for human and fundamental rights, which have however been further challenged and undermined by a number of emergency decrees. Turkey should urgently adopt a law on combating discrimination in line with the European Convention on Human Rights, including with regards to sexual orientation and gender identity. Turkey should also ratify Protocol 12 of the Convention, which provides for the general prohibition of discrimination.

Violence, hate speech and hate crime

Gender-based violence, discrimination, hate speech against minorities, hate crime and violations of human rights of LGBTI persons are still a matter of serious concern. Legislation on hate speech is not in line with the European Court of Human Rights case-law. Hate crime legislation is not in line with international standards and does not cover hate offences based on sexual orientation and gender identity.

Independent bodies

The Ombudsman and The National Human Rights and Equality institution, which provides an individual application mechanism for complaints in the field of alleged discrimination cases, do not have operational, structural or financial independence and their members are not appointed in compliance with the Paris Principles.

Council of Europe membership obligations

The capacity of Turkey to ensure an effective domestic legal remedy in the sense of the European Court of Human Rights has been further undermined. Key human-rights recommendations of the Council of Europe and its bodies are yet to be addressed by Turkey, including European Commission against Racism and Intolerance.

Freedom of assembly and association

There was further backsliding in the area of freedom of assembly and association. LGBTI marches, including in Istanbul and Ankara, were banned for security reasons for the third year in a row. The detention and release under judicial control of an activist following his social media posts regarding Ankara governor's ban on LGBTI events for an indefinite period is testimony of the pressure exercised against activists in this field. In February 2018, an Administrative Court rejected the request of two NGOs' to lift the execution of this ban.

Human rights defenders

Conditions surrounding the activities of human rights defenders have deteriorated even further. Many of them continue to be subject to intimidation, judicial prosecution, violent attacks, threats, surveillance, prolonged arbitrary detention, ill-treatment and smear campaigns in some media. There is limited protection given to LGBTI organisations who have been receiving threats.

Civil society

Despite serious backsliding, civil society remained active and involved in public life as far as was possible. The map of civil society organisations has started to change significantly, with a more visible

⁵ As indicated in the [2018 EU Country report for Turkey](#)

role given to the pro-government organisations. Administrative burdens, including for international non-governmental organizations (NGOs), continue to hamper civil society activities. Systematic and inclusive mechanisms for consulting a wide spectrum of civil society, notably on new legislation and policies, need to be put in place and used consistently.

Section I – Implementation of the Recommendation

“The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe, [...] recommends that member states,

- 1. examine existing legislative and other measures, keep them under review, and collect and analyse relevant data, in order to monitor and redress any direct or indirect discrimination on grounds of sexual orientation or gender identity;*
- 2. ensure that legislative and other measures are adopted and effectively implemented to combat discrimination on grounds of sexual orientation or gender identity, to ensure respect for the human rights of lesbian, gay, bisexual and transgender persons and to promote tolerance towards them;*
- 3. ensure that victims of discrimination are aware of and have access to effective legal remedies before a national authority, and that measures to combat discrimination include, where appropriate, sanctions for infringements and the provision of adequate reparation for victims of discrimination;”*

In Turkey, no review has been carried out of existing legislative and other measures which could result directly or indirectly in discrimination on grounds of sexual orientation and gender identity (hereinafter: SOGI), and there are no measures in place to redress any such discrimination. No legislative, policy and other measures have been adopted and/or implemented to collect and analyse relevant data on discrimination on grounds of SOGI. There are no effective legal remedies for victims of sexual orientation or gender identity discrimination, including sanctions for infringements.

Section II – Implementation of the specific provisions in the Appendix

I. Right to life, security and protection from violence

A. Hate crimes and other hate-motivated incidents

- 1. “Member states should ensure effective, prompt and impartial investigations into alleged cases of crimes and other incidents, where the sexual orientation or gender identity of the victim is reasonably suspected to have constituted a motive for the perpetrator; they should further ensure that particular attention is paid to the investigation of such crimes and incidents when allegedly committed by law enforcement officials or by other persons acting in an official capacity, and that those responsible for such acts are effectively brought to justice and, where appropriate, punished in order to avoid impunity.*
- 2. Member states should ensure that when determining sanctions, a bias motive related to sexual orientation or gender identity may be taken into account as an aggravating circumstance.*

3. Member states should take appropriate measures to ensure that victims and witnesses of sexual orientation or gender identity related “hate crimes” and other hate-motivated incidents are encouraged to report these crimes and incidents; for this purpose, member states should take all necessary steps to ensure that law enforcement structures, including the judiciary, have the necessary knowledge and skills to identify such crimes and incidents and provide adequate assistance and support to victims and witnesses.

4. Member states should take appropriate measures to ensure the safety and dignity of all persons in prison or in other ways deprived of their liberty, including lesbian, gay, bisexual and transgender persons, and in particular take protective measures against physical assault, rape and other forms of sexual abuse, whether committed by other inmates or staff; measures should be taken so as to adequately protect and respect the gender identity of transgender persons.

5. Member states should ensure that relevant data are gathered and analysed on the prevalence and nature of discrimination and intolerance on grounds of sexual orientation or gender identity, and in particular on “hate crimes” and hate-motivated incidents related to sexual orientation or gender identity.”

In Turkey, no legislative and other measures have been adopted and/or implemented to ensure an effective, prompt and impartial investigation into alleged cases of crimes and/or other incidents, where there is reasonable ground to suspect that the victim was targeted due to their SOGI.

There are no independent and effective procedures to receive and investigate reports of hate crimes and/or hate motivated incidents allegedly committed by law enforcement staff, particularly where SOGI constitutes one of the motives.

No legislative and other measures have been adopted or implemented to ensure that a bias motive may be taken into account as an aggravating circumstance when related to SOGI. Hate crimes and other hate-motivated incidents do not recognise SOGI as a possible motive and no appropriate measures have been taken or implemented to ensure that victims and witnesses of hate crimes and incidents against LGBTI persons are encouraged to report them, neither to identify specific LGBTI groups with heightened vulnerability and adopt targeted measures to protect them.

No appropriate measures have been taken or implemented to ensure that law-enforcement, judiciary and prison officials possess the knowledge and skills (and are able to apply them) to identify hate crimes and other hate-motivated incidents and provide victim and witnesses with adequate assistance and support.

Within the police, there are no units tasked specifically with investigating these incidents, no liaison officers tasked with maintaining contact with LGBT communities in order to establish a relationship of trust, and no systems of anonymous complaints or online complaints to allow reporting by third parties of the occurrence of such incidents.

No specific measures have been adopted or implemented to ensure the safety and dignity of lesbian, gay, bisexual and transgender persons deprived of their liberty, including: effective measures to minimise the dangers of physical assault, rape and other forms of sexual abuse; authorities adopting and implementing anti-bullying strategies to prevent violence against LGBT detainees; trans prisoners given the possibility to be allocated to either a male or female facility based on their self-determined gender identity; providing protective measures to avoid placing LGBT detainees in solitary

confinement; and training programmes and/or codes of conduct for prison staff to ensure that prisoners are treated with respect and without discrimination with regard to their SOGI.

There is no effective system to register complaints and collect data on hate crime and hate-motivated incidents related to SOGI and are there no official statistics publicly available with regard to hate crime and hate-motivated incidents related to SOGI.

No measures have been adopted or implemented to regularly gather data on the levels of social acceptance towards lesbians, gay, bisexual and transgender persons.

B. Hate speech

6. *“Member states should take appropriate measures to combat all forms of expression, including in the media and on the Internet, which may be reasonably understood as likely to produce the effect of inciting, spreading or promoting hatred or other forms of discrimination against lesbian, gay, bisexual and transgender persons. Such “hate speech” should be prohibited and publicly disavowed whenever it occurs. All measures should respect the fundamental right to freedom of expression in accordance with Article 10 of the Convention and the case law of the Court.*

7. *Member states should raise awareness among public authorities and public institutions at all levels of their responsibility to refrain from statements, in particular to the media, which may reasonably be understood as legitimising such hatred or discrimination.*

8. *Public officials and other state representatives should be encouraged to promote tolerance and respect for the human rights of lesbian, gay, bisexual and transgender persons whenever they engage in a dialogue with key representatives of the civil society, including media and sports organisations, political organisations and religious communities.”*

In Turkey, no appropriate measures have been taken to combat all forms of hate speech against lesbian, gay, bisexual or transgender persons, in accordance with Article 10 of the European Convention on Human Rights and with paragraph 6 of the Appendix to the Recommendation. In particular, there are no legislative measures adopted or implemented to criminalise hate speech against LGBTI persons on the internet, even though such incidents of hate speech occur⁶.

No specific measures have been taken to raise awareness of public authorities and institutions of their responsibility to refrain from statements which may reasonably be understood as legitimising hatred or discrimination against lesbian, gay, bisexual or transgender persons.

No trainings, awareness raising activities or any other form of guidance is provided to public officials and state representatives to promote tolerance towards LGBTI persons whenever they engage with civil society, media and sports organisations, political organisations and religious communities.

II. Freedom of association

9. *“Member states should take appropriate measures to ensure, in accordance with Article 11 of the Convention, that the right to freedom of association can be effectively enjoyed without discrimination on grounds of sexual orientation or gender identity; in particular, discriminatory administrative procedures, including excessive formalities for the registration and practical functioning of associations, should be prevented and removed; measures should also be taken to prevent the abuse of legal and administrative provisions, such as those related to restrictions based on public health, public morality and public order.”*

⁶ See e.g: <http://www.lgbti-era.org/news/hate-speech-leaflets-disseminated-unison-around-turkey>

10. Access to public funding available for non-governmental organisations should be secured without discrimination on grounds of sexual orientation or gender identity.

11. Member states should take appropriate measures to effectively protect defenders of human rights of lesbian, gay, bisexual and transgender persons against hostility and aggression to which they may be exposed, including when allegedly committed by state agents, in order to enable them to freely carry out their activities in accordance with the Declaration of the Committee of Ministers on Council of Europe action to improve the protection of human rights defenders and promote their activities.

12. Member states should ensure that non-governmental organisations defending the human rights of lesbian, gay, bisexual and transgender persons are appropriately consulted on the adoption and implementation of measures that may have an impact on the human rights of these persons.”

In Turkey, the freedom of association of LGBTI human rights organisations is ensured by both the possibility to obtain official registration and the removal of discriminatory administrative procedures and/or restrictions based on public health, morality and public order. However, there is no involvement or consultation of such organisations when policies that may concern or affect LGBTI persons are being adopted or implemented.

No public funding is available for non-governmental organisations with the purpose of protection of the rights of LGBTI persons.

There are no measures in place to effectively protect defenders of human rights of lesbian, gay, bisexual and transgender persons against hostility and aggression.

LGBTI human rights organisations are able to work with other human rights organisations. However, they are not able to work with national human rights institutions and the media or take part in training sessions or conferences as before. There used to be some degree of communication with national human rights institutions but this has changed negatively in the recent years. They do not invite LGBTI organisations to their meetings anymore, neither they accept their invitations.

Regarding the media, there is a decrease of the mainstream media to human and LGBTI rights issues as nearly all mainstream media is pro-government in Turkey.

No measures have been taken to ensure that non-governmental organisations defending the human rights of lesbian, gay, bisexual and transgender persons are appropriately consulted on the adoption and implementation of measures that may have an impact on the human rights of these persons.

III. Freedom of expression and peaceful assembly

13. “Member states should take appropriate measures to ensure, in accordance with Article 10 of the Convention, that the right to freedom of expression can be effectively enjoyed, without discrimination on grounds of sexual orientation or gender identity, including with respect to the freedom to receive and impart information on subjects dealing with sexual orientation or gender identity.

14. Member states should take appropriate measures at national, regional and local levels to ensure that the right to freedom of peaceful assembly, as enshrined in Article 11 of the Convention, can be effectively enjoyed, without discrimination on grounds of sexual orientation or gender identity.

15. Member states should ensure that law enforcement authorities take appropriate measures to protect participants in peaceful demonstrations in favour of the human rights of lesbian, gay, bisexual and

transgender persons from any attempts to unlawfully disrupt or inhibit the effective enjoyment of their right to freedom of expression and peaceful assembly.

16. Member states should take appropriate measures to prevent restrictions on the effective enjoyment of the rights to freedom of expression and peaceful assembly resulting from the abuse of legal or administrative provisions, for example on grounds of public health, public morality and public order.

17. Public authorities at all levels should be encouraged to publicly condemn, notably in the media, any unlawful interferences with the right of individuals and groups of individuals to exercise their freedom of expression and peaceful assembly, notably when related to the human rights of lesbian, gay, bisexual and transgender persons.”

In Turkey, there are no specific measures in place to ensure the freedom to receive and impart information on subjects dealing with SOGI, including: organising activities that support the human rights of LGBTI persons; publishing material that raises awareness on the human rights of LGBTI persons; securing visibility via media coverage; and disseminating or accessing information on safe sexual practices. All of the abovementioned activities occur to some extent but there are no official measures that “ensure” them.

There are no measures in place to ensure that freedom of peaceful assembly can be enjoyed without discrimination on grounds of SOGI. The ban for peaceful assembly is continuing in the capital city, Ankara⁷. In addition, events have been banned by other governorates in cities like İstanbul, Mersin and Bursa. There are no visible changes made to review or lift such measures.

Law enforcement authorities do not take appropriate measures to protect participants in peaceful demonstrations in favour of the human rights of lesbian, gay, bisexual and transgender persons. Law enforcement officers are not sensitized and trained to protect specific social groups, including LGBT persons, during public demonstrations.

No measures are in place to prevent the abuse of legal or administrative provisions on grounds of public health, public morality or public order resulting in restrictions on the effective enjoyment of the rights to freedom of expression and peaceful assembly by LGBTI persons or human rights organisations supporting the rights of LGBTI persons.

Public authorities have not publicly condemned any unlawful interferences with the exercise of freedom of expression and peaceful assembly by LGBTI persons or human rights organisations supporting the rights of LGBTI persons.

IV. Right to respect for private and family life

18.“ Member states should ensure that any discriminatory legislation criminalising same-sex sexual acts between consenting adults, including any differences with respect to the age of consent for same-sex sexual acts and heterosexual acts, are repealed; they should also take appropriate measures to ensure that criminal law provisions which, because of their wording, may lead to a discriminatory application are either repealed, amended or applied in a manner which is compatible with the principle of non-discrimination.

⁷ More info: <http://www.lgbti-era.org/news/appeal-hold-execution-“lgbti-events-ban-turkey”-rejected-administrative-court> and <http://www.lgbti-era.org/news/kaos-gl-idahobit-end-bans-hate-attacks-and-discrimination>

19. Member states should ensure that personal data referring to a person's sexual orientation or gender identity are not collected, stored or otherwise used by public institutions including in particular within law enforcement structures, except where this is necessary for the performance of specific, lawful and legitimate purposes; existing records which do not comply with these principles should be destroyed.

20. Prior requirements, including changes of a physical nature, for legal recognition of a gender reassignment, should be regularly reviewed in order to remove abusive requirements.

21. Member states should take appropriate measures to guarantee the full legal recognition of a person's gender reassignment in all areas of life, in particular by making possible the change of name and gender in official documents in a quick, transparent and accessible way; member states should also ensure, where appropriate, the corresponding recognition and changes by non-state actors with respect to key documents, such as educational or work certificates.

22. Member states should take all necessary measures to ensure that, once gender reassignment has been completed and legally recognised in accordance with paragraphs 20 and 21 above, the right of transgender persons to marry a person of the sex opposite to their reassigned sex is effectively guaranteed.

23. Where national legislation confers rights and obligations on unmarried couples, member states should ensure that it applies in a non-discriminatory way to both same-sex and different-sex couples, including with respect to survivor's pension benefits and tenancy rights.

24. Where national legislation recognises registered same-sex partnerships, member states should seek to ensure that their legal status and their rights and obligations are equivalent to those of heterosexual couples in a comparable situation.

25. Where national legislation does not recognise nor confer rights or obligations on registered same-sex partnerships and unmarried couples, member states are invited to consider the possibility of providing, without discrimination of any kind, including against different sex couples, same-sex couples with legal or other means to address the practical problems related to the social reality in which they live.

26. Taking into account that the child's best interests should be the primary consideration in decisions regarding the parental responsibility for, or guardianship of a child, member states should ensure that such decisions are taken without discrimination based on sexual orientation or gender identity.

27. Taking into account that the child's best interests should be the primary consideration in decisions regarding adoption of a child, member states whose national legislation permits single individuals to adopt children should ensure that the law is applied without discrimination based on sexual orientation or gender identity.

28. Where national law permits assisted reproductive treatment for single women, member states should seek to ensure access to such treatment without discrimination on grounds of sexual orientation."

In Turkey, no measures have been taken to repeal, amend or apply in a manner which is compatible with the principle of non-discrimination, any criminal law provisions which, because of their wording or scope, may lead to a discriminatory application with respect to SOGI.

There are no measures in place to ensure that personal data are not collected, stored or otherwise used when referring to SOGI. Existing records that do not comply with this principle are not being destroyed.

No legal gender recognition procedures that are quick, transparent, accessible and based on self-determination are available. In particular, legal gender recognition of transgender persons is: conditional on undergoing an operation or treatment entailing irreversible sterilisation against their wishes; conditional on undergoing hormonal treatment or any other form of medical treatment or surgical procedure; and conditional on a psychological diagnosis or expert statement. It is not conditional on the capacity to demonstrate a period of “life experience” in the self-determined gender. Legal gender recognition of transgender persons is accessible irrespective of financial situation and police record, but not when it comes to age and medical status. The Turkish Constitutional Court repealed⁸ the provision on forced sterilization stating that “due to the medical operation which is obliged by the law, transgender persons will need to be sterilized anyway⁹”.

Appropriate measures have partially been adopted and/or implemented to guarantee full legal gender recognition of a person in all areas of life, including adapting official documents, and educational or work certificates issued by non-state actors. In concrete, there are no measures in place to ensure change of documents provided by non-state actors.

There are partial legal and other measures in place to protect the right of transgender persons to marry: transgender persons are allowed to marry a person of the sex opposite to their reassigned sex. However, where married trans persons are required to divorce prior to obtaining the legal recognition of their self-determined gender, there are no measures in place compensating for a loss in acquired rights of spouses. They need to be divorced to get recognized for their gender reassignment. After official recognition, they cannot get married with persons of the same sex, as there is no marriage equality in Turkey.

National legislation does not confer rights and obligation on unmarried couples and no measures have been adopted and/or implemented so that the same rights and obligations apply to same-sex couples and different-sex couples.

Same-sex couples have no access to registered partnerships under national law and there are no measures in place to provide them with the possibility to address the practical problems related to the social reality in which they live. No legal measures have been adopted and/or implemented to ensure that the same-sex partner of a national may obtain a residence permit in Turkey for family reasons.

There are no measures in place to ensure that decisions regarding parental responsibility and adoption of a child are taken primarily in the child’s best interest without discrimination based on SOGI.

National legislation in Turkey does not permit unmarried different-sex couples to adopt each other’s children (a second-parent or step-parent adoption), neither does it give the same right to unmarried same-sex couples.

National laws do not permit assisted reproductive treatment for single women. Unmarried different-sex couples cannot receive assisted reproductive treatment, and such treatment is not available for unmarried same-sex couples either.

⁸ Decision of the Constitutional Court of Turkey available here (in Turkish): <http://kararlaryeni.anayasa.gov.tr/Karar/Content/541c15e5-cca0-4b1b-bee7-63fa0e24a29e?highlightText=transseks%C3%BCel&excludeGerekce=False&wordsOnly=False>

⁹ Turkish Civil Code, Article 40.

V. Employment

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

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

Legislation in Turkey does not prohibit discrimination in employment on grounds of SOGI, both in public and private sector, neither does it take into consideration the heightened vulnerability of specific LGBTI groups.

There are no measures in place to provide effective protection against discrimination on grounds of SOGI in access to: employment; promotion, dismissals, pay and other working conditions; and prevention and punishment of harassment in employment.

The privacy of transgender persons is not protected so as to prevent the disclosure of transgender persons’ gender history and former name in the context of employment.

VI. Education

31. *“Taking into due account the over-riding interests of the child, member states should take appropriate legislative and other measures, addressed to educational staff and pupils, to ensure that the right to education can be effectively enjoyed without discrimination on grounds of sexual orientation or gender identity; this includes, in particular, safeguarding the right of children and youth to education in a safe environment, free from violence, bullying, social exclusion or other forms of discriminatory and degrading treatment related to sexual orientation or gender identity.*

32. *Taking into due account the over-riding interests of the child, appropriate measures should be taken to this effect at all levels to promote mutual tolerance and respect in schools, regardless of sexual orientation or gender identity. This should include providing objective information with respect to sexual orientation and gender identity, for instance in school curricula and educational materials, and providing pupils and students with the necessary information, protection and support to enable them to live in accordance with their sexual orientation and gender identity. Furthermore, member states may design and implement school equality and safety policies and action plans and may ensure access to adequate anti-discrimination training or support and teaching aids. Such measures should take into account the rights of parents regarding education of their children.”*

Taking into due account the over-riding interests of the child, there are no appropriate legislative and other measures in Turkey, addressed to educational staff and pupils, to ensure that the right to education can be effectively enjoyed without discrimination on grounds of SOGI, including: anti-discrimination training or support and teaching aids; information, protection and support for pupils and students; respect for the self-determined name and gender marker of pupils and students in form of address, educational documents, and use of gendered facilities/classes; objective information on

sexual orientation and gender identity in school curricula; and school equality and safety policies and action plans.

VII. Health

33. “Member states should take appropriate legislative and other measures to ensure that the highest attainable standard of health can be effectively enjoyed without discrimination on grounds of sexual orientation or gender identity; in particular, they should take into account the specific needs of lesbian, gay, bisexual and transgender persons in the development of national health plans including suicide prevention measures, health surveys, medical curricula, training courses and materials, and when monitoring and evaluating the quality of health-care services.

34. Appropriate measures should be taken in order to avoid the classification of homosexuality as an illness, in accordance with the standards of the World Health Organisation.

35. Member states should take appropriate measures to ensure that transgender persons have effective access to appropriate gender reassignment services, including psychological, endocrinological and surgical expertise in the field of transgender health care, without being subject to unreasonable requirements; no person should be subjected to gender reassignment procedures without his or her consent.

36. Member states should take appropriate legislative and other measures to ensure that any decisions limiting the costs covered by health insurance for gender reassignment procedures should be lawful, objective and proportionate.”

In Turkey, there are no appropriate measures in place to ensure that:

- **the highest attainable standard of health can be effectively enjoyed without discrimination on grounds of SOGI;**
- **education, prevention, care and treatment programmes and services in the area of sexual and reproductive health are available to all individuals, regardless of their sexual orientation and gender identity;**
- **the specific needs of LGBTI persons are taken into consideration in the development of national health plans, including suicide prevention measures; health surveys; medical curricula and training programmes; and in the monitoring and evaluating of quality of health-care services.**

Patients in hospitals are not able or subject to medical emergencies free to identify their “next of kin”¹⁰. There are no rules on issues regarding “next of kin” applied without discrimination on grounds of SOGI.

In terms of measures in place, it is not possible to ensure that transgender persons have effective access to appropriate gender reassignment, specialised psychological, endocrinological and surgical services without being subjected to unreasonable requirements, as the number of medical and psycho-social experts are very limited. Health education curricula does not cover transgender health issues.

¹⁰ There is not a clear cut definition of “next of kin” in Turkish legislation. There are terms like “family” and “patient’s relative”, usually used next to each other. So, practice differs greatly depending on the medic’s understanding of “family” or “relative”.

There is not a specific legislation on social security aspect of gender reassignment – both for public or private insurance systems. Therefore, coverage of public social insurance depends on the situation – so it is inconsistent. Most of the times, it does not cover “plastic surgery” elements of gender reassignment. No good example from private insurance companies can be specified either.

There are no legislative or other measures in place ensuring that no person is subjected to gender reassignment procedures, including so-called “conversion therapies”, without their informed consent.

VIII. Housing

37. *“Measures should be taken to ensure that access to adequate housing can be effectively and equally enjoyed by all persons, without discrimination on grounds of sexual orientation or gender identity; such measures should in particular seek to provide protection against discriminatory evictions, and to guarantee equal rights to acquire and retain ownership of land and other property.”*

38. *Appropriate attention should be paid to the risks of homelessness faced by lesbian, gay, bisexual and transgender persons, including young persons and children who may be particularly vulnerable to social exclusion, including from their own families; in this respect, the relevant social services should be provided on the basis of an objective assessment of the needs of every individual, without discrimination.”*

In Turkey, there are no measures taken to ensure access to adequate housing can be effectively and equally enjoyed by all persons, without discrimination on grounds of SOGI, including that protection is provided against discriminatory evictions, and that equal rights are guaranteed in respect of ownership of land and other property.

With respect to the risk of homelessness faced by lesbian, gay, bisexual and transgender persons, in particular young persons and children, there are no measures taken to ensure that the relevant social services are provided without discrimination on grounds of SOGI.

IX. Sports

39. *“Homophobia, transphobia and discrimination on grounds of sexual orientation or gender identity in sports are, like racism and other forms of discrimination, unacceptable and should be combated.”*

40. *Sport activities and facilities should be open to all without discrimination on grounds of sexual orientation or gender identity; in particular, effective measures should be taken to prevent, counteract and punish the use of discriminatory insults with reference to sexual orientation or gender identity during and in connection with sports events.*

41. *Member states should encourage dialogue with and support sports associations and fan clubs in developing awareness-raising activities regarding discrimination against lesbian, gay, bisexual and transgender persons in sport and in condemning manifestations of intolerance towards them.”*

No measures in Turkey (including awareness-raising measures) have been taken to tackle discrimination on grounds of SOGI (including the use of discriminatory insults) in sports and in connection with sports events.

X. Right to seek asylum

42. *"In cases where member states have international obligations in this respect, they should recognise that a well-founded fear of persecution based on sexual orientation or gender identity may be a valid ground for the granting of refugee status and asylum under national law.*

43. *Member states should ensure particularly that asylum seekers are not sent to a country where their life or freedom would be threatened or they face the risk of torture, inhuman or degrading treatment or punishment, on grounds of sexual orientation or gender identity.*

44. *Asylum seekers should be protected from any discriminatory policies or practices on grounds of sexual orientation or gender identity; in particular, appropriate measures should be taken to prevent risks of physical violence, including sexual abuse, verbal aggression or other forms of harassment against asylum seekers deprived of their liberty, and to ensure their access to information relevant to their particular situation."*

A well-founded fear of persecution is not recognised as a valid ground for the granting of refugee status and asylum under Turkish national legislation, when based on SOGI. There are no measures in place to ensure that asylum requests may not be turned down on the ground that the claimant can escape persecution in the country of origin by keeping their SOGI secret.

Turkey does not ensure that asylum seekers are not sent to a country where their life or freedom would be threatened because of their SOGI, including: removal from the lists of safe countries of origin any state that criminalise or persecute same-sex relations or transgender identities; applicants not being asked to provide detailed account of their sexual practices or to produce "evidence" such as images or films of intimate acts to prove their sexual orientation or gender identity in asylum claims; and measures in place to ensure that applicants will not be subjected to psychological tests to determine their SOGI.

However, the Constitutional Court of Turkey recently halted the execution of refoulement of 6 women who were lesbian, bisexual and trans to Iran. This is still just an individual case¹¹.

There are no specific measures in place to prevent violence against LGBT asylum seekers deprived of their liberty, including alternatives to detention offered to LGBT asylum seekers whose protection cannot be guaranteed.

The self-determined name and gender identity of a transgender asylum seeker is not respected throughout, including in particular related to placement, use of gendered facilities, form of address, and official documents.

XI. National Human Rights Structures

45. *"Member states should ensure that national human rights structures are clearly mandated to address discrimination on grounds of sexual orientation or gender identity; in particular, they should be able to make recommendations on legislation and policies, raise awareness amongst the general public, as well as – as far as national law so provides – examine individual complaints regarding both the private and public sector and initiate or participate in court proceedings."*

National Human Rights Structures in Turkey are still not clearly mandated to address discrimination on grounds of SOGI.

¹¹ More information (in Turkish) available here: <http://kaosgl.org/sayfa.php?id=23503>

XII. Discrimination on multiple grounds

46. *“Member states are encouraged to take measures to ensure that legal provisions in national law prohibiting or preventing discrimination also protect against discrimination on multiple grounds, including on grounds of sexual orientation or gender identity; national human rights structures should have a broad mandate to enable them to tackle such issues.”*

In Turkey, there are no measures in place to ensure that the provisions of national law prohibiting or preventing discrimination also protect against discrimination on multiple grounds, including on grounds of SOGI. There are no measures in place pro-actively identifying, protecting and/or supporting groups affected by multiple discrimination, including: lesbian, bisexual and trans women; LGBTI persons of colour; LGBTI persons of ethnic minority backgrounds, including Roma persons; LGBTI asylum seekers and refugees; LGBTI persons from religious minorities; LGBTI sex workers; and LGBTI persons with disabilities.

Section III - General assessment and dissemination of the Recommendation and its Appendix

In terms of the status of implementation of the Recommendation in Turkey, the overall assess is marked as absent, as there are no initiatives taken by the Government to achieve legislative, political or procedural aspects of the Recommendation. Main obstacles that have been encountered in the implementation of the Recommendation are lack of political will and no sanctions on the governments that decline its implementation.

The Recommendation, including its Appendix, has been officially translated to Turkish¹². No steps have been taken by the Government so far. As a civil society organisation, Kaos GL Association have also translated the document into Turkish¹³ and have been disseminating it via all possible channels since 2014. The document have been sent to parliamentarians and public authorities particularly via registered cargo.

Useful links

- [Council of Europe](#)
- [Council of Europe Sexual Orientation and Gender Identity Unit \(SOGI Unit\)](#)
- [Recommendation CM/Rec\(2010\)5 of the Committee of Ministers to member states on measures to combat discrimination on grounds of sexual orientation or gender identity in Turkish language](#)
- [European Court of Human Rights](#)

¹² There is no official language in Turkey other than Turkish.

¹³ Available here: <http://www.kaosgldernegi.org/yayindetay.php?id=66>