

BY EMAIL

Quick Response Desk
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Date: 10 August 2020

FOR THE ATTENTION OF:

- **Independent Expert on sexual orientation and gender identity**
- **Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association**
- **Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression**
- **Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while countering terrorism**

Dear Sir/ Madam,

URGENT ACTION: The continued discrimination and hate speech against lesbian, gay, bisexual, transgender and intersex (LGBTI+) people in Turkey.

1. We are writing to express our grave concern regarding the rise of hateful discourse against the LGBTI+ community in Turkey, including hate speech and discrimination from senior public officials and political institutions. Recent events form part of a series of systematic attacks against LGBTI+ people, fuelling an atmosphere of violence and intolerance. This constitutes a violation of Turkey's obligations under domestic and international law, which guarantee the rights and freedoms of all citizens, regardless of their sexual orientation or gender identity.

BACKGROUND

2. On 15 July 2016, a faction of Turkey's armed forces staged a violent coup attempt which resulted in the deaths of over 200 people and the injuries of over 2,000 people.¹ Following the attempted coup, the Government of Turkey (Government) declared a three-month state of emergency to commence on the 21st July 2016. This was later extended seven times by three months each time and eventually ended on 19 July 2018.² During this period, the Government used exceptional powers under the guise of national security arguments, overstepping the legal limits envisaged by the Turkish Constitution and the international treaties it had ratified. Emergency decrees allowed the government to rule without a judicial control and to restrict fundamental rights and freedoms of citizens, including banning public assemblies, using excessive force against peaceful protestors, closing hundreds of associations, foundations, media outlets and other institutions, prosecuting journalists, academics, human rights defenders and anyone perceived to express criticism of State action.³
3. Amongst those targeted by the Government under the state of emergency were civil society groups associated with the LGBTI+ community, who were forced to close on the basis of alleged links to terrorist organisations.⁴ On 19 November 2017, the Governor of Ankara issued an indefinite ban on any public gatherings and events, including cinema, theatre, panel, conference, exhibition...etc. concerning the LGBTI+ movement in Ankara.⁵ The press release stated that such events may "*incite hatred and hostility in one group towards another social group, giving rise to dangerous situations in terms of public security; the protection of the rights and freedoms of the groups and individuals who participate in the events might be jeopardized, and some social groups could react and cause provocations because of certain social sensitivities.*"⁶ The open-ended formulation of the ban was criticised for conferring unfettered authority onto the Governor.⁷ When

¹ Amnesty International, *No End in Sight, Purged Public Sector Denied a Future in Turkey*, 2017. Available at: <https://www.amnestyusa.org/wp-content/uploads/2017/05/No-End-In-Sight-ENG.pdf>.

² On 9 August 2018, the lifting of the state of emergency and end of the derogation period was notified by the Turkish Government to the Secretary General of the UN, <https://treaties.un.org/doc/Publication/CN/2018/CN.378.2018-Eng.pdf>.

³ Amnesty International, *Turkey: NGOs unite to defend civil society from destruction*, 27 February 2019, <https://www.amnesty.org/en/latest/news/2019/02/turkey-ngos-unite-to-defend-civil-society-fromdestruction>.

⁴ ILGA Europe, *State of Emergency Continues in Turkey*, 28 November 2016. Available at: <https://www.ilga-europe.org/resources/news/latest-news/state-emergency-continues-turkey>.

⁵ Library of Congress, *Turkey: Ban on LGBTI Group Gatherings in Capital Province*, 27 December 2017. Available at: <https://www.loc.gov/law/foreign-news/article/turkey-ban-on-lgbti-group-gatherings-in-capital-province/>.

⁶ Ibid.

⁷ Human Rights Watch, *Turkey: End Ankara Ban on LGBTI Events*, 14 February 2019. Available at: <https://www.hrw.org/news/2019/02/14/turkey-end-ankara-ban-lgbti-events>.

the state of emergency was lifted in July 2018, the ban remained in force and was reaffirmed by the Ankara Government's Office on 2 October 2018.⁸ Kaos GL (Kaos Gay and Lesbian Cultural Research and Solidarity Association), an organisation focused on gender identity, filed a complaint against the ban on the grounds that the Government had failed to establish any legitimate purpose, as required under international law.⁹

4. On 19 April 2019, it was announced that the ban on LGBTI+ events had been lifted following the decision of an Ankara court, which ruled that it constituted an unlawful and disproportionate restriction of the rights and freedoms of LGBTI+ people.¹⁰ Despite the ruling, Government authorities have continued to ban LGBTI+-related events across the country. On 10 May 2019, eighteen Turkish students and a lecturer were arrested for taking part in an LGBTI+ event banned by an Ankara university and were put on trial for unlawful assembly and refusal to disperse.¹¹ Furthermore, the annual LGBTI+ Pride in Istanbul has been banned by authorities for five consecutive years and the annual Queer Olympix was cancelled in August 2019.¹² On 30 June 2019, police used tear gas and water cannons to disperse thousands of people who had gathered to celebrate the Pride despite the ban.¹³ A *de facto* ban on all LGBTI+ public events have been ongoing in the country for several years.
5. In addition to the Government's attacks on the freedom of assembly, institutional discrimination against LGBTI+ persons is widespread. For instance, military disciplinary mechanisms define homosexuality as a "psychosexual disorder/ illness" and a new law was introduced in January 2018 which provides that the dismissal of security personnel could be justified on the grounds of "abnormal/ pervert" actions.¹⁴ Homosexuality is still considered by law to be a mental health disorder in Turkey and same-sex relationships are not legally recognised.¹⁵

⁸ Ibid.

⁹ Ibid.

¹⁰ Graeme Reid, *In Turkey, Ankara Wakes Up to Court Lifting LGBTI Events Ban*, Human Rights Watch, 25 April 2019. Available at: <<https://www.hrw.org/news/2019/04/25/turkey-ankara-wakes-court-lifting-lgbti-events-ban>>.

¹¹ Wionews, *18 Turkish students, 1 lecturer on trial for taking part in pride march*, 12 November 2019. Available at: <<https://www.wionews.com/world/18-turkish-students-1-lecturer-on-trial-for-taking-part-in-a-pride-march-261612>>.

¹² Kaos GL, *"The third annual "Queer Olympix" to be held in Istanbul was cancelled by authorities at the last minute because of "social sensitivities"*, 27 August 2019. Available at: <https://www.kaosgl.org/en/single-news/istanbul-authorities-ban-third-queer-olympix-because-of-social-sensitivities>

¹³ Lily Wakefield, *Police Launch Tear Gas at Istanbul Pride Parade in Turkey*, Pinknews, 30 June 2019. Available at: <<https://www.pinknews.co.uk/2019/06/30/police-launch-tear-gas-at-istanbul-pride-parade-in-turkey/>>.

¹⁴ European Commission, *Turkey Report 2019*, 29 May 2019. Available at: <<https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20190529-turkey-report.pdf>>.

¹⁵ Rights in Exile Programme, *Turkey LGBTI Resources*. Available at: <<http://www.refugeelegalaidinformation.org/turkey-lgbti-resources>>.

6. The statements of public officials have continued to perpetuate the atmosphere of discrimination and hate towards LGBTI+ people in Turkey. During a sermon on 24 April 2020, Ali Erbaş, the head of Directorate for Religious Affairs, continued his and his institution's policy marginalising and targeting LGBTI+¹⁶ and stated that homosexuality "*causes illnesses and withers the generation.*"¹⁷ His remarks triggered the spread of a Twitter hashtag stating "Ali Erbaş is not alone."¹⁸ His statement appeared to insinuate that LGBTI+ people were to blame for the spread of COVID-19, endangering the safe and non-discriminatory access of LGBTI+ people to medical care and further stigmatising them and those living with HIV. Subsequently, the Ankara Bar Association filed a complaint against Erbaş on the grounds that the sermon had amounted to a public provocation of hatred and hostility, which risks an increase in attacks against LGBTI+ people and "instigates a faction of the society to commit crime."¹⁹ In response, the Ankara Prosecutor's Office opened an investigation against the Ankara Bar Association on the grounds that the complaint amounted to an insult to the religious values adopted by a part of the public. In addition to this, several leaders publicly defended Erbaş's statements, including the Justice Minister²⁰ and President Erdoğan, who stated that an attack on the Dictorate "is an attack on the State and on Islam."²¹ The spokesman for the Parliamentary Human Rights Investigation Commission stated that Erbaş's words "remind us of our religious values in order to protect our families and generations." On 8 May 2020, several international organizations released a joint statement for an end to the hate

¹⁶ E.g. In a speech he delivered during a conference in July 2019, Ali Erbaş called homosexuality as "perversion" and "against nature", see: <https://www.kaosgl.org/en/single-news/hate-speech-from-the-president-of-turkish-religious-affairs>.

This speech was followed by the discriminatory and hateful remarks included by the Directorate in the 5 July 2019 Friday Khutba against LGBTI+ community and read in the mosques countrywide, see:

<https://www.kaosgl.org/en/single-news/turkish-religious-affairs-targeted-lgbtis-in-friday-khutbah>.

¹⁷ Hurriyet Daily News, *Religious authority's statement on LGBT sparks debate in Turkey*, 27 April 2020. Available at: <<https://www.hurriyetdailynews.com/religious-authoritys-statement-on-lgbt-sparks-debate-in-turkey-154246>>.

¹⁸ Ibid.

¹⁹ Duvar English, *Prosecutor's Investigation widens to include Diyarbakir Bar Association after criticism of top cleric*, 29 April 2020. Available at: <<https://www.duvarenglish.com/human-rights/2020/04/29/prosecutors-investigation-widens-to-include-diyarbakir-bar-association-after-criticism-of-top-cleric-comments-on-lgbt/>>.

²⁰ Tweet from the Justice Minister, 27 April 2020. Available at: <<https://twitter.com/abdulhamitgul/status/1254755658920071168>>.

²¹ Hamdi Firat Buyuk, *Turkish President Supports Top Cleric's Homophobic Comments*, Balkan Insight, 28 April 2020. Available at: <<https://balkaninsight.com/2020/04/28/turkish-president-supports-top-clerics-homophobic-comments/>>.

speech and targeted attacks against LGBTI+ people in Turkey.²² A report published by an LGBTI+ rights group SPoD (Social Policy Gender Identity and Sexual Orientation Studies Association) in June 2020 indicated that applications to their hotline regarding discrimination and violence due to sexual identity and orientation had doubled in the 45 days following Erbaş's comments.²³ This is especially concerning as LGBTI+ persons who fall victim of hate crimes frequently face discrimination under the judicial system, with judges routinely using Article 29 of the Penal Code to reduce the sentences of those who have killed an LGBTI+ person under the justification of "unjust provocation."²⁴

7. The hateful and discriminatory rhetoric against the LGBTI+ community has increased with the concision of Pride celebrations in Turkey. On 28 June 2020 the Chairperson for the Turkish Red Crescent and Vice-President of International Federation of the Red Cross Red Cross and Red Crescent Societies (IFRC), Kerem Kınık, stated that "[W]e will not let them [LGBTI+] violate the dignity of humanity. We will protect what is natural and the mental health of our children. We will fight whoever disrupts healthy creation and shows abnormal things as normal with the power of communication and inserts paedophilic dreams to the young minds as modernity."²⁵ The IFRC condemned his statements as wrong and offensive and stated that they are assessing their next course of action.²⁶ However, Kınık continued to defend his comments as being in line with the values of the IFRC and was publicly supported by several Government officials.²⁷ President Erdoğan's Communications Director, Fahrettin Altun, tweeted that "LGBTI propaganda poses a grave threat to freedom of speech. The IFRC became complicit in that attack by targeting [Kınık] - a doctor who devoted his entire life to protecting children around the world. We

²² ILGA Europe, *Joint Statement: End Hate Speech and Targeted Attacks Against LGBTI people in Turkey*, 8 May 2020. Available at: <<https://www.ilga-europe.org/resources/news/latest-news/joint-statement-end-hate-speech-and-targeted-attacks-against-lgbti-people>>.

²³ Reuters, *Pride Celebrations Stir Tensions in Turkey*, 1 July 2020. Available at:

<https://mobile.reuters.com/article/amp/idUSKBN2426FA?_twitter_impression=true>.

See also Kaos GL, "Market worker attacked a trans woman in Pangaltı/Istanbul, threatened her with death", 22 July 2020. Available at: <https://www.kaosgl.org/en/single-news/market-worker-attacked-a-trans-woman-in-pangalti-istanbul-threatened-her-with-death>.

²⁴ ILGA Europe, *Human Rights Violations of LGBT Individuals in Turkey: Submission to the UN Universal Periodic Review*, November 2014. Available at: <<https://ilga.org/wp-content/uploads/2016/02/Shadow-report-16.pdf>>

²⁵ Yildiz Tar, *Hatred against LGBTI's during the Pride Week*, Kaos GL, 1 July 2020. Available at:

<<https://www.kaosgl.org/en/single-news/hatred-against-lgbti-s-during-the-pride-week?fbclid=IwAR2fqT7Tarc7uAwgFMdIX4KTeaP1uCm-SPmSTGUt6s95-oQPzO43xE3ckLk>>.

²⁶ Reuters, *Turkey defends anti-gay tweet by head of Turkish Red Crescent*, 29 June 2020. Available at:

<<https://uk.reuters.com/article/uk-turkey-rights-lgbt/turkey-defends-anti-gay-tweet-by-head-of-turkish-red-crescent-idUKKBN2401VX>>. The IFRC deleted its comments later without providing any explanation.

²⁷ Ibid.

won't be silenced!"²⁸ In the same week, President Erdoğan gave a television speech, stating that "someone is attacking our national and spiritual values from the shadows again. Throughout human history, they've always been trying to poison young minds by normalising cursed perversions." The effect of such statements from key public figures continues to exacerbate the atmosphere of homophobia in Turkey and encourages hate crime and violence against marginalised LGBTI+ persons and LGBTI+ human rights defenders.

8. The public statements have fueled a discriminative discourse against the LGBTI+ community on social media. For example, in the month of June 2020 hashtags demanding the prohibition of LGBTI+ activities and a boycott of Turkish companies who expressed solidarity with global Pride Day were trending on Twitter. The use of the hashtag #YallahHollandaya ("go to Holland"), which has become a popular homophobic slur in Turkey.²⁹ Additionally, the hashtag #DecathlonBoykot ("Boycott Decathlon") was trending on Twitter after the retailer posted support for Pride month on social media.³⁰ However, other brands, such as the large retail brand LC Waikiki, prohibited the use of symbols associated with the LGBTI+ movement, such as rainbows and unicorns.³¹ 50 associations and foundations released a joint statement calling for a boycott of the brands supporting the pride and LGBTI+ rights.³²

TURKEY'S OBLIGATIONS UNDER DOMESTIC AND INTERNATIONAL LAW

Domestic Law:

9. The Turkish Constitution of 1982 (the Constitution) guarantees the fundamental rights and freedoms of every individual, such as the freedom of expression under Article 26 and the freedom of assembly under Article 34.³³ These rights and freedoms are guaranteed

²⁸ Reuters, *Pride Celebrations Stir Tensions in Turkey*, 1 July 2020. Available at:

<https://mobile.reuters.com/article/amp/idUSKBN2426FA?_twitter_impression=true>.

²⁹ Emma Powys Maurice, *'Go to Holland' is the bizarre new homophobic slur in Turkey after Muslim cleric curses LGBTI+ people*, Pink News, 2 May 2020. Available at: <<https://www.pinknews.co.uk/2020/05/02/turkey-homophobic-slur-go-to-holland-yallah-hollandaya-ali-erbas-president-erdogan/>>.

³⁰ Alaraby English, *Decathlon Turkey faces social media backlash over post supporting gay pride*, 5 June 2020. Available at: <<https://english.alaraby.co.uk/english/news/2020/6/5/decathlon-turkey-faces-backlash-over-gay-pride-post>>.

³¹ Diriliş Postası, *LC Waikiki says to stop immorality: LGBT symbols banned*, 8 July 2020. Available at: <<https://www.dirilispostasi.com/gundem/lc-waikiki-ahlaksizliga-dur-dedi-lgbt-sembolleri-yasaklandi>> .

³² P24, *"Call from 50 associations and foundations, including Ensar Foundation and Humanitarian Aid Foundation (IHH) to boycott the brands supporting the Pride"*, 30 June 2020. Available at: <https://t24.com.tr/haber/aralarinda-ensar-vakfi-ihh-nin-da-bulundugu-50-dernek-ve-vakifan-onur-haftasi-na-destek-veren-firmalara-boykot-cagrisi,887699>.

³³ *Constitution of the Republic of Turkey*, 1982, available at: <https://global.tbmm.gov.tr/docs/constitution_en.pdf>.

equally before the law under Article 10 which provides that *“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. ... State organs and administrative authorities are obliged to act in compliance with the principle of equality before the law in all their proceedings.”*

10. Despite this Constitutional principle, the existing anti-discrimination provisions in domestic law does not acknowledge gender identity or sexual orientation as the grounds for discrimination, not translating the Constitution principle into an applicable law.³⁴ Addressing this issue in its concluding observations, Human Rights Committee drew attention to lack of comprehensive anti-discrimination law in Turkey and requested Turkey to adopt a legislation prohibiting discrimination on all grounds, including gender identity and sexual orientation.³⁵
11. The Constitution recognises under Article 5 that a fundamental goal of the State is to provide the necessary conditions for the development of the individual’s material and spiritual existence. In 2017, amendments were made to Article 104, which assigns a position of responsibility to the President to ensure the implementation of the Constitution, conferring powers and duties both as the head of State and head of government.³⁶ This places a position of political responsibility onto the President and those under his political control. Article 90 of the Constitution stipulates that international agreements duly put into effect have the force of law and will prevail in the case of conflict with domestic law.
12. The Turkish Penal Code also enshrines equity before the law under Article 3.³⁷ Discrimination is banned under Article 122 and provocation to hatred based on social class, religion, race, sect or ethnicity is prohibited under Article 216.

International Law:

13. Discrimination is a severe breach of human dignity which goes against the very idea of human rights. Non-discrimination is a rule of customary international law which cannot

³⁴ E.g. The Law No. 6701 on the Human Rights and Equality Institution of Turkey does not list “gender identity” and “sexual orientation” among the prohibited grounds for discrimination. The Institution rejects the relevant applications made on this ground, see: Pembe Hayat, “Gender identity is not accepted as a prohibited ground for discrimination”, 11 February 2019. Available at: <http://www.pembehayat.org/haberler/detay/2061/ldquocinsel-kimlik-ayrimcilik-temelleri-arasinda-sayilmiyorrdquo>.

³⁵ Human Rights Committee, Concluding observations on the initial report of Turkey adopted at its 106th session, 15 October-2 November 2012.

³⁶ Abdulkadir Yıldız, *The Matter of Accountability of the President in the Presidential System of Turkey*, 2019, Kirikkale University Journal of Social Sciences, Vol. 9, No. 1, pp. 1-20.

³⁷ Turkish Penal Code, 2004, available at: <https://www.wipo.int/edocs/lexdocs/laws/en/tr/tr171en.pdf>.

be derogated from even in times of emergencies. According to General Comment No.29 of the Human Rights Committee, the right to non-discrimination cannot be derogated from in any circumstances.³⁸

14. The International Covenant on Civil and Political Rights (ICCPR) guarantees the rights and freedoms equally before the law and without discrimination under Article 26.³⁹ In this respect, Turkey has a duty to “prohibit discrimination and guarantee to all persons equal and effective protection against discrimination.”⁴⁰ Whilst the provisions do not explicitly refer to “sexual orientation” or “gender identity,” they conclude with the non-exhaustive words “other status” covering, among others, these grounds.⁴¹ Under Article 2(1) ICCPR, each State Party has an obligation to respect and to ensure to all individuals in its territory the rights of the Covenant without distinction ‘of any kind’. The prohibition of discrimination and the entitlement to equal protection against discrimination are enshrined under Article 2 and Article 7 of the Universal Declaration of Human Rights.⁴²
15. Turkey is party to several other international agreements which explicitly prohibit States from discriminating against individuals based on their sexual orientation and gender identity. In March 2012, Turkey ratified the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention), which places an obligation on State Parties not to discriminate on the basis of sexual orientation and gender identity under Article 4(3).⁴³ The European Convention on Human Rights (ECHR) prohibits discrimination under Article 14⁴⁴ and places a series of obligations of non-discrimination upon public authorities under the Protocol No. 12.⁴⁵
16. The International Covenant of Economic, Social and Cultural Rights (ICESCR) obligates States to ensure that a person’s sexual orientation is not a barrier to realising their rights enshrined under ICESCR.⁴⁶ In its General Comment 20, the UN Committee on Economic,

³⁸ Human Rights Committee, General Comment No.29, para. 8.

³⁹ International Covenant on Civil and Political Rights, December 1966. Available at: <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>.

⁴⁰ Ibid.

⁴¹ OHCHR, *Born Free and Equal*, 2019, p. 55. Available at: https://www.ohchr.org/Documents/Publications/Born_Free_and_Equal_WEB.pdf.

⁴² Universal Declaration of Human Rights, General Assembly Resolution 217 A, December 1948. Available at: https://www.ohchr.org/EN/UDHR/Documents/UDHR_Translations/eng.pdf.

⁴³ Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, May 2011. Available at: <https://rm.coe.int/168008482e>.

⁴⁴ European Convention of Human Rights, September 1953. Available at: https://www.echr.coe.int/Documents/Convention_ENG.pdf.

⁴⁵ Turkey signed but has not ratified the Protocol No. 12 to the ECHR as of 22 July 2020.

⁴⁶ International Covenant on Economic, Social and Cultural Rights, December 1966. Available at: <https://www.ohchr.org/en/professionalinterest/pages/cescr.aspx>.

Social and Cultural Rights stated that the ICESCR explicitly prohibits discrimination on the grounds of sexual orientation and gender identity.⁴⁷

Application of the Law:

17. While the Constitution provides that international agreements must take precedence where any conflict arises with domestic law, the silence of domestic law on LGBTI+ issues continues to enable authorities to take discriminatory measures on the justification of “morals of the society”, “public safety” and “unnatural sexual behaviour.”⁴⁸ Similarly, while Article 26 of the Constitution guarantees the freedom of expression of individuals, the lack of any specific statement relating to sexual orientation and gender identity is used by authorities to censor LGBTI+ content and expression on the grounds of protecting public morals. The lack of explicit legal protection for LGBTI+ persons not only means they frequently face discrimination regarding their right to housing, employment, family and education, but it also provides an “immunity for the perpetrators of hate crimes and has given an impression of tacit legal endorsement of acts of violence and discrimination.”⁴⁹
18. Under the 2017 amendments to the Constitution, the President has a political responsibility, as both the head of State and the head of government, to ensure the rights and freedoms of individuals. This includes ministers acting under his political control and other political leaders, who can be seen as possessing a public responsibility to protect the rights conferred under the Constitution.⁵⁰ The various statements of the President and other senior public officials inciting hatred and discrimination towards LGBTI+ groups undermines this political responsibility.
19. Under international law, the Turkish Government have a duty to protect individuals from discrimination. The ECtHR have consistently held that restrictions of the rights of LGBTI+ people cannot be justified on the grounds of protecting the morals or values of society and that public officials have a duty to refrain from making comments that pose a present

⁴⁷ UN Committee on Economic, Social and Cultural Rights, *General Comment No. 20: Non-discrimination in economic, social and cultural rights (Art. 2, para. 2 of the International Covenant on Economic, Social and Cultural Rights)*, 2 July 2019, E/C.12/GC/20. Available at: <<https://www.refworld.org/docid/4a60961f2.html>>.

⁴⁸ LGBTI Equal Rights Association, *Turkey*. Available at: <<https://www.lgbti-era.org/content/turkey>>.

⁴⁹ UK Home Office, *Country Policy and Information Note: Turkey Sexual Orientation and Gender Identity*, June 2017. Available at: <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/619683/Turkey_-_SOGI_-_CPIN_-_v2_0_June_2017_.pdf>.

⁵⁰ Polat Yamaner, *LGBTI+s in the middle of current politics: a brief review of the statements of senior public officials*, July 2020. Available at: <http://susma24.com/guncel-siyasetin-ortasinda-lgbtilar-ust-duzey-kamu-yetkililerinin-aciklamalariyla-ilgili-kisa-bir-degerlendirme/?fbclid=IwAR065pwdl9peeO_daLaUv4_3oulPonLoSiVlct6O2ODj8LQc0L0YsXGzME>

risk or imminent danger.⁵¹ It is clear, given the number of reported incidents of violence against LGBTI+ persons following the comments of the head of Directorate for Religious Affairs, that such statements fuel public violence and expose LGBTI+ people to intolerance. Indeed, the UN Special Rapporteur on Freedom of Religion and Belief has previously reminded States that they cannot use religious beliefs as a legitimate justification for violence or discrimination against the LGBTI+ community and that the right to freedom of religion protects individuals and not religions as such.⁵² Additionally, he expressed concern at the rise of political and religious campaigns that invoke religious freedom as a means of curtailing fundamental human rights. Under international law, hate speech based on sexual orientation or gender identity does not fall within the scope of the right to freedom of expression.⁵³

20. In a statement made on 17 May 2020, OHCHR experts recognised the correlation between COVID-19 and increasing discrimination against LGBTI+ people and urged States to take positive measures, such as the adoption of legislation, public policy and ensuring the work of LGBTI+ civil society groups.⁵⁴ The Turkish Government did not address or take any such measures to protect LGBTI+ groups throughout the pandemic and statements made by public officials and authorities referring to sexual orientation as a disease or a perversion encourage discrimination against LGBTI+ persons in their rights protected under international law, including their right to access medical attention under Article 12 ICESCR. The European Council, in their 2019 report, expressed their serious concerns at the widespread discrimination and the failure of Turkey to protect the fundamental rights of LGBTI+ people, including hate speech by government officials and the lack of specific legislation to address these crimes.⁵⁵

RECOMMENDATIONS

21. We request the Special Rapporteurs to remind the Turkish Government of its duty under international and domestic law to protect the dignity of all human beings and respect the equal rights of all citizens.

⁵¹ Press Release for ECtHR, *Erbakan v. Turkey*, Application No. 59405/00, 6 July 2006. Available at: <https://hudoc.echr.coe.int/app/conversion/pdf/?library=ECHR&id=003-1728198-1812055&filename=003-1728198-1812055.pdf>.

⁵² Human Rights Council, *Report of the Special Rapporteur on Freedom of Religion or Belief*, 20 March 2020. Available at: <<https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=25644&LangID=E>>.

⁵³ See ECtHR, *Vejdeland and Others v. Sweden*, App No. 1813/07, 9 February 2012, paras 50-60. Available at: <http://hudoc.echr.coe.int/fre?i=001-109046>.

⁵⁴ *Ibid.*

⁵⁵ European Commission, *Turkey 2019 Report*, 29 May 2019. Available at: <<https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20190529-turkey-report.pdf>>.

22. We further request the Special Rapporteurs to urge the Turkish Government, its public officials and other high-profile political and religious individuals, to uphold their obligations to protect the rights and freedoms of all individuals without discrimination against sexual orientation or gender identity.
23. We request the Special Rapporteurs to remind the Turkish Government, its public officials and other high-profile political and religious individuals of their duty under international law to refrain from making statements which may incite intolerance or pose a present risk of violence.
24. We request that the Special Rapporteurs urge the Turkish Government to amend its Constitution to include explicit provision for sexual orientation and gender identity under Article 10 and introduce domestic legislation in line with its international obligations, explicitly protecting the fundamental rights and freedoms of LGBTI+ people without discrimination.
25. We would be grateful if you would kindly notify us of what action you are minded to take on this matter and to inform us, in due course, of any response received from the Turkish State. We would also be grateful if you are able to acknowledge receipt of this letter.

Yours faithfully

Ayşe Bingöl Demir, Turkey Human Rights Litigation Support Project

(and on behalf of the following NGOs endorsing the letter)

Civil Rights Defenders

Eşit Haklar İçin İzleme Derneği

Hakikat Adalet Hafıza Merkezi

Kaos GL

London Legal Group

Medya ve Hukuk Çalışmaları Derneği

Özgürlük İçin Hukukçular Derneği

P24 Bağımsız Gazetecilik Derneği

Research Institute on Turkey

Sosyal Politikalar, Cinsiyet Kimliği ve Cinsel Yönelim Çalışmaları Derneği

Türkiye İnsan Hakları Vakfı

Yaşam Bellek Özgürlük Derneği

Yurttaşlık Derneği