



TURKEY

# “We Need a Law for Liberation”

Gender, Sexuality, and Human Rights in a Changing Turkey

HUMAN  
RIGHTS  
WATCH



**“We Need a Law for Liberation”  
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a Changing Turkey**

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## Glossary of Key Terms

**Biological sex:** the biological classification of bodies as male or female, based on factors including external sex organs, internal sexual and reproductive organs, hormones, and chromosomes.

**Bisexual:** a person who is attracted to both sexes.

*Escinsek:* a synonym for homosexual.

**Gay:** a synonym for homosexual. Sometimes used to describe only males who are attracted primarily to other males.

**Gender:** the social and cultural codes used to distinguish between what a society considers “masculine” or “feminine” conduct or appearance.

**Gender nonconforming:** a term used to refer to a person who does not conform either to expectations for their assigned sex or to the binary nature of male and female gender assignments.

**Gender expression:** the external characteristics and behaviors which societies define as “masculine” or “feminine”—including such attributes as dress, appearance, mannerisms, speech patterns, and social behavior and interactions.

**Gender identity:** a person's internal, deeply felt sense of being male or female, or something other than or in between male and female.

**Heterosexual:** a person attracted primarily to people of the opposite gender.

**Homosexual:** a person attracted primarily to people of the same gender.

**Honor killing:** the murder of a person, usually a woman, suspected of having offended the “honor” of her family or community, generally on the basis of sexual

behavior deemed transgressive—for example, engaging in a sexual relationship outside of heterosexual marriage.

***lbne***: pejorative term used to refer to a man attracted primarily to someone of the same gender, derived from an Arabic term for the “habitual bottom” in sex between men.

**Lesbian**: a female attracted primarily to other females.

**LGBT**: lesbian, gay, bisexual or transgender; an inclusive term for groups and identities sometimes also associated together as “sexual minorities.”

***Namus***: honor. Generally perceived as social standing in the public sphere and mainly defined through women’s’ sexuality and her behavior.

**Same-sex**: term often used to describe the relationships of lesbian, gay, bisexual and some transgender people.

**Sexual orientation**: the way in which a person's sexual and emotional desires are directed. The term categorizes according to the gender of the object of desire—that is, it describes whether a person is attracted primarily toward people of the same or opposite gender or to both.

***Top***: literally, “ball”: in slang, generally means a passive partner in a same-sex relationship between men.

***Töre***: custom

**Transgender**: one whose inner gender identity or outward gender expression differs from the physical characteristics of their body at birth. Female-to-male (FTM) transgender people were born with female bodies but have a predominantly male gender identity; male-to-female (MTF) transgender people were born with male bodies but have a predominantly female gender identity.

## I. Summary

### Visibility and Violence

Many lesbian, gay, bisexual, and transgender (LGBT) people in Turkey lead lives of fear, paralyzed by stigma. When singled out for harassment, violence, or other abuse—still an everyday occurrence for many—they also fear going to the authorities for assistance, and often for good reason: they have long experienced harassment and sadistic treatment by police and dismissive attitudes among judges and prosecutors. Despite reforms, new cases of such mistreatment continue to emerge, as this report demonstrates.

While the predicament faced by LGBT people in Turkey is similar to that faced by this community in many other countries, stringent norms for “masculinity” and “femininity” are particularly ingrained in both Turkish society and the state itself. The endurance of such norms, reflected in this report, perpetuate inequality and promote violence in many of the cases we document.

Every transgender person and many of the gay men Human Rights Watch spoke to report having been a victim of a violent crime—sometimes multiple crimes—based on their sexual orientation or gender identity. Beatings in cruising areas, robberies by men or gangs who arranged to meet their victims over the internet, and attempted murder were among the documented abuses.

The lesbian or bisexual women Human Rights Watch spoke with reported pressure, often extreme, from their families. Some were constrained to undergo psychological or psychiatric “help” to “change” their sexual orientation. Many faced physical violence.

The picture is not unremittingly bleak; there have been positive developments in recent years. Turkey today is full of mixed signals. The situation was illustrated most pointedly by the process leading to the adoption of a revised version of the Criminal Code in mid-2005. A year before the new code was adopted, the Justice Commission of Turkey’s Parliament voted to include new language in the provision barring



discrimination in a wide range of areas of public life: it would have included “sexual orientation” as a protected status. The move almost certainly came in response to Turkey’s pending application for admission to the European Union (EU).

The move galvanized Turkey’s small lesbian, gay, bisexual, and transgender movement, which rallied in support of including “sexual orientation” in the new law. Lambda Istanbul and the Ankara-based KAOS-GL, its two largest LGBT organizations, joined women’s groups in a 500-strong march on the Parliament on September 15, 2004—demanding the provision be kept, and that other articles used to harass minorities and restrict rights be changed.

Ultimately, the language mentioning sexual orientation was dropped and replaced with that found in Article 10 of Turkey’s Constitution—promising equality “irrespective of language, race, color, sex, political opinion, philosophical belief, religion, and sect, or any other reasons.” This defeat was perhaps predictable—since in late 2003, the prime minister’s spokesman said, “homosexuals cannot be members” of the ruling party: “They can establish their own.”<sup>1</sup> However, activists were hopeful because Turkey had seen many positive legislative changes in preceding years, many in order to comply with the EU accession criteria.

Conditions in Turkey are still in flux today, with greater freedom and invidious attitudes coexisting. On the positive side, civil society in Turkey is notably freer than it was a decade ago, and gays and lesbians feel it; so too do some in Turkey’s large communities of transgender people. Lambda Istanbul, KAOS-GL, and the Ankara-based transgender support group Pink Life (Pembe Hayat)—though small, hampered by legal difficulties and harassment—benefit from an environment in which censorship is relaxing, and civil society enjoying greater if still restricted space. In February 2005, a member of parliament from the ruling party and a representative of the Ministry of Health attended a conference in Ankara on the human rights of LGBT people—a significant symbolic step.

Yet violence has followed visibility. Lesbian, gay, bisexual, and transgender people’s greater exposure has led to greater danger for many ordinary people. This report

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<sup>1</sup> Hüseyin Özalp, “May homosexuals be members of AKP?” *Sabah*, April 15, 2003.

provides evidence of those dangers in five areas: abuses against gay men, still too often abetted and at times perpetrated by the police themselves; continuing family strictures on lesbian women, with often violent repercussions, again with woefully inadequate police response, if not police complicity; the particularly severe stigmatization and violence faced by transgender individuals; discrimination in the military and medical profession; and continuing restrictions on LGBT groups' freedom of association and expression.

Homophobic violence has come to the attention of Turkish authorities as an endemic problem, and the first uncertain steps are being taken to address it. In 2003 Dr. Şevki Sözen, professor of forensic medicine at Istanbul University, and a former doctor in the sexual-violence unit of the Justice Ministry's Forensic Sciences Department, gave Human Rights Watch figures that he said came from a study launched by the ministry. Among gays and lesbians interviewed for the study, he said, 37% reported having undergone physical violence and 28% reported sexual violence. Among transvestites and transsexuals, 89% reported physical violence, and 52% sexual violence. Among all cases, Dr. Sözen told us, only 42% of victims sought help and only 26% turned to police. Less than one-sixth of the latter said that their cases had been adequately addressed by the criminal justice system.<sup>2</sup>

The study in question remains unpublished; Dr. Sözen could not tell Human Rights Watch the number of subjects, or the methodologies used to select and interview them. While these figures must therefore be treated as inconclusive, they are fully consistent with what we found in our interviews.

### *Gay men*

Gangs go to cruising areas and visit internet websites where gay men meet—looking for chances to inflict violence or robbery, and driven by prejudice against those who are not “masculine” enough. Police rarely respond adequately; sometimes they blame or further harass victims. Courts lower the sentences they impose on killers of gay men because they conclude the men's gayness itself “provoked” the killers.

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<sup>2</sup> Human Rights Watch interview with Dr. Şevki Sözen, Istanbul, October 9, 2003.

In several notable instances, perpetrators of violence first had sexual encounters with gay victims, leading former Istanbul deputy police chief Halil Yilmaz to conclude: “In our country, homosexual homicides do not result from discrimination. The violence is not *against* homosexuals, but *between* homosexuals.”<sup>3</sup>

The fact that people who experience homosexual desire may engage (along with people who do not) in homophobic assaults does not mean they do so as homosexuals—or that their violence can be dismissed as internecine to a shared identity between victim and assailant. Self-hatred reflects, and distills, a climate of hate. Bulut, a working-class, gay-identified man in Ankara, told Human Rights Watch that “homosexuals face the greatest violence from people who feel homosexual desires but don’t and can’t accept themselves.” The stigma that precludes self-acceptance—the intensity of prejudice against homosexual conduct, or against “feminized” males—drives such violence, not the desire itself. It is this stigma that police and other authorities must do much more to combat. Statements like that of Yilmaz quoted in the paragraph above show the distance yet to be traveled.

### *Lesbian and bisexual women and girls*

Lesbian and bisexual women and girls suffer from familial, community, and social refusal to allow them to make autonomous sexual choices. The traditional dominant understanding of Turkish “femininity” means, as both feminist and lesbian activists told us, remaining under the control of a man.

Multiple cases detailed in this report demonstrate the virulent and too often violent rejection within the home that girls and women experience when they are identified as lesbian or bisexual. And just as courts are lenient when it comes to killers of gay men, in part “blaming the victim,” so too they continue to be lenient when it comes to violence against women and girls deemed to have tarnished the “honor” (*namus*) of their families through expressions of sexuality deemed unorthodox.

Once again, certain reforms notwithstanding, police and other authorities are not doing enough. In its 2005 concluding observations on Turkey, the UN Committee on

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<sup>3</sup> Quoted in Janoff, “Tales from the Turkish Crypt,” Xtra Magazine, July 1, 2004 (emphasis added), <http://archives.xtra.ca/Story.aspx?s=3130209> (accessed April 21, 2008).

the Elimination of Discrimination Against Women recommended, “continuous training for public officials, *especially law enforcement officials*, the judiciary and health-care providers, so that they are fully sensitized to all forms of violence against women and can adequately respond to it.”

Many of the testimonies we collected show that authorities still have not addressed the problem; confrontations with police continue and can be fraught. Outed in the 1990s by a journalist, a woman named Ferda faced steady harassment from neighbors: “They would call police and say that because I was a lesbian I was a terrorist, or I was pimping other women.” She complained to the police. The policeman in charge of the investigation, she said, was the officer implicated in the death under torture of the journalist Metin Göktepe.

He came to my house. He didn’t find anything—he was actually very understanding about the case. But then he created a sexual threat over me for years. He said, “If you ever have a lover, I will come and make love to both of you.” That was his fantasy. He tormented me in this way for years. He came once a week; and because I never had a lover he took money—hundreds of millions of [Turkish] lira; all because I was a lesbian.

### *Transgender people*

Turkey’s transgender people defy gendered norms in an unequivocal way: their looks and demeanor differ from the expectations for their birth sex. The military regime in the early 1980s severely repressed any form of social deviance—and flouting standards of gendered conduct, turning a “masculine” body into a “feminine” one, was particularly despised. Turkey banned the complex of cosmetic alternations and hormone therapies known as “sex-reassignment surgery”; when Bülent Ersoy, a celebrated singer, obtained the procedures abroad, her music was also prohibited.

After a long legal struggle, in 1988 the Turkish Civil Code was finally amended, to state that “[i]n cases where there has been a change of sex after birth, documented by a report from a committee of medical experts, the necessary amendments are

made to the birth certificate.” Male-to-female postoperative transgender people could obtain the “pink card” certifying their new gender.

Yet many transgender people do not want the surgery; others cannot afford it. Those whose state IDs do not correspond to their apparent gender—and such IDs are required for entry to all manner of institutions and access to all manner of services—remain in a legal limbo, facing enormous prejudice. Denied employment, many transgender people practice sex work—which redoubles the prejudice against them.

Memories of repression run long. In the months before the 1996 United Nations Human Settlements Program (Habitat) conference was to be held in Istanbul, authorities evidently decided on further steps to clean up the city. A community of dozens of transgender people had grown up on Ülker Street, in the Cihangir district of the city. One police officer, Süleyman Ulusoy, chief of Beyoğlu's police force at the time, determined to drive them from the area.<sup>4</sup> Over months, police arrested transvestites on the street and tortured them. Even after the community was broken up, persecution of transvestites in central Istanbul continued unabated. One victim told Human Rights Watch about the time:

The police would pick us up constantly. They used to cut our hair, electroshock our bodies, leave us nude in ice-cold water. They would throw us naked in a cell with broken windows, in the winter; we were splashed with water and thrown in the room. I would offer sex to the police so they wouldn't torture me.

In Turkey, the Penal Code criminalizes encouraging or facilitating sex work; however, prostitution in licensed brothels is legal. As we will see below, transgender people are commonly compelled to do sex work, but only women (by birth) have the right to work in the licensed brothels—and few if any post-operative transgender people,

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<sup>4</sup> Ulusoy himself became widely known as “Hortum Süleyman” (Süleyman the Hosepipe) after one of his allegedly favored instruments for beatings. Demet Demir, a leader of the transgender community on Ülker Street, was subjected to repeated arrest and torture. After years, she managed to bring Ulusoy for trial on charges of repeatedly torturing her. The case suffered repeated postponements; finally, in 2003, Demir received a verdict. Ulusoy received a 21-year sentence—which was immediately suspended under the terms of Turkey's amnesty law. Human Rights Watch interview with Demet Demir, Istanbul, October 7, 2003. See also “Chief Commissar Ulusoy Got Amnesty and Is Released,” *Hürriyet* newspaper, February 19, 2003.

even with the pink card, have gained that right due to discrimination. Hence transgender sex workers are driven onto the street, at the mercy of the police. There, they are subject to arbitrary arrest, prohibitive fines, and repressive regimes of medical testing: a steady round of humiliations, where revulsion at their not conforming to “maleness” or “femaleness” adds to the intensity of abuse.

### *The medical profession and the military*

Medical mythologies—the belief, discredited in most medical systems, that homosexuality is an illness—are an insidious way that expectations about gender and sexuality persist. The powerful Turkish military, in flagrant violation of the European Convention on Human Rights (ECHR), still bans gay men from serving, claiming that homosexuality is a disease. In an ironic state of affairs, many men feel obliged to acknowledge themselves as “sick” in the eyes of the Turkish state (in the absence of any recognition of conscientious objection), in order to be banned from serving in the military. For many gay men, military service would bring harassment and violence because of their sexual orientation. But the humiliation does not end with their obligatory admission that they are “ill.” The military inflicts humiliating and degrading examinations on men who inform it of their homosexuality, sometimes involving intrusive anal tests to “prove” their sexuality. Applicants can be forced to produce photographs of themselves engaged in gay sex—for perusal by the Turkish state’s representatives.

### *Freedom of expression and association*

Authorities themselves harass human rights defenders. Lambda Istanbul, KAOS-GL, and Pink Life have faced state attempts, using national laws protecting “morality” or “decency,” to censor them or close them down. The Law on Associations, basis for the creation of these NGOs, has no express restrictions to the formation of LGBT organizations. Nonetheless, the vague definition of “public morals” is a major obstacle for these groups. KAOS-GL, and more recently, Lambda Istanbul were raided under the belief that they engage in or facilitate illegal activities, despite their objectives being clearly defined in their constituency documents, mainly, to provide support to lesbian, gay, bisexual, and transgender people in Turkey. As will be shown below, such actions by the Turkish authorities constitute clear violations of international law.

\* \* \*

“Government doesn’t like you. Society doesn’t like you. And you don’t like yourself,” one gay man said of his situation in Turkey.<sup>5</sup> The interlocked fears and prejudices must be loosened and lifted. This is true because the lives and well-being of Turkey lesbian, gay, bisexual, and transgender people are at stake. It is true because of Turkey’s desire to join the EU; the latter has made clear its commitment to ending discrimination based on sexual orientation and gender identity in acceding states. And it is true because international human rights law—and the principles of respect for human dignity and equality on which the human rights system is founded—demand Turkey to eliminate “[p]rejudices and customary and other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.”<sup>6</sup>

Many Turkish lesbian, gay, bisexual, and transgender activists have spent years working with other oppressed groups, trying to shake the grip of a repressive state upon society. Now they feel the possibility of a different state, defined by the rule of law and defending the individual. One told Human Rights Watch: “We need a law for liberation.”

## Key Recommendations

*Turkey should establish unequivocal constitutional and legislative guarantees of equal rights for lesbian, gay, bisexual, and transgender people.*

Since its re-election in July 2007, the Justice and Development Party government has vowed that it will introduce a new constitution. (At this writing the draft had not appeared). The government is also in ongoing dialogue with the European Union about the conditions for Turkey’s possible accession, a dialogue which in turn has contributed to a process of legislative reform. These are prime opportunities to enshrine formal equality for sexual minorities in Turkey, a change that would provide victims new avenues of redress and have tremendous symbolic importance. After

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<sup>5</sup> Human Rights Watch interview with Kenan (name changed), Istanbul, October 22, 2003.

<sup>6</sup> CEDAW, article 5(a).

decades of legalized discrimination, it would be an affirmation of the essential human dignity and equality of all people in Turkey.

Sexual orientation and gender identity should explicitly be prohibited as grounds for discrimination in any new constitution. Turkey should also enact a comprehensive anti-discrimination law that specifically prohibits discrimination on the grounds of sexual orientation and gender identity. Such steps should be accompanied by repeal or reform of conflicting legislation, including vague and sweeping laws against “offenses against public morality” that are consistently used by police to harass, arrest, and persecute lesbian, gay, bisexual, and transgender people and rights defenders.

*End discrimination in the Turkish military.*

Turkish authorities should take immediate action to end the ban on homosexuals serving in the armed forces by amending the Turkish Armed Forces Health Requirement Regulation to exclude sexual orientation from the List of Illnesses and Disabilities. Turkey is the only European member of the North Atlantic Treaty Organization to ban gay men from military service, and its ban persists nine years after the European Court of Human Rights ruled against a similar ban in the UK. In addition, the medical community should bar the participation of any medical professional in the humiliating and scientifically discredited examinations the military uses to prove homosexuality. It should also fully disavow the notion of homosexuality as a mental or physical pathology.

If obligatory military service is deemed to be obligatory, Human Rights Watch urges Turkish authorities to recognize the right to conscientious objection for all men in Turkey.

*The EU should make Turkey’s record on sexual orientation and gender-identity-based discrimination integral to its review of human rights progress in Turkey.*

The EU continues to be an important partner of Turkey, a role highlighted by Turkey’s continuing EU candidacy. It is in the interests of both parties that the EU work with Turkey on the adaptation of its laws and policies to bring them into compliance with European standards. Turkey’s employment practices, for instance, should be brought



into compliance with European Union Directive 2000/78/ED, “establishing a general framework for equal treatment in employment and occupation,” including through guarantees of nondiscrimination for lesbian, gay, bisexual, and transgender workers.

A more detailed and complete set of recommendations is set forth at the end of this report.

## **Methods**

This report is based on research conducted in a five-week field visit to Turkey in October and November 2003 and a four-week field visit to Turkey in October and November 2007, as well as prior and subsequent research. Overall, Human Rights Watch staff members conducted detailed interviews in 2003 with 56 people who furnished testimonies of discrimination or abuse based on sexual orientation and gender identity, and with 39 people in 2007. In 2003 we interviewed people in Ankara, Istanbul, and Izmir; in 2007, in Ankara, Istanbul, and Van. However, the majority of the people to whom Human Rights Watch researchers spoke had migrated from other regions in Turkey.

As noted in relevant citations throughout the report, the identities of some of these persons and certain identifying information have been withheld to protect their privacy and safety.

Interviewees were identified largely with the assistance of the Turkish non-governmental organizations Lambda Istanbul and the Ankara based, KAOS-GL, both of which provide information and services to lesbian, gay, bisexual, and transgender people in Turkey. These interviewees may have had greater access to information and services to protect against abuses based on sexual orientation than those without comparable connections in other regions in Turkey where no LGBT organizations exist or people are yet to organize.

Human Rights Watch also interviewed seven officials from seven different Turkish government agencies, United Nations officials, human rights NGO leaders and activists; academics; and members of the health profession. Questions were sent to local authorities and to the head of the police. Human Rights Watch has yet to

receive responses to these letters, copies of which are found in the appendices to this report. All documents cited in this report are either publicly available or on file with Human Rights Watch.

## II. Background: Imposing Gender: Identities and Histories

Turkey is a unique society, its present-day identity still built around the rapid “modernization” it experienced under Mustafa Kemal Atatürk. That means, as well, that its identity is also still founded on the gender norms that its “modernization” imposed.

One Turkish sociologist writes that Kemalism was “perhaps the first [political] movement in the world that set the alteration of the existing civilization as its primary objective.” Its political interventions aimed first at clothing, appearance, and conduct, “penetrating daily life,” targeting “daily practices rather than political ones,” especially “the relationship between the sexes.”<sup>7</sup>

A “modern” Turkey meant “modern” gender roles. Under the patriarchal aegis of Atatürk a new image of Turkish masculinity arose, strong, set in opposition to past “decadence,” and inculcated through key institutions like the military. Meanwhile, women were unveiled and encouraged to enter public space: but, the same writer notes, “Women’s attainment of a new social identity outside the private realm became possible only when they stripped off their sexual identities.’ Women had to be ‘untouchable,’ embodying ‘virtue’ and ‘honor.’”<sup>8</sup> Men were repressed if they failed to conform; women, if they took liberationist rhetoric too far, and tried to discover themselves outside heterosexual partnership.<sup>9</sup> Today, secularists and Islamists alike define much of their politics through issues of gender, behavior, and dress.<sup>10</sup>

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<sup>7</sup> Nilüfer Göle, *The Forbidden Modern: Civilization and Veiling* (Ann Arbor: University of Michigan, 1996), pp. 57 and 71.

<sup>8</sup> *Ibid.*, p. 79.

<sup>9</sup> See particularly Elif Shafak, “Transgender Bolero,” *Middle East Report*, Vol. 34, No. 1, spring 2004.

<sup>10</sup> One anthropologist observes: “So much symbolic weight had been attached to the question of women, in the period of the new nation-state’s character formation, that it is no surprise for contemporary secularists to differentiate themselves once again from local culture and Islam especially on the basis of gender.” Yael Navaro-Yashin, *Faces of the State: Secularism and Public Life in Turkey* (Princeton: Princeton University, 2002), p. 27. The same scholar notes one woman’s remark on the night of the 2002 elections: “hepsi cinsiyet ile ilgili!” (“It’s all about gender!”).

Many people told us that they see homophobia in Turkish society as intimately connected to the project of modernization, including “modernizing” gender roles. One gay man told us, “Modernization came so fast, people claimed that they cast off traditional culture altogether. They rejected all Ottoman culture, became Kemalists overnight. Any traces of homosexual experience before the revolution were simply dismissed as part of the Ottoman past.”<sup>11</sup> Another said, “Under Ottoman Islam, homosexual behavior was a sickness—bottoms were sick, they had to be taken care of. But you did not beat or abuse them. Gay-bashing, the hatred of a thing called ‘gayness,’ is imported from the West.”<sup>12</sup>

This report shows that norms around gender and sexuality, masculinity and femininity, “honor” and “shame,” are deeply ingrained in Turkish society. They are ingrained in the practice of state authorities who see any deviation from them—including men or women who simply do not look or act as expected of their gender—as “immoral” or “indecent.” They are ingrained in a powerful military that roots out and humiliates men whose sexuality makes them insufficiently “manly.” They are ingrained, too, in the letter of the law, which still sweepingly punishes behaviors that can be seen as defying the standards of Turkish manhood, womanhood, or Kemalist morality.<sup>13</sup>

“Identity” is an important concept for many people in Turkey—lesbian, gay, bisexual, and transgender people among them. Again and again men and women we interviewed spoke of the hard-won importance of having built an identity for themselves.<sup>14</sup> “The system identifies and categorizes you,” one pre-operative

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<sup>11</sup> Human Rights Watch interview with Cihan, Istanbul, October 15, 2003.

<sup>12</sup> Human Rights Watch interview with Royan, Istanbul, October 22, 2003. For discussions of norms for gender and sexuality in the Ottoman period—and a contrast with how the Kemalist regime imposed strict gender roles based on concepts of what was “modern”—see Khaled el-Rouayheb, *Before Homosexuality in the Arab-Islamic World, 1500-1800* (Chicago: University of Chicago, 2005), and Dror Ze’evi, *Producing Desire: Changing Sexual Discourse in the Ottoman Middle East* (Berkeley: University of California, 2006).

<sup>13</sup> Despite the reforms, the recently enacted criminal and procedural codes retained provisions barring “indecent,” “exhibitionism,” and “offenses against public morality,” historically often used to restrict LGBT people’s rights. Recent amendments to a 1934 law on the powers and duties of the police have given the police almost unlimited power to patrol and control public spaces. See, e.g., Turkish Penal Code, art. 225: “(1) Anyone who conducts a sexual act in public or partakes in exhibitionism, will face prison for 6 months to one year.” [TCK. madde 225: “(1) Alenen cinsel ilişkide bulunan veya teşhircilik yapan kişi, altı aydan bir yıla kadar hapis cezası ile cezalandırılır”].

<sup>14</sup> None of the terms in question here—“lesbian,” “gay,” “bisexual,” but most particularly “transgender”—would be endorsed unequivocally by all the people they appear to describe. In particular, “transgender” (used to describe people whose gender

transgender woman told Human Rights Watch, describing her lifelong struggle to find a way of defining herself. “We have to take the categories and change them. First we have to take back the categories from mass media and society to own them, and then we can start redefining them.”<sup>15</sup> And then find the ones we can live in.”<sup>16</sup>

In part this importance derives from the difficulty of carving out a space for individuality, much less sub-cultural community, in modern Turkish society where a nationalist affiliation with “Turkishness” has been expected to take priority over, and subsume, every other sense of self. Gay, lesbian, bisexual, and transgender activists speak often of the importance of identifying with other minority identities long suppressed by the state: whether religious minorities such as Alevis, or ethnic identities such as Kurdish. Yet it also reflects the tenuousness of an identity such as “homosexual,” which has no traditional resonance in Turkish culture. The term used in Turkish—*eşcinsel*, “same-sex”—is a recent and synthetic one, modeled after the Western phrase. Other terms with longer roots—*ibne* (derived from an Arabic term for the “habitual bottom” in sex between men), *dönme* (“reversed”), *top* (“ball”)—are used for men, generally imply being a passive partner, and have come to be taken as intensely abusive.<sup>17</sup>

Homosexual conduct has existed everywhere, and throughout history; the term and identity are recent. In Turkey, the development both of the identity, and of the peculiar form of the prejudice against it, is arguably connected to the country’s difficult experience of modernization. What is certain that the “gay” or “homosexual”

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identity or expression differ from the gender to which they were assigned at birth) has no exact equivalent in Turkish; most of the people described by it here would defined themselves as *travesti* (transvestite) or *transseksuel* (transsexual).

<sup>15</sup> Newspaper articles routinely paint transgender people not as victims of violence, but as dangerous aggressors. See, for example, “Transvestite Terror,” *Hürriyet* newspaper, January 8, 2002; “Embargo on Transvestites,” *Radikal*, July 20, 2001; “Transvestites in action!” *Sabah*, February 14, 2000; or “Transvestite Rebellion,” *Sabah*, July 16, 2000. Many articles depict transvestite protests against police repression or social injustice as violent provocations justifying still-more-violent retaliation.

<sup>16</sup> Human Rights Watch interview with Esmeray, Istanbul, October 1, 2003.

<sup>17</sup> There is no reason to think those epithets were always as insulting as today. One 19<sup>th</sup> century traditionalist writer, lamenting the changes of late Ottoman modernization, criticized the growing opportunities for flirtation with women: “Ladies, men proliferated, catamites declined in number. It was as if the people of Lot had perished. The love and affection for young men, renowned in Istanbul from time immemorial, had been shifted to girls.” Cevdet Pasha, Ma’ruzat, quoted in Ekrem İşin, *Everyday Life in Istanbul*, trans. Virginia Taylor Saçlıoğlu (Istanbul: VKY, 2001), p. 126. The bemused tolerance such a passage suggests, however, has more to do with the passing of a regime of gender separation than with acceptance of a phenomenon the writer would have recognized as “homosexuality.”

identity shared by many men and women in Istanbul or Ankara is not shared, and should not be attributed to, many men who have sex with men or women who have sex with women in the country. What is also evident, from story after story, is that the pressure to define an “identity” as either “gay” or “straight” among the latter group of men, in the context of modern-day Turkey, can generate a self-loathing that may lead to violence.

Transgender people are usually included in the term “eşcinsel”—but also have a different realm of identities. The term “transgender” (embracing anyone whose gender identity differs from his or her birth sex) has no exact equivalent in Turkish. Most people use the terms *travesti* or *transseksüel*; the former usually means people who have not had “sex-reassignment surgery,” the latter people who have—but the terms are often used loosely. One transgender activist estimated that there are more than 3000 transgender people in Istanbul alone, only 1000 of whom are “*transseksüel*.”<sup>18</sup>

While some transgender people speak of a widespread desire in their communities for the supposed security that surgery and the “pink card”—an identity paper legally classing them as women—can bring, others disparage that security, and affirm they are happy without it.<sup>19</sup> Another told Human Rights Watch the reason why she has not sought the surgical procedures and the legal change—pointing again to the complicated constructions of masculinity in Turkey. “We all do sex work,” she said, “and 90 percent of our clients want a penis. You understand? They want to be fucked by a penis in a dress.”<sup>20</sup>

For a long time, many transgender people shared an almost stereotypical life-course. There was often an upbringing in a rural community; rejection by the family as they began to reveal their gender identity in adolescence; and flight to a major city, where they met other transgender people who integrated them into sex work. As a young transgender woman, Seyhan recalls, “You sometimes became a *domez*, [the name

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<sup>18</sup> Human Rights Watch interview with Ece, Human Resources Foundation, Istanbul, October 17, 2003.

<sup>19</sup> By contrast, some transgender people who were born female but identify as male told Human Rights Watch they strongly want a blue card identifying them as male. Toprak, for instance, told us, “I have thought about this all my life; it is the only desire in my life.” Human Rights Watch interview with Toprak, November 6, 2007.

<sup>20</sup> Human Rights Watch interview with Seyhan, Istanbul, October 17, 2003.

given to young transgender people who want to transition into women], helping the *transsexuals* and working. To be a transvestite, you have to start that way.”<sup>21</sup> People often spoke to Human Rights Watch about the family-like atmosphere of transgender people living together in mutual support. Over decades, transgender people in Turkey even developed their own *argot*, called *kelavca*: a mixture of terms from Roma and other minority languages, as well as popular culture. Demet Demir told us,

The language kept police and heteros from understanding. Once I made a dictionary of 210 words; now there are new words emerging. And the language is always changing, moving from old transvestites to new ones. Old ones say *paparon* for police; new ones say “baby.”<sup>22</sup>

In the wake of the massive police crackdowns on Ülker Street and other transgender communities, that sense of solidarity is now, older transgender people said, “shattered and scattered.”<sup>23</sup>

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<sup>21</sup> Ibid.

<sup>22</sup> Human Rights Watch interview with Demet Demir, Istanbul, October 7, 2003.

<sup>23</sup> Human Rights Watch interview with Ece, Human Resources Foundation, Istanbul, October 17, 2003.

### **III. Living in Fear: Harassment and Abuses against Gay Men**

#### **A. Cem's Story**

"I knew this guy over the internet," Cem Başeskiöğlü began. Thirty-two and soft-spoken, he was accustomed, when we interviewed him, to speaking about what happened to him in 2001. He arranged to meet the man whom he'd chatted with several times—"He said he was gay and he came from Ankara"—in an Istanbul café. After their second meeting,

I invited him home. I live alone.... So we wound up back at my place. I told him I was hungry, asked if he was too. We ate together, and I made tea. He asked how many sugars I wanted, and when I said two he put them in and stirred them for me—he seemed very gentle. Then he started talking about his family, where they came from. He was very insecure, he wasn't out at all, to anyone, he said. ...

We had sex and everything was OK. Nothing was suspicious. I said, "I have to work tomorrow, and I have to sleep." He said, "Fine, if you want I can go." I said, "You can't go home at this hour"—it was around 2 a.m. The charger for his mobile phone was finished so he put his card in mine, then called someone. That should have made it easier afterward to find him.

Then I slept. After half an hour I woke. He was sitting on the corner of the bed. I asked why he didn't sleep and he said he didn't want to sleep: he said, "Go on sleeping." I did. I don't know how much time passed. It was from my neighbors that I learned what time it was when I started shouting. While sleeping I felt a pain. I don't hurt so often. Then another. When I opened my eyes he was sitting on top of me, holding my knife and stabbing me. Up and down, like a piston. I felt the last stab but I didn't think it was real. I thought I was still dreaming.



I pushed him away, and got up. He pulled my hair from behind. I fell and saw my intestines coming out of my stomach. I wanted someone to hear me so I kicked the door.

We started to fight—I protected myself for a long time, several minutes. He tried to cut my throat. After much struggle I understood I was losing. What was strange was, I felt a great strength. I had been stabbed seventeen times—but I was still fighting.

I grabbed the sharp blade of the knife with my hand. It slashed my hand but I got it away from him. I asked him why he did it. He said, “OK, I’m gay.” And he went.

An old man who lived on the first floor came up. I think he was shocked because I was bleeding so much. Like a flood. I begged for help. The room was covered with blood. I collapsed, my strength gone, feeling sharp pains. I closed my eyes and prepared to die. I lay like that for a long time. Finally the police came.

They were shouting, asking if an ambulance would come or not. The ambulance finally arrived. They were so incompetent—they couldn’t get the stretcher unfolded for twenty minutes. And then I was in the hospital for 25 days.

The investigation, Cem said, “was different from what I expected. I had never heard the police behaved kindly to gay people. But they were very *correct* in how they talked to me. My being gay came up in the investigation—I told them after I woke up from my operation. And one of my friends had been interrogated during my operation and told them. They didn’t ask me but said they knew my private life and asked if I accepted it or not, and I said yes. ‘Don’t hide anything from us.’ The policeman was around thirty, very intelligent-sounding. ‘Your sexual identity is none of our business,’ he said. Even the word he used for identity, *kimlik*, sounded very modern.”

But, Cem said, “The police never found the man. And I believe it is because I was gay.” He explained that, despite the kind approach in the hospital, there was no sign the police did much to follow up.

The police could find the number he dialed—the last call remained on my cell even though the SIM card was gone. The policemen told me in the hospital, “We may have a clue from that number.” Then they shut up.

My belief, and I can’t prove it, is they didn’t bother to investigate fully—they prefer not to do it because the victim is gay. It’s not just their prejudice: I think if they found the guy, he would just say he was “defending himself”; he would get off lightly. So why should they bother?

In 2003, Cem spoke at a panel on “Extreme Violence in Homosexual Homicides” at the annual congress of the European Academy of Forensic Sciences, in Istanbul. Officials from the city’s police also addressed the subject of “gay murders.”

Even in the conference, the two high-ranking police officers—the deputy head of the police, the head of the homicide department—behaved strangely around me. It’s very funny telling it, but very inhumane. They shook hands with other participants. I said nothing to blame them. ... But they didn’t shake my hand, didn’t come near me. They treated me like a pariah. And we sat at the same table on the dais for three hours.<sup>24</sup>

## **B. Intolerance and Impunity**

Cem’s story is rare: that of someone who faced an extreme form of homicidal, homophobic violence, and lived to tell the story. There is little reason, however, to think that either the possibility of such violence, or the ambivalent and

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<sup>24</sup> Human Rights Watch interview with Cem Başeskiöğlu, Istanbul, October 3, 2003.

discriminatory character of official responses, have changed substantially in the years since.

On February 24, 2006, Istanbul police found the body of Baki Koşar, a 41-year-old journalist, in an apartment in the neighborhood of Feriköy in the Şişli district of Istanbul. According to the police report he died six days earlier.<sup>25</sup> Four years earlier, Koşar wrote an article called “Gay Murders.” Gülşen Tunç is the lawyer representing Koşar’s family in the criminal procedure against his murderer. She recalls reading the article soon after the murder took place. “It gave me the goosebumps,” she said. “It was as if he was telling us about his own murder.”<sup>26</sup>

Tunç told Human Rights Watch that police found Koşar’s decomposing body in the living room, while bloodstains covered much of the rest of the apartment. Initially the police caught one suspect, but released him for lack of evidence. They arrested another man on March 30, 2006, in Muğla, a city in the south-west of Turkey, and charged him with the murder.

The defendant Serhan Bağlan, stated before the Istanbul court that he met Koşar on the internet. According to the defendant Koşar described himself as a passive homosexual, gave him his address, and invited him over to his apartment.

The defendant told the judge:

I thought that in the intercourse Baki would be passive and I would be the active, but he showed me that he wanted to pass to the active side by doing *elle sarkıntılık* [harassing me]. I told him that such a thing could not happen. Baki said that he could get into intercourse by both being active and passive. I cannot accept being passive! I went out of the bedroom, we had a quarrel. Baki Koşar said to me “Who do you think you are?” He went to the kitchen, took a knife and walked towards me.

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<sup>25</sup> Human Rights Watch had access to the file and read the records of their Internet chat, the autopsy, and the sentence.

<sup>26</sup> Human Rights Watch interview with Gülşen Tunç, Istanbul, November 14, 2007.

The defendant described an altercation: “Apparently I stabbed him numerous times, but I don’t remember this because I lost consciousness.”<sup>27</sup> The forensic report registered 32 stab wounds in different places. Twenty-one were deep wounds, seven of them lethal, and 11 were considered cuts. The cause of death was “internal bleeding caused by the stabbing.”<sup>28</sup> The defendant said he took Koşar’s cell phone and tape recorder. He added: “I went to the bathroom and washed my hands, put on my coat and ran away.”<sup>29</sup>

The No. 6 Criminal Court in Istanbul convicted the accused, ruling on February 27, 2007:

The attitude and the attack of the deceased—who proposed active intercourse—towards the defendant has been considered an occasion of provocation to the suspect’s benefit. The effect that this proposal of intercourse has created on the suspect has to be taken into account.<sup>30</sup>

Under article 81 of the Turkish Criminal Code (TCK), which provides that “anyone who murders intentionally is subject to life imprisonment,” Bağlan should have received a life sentence. However, the Court decided he committed murder under *tahrik* (incitement, provocation), one of the grounds for alleviating the sentence under article 29 of the TCK. The Court considered *elle sarkıntılık* as grounds for provocation

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<sup>27</sup> Tunç was forced to find a person who testified to his passive role in relationships. “We asked if he could be a witness to say whether Baki had been active or passive in the intercourse. He didn’t want to at first; afraid he would be a suspect himself: He was really affected. He was hesitant, but ... he came to court to say that Baki Koşar hadn’t had a demand or wish to be active during their intercourse.” The Court’s admission of a defense based on the victim’s “active” or “passive” role in a relationship reveals the prejudicial attitudes of the judicial authorities and is in itself discriminatory. Human Rights Watch interview with Gülşen Tunç, Istanbul, November 14, 2007.

<sup>28</sup> Human Rights Watch had access to the autopsy document dated May 23, 2006.

<sup>29</sup> There is ample evidence that in many countries, gay, lesbian, bisexual, and transgender people are victims of serious violence, including murder because of their sexual orientation and that these murder victims often undergo exceptional brutality, sometimes called “overkill” (extreme harm beyond that necessary to cause death). But this evidence does not support any conclusion that gay men sharing a common, open identity routinely commit such savage acts of violence against other gay men. The “overkill” stems from hate—which can indeed include the internalized hatred felt by someone unable to accept or acknowledge his own desires because of an atmosphere of hate outside him. See, e.g., “Homicide in Homosexual Victims: A Study of 67 Cases from the Broward County, Florida, Medical Examiner’s Office (1982-1992), with Special Emphasis on ‘Overkill,’” *The American Journal of Forensic Medicine and Pathology*, vol. 17, No. 1 (March 1996), pp. 65-69 (comparing number and extent of injuries in homosexual and heterosexual homicide victims and finding that homosexual homicides were more violent).

<sup>30</sup> Human Rights Watch interview with Gülşen Tunç, Istanbul, November 14, 2007.

and reduced the defendant's sentence to 18 years.<sup>31</sup> The defendant's good behavior in court further reduced the sentence: thus he received a total of 15 years.<sup>32</sup> Both Koşar's family and the defendant's lawyers appealed.

Tunç explains how the judicial system discriminates in the cases of gay men. "Because of this 'active-passive' role they [the Court] decreased the sentence. This is how effective this argument is." She recalls the first hearing. "The attitude of the members of the court surprised me a lot. They were very indifferent. They did not question the suspect thoroughly." She claims that "[t]he defendant's lawyer was very comfortable: he didn't do much defending, it seemed members of the court were doing the lawyer's job."<sup>33</sup>

She also stated she was surprised when one of the prosecutors quietly told her that Baki Koşar was apparently gay and that the suspect went to his apartment for a regular chat without knowing that he was gay. The prosecutor added, "If the Court decides that it was legitimate self-defense and decides to give a few years of imprisonment, or if they decide on his release, don't be surprised."<sup>34</sup>

She added, "[a] person who commits a customary killing gets a life sentence. But if someone commits a gay murder, it is pretty obvious the slight sentence they will get."<sup>35</sup>

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<sup>31</sup> See Turkish Penal Code, article 29: "Unjust provocation": "(1) If an individual undertakes a crime while in a state of anger or mental anguish induced by an unjust action, their aggravated life sentence penalty can be reduced to 18-24 years, or their life sentence penalty can be reduced to 12-18 years. In other instances, the sentence can be reduced by [an amount ranging from] ¼ to three quarters." [TCK, Madde 29 "(1) Ceza Sorumluluğunu Kaldıran veya Azaltan Nedenler, Haksız tahrik": "(1) Haksız bir fiilin meydana getirdiği hiddet veya şiddetli elemin etkisi altında suç işleyen kimseye, ağırlaştırılmış müebbet hapis cezası yerine onsekiz yıldan yirmidört yıla ve müebbet hapis cezası yerine oniki yıldan onsekiz yıla kadar hapis cezası verilir. Diğer hâllerde verilecek cezanın dörtte birinden dörtte üçüne kadarı indirilir."]

<sup>32</sup> See Turkish Penal Code, article 62: "(1) Good behavior can lead the reduction of a life sentence to 25 years. It must be reduced to 1/5 of other crimes. 2) The past of, previous social relations of, and actions of the culprit after arrest will be recognized when evaluating sentence reduction." [TCK, Madde 62: "(1) Fail yararına cezayı hafifletecek takdiri nedenlerin varlığı hâlinde, ağırlaştırılmış müebbet hapis cezası yerine, müebbet hapis; müebbet hapis cezası yerine, yirmibeş yıl hapis cezası verilir. Diğer cezaların beşte birine kadarı indirilir.(2) Takdiri indirim nedeni olarak, failin geçmişi, sosyal ilişkileri, fiilden sonraki ve yargılama sürecindeki davranışları, cezanın failin geleceği üzerindeki olası etkileri gibi hususlar göz önünde bulundurulabilir. Takdiri indirim nedenleri kararda gösterilir."]

<sup>33</sup> Human Rights Watch interview with Gülşen Tunç, Istanbul, November 14, 2007.

<sup>34</sup> Ibid.

<sup>35</sup> Ibid.

Tunç believes that murders like Koşar’s should be considered honor killings. The exact truth of what happened the night of Koşar’s death may never be known. Both these stories, however, suggest that criminal-justice officials take “honor” in a dual sense, both of which tend to deny full protection of the law to men like Başeskiöglü or Koşar who are seen as desiring sex with other men.

On the one hand, a man identifying as “gay” is without “honor,” a “pariah,” as Başeskiöglü felt police saw him. On the other, a man who is the object of homosexual desire—particularly of possible penetration—is legitimated in feeling his “honor” threatened, and that can justify or even require the violence of 17 or 32 knife thrusts in “self-defense.”

In both cases, ideas about what it means to be a man may mitigate murder.

Every transgender person and many gay men Human Rights Watch spoke to reports having been a victim of violent crime—sometimes multiple crimes—based on their sexual orientation or gender identity. These crimes ranged from beatings in cruising areas, to robberies by men or gangs who arranged to meet their victims over the internet, to attempted murder.<sup>36</sup>

Homophobic murders have become a particularly contested subject. Activists allege that police do not adequately investigate murders of gay men and transgender people, and do not take possible motives of hate into account. According to KAOS-GL at least 15 gay men and transgender people were reported murdered between January and October 2007.<sup>37</sup> Halil Yılmaz, former deputy head of the Istanbul police, stated both publicly and to Lambda Istanbul in 2003 that in the eight preceding years there were 36 known murders of gay men in Istanbul; 34, he claimed, had been solved.<sup>38</sup> While the numbers seem impressive on first glance, the criteria Yılmaz

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<sup>36</sup> “Cruising areas” is a term used for places where gay men, and men who have sex with men, meet other men—often open spaces giving a degree of privacy, or where loitering draws little attention, such as parks or railway stations.

<sup>37</sup> “Hate murders continue,” (Nefret cinayetleri sürüyor), *Birgün* daily newspaper, Istanbul, November 28, 2007, [http://www.birgun.net/bolum-56-haber-54065.html#haber\\_basi](http://www.birgun.net/bolum-56-haber-54065.html#haber_basi) (accessed April 20, 2008).

<sup>38</sup> Human Rights Watch interview with Cihan, Lambda Istanbul, Istanbul, October 4, 2003. The figures are also cited in “How has homosexual Cem Başeskiöglü been stabbed seventeen times?” *Hürriyet* newspaper, October 5, 2003, an article based on the panel described above. The figure apparently does not include transvestites and transsexuals. Halil Yılmaz’s office declined a faxed request for a meeting with Human Rights Watch in October 2003.

cited as revealing the victims' sexuality suggest both persistent stereotypes about homosexuals, and the strong possibility that other such crimes have gone unclassified. Yılmaz has alleged that gay victims can be identified through "naked pictures, Vaseline, and porno videos ... found in their homes"—and the fact that "many victims wear red tanga underwear."<sup>39</sup> Yılmaz has also referred to homosexuality as among the "sexual perversions" [cinsel sapıklığı].<sup>40</sup> And he has stated that "[i]n our country, homosexual homicides do not result from discrimination. The violence is not *against* homosexuals, but *between* homosexuals."<sup>41</sup>

Yılmaz's statement is a rhetorical move familiar to campaigners against homophobic crimes in other countries—blaming the stigmatized victim, and the victim's identity and community. It dangerously misunderstands the nature of much homophobic violence. Cem Başeskioğlu told Human Rights Watch that the man who stabbed him "was dying of self-hatred. And he decided to take it out by killing me."<sup>42</sup>

As already noted in the summary of this report, homophobic violence cannot be dismissed, whether it comes from people who might or who might not experience homosexual desire. Such violence is ultimately driven by prejudice, not by desire itself and, thus, it should be equally condemned.

Further, when the court lessened Baki Koşar's killer's sentence, it chose to treat a man's sexual "approach" to a man (not just an "attack") as in itself a mitigating "occasion of provocation." This is a version of what has been called the "homosexual panic defense." Courts' susceptibility to believing that the "humiliation of being objectified by someone's homosexual affections" can drive someone to kill is, as one writer notes, a sign of whether a "legal system—and the

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<sup>39</sup> Quoted in "Tales from the Turkish Crypt," *Xtra Magazine*, July 1, 2004—an article by Douglas Victor Janoff, a Canadian researcher who has investigated homophobic violence, and who was also on the panel with Yılmaz. The substance of the statements is confirmed in the article in *Pazar Hürriyet*. The curious myth that homosexuals can be identified by their styles of colored underwear is also prevalent among police in Egypt. See: Human Rights Watch, "In a Time of Torture: The Assault on Justice in Egypt's Crackdown on Homosexual Conduct," March 2004, <http://www.hrw.org/reports/2004/egypto304/> (accessed April 25, 2008).

<sup>40</sup> Quoted in "How has homosexual Cem Başeskioğlu been stabbed seventeen times?" *Hürriyet* newspaper, October 5, 2003.

<sup>41</sup> Quoted in Janoff, "Tales from the Turkish Crypt," *Xtra Magazine*.

<sup>42</sup> Human Rights Watch interview with Cem Başeskioğlu, Istanbul, October 3, 2003.

society it reflects and supposedly protects—is willing to condone prejudice and excuse violence against gays.”<sup>43</sup>

Meanwhile, the visibility of lesbian, gay, bisexual, and transgender people amid expanding political openness has made them exposed, easy targets of violence. Royan, a gay man who has himself been beaten and robbed, told Human Rights Watch “there are several types of people doing gay-bashing.”

One group is fundamentalists. They think that going after gays and leftists are similar things, and approved by God. The second group is working-class guys who are sort-of-nationalists, brainwashed by these fascist movements like the MHP in a superficial way. They think gays are rich and decadent. So they rob them, and, if they resist, kill them. And the third group does it just for money, without ideology.<sup>44</sup>

Kenan stressed the impact of increasing social inequality:

Fathers become jobless, families poor. They tell their sons, “Go away, earn your own money, I can’t support you.” And they become gangs. Taksim [a district of Istanbul] is particularly dangerous. Taksim for the jobless becomes a potential to earn money. ...There are straight people prowling Taksim looking for victims, looking for money. Any victims. But if you look different—if you look effeminate or gay—it makes you an ideal victim, because you will not go to the police. ... Gay people and transvestites face this danger because they are public: in the streets, in the bars. We are in front of those who need money. And now I am afraid if this goes on, it will become a world of gangs like in collapsing countries. No one will go out; everyone will be too afraid.

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<sup>43</sup> Kara S. Suffredini, “Pride and Prejudice: The Homosexual Panic Defense,” *Boston College Third World Law Journal* 279 (2001), pp. 287-88; Gary David Comstock, “Dismantling the Homosexual Panic Defense,” 2 *Tulane Journal of Law & Sexuality* 81, (1992), p. 81.

<sup>44</sup> Human Rights Watch interview with Royan, Istanbul, October 22, 2003.



It will become a division not between gay and straight, but between rich and poor, your money or your life.<sup>45</sup>

As the internet has become increasingly important in Turkish life, gay men increasingly are targeted through it. Bakı Koşar is one case—but Human Rights Watch researchers heard many more. Can, 30, was beaten up in the winter of 2005 by two men, one of whom he had met in a chat room.<sup>46</sup> Volkan, a 23-year-old student, “spoke” to a man in an internet chat room in April 2002, and then arranged a meeting one night in his Ankara neighborhood. At the rendezvous, however, they were joined by seven other men—who dragged Volkan into the darkness of a nearby park.

“Is this a faggot?” they asked. “Is he giving his asshole?” They kept hitting me: on my face, and pounding my head against the iron bars of a fence till it was bleeding. They kept asking me questions: if I answered in my own words, they would hit me. “What kind of a man are you?” I said, “Is this manhood, eight to one?” When I questioned their manhood they got angrier, started hitting me harder. I was bleeding and when I got their clothes bloody, they got furious: “You’re ruining our clothes.” They were saying to each other, “Why don’t you fuck this one? Why don’t you take him?” I was very afraid of being raped. Then they threatened to castrate me. “Are you a transsexual? We’ll make you one.” They started telling me to get undressed. One of them broke a bottle on a stone and walked towards me with the jagged end.<sup>47</sup>

The men became distracted when another gay man—and potential victim—appeared to be entering the park, and Volkan escaped.

Other gangs still target areas gay men are known to frequent. Cenk told Human Rights Watch of going to a cinema in Izmir, “not a gay movie theater, but a place that

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<sup>45</sup> Human Rights Watch interview with Kenan (name changed), Istanbul, October 22, 2003.

<sup>46</sup> Human Rights Watch interview with Can, Istanbul, November 16, 2007.

<sup>47</sup> Human Rights Watch interview with Volkan, Ankara, October 12, 2003.

on weekends and at night is full of gay men, and men who don't call themselves gay but have sex with gays." A man seemed to cruise him:

Then suddenly he was screaming, "What are you doing, *ibne*, I'm going to kill you!" I ran out into the lobby to get the usher—and the guy hit me in the face and my glasses flew off. Suddenly two others came out to block me. Suddenly it was obvious: this little gang had come to the cinema looking for gays and for trouble. I ran as fast as I could. I'm sure these psychopaths do it in a planned way, and they come there in groups.<sup>48</sup>

Not only gangs but individuals visit cruising areas to assault or rob gay men. Murat told Human Rights Watch how, in June 2003, he went to a park in Ankara that is "a gay venue, especially in the evenings." He met a man there, who walked with him and held his hand "Then he said, 'I will dig you a grave in the middle of the street and put you in it. You did something wrong.'" At knifepoint, he stole 25 million Turkish Lira (TRY)—about US\$20 at the time. Murat said the same man had robbed another gay friend:

Gays are easy targets for a guy like this; they'll immediately give away all they have. For social reasons: because of what might happen to them. If you go to the police, they won't treat you objectively. Then there's the family factor, needing to hide your homosexuality. Plus these systematic pressures: you already feel guilty over your sexuality, you are affected by the image of homosexual men as easily scared, as weak, unlike straight men who are powerful and in control. He expects you to slip into the role automatically.<sup>49</sup>

Indeed, mistrust of the police is widespread among Turkey's lesbian, gay, bisexual, and transgender people. In Izmir, Deniz, a gay student, said, "All of us have heard the story of Ülker Sokak [the Istanbul street where police drove out a transgender community]. You don't need anything extra to give you an idea of how the police

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<sup>48</sup> Human Rights Watch interview with Cenk, Izmir, October 19, 2003.

<sup>49</sup> Human Rights Watch interview with Murat, Ankara, October 12, 2003.

treat sexual difference. You can extrapolate from the facts.”<sup>50</sup> And Kenan’s statements reflected the same deep mistrust:

The police will not help: police will say to the victim, you deserve it. So, gays and transvestites don’t say anything to the law. Because they will make fun of us: most of them will say, “Where were you?” “In the bar.” “When?” “At night.” “You’re an *ibne*. You were asking for it.” Just to be out at night, at a certain age, as a man, makes them think you are gay! And some police take money from the gangs. All policemen will deny this, but it is clear. Most of the mafia and gangs are not just with the permission of, but are because of the police.

“The police in Turkey must be cleaned up,” Kenan said. One key step in addressing the spread of violence based on sexual orientation and gender identity is changing both the language, and the thinking, of the criminal justice system.

### C. Emre’s Story

Emre, in his mid-twenties when we talked to him in 2003, is a middle-class professional who had moved to Istanbul in the late 1990s to study. He also learned to fear the police. An incident in 2001 still affects him. “I have been seeing psychologists since that time. I think my lack of self confidence comes from that,” he told us.<sup>51</sup> It happened in the early hours of December 30, 2001. He had spent the night drinking and celebrating at a gay bar. As he was walking home, a man offered him a ride.

He looked good, very well-dressed. It didn’t seem a risk. I got in the car. He asked where I had been. I said the name of the bar. He said, “Isn’t that a gay place?” He asked was I a student, where was I from. I told him a lot about my life. In front of my apartment building, he asked what floor I lived on. I showed him the apartment window. He said: “Can you handle the stairs by yourself?” And as I stepped down, he

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<sup>50</sup> Human Rights Watch interview with Deniz, Izmir, October 19, 2003.

<sup>51</sup> Human Rights Watch interview with Emre (name changed), Istanbul, October 18, 2007.

said, “Stop. You’re not getting out.” He started the engine, and we were moving. He started insulting me. “Aren’t you ashamed of doing *ibne* [faggot] things? Letting yourself be fucked?” Then he showed his ID, and it was a real police ID. He took my ID card, my cell phone. He gave me a paper, asked me to write down my mother’s and father’s names and numbers. ...

He attacked me physically—grabbed my head by my hair and hit it against the window. He said, “I will take you to the main police station, Vatan Caddesi, and make you a Christmas present for the policemen there. I’ll tell your parents—they’ll learn what you are. Let’s see if you can ever go home again.”

I think he was of a high rank—on the way, when we met some police cars, officers in them greeted him with respect. Then he started saying, “You might be saved if...” Meaning I had to pay. He asked what I had in my wallet. I hadn’t much. He gave me the telephone and said, “Find the money.”<sup>52</sup>

They drove to meet a friend of Emre and got the money from him (80 million TRY altogether, about US\$100 then). Since he was now with his friend, Emre refused the officer’s demands that he get back in the car. “He took off with my cell phone and ID card.” Emre’s roommate continued the story.

It was 3 a.m. or so. I was still awake; we had a woman guest staying with us, and she was sleeping. The bell rang. The voice over the intercom said, “Police.”

The man came up. He said, “We have arrested Emre.” I asked for his ID: He showed it, it was real. He said he needed the charger of Emre’s cell phone. Such nerve! So daring! And it’s so cheap just to buy a charger on the streets!

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<sup>52</sup> Human Rights Watch interview with Emre, Istanbul, October 1, 2003.

I asked: “Why was Emre arrested?” He didn’t answer at first, then said: “Prostitution.”

When the girl woke up, he asked for her ID and mine. He stormed around to make us both afraid. He was small but he had a mean, thuggish face. ... I asked where Emre was: he said he didn’t know, he might have been taken to the police lockup. As he was leaving he said, “He’ll be out before morning, don’t worry.”

We couldn’t sleep, of course. We tried calling Emre. Then in less than an hour the phone rang and it was the officer. He wanted me to come downstairs.

I had about 80 million on me. I knew he would ask for money. I gave most to the girl and took 30 million with me. I put 20 million in one pocket and 10 in another—I wanted to save some. He took me in the car and we started driving—in very dark streets, with sudden turns, trying to disorient me, making me feel psychologically lost. I kept asking what Emre had done, and he kept saying, “prostitution.”

I defined prostitution for him—sex for money. “Did he ask money from you?” He got angry—“No, it’s not that way! If someone asks for sex from you, it’s prostitution!”

He got brutal. Finally I asked him how much money he wanted directly. ... I offered 10 million. It’s all I have. He laughed—“It’s too little.” He said he was taking me to the police lockup too.

He did a U-turn to make me think we were going there. Then he said, “We’ll go home and take your girlfriend to the police lockup too. I’m sure you’re selling her. I’m sure you’re having sex. I can accuse you of many things once we get to jail.”<sup>53</sup>

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<sup>53</sup> Human Rights Watch interview with Uğur, Istanbul, October 1, 2003.

Emre's roommate eventually gave the officer all the cash he had on him, and was released.

Emre said, "The cop must be a professional in this. He knows what gay people are afraid of—the way he cajoled me to give details, show my apartment. He had my ID, my parents' numbers—everything. I lived in fear. I started making up stories to tell my family if he called them. I was in sheer terror."<sup>54</sup> Emre still believes that coming in direct contact with the police is dangerous and avoids contact.

#### **D. Police Abuse: "The Problem is You!"**

On a Saturday night in June 2007, police raided Tekyön, a club for gay men in Istanbul. Bawer, age 27, and his friends had arrived there around midnight.

We had been there about 10 minutes when the music suddenly stopped. We were expecting the usual ID check. We started to get suspicious 10 minutes later. I gathered some people and said to leave. When we got to the door we saw two policemen blocking the entrance. Then we started hearing shouting from the inside. Police were swearing and insulting people. .... When one of our friends went to ask an officer what is the problem, the officer told him "the problem is you!"<sup>55</sup>

That attitude seems common. Eren Keskin, a lawyer and former chair of the Human Rights Association in Istanbul, notes that "There is nothing in Turkish law that says homosexuality is a crime." Yet she also points to the irrelevance of the rule of law where social stigma and police authority are unchecked, and intersect. "We live in a society in which police power is very great, and militaristic. Police and military—they take homosexuality as a vice. This is why people who are homosexual face a great deal of violence."<sup>56</sup>

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<sup>54</sup> Human Rights Watch interview with Emre, Istanbul, October 18, 2007.

<sup>55</sup> Human Rights Watch interview with Bawer, Istanbul, October 20, 2007.

<sup>56</sup> Human Rights Watch interview with Eren Keskin, Human Rights Association, Istanbul, October 2003.

Emre's story illustrates that intersection, and that violence. It shows how police can exploit the stigma against homosexual conduct for profit, through extortion. Gay men and lesbians are less consistently subject to police abuse than transgender people, because they are less visible: their bodies do not necessarily proclaim their identities; secrecy is an option. But gay men are not exempt from police ambitions to uncover, and rid cities and towns of "deviance." The stigma attached to homosexuality and the possibility of concealment make them ready targets for police harassment.

Bulut, 30, was waiting for a friend in Ankara when a police car stopped him.

The cop asked me for my ID card. I asked why—"Don't ask, *ibne* [faggot], just hand it over." He took me to the car. There were two men in it, one of them was the friend whom I was going to meet. I didn't know who the other one was but he was gay too. The cop asked me how I knew them. There were two other policemen also. They were all in uniforms, regular police. "You're a man like a ram [a colloquial expression for a strongly-built man]: why are you doing *ibnelik* [being a faggot]?" One of the policemen said, "There's no room in Ankara for faggots." He hit me on the face, and another one spat in my face. They asked if I had other homosexual friends, and asked for their phone numbers and home addresses. I said I only knew the friend they were keeping in the car and I didn't know any other gays. They put me in the car and we drove around. They were saying, "Show us the homosexuals if you see them on the street."<sup>57</sup>

Finally, the three men were taken to an isolated street. The police took Bulut's money; one officer struck him in the face, saying, "I will kill you if I see you again doing *ibnelik*." Then Bulut was left there while the others went on.

Beyond the business of blackmail, police scrutinize known cruising areas, such as Taksim Square in Istanbul, and harass men there as part of efforts to "clean up" the quarters—modeled on their campaigns against prostitution. Deniz told Human Rights

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<sup>57</sup> Human Rights Watch interview with Bulut, Ankara, October 13, 2003.

Watch how one night “I was in Taksim, with my boyfriend. I was about to say goodbye, we hugged. A policeman was staring at us. He came over suddenly, and put handcuffs on me and him.”

He said: “What are you doing? You are both men! Why are you doing that to each other?” I was very angry and afraid. But I stood up to him—I said, “Being homosexual is nothing to be ashamed of. We were saying goodbye. Why are we handcuffed together?”

He loaded us into a police minibus. And as we got underway, he kept asking who we were and what we were doing. I demanded to know why we had been arrested and where we were being taken. The cops said, “[y]ou’ll go to the contagious diseases hospital.”

Instead, they took us to Beyoğlu police station. They said we were “suspects”—I have no idea what we were suspected of. I demanded to call a lawyer, and my aunt here in Istanbul. They said, “[t]he officer in charge isn’t here; you aren’t allowed to phone.”<sup>58</sup>

They took our shoelaces and our belts. And they gave us papers: on this document it was written that we were detained because of security. ...I refused to sign it. But saying that didn’t change the reality that we had to sign. So we signed it! ...They told us to sign or we would never get out.

Deniz and his friend were released the next afternoon. “They gave up the idea of testing us at the contagious diseases hospital: I don’t know why.” No charges were pressed. “It was meant to scare us, to discourage us from being seen in public.”<sup>59</sup>

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<sup>58</sup> According to the Criminal Procedure Code (CMK), those detained by police on suspicion of committing a crime have the right to see a lawyer from the first moment of detention. Article 150 of the 2005 CMK revision included the provision that minors and anyone suspected of a crime whose upper sentence limit was five years would be automatically assigned legal aid by the local bar association. This provision was changed in December 2006: now legal aid is only assigned to those detained on suspicion of crimes with a minimum sentence of five years. Law No. 5271, as amended on June 1, 2005, available at <http://www.ceza-bb.adalet.gov.tr/mevzuat/5271.htm> (accessed April 25, 2008).

<sup>59</sup> Human Rights Watch interview with Deniz Yıldız, Istanbul, October 1, 2003.



The document given to gay men who are prohibited from serving in the military (an issue discussed in a later chapter) can also be an excuse for abusing gay men. In 2005 Şule, who now identifies as a transgender woman but who at the time identified as a gay man, was stopped by the police on the street. “Police knew I was gay,” Şule explained.

I had just gone through the process to get my military exemption, but for some reason they didn’t put it in my record... I was stopped by the police and taken to the police station. One of the policemen harassed me. He beat me, made me strip and clean the bathroom naked. I wanted to press charges. I complained to the high officer. He said he would take care of it, but then made fun of the situation. He told me to apologize to the guy that abused me!<sup>60</sup>

Undercover police also harass gay men. Atilla, 33 when we spoke to him in 2003, comes from a middle class background and works for a private company in Ankara. He told Human Rights Watch how he began a December night dancing with friends at a gay bar in Ankara. A flirtatious man in his twenties approached him insistently throughout the evening.

Atilla avoided him. But after midnight, he found two men seizing his arms and hauling him toward the door. When Atilla resisted, one showed a police ID.

Outside, they shouted, “Bring the handcuffs.” I still didn’t believe they were cops... They just cuffed me and pushed my head into the car. There were two cars, plain, not official. I was scared as hell. I knew I hadn’t committed any crime, but anything could happen.

In the car, one cop said, “Now your mother’s fucked, son of a bitch.”

Four police filled one car, and four or five the other, “including the guy who had cruised me”—who had been an undercover officer.

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<sup>60</sup> Human Rights Watch interview with Şule (name changed), Istanbul, October 22, 2007.

Every word out of their mouths was a swear word. “Son of a bitch, we’re going to fuck you,” and so on. The guy driving was playing the good cop. He’d ask, “What have you done, beautiful [*güzelim*]. Don’t make trouble, make it easy for us.” I said: “If I knew what my offense was, it might be easy.” My mouth was dry with terror, my teeth were chattering. They said they were from the Narcotics Division, and the man in the bar had said I was selling drugs.

They kept insulting me: *ibne*, ass-giver [*götveren*], and so on. It was Ramadan—so they said, “You don’t stay at home at Ramadan, you come to these places to get your asses fucked. And you blame our married friend” —the man who cruised me—“for your perversion!” ... Asking the same questions over and over. About dealing drugs but also about all the gays I knew. And physically shoving and slapping me, and still with the names—*ibne*, *ibne*. I felt I was going crazy.

Finally they said, “Now we’re going to the police station.” They asked if I’d ever been there, and told me there I could see my mother’s cunt.

They drove to the Second Branch of the Ankara Security Directorate—the city police headquarters notorious for torture from the 1980s on. “It has been called the ‘Building of Shame,’” Atilla remembers.

During the “incidents” in 1980s, mothers would look at that building and cry.<sup>61</sup> They took me there. In the foyer, one of the guys from the other car came to me and held me by my ears and hit my head against the wall. I had earrings and he pulled them to hurt me. He was swearing and telling me to speak. The cop was holding me by my hair and hitting my legs. I was handcuffed and they were swinging me by my hair. With his knee he hit my stomach and my testicles. I doubled

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61 In the 1980’s the military seized power. The incidents Atilla refers to are the torture of detainees in police stations by members of the police and security forces, which were documented at the time. See: Human Rights Watch, World Report, 1989, <http://www.hrw.org/reports/1989/WR89/Turkey.htm#TopOfPage>.

up and was about to faint. Holding me by the ears he smashed me into the wall... *lbne!* I fell. Then I don't remember.

Then they poured water on my face. They were making fun of my earrings, the way I was dressed. Asking, "Are you hurt? You don't feel pain when you're eating cocks, but you're in pain now." They said, "You must be used to it, faggot." That was horrible.<sup>62</sup>

Atilla begins to cry.

And they said, "This is nothing. We can decide to take you upstairs or not. If we do, you're from Ankara, you know this building: everyone knows what happens here." My ears were bleeding, my lips were bleeding. There was a woman officer and she said, "Aren't you ashamed? You are a stain on manhood. Look at you. You're not like a man, but you're not like a woman." I thought everything had happened to me that could happen, so I tried to answer her, but I realized I couldn't talk. She was laughing and kept insulting me, saying I was disgusting. I tried to shout—I said, "I can understand the men to some extent, but how can a woman act like this?" She said, "I am more man than you. Don't you understand that?"<sup>63</sup>

They returned to the car and drove again. He was asked to collaborate with the police and when he refused the policeman said

"[y]ou faggots don't understand good from bad. You're all the same sons of bitches." He was furious now. "What do you want us to do to you? Do you want us to kill you?"

Finally, Atilla was dropped by the roadside: "They kept me in the car for some time before letting me out, hitting me."

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<sup>62</sup> Human Rights Watch interview with Atilla, Ankara, October 13, 2003.

<sup>63</sup> *Ibid.*

And they got in their cars and went away. ... I didn't have power to walk. I felt filthy, degraded. I walked for a long time. It was very cold. I took a taxi in the end, and went home. I rang the bell and my mother answered. I pretended to be drunk, told her to turn off the lights, but she saw there was something wrong. In the bathroom I couldn't recognize myself in the mirror. I thought, how could I let them use me that way?

I'm very afraid of policemen. For a long time I'd cross the street whenever I saw one. I am filled with hate as well as fear. ... Having listened to other people's stories has helped me recover. Because many gay people I know have horror stories with the police.<sup>64</sup>

### *Reform falls short*

Unquestionably, in the last 10 years, policing in Turkey has seen positive changes; UN and EU mechanisms have both recognized progress. In a 2005 report, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) recognized that "detention by law enforcement agencies [police and gendarmerie] is currently governed by a legislative and regulatory framework capable of combating effectively torture and other forms of ill-treatment by law enforcement officials."<sup>65</sup> The UN Working Group on Arbitrary Detention found in its 2006 Mission to Turkey that "torture and ill-treatment by the

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<sup>64</sup> Human Rights Watch interview with Atilla, Ankara, October 13, 2003.

<sup>65</sup> European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), "Report to the Turkish Government on the visit to Turkey carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 7 to 14 December 2005," CPT/Inf (2006) 30, Strasbourg, September 6, 2006, para. 12, [www.cpt.coe.int/documents/tur/2006-30-inf-eng.pdf](http://www.cpt.coe.int/documents/tur/2006-30-inf-eng.pdf) (accessed February 12, 2008). The Turkish police is divided into the civil police and the military police (gendarmerie). The Ministry of the Interior is responsible for both in matters related to safety and public order. The commander of the gendarmerie is in charge of everything related to training and education in connection with the Armed Forces, and responds to the Minister of Interior. Similarly, the head of the civil police is the General Director of Security, appointed by and accountable to the Minister of the Interior. The General Directorate runs the national territorial divisions (80 provinces), each headed by a four-star director. Each province is divided into districts and small towns; the lowest level in the structure is local police stations in the districts. The gendarmerie exercises control in places where civil police have no presence, generally rural areas.

police had dramatically decreased in the past few years” and had “no doubts that the Government’s policy of ‘zero tolerance’ of torture is highly successful.”<sup>66</sup>

However, neither the legal framework nor the zero-tolerance policy has seen full effects on the ground. In 2006, for example, in its mission to Turkey, the Working Group on Arbitrary Detention found cases of “ill-treatment of a psychological nature, such as threats of physical ill-treatment ... not to mention verbal abuse”<sup>67</sup> in police headquarters. Police ill-treatment is still regularly reported, with allegations particularly relating to contexts outside formal sites of detention.<sup>68</sup>

Moreover, the UN Special Rapporteur on Torture has stressed that, while lesbian, gay bisexual, and transgender people worldwide are “disproportionately subjected to torture and other forms of ill-treatment, because they fail to conform to socially constructed gender expectations,” documenting these violations entails special difficulties:

... their status may also affect the consequences of their ill-treatment in terms of their access to complaint procedures or medical treatment in state hospitals, where they may fear further victimization, as well as in terms of legal consequences regarding the legal sanctions flowing from certain abuses. The Special Rapporteur would like to stress that, because of their economic and educational situation, allegedly often exacerbated or caused by discriminatory laws and attitudes, members of sexual minorities are deprived of the means to claim and ensure the enforcement of their rights, including their rights to legal representation and to obtain legal remedies, such as compensation... Discriminatory attitudes to members of sexual minorities can mean that they are perceived as less credible by law enforcement agencies

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<sup>66</sup> Report of the Working Group on Arbitrary Detention, “Mission to Turkey,” A/HRC/4/40/Add.5, February 7, 2007, para. 68, [www2.ohchr.org/english/bodies/chr/special/sp\\_reportshrc.htm](http://www2.ohchr.org/english/bodies/chr/special/sp_reportshrc.htm) (accessed February 12, 2008).

<sup>67</sup> *Ibid.*, para. 18.

<sup>68</sup> HRW World Report 2008, entry on Turkey, <http://hrw.org/englishwr2k8/docs/2008/01/31/turkey17727.htm> (accessed April 18, 2008).

or not fully entitled to an equal standard of protection, including protection against violence carried out by non-state agents.<sup>69</sup>

Many gay men in Turkey emphasized their mistrust of the police. Cenk, a student and gay activist, said that “Most of my gay friends have been abused by the officers. The police are a patriarchal institution; they protect an idea of masculinity. ... Police committing crimes against gay people, transvestites, transsexuals, is part of the mentality of the whole institution.”<sup>70</sup>

Asked what would need to happen for police to gain the confidence of LGBT people, one gay man told Human Rights Watch:

Very simple. Treat transvestites and gays fairly on the street. If a guy steals my wallet in a hotel and if I go to the police, I want someone to be interested in it properly. Everyone is very afraid of people with uniforms in this country. ... But as a guy with a high-pitched voice, you are just a zero in this country. There is a cold war between gays and people with uniforms. They do anything to fuck us, to psychologically and spiritually destroy us.<sup>71</sup>

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<sup>69</sup> Report of the Special Rapporteur on the Question of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment to the General Assembly, interim report, 56<sup>th</sup> session, A/56/156, July 3, 2001, para. 19, [www.un.org/documents/ga/docs/56/a56156.pdf](http://www.un.org/documents/ga/docs/56/a56156.pdf) (accessed March 4, 2008). Also see, e.g. Human Rights Committee, Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, E/CN.4/2001/9, January 11, 2001, para. 50; E/CN.4/2000/3, January 25, 2000, para. 57; E/CN.4/2000/3/Add.3, November 25, 1999, paras. 90-92; E/CN.4/1999/39, January 6, 1999, para. 77, all of these found in <http://www.extrajudicialexecutions.org/reports/> (accessed February 12, 2008). Reports of the Special Rapporteur on the Question of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, E/CN.4/2002/76, December 27, 2001, <http://domino.un.org/UNISPAL.NSF/9a798adbf322aff38525617b006d88d7/4ed9d19648bc882d85256c4fo06245eb!OpenDocument> (accessed February 12, 2008); A/56/156, July 3, 2001, para. 21, [www.unhcr.ch/Huridocda/Huridoca.nsf/\(Symbol\)/A.56.156.En?Opendocument](http://www.unhcr.ch/Huridocda/Huridoca.nsf/(Symbol)/A.56.156.En?Opendocument) (accessed February 12, 2008).

<sup>70</sup> Human Rights Watch interview with Cenk, Izmir, October 19, 2003.

<sup>71</sup> Human Rights Watch interview with Mustafa, Istanbul, October 20, 2003.

## **IV. Silence and Violence: The Situations of Lesbian and Bisexual Women and Girls**

### **A. Cuci and Gia's Story**

Cuci and Gia were both 21 when we spoke to them in 2003; they identified as lesbians, and they were in love. Gia grew up in Izmir; she met Cuci, who is from Istanbul, over the internet when both were 20. Gia left her family home and went to a town near Izmir to stay with Cuci for a few days. However, they accidentally met Gia's parents on the street there. "They asked why I had left. My mother said, 'Did you run off to live like pigs, like perverts?' She started to hit me on the street."

Gia returned home that night. Her family had searched her room: "They found love letters that I had written to Cuci, and pictures we'd exchanged. They kept me up till 7 a.m. talking to me. My mother said she didn't believe something like this could happen. She said you can never write something like that to a woman. And she said, 'You must never meet again.'"

Secretly, Cuci came to Izmir and rented an apartment so the two could be together for a few hours each day. At home, Gia said, "They followed me, spied on me. I felt if they knew she was in town they would do me violence. I had to be very careful." Her mother finally found out that she was meeting Cuci. "So she started swearing, threatening me. I told Cuci I couldn't go home: we had to leave town. We went to Bursa where I had friends, and stayed in a friend's house for a month."

Gia continued,

I had to change my appearance there—my mother put pictures of me in some newspapers as "lost." So I looked very skinhead. People in Bursa would shout "lesbian" at us in the street. The owner of the room figured out that we were lesbians: she didn't want Cuci there because she was looking mannish. She said I could stay, but Cuci had to go. One day we came home and the keys had been changed. So we had to

go to Istanbul to stay with Cuci's family. They were okay with us; *my* family was the problem.

Gia's family located Cuci's parents in Istanbul. "My mother kept calling Cuci's family and threatening them. 'Because of you, my daughter became lesbian—if I were you, I'd break my daughter's legs so she couldn't go outside.'"

Finally, my stepfather came to Istanbul, to Cuci's house, and insisted that I return with him. I refused but he used force. He said he'd told all the police in Istanbul, and they would arrest Cuci for perversion if I didn't come. I held Cuci and cried. But my father said, "Stop the shower."

He put me physically in a car. Cuci was sitting on the ground and crying. My father locked the door, and shouted at her, "If you ever come to Izmir again I will break all your bones and kill you."

Gia escaped the car and fled with Cuci. "We hid with Cuci's sister. My father was calling her family and threatening them. He went to the police and said someone had kidnapped his daughter."

Gia and Cuci "tried to open a claim, that we were threatened by my family." On May 12, 2003, they went to a public prosecutor's office in the Üsküdar district and submitted documents in which Gia stated that "for six months, although we were adults, we were harassed ... I want to live freely and it is my right: I will face violence if I return to my family. ... I want my father and mother to leave me and let me go. I trust Turkish law. Please stop my family from blackmailing me."

The prosecutor could have offered several remedies to the threatened women. For instance, provisions of the TCK call for increased penalties in cases where violence is committed by family members.<sup>72</sup> He did not. "The prosecutor understood that we

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<sup>72</sup> Turkish Penal Code, article 81: "A person who has intentionally killed a person is punishable by a life sentence;" article 82(d): "A person who intentionally kills a family member, spouse, or sibling is punishable by an aggravated life sentence;"



were lesbians,” explained Cuci, “and he said, ‘You are doing something wrong. Don’t you think of having children in the future?’ He asked us how we have sex. And I said, ‘Enough.’ He didn’t say anything about our fears. So we went away.”<sup>73</sup>

## B. The Power of the Family

Human rights violations against lesbian and bisexual women and girls in Turkey are inextricable from the abuses that women in Turkish society face in general. Human Rights Watch interviewed 24 lesbian or bisexual women and girls in 2003 and 2007. The most overwhelming factor that they cited to Human Rights Watch is the subjection of women and their sexualities to the family and its values—including “honor” or “custom.” As women and girls whose sexualities move beyond the norms and expectations of heterosexuality, lesbians and bisexual women and girls feel these pressures in especially acute ways, and feel and fear the steady possibility of family violence.

In recent years, the Turkish government has made advances in protecting women and girls from ill-treatment. The Law on the Protection of the Family, passed in 1998, allows any member of a family subject to domestic violence to file in court for a “protection order” against the perpetrator.<sup>74</sup> It was at first generally interpreted to include only violence between spouses, because the section on sanctions referred only to a spouse. In May 2007 a reform extended the definition of “victim of domestic violence” to include all members of the family, whether living or not in the

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article 86: “Intentionally causing pain to someone or intentionally harming their health or mental faculties is punishable by a prison sentence of one to three years;” article 86(3)a: “When this is done to a family member, spouse or sibling the punishment is increased by one half. ...” [TCK, Madde 81: “(1) Bir insanı kasten öldüren kişi, müebbet hapis cezası ile cezalandırılır, Nitelikli hâller;” Madde 82(d): “Üstsoy veya altsoydan birine ya da eş veya kardeşe karşı, Kasten yaralama;” article 86(3)a: “Üstsoya, altsoya, eşe veya kardeşe karşı, ... .”]

<sup>73</sup> Human Rights Watch Interview with Gia and Cuci (names changed), Istanbul, October 21, 2003. Human Rights Watch has also inspected the claim documents the two filed at Üsküdar Court. The harassment continued: in late 2003, as the pair sat in the audience of a live television show, Gia’s mother saw them and called the program. “They put her on the air and my stepfather grabbed the phone, saying, ‘She kidnapped my child!’ The studio guards wouldn’t let us leave: and we were even on the evening news.” Gia and Cuci now live together. The latter concludes, “We don’t know what will happen in future. We are not comfortable in our situation: some people on the street shout, ‘You lesbians!’ We would like to stay together. But we don’t want to have to leave the country.”

<sup>74</sup> Law on the Protection of the Family, No. 4320 (1998).

same household.<sup>75</sup> Meanwhile, a 2004 law requires all municipalities with more than 50,000 inhabitants to provide a shelter for women and children victims of violence.<sup>76</sup>

However, concerns remain about whether these laws work for most women and girls. In its 2005 report on Turkey, the UN Committee on the Elimination of Discrimination against Women (CEDAW), that oversees states compliance with the Convention on the Elimination of All Forms of Discrimination against Women, underlined “the need to fully implement and carefully monitor the effectiveness of the Law on the Protection of the Family, and of related policies in order to prevent violence against women, provide protection and support services to the victims, and punish and rehabilitate offenders.”<sup>77</sup> Some problems have to do with the police and judiciary’s role. Sevinç Eryılmaz, professor at Bilgi University explained, “In practice the law is not working very well. The decision [to grant a protection order] is supposed to be made immediately but they [the judges] don’t. Prosecutors are asking for medical reports as the golden proof of violence. We have had cases of women who have gone to the police station and they got sent back to their house; after, the police tell the husband the wife started a case against them.”<sup>78</sup>

Neither in the Law on the Protection of the Family nor elsewhere in Turkish law is there specific reference to violence against women or girls due to their perceived sexual orientation. CEDAW asked Turkey in 2005 to “provide in its next report information, sex-disaggregated statistics and data relating to women in the judiciary, trafficked women and girls, as well as Kurdish women *and other groups of women* subject to multiple forms of discrimination and their access to health, employment and education, as well as various forms of violence committed against them.”<sup>79</sup> However, reports on gender-based violence that Turkey has presented to UN

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<sup>75</sup> Ibid. This law was reformed in 2006 through a revision to the original law spelled out in articles 1 and 2 of Law No. 5636.

<sup>76</sup> Law on Municipalities, No. 5272 (2004).

<sup>77</sup> Convention on the Elimination of all Forms of Discrimination against Women (CEDAW), G.A. Res. 34/180, U.N. Doc. A/34/46, acceded by Turkey on December 20, 1985. CEDAW, “Concluding Comments: Turkey,” CEDAW/C/TUR/CC/4-5, January 15, 2005, <http://www.un.org/womenwatch/daw/cedaw/cedaw32/conclude-comments/Turkey/CEDAW-CC-TUR-0523813E.pdf>, para. 27, [www.un.org/womenwatch/daw/cedaw/cedaw32/conclude-comments/Turkey/CEDAW-CC-TUR-0523813E.pdf](http://www.un.org/womenwatch/daw/cedaw/cedaw32/conclude-comments/Turkey/CEDAW-CC-TUR-0523813E.pdf) (accessed February 12, 2008).

<sup>78</sup> Human Rights Watch interview with Professor Sevinc Eryilmaz, Istanbul, October 19, 2007.

<sup>79</sup> Concluding Observations of the Committee on the Elimination of Discrimination Against Women, Turkey, sixtieth session, A/60/38, January 2005, para. 381.

mechanisms thereafter leave issues of violence against lesbian and bisexual women unaddressed.<sup>80</sup>

The indifference may be inadvertent, but it is not benign. Turkish organizations working with women victims of violence—including lesbian and bisexual women—said that they thought lesbian and bisexual women would be afraid to seek recourse when facing family violence out of fear that they might be forced to reveal their sexuality and in turn face even more discrimination or violence. Secin, who has worked with women victims of violence, told Human Rights Watch, “Lesbians are all required to keep quiet and not say anything [when victims of violence].”<sup>81</sup> The General Coordinator for the Istanbul Research Centre on Women told Human Rights Watch, “I can’t think of a lesbian woman that could easily go to the authorities or seek other type of protection admitting her sexuality.”<sup>82</sup>

The new Turkish Criminal Code (TCK) that entered into force on June 1, 2005, after a successful campaign by women’s movements, brought positive changes towards the recognition of women’s sexual and bodily rights.<sup>83</sup> Sexual crimes now carry higher sentences and it is harder for perpetrators of honor killings to win sentence reductions. However, according to women’s rights organizations, the reforms have fallen short.<sup>84</sup>

Article 82/k, specifying the aggravating circumstances of a crime, states that killings in the name of *töre* (custom) constitute aggravated homicide and the perpetrator must be sentenced to life imprisonment. However, there is no mention of killings justified in the name of *namus* (honor)—which may be exempted from the higher

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<sup>80</sup> See for example, Government of Turkey, Implementation of General Assembly Resolution 60/251 of 15 March 2006 entitled “Human Rights Council,” Annex, “The views of the Government of the Republic of Turkey concerning the report of the Special Rapporteur on Violence Against Women, its Causes and Consequences, Ms. Yakın Ertürk” and Human Rights Council, “Information Note on the steps taken to combat violence against women in Turkey,” A/HRC/4/G/10, March 14, 2007, [http://ap.ohchr.org/documents/dpage\\_e.aspx?si=A/HRC/4/G/10](http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/4/G/10) (accessed February 12, 2008).

<sup>81</sup> Human Rights Watch interview with Secin, Ankara, November 2, 2007.

<sup>82</sup> Human Rights Watch, interview with the General Coordinator for the Istanbul Research Centre on Women (name withheld), New York, March 4, 2008.

<sup>83</sup> The Penal Code was adopted by the Turkish National Assembly on September 26, 2004.

<sup>84</sup> Women for Women’s Human Rights (WWHR-New Ways), *Turkish Civil and Penal Code Reforms from a Gender Perspective: The Success of two Nationwide Campaigns*, (Istanbul: New Ways, 2005) p. 63. Available at <http://www.wwhr.org/images/CivilandPenalCodeReforms.pdf> (accessed April 25, 2008).

sentences for *töre* (custom) killings. Concern over this large loophole was expressed by the UN Committee on the Elimination of Discrimination Against Women: reviewing Turkey in 2005, it found that “the use of the term ‘custom killing’ instead of ‘honour killing’ in the Penal Code may result in less vigorous prosecution of, and less severe sentences for, the perpetrators of such crimes against women.”<sup>85</sup> Yakın Ertürk, the UN Special Rapporteur on Violence against Women, agrees: “With the law worded as *töre*, there is still room for interpretation.”<sup>86</sup>

Since *namus* is not specifically included as one of the aggravating circumstances of a crime, other provisions within the Criminal Code can still be used to reduce the sentences of those who have committed crimes in the name of *namus*. Article 29 establishes sentence reductions for provocation: “If an individual commits a crime while in a state of anger or mental anguish induced by an unjust action, their heavy life sentence penalty can be reduced to 18 to 24 years, or their life sentence penalty can be reduced to 12 to 18 years. In other instances, the sentence can be reduced by [an amount ranging from] one quarter to three quarters.”<sup>87</sup> Women’s rights groups in Turkey have said that this article implicitly “offers license to perpetrators of honor killings and legitimizes this violent tradition under the pretext of penal law.”<sup>88</sup>

“Honor killings” entail the murder of a woman or girl suspected of transgressing the limits of sexual behavior imposed by tradition. Homosexual conduct between women and girls transgresses insofar as their behavior moves beyond the norms and expectations of traditional heterosexual conduct. Indeed, lesbian and bisexual women and girls repeatedly told Human Rights Watch researchers that their families saw their sexual orientation as a source of shame.<sup>89</sup>

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<sup>85</sup> See above, fn 98., para. 363.

<sup>86</sup> Human Rights Watch interview with Yakın Ertürk, Ankara, November 6, 2007.

<sup>87</sup> [TCK, madde 29 “(1) Ceza Sorumluluğunu Kaldıran veya Azaltan Nedenler, Haksız tahrik”: “(1) Haksız bir fiilin meydana getirdiği hiddet veya şiddetli elemin etkisi altında suç işleyen kimseye, ağırlaştırılmış müebbet hapis cezası yerine onsekiz yıldan yirmidört yıla ve müebbet hapis cezası yerine oniki yıldan onsekiz yıla kadar hapis cezası verilir. Diğer hâllerde verilecek cezanın dörtte birinden dörtte üçüne kadarı indirilir.”]

<sup>88</sup> WWHR-New Ways, *Gender Discrimination in the Turkish Penal Code Draft Law* (Istanbul: New Ways, 2003) p. 7. Available at [http://www.wwhr.org/files/2\\_3.pdf](http://www.wwhr.org/files/2_3.pdf) (accessed April 25, 2008).

<sup>89</sup> See for example, Human Rights Watch interview with Emel, Istanbul, November 9, 2007.

One case points to the legal consequences of this perception. On January 4, 2005, an Istanbul court convicted a man of stabbing to death a woman whom he believed to be his wife's girlfriend. Finding that the alleged lesbian relationship had "provoked" him, the court lowered his prison sentence from 24 years to six years and eight months.<sup>90</sup> The court did not even consider aggravating the penalty under Article 82—that is, finding the crime one of "custom."

The case illuminates with terrible intensity the same travails Gia and Cuci experienced: the difficulties women and girls can endure in asserting an autonomous sexuality outside their families' control. Like Gia and Cuci's story, it also shows a state unwilling to defend them effectively—its officers sometimes more interested in prurient fantasy than in the facts of the harassment and violence they faced. These stories confirm the specific protection lesbian and bisexual women and girls need, despite the changes in legislation.

Okyanus, a bisexual and a feminist activist, told Human Rights Watch that women and girls are still considered the repository of honor, legal changes aside. "Women having autonomous sexual desires threaten the conception of them as property. And it threatens the *namus*—the honor of a family, a group, a clan. If a man is walking with his sister on the street and another man looks at her, *namus* is hurt and may give the brother reason to kill him." Turkey's rapid twentieth-century modernization has not changed this conception of honor and control over women's sexuality. "It's a Potemkin modernity in Turkey," Yeşim, a 30-year-old lesbian activist, said, "[t]he old patterns persist":

Women are very bonded to men. And this is changing, but still there is no safe space between being a father's daughter and a husband's wife. We have sayings such as, "A daughter can escape her father's will either in her husband's house or in the grave."<sup>91</sup>

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<sup>90</sup> E-mail communication to Human Rights Watch from KAOS-GL, January 23, 2005; see "She was like a man but she wasn't a lesbian" (Erkek gibiydi ama lezbiyen değildi), *Sabah* newspaper, January 25, 2004, and "Sentence reduction for lesbian murder on the basis of heavy incitement" (Lezbiyen cinayetine ağır tahrik indirimi), *Sabah* newspaper, January 5, 2005.

<sup>91</sup> Human Rights Watch interview with Yeşim, Istanbul, October 4, 2003. Human Rights Watch researchers interviewed her again in 2007 and she reiterated the statement.

This is one of the reasons Ayşe, 26, has not come out to her family. “I’m not planning to say anything ever. This is something that can result in killings in my family. My dad says, ‘I can forgive if my children are prostitutes, thieves, but I cannot forgive one thing, being homosexual.’”<sup>92</sup>

As a result of such pressures, Okyanus said, life for lesbian and bisexual women and girls in Turkey is “hard, almost impossible.” She told Human Rights Watch, “Many people in Turkey keep silent because of family. My family would not want to see me if they knew.” She has a 15-year-old son. “He doesn’t know. But he once said, ‘If I ever find out you are a lesbian, I’ll never look in your face again.’”<sup>93</sup> And isolation, she emphasized, is the basic fact:

Women don’t have evidence of other women like themselves. There is a saying among gay men, “At least there’s Zeki Müren [a famous, flamboyantly effeminate singer] and me.” For women, there is no Zeki Müren. There is no open lesbian in Turkish society.<sup>94</sup>

These problems intensify in the arena of marriage. The difficulties of heterosexual women in Turkey in establishing free choice in marriage are familiar to lesbian and bisexual women. Okyanus explains, “Pressure comes because fundamentally this is a feudal, patriarchal society. I have visited many places in Anatolia where women [and girls] are forced to get married. It is already difficult to be a woman [or girls] in Turkey. But if you are a lesbian—you can’t imagine.”<sup>95</sup>

The UN CEDAW and the ICCPR spell out the obligation of States to ensure equality in all matters related to marriage.<sup>96</sup> Pursuant to these standards, articles 126 and 127 of

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<sup>92</sup> Human Rights Watch interview with Ayşe, Istanbul, October 23, 2007.

<sup>93</sup> In 1996, a ruling by Turkey’s Cassation Court held that for a child to be reared by a lesbian threatened its moral development. It denied a lesbian mother custody of her daughter, calling her sexual orientation a “sickness.” A similar decision was taken by the Supreme Court (Yargıtay) 2nd Law Section on June, 21, 1982.

<sup>94</sup> When asked how they felt as they realized their sexual orientation, interviewed lesbian women responded they thought they were the only lesbians in the world. Human Rights Watch interview with Yasemin, Istanbul, November 10, 2007; Human Rights Watch interview with Ödül (name changed), Istanbul, November 2, 2007, among others.

<sup>95</sup> Human Rights Watch interview with Okyanus (name changed), Istanbul, September 30, 2003.

<sup>96</sup> Article 16 of CEDAW sets forth that states should “[t]ake all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and

the New Turkish Civil Code, which came into force on January 1, 2002, provide that full and free consent of the couple getting married is a basic condition for marriage for both children and adults.<sup>97</sup> Article 124 sets 18 as the minimum age of marriage for men and women.

Yet reality does not reflect the norm, and for women whose sexuality leads them to refuse heterosexual marriage, pressure can become harassment. Zeynep, 30, a writer from an intellectual background, told Human Rights Watch, “Women’s sexuality is seen as tied to men. The pressure to marry is intense. Most people, if you’re a woman in your thirties, expect you to be married and have kids; there is no other option.”<sup>98</sup> Yasemin told Human Rights Watch, “At 17 I tried to commit suicide. I thought that I would have to get married.”<sup>99</sup>

In some situations suggestion becomes coercion. Toprak, 31, is originally from Malatya, a province in the south-east of Turkey. Though he now sees himself as a transgender man, at 16, when he left his parents, he identified as a lesbian woman. Toprak did not leave his parents lightly.

I was forced to get married to a 52-year-old man. They made me marry because they caught me with my girlfriend having sex. When they found out I was kept in the garage and was beaten over several days.

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women: (a) The same right to enter into marriage; (b) The same right freely to choose a spouse and to enter into marriage only with their free and full consent.” Article 23(4) of the ICCPR determines that governments should “take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution. In the case of dissolution, provision shall be made for the necessary protection of any children.”

<sup>97</sup> Article 10 (1) of the International Covenant of Economic Social and Cultural Rights (ICESCR) sets forth that “[m]arriage must be entered into with the free consent of the intending spouses.” Article 16 (1) of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) provides that “States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women...the same right freely to choose a spouse and to enter into marriage only with their free and full consent.”

<sup>98</sup> Human Rights Watch interview with Zeynep, Istanbul, October 2, 2004.

<sup>99</sup> Human Rights Watch interview with Yasemin, Istanbul, November 10, 2007.

Then I married. Life with him was really bad. It was so horrible. When I remember those kinds of things I just go crazy. I was freed when the guy died. I was almost 22.<sup>100</sup>

Even without the threat of marriage, parents apply financial as well as social pressures to lesbian and bisexual women and girls. Esra, a 21-year-old lesbian, said

My family is a very big pressure on me. If I tell them, I think I'll be thrown out of the house. Because of the way my mother reacted when I first hinted at it to her—she said if that happened, I couldn't be part of the family. And she says it's a big sin, it's morally very bad. And she hates all homosexuals.<sup>101</sup>

Nehir told Human Rights Watch, “There is a difference depending on whether you are economically independent or dependent on your family. When they know you can work, can rent a place, you face less violence. But when you are dependent on them, the pressure grows. And beyond that some families are very conservative, beat their children, dominate them cruelly.”<sup>102</sup>

Lesbian women repeatedly pointed to women and girls' lack of financial independence as a wellspring of family power. Ecem, 19, told her parents she was a lesbian at 17. “My mom kicked me out of the house several times,” she said. “The last time was last year in the beginning of spring. Then I decided I would go to my father's house. My mom said: ‘If you go I will cut your money too.’” Worried she would have to drop out of school, Ecem decided to stay—still feeling that “inside the family you can't do anything.”<sup>103</sup>

Independence, however, is sometimes not enough to stop abuses. Human Rights Watch spoke to Tansu, 23, who pointed the violent power of family constraints even after she left home. Tansu realized she was a lesbian in secondary school, but told

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<sup>100</sup> Human Rights Watch interview with Toprak, Ankara, November 6, 2007.

<sup>101</sup> Human Rights Watch interview with Esra, Istanbul, October 4, 2004.

<sup>102</sup> Human Rights Watch interview with Nehir, Istanbul, October 7, 2004.

<sup>103</sup> Human Rights Watch interview with Ecem, Istanbul, October 23, 2007.



no one. “My father is a very harsh man. I was 13 when he hit me for the first time. It was because I was playing football with boys,” she explained. Tansu said that her family is very conservative and would never accept her sexual orientation. The pressure came not only from her parents, but from her sister. “[She] always suspected. She never asked me *exact* questions—but she had suspicions. She questioned the music I listened to—she said a woman who didn’t have perverted feelings wouldn’t listen to stuff like that.”

After refusing to marry manta her parents’ behest, Tansu left home. The pressure did not cease.

Tansu explains:

One month ago I left home, and moved in with a woman friend of mine.

Then one of my friends who knew that I was lesbian phoned my family and told them where I was living. My father came. He couldn’t enter, but he shouted and made threats. So I couldn’t stay there any more. I moved to another friend.

My father telephones me all the time on my mobile, but I never answer. ... I feel threatened, very much. I don’t want him to come near me, even by chance. One of my cousins escaped her parents and it was my father who found her, with great brutality, and her family forced her to marry someone she didn’t want. I wouldn’t return to my family unless I heard of his death or disappearance. I’m afraid of him.<sup>104</sup>

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<sup>104</sup> Human Rights Watch interview with Tansu (name changed), Istanbul, October 7, 2003. Lesbians are not alone in often experiencing violent pressure within the family. Cihan, of Lambda Istanbul, commented that for LGBT people generally, “The worst problem is when you are a child, developing character, trying to be something. There is the real violence in homophobia. Other forms—open, criminal violence—are just extensions of yourself. The worst is what you are made to do to yourself. To try to change yourself and not be able to—that is the worst thing.” Human Rights Watch interview with Cihan, Lambda Istanbul, October 15, 2003.

Several gay men recounted abuse within the family. Göksel, who turned 18 in 2007, told Human Rights Watch researchers that “[o]ne day in the beginning of October I had been wearing some makeup. I had exaggerated a bit so they [my parents] probably saw the traces on my face. My brother, who is a policeman, started to beat me up. Then my father saw me and beat

## C. Overcoming Solitude: Public Harassment and the Dangers of Solidarity

Freedom of expression and association are rights recognized in the Turkish Constitution.<sup>105</sup> However, social, economic, and in some cases legal strictures interfere with lesbian and bisexual women’s full enjoyment of those rights. Most basically, Didem told Human Rights Watch, “There is no lesbian community” in Turkey: “just some groups of friends.”<sup>106</sup> Yeşim said,

Gays have a social base where they can nourish themselves. Lesbians have a tiny one—not even a circle, a few shadows. ... It is very difficult to break this invisibility. It is a vicious circle. From my observations over the years this is the biggest problem we face. If we solve this problem, we can solve others. But now we are separated from each other.<sup>107</sup>

Economic powerlessness makes it difficult for women to claim public space and public identities. “Women don’t have money,” Yeşim stated simply. “And they are

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me up too. They took my collars, my earrings, my clothes and threw them away. He [my father] made me cut my hair and made me wear lumberjack t-shirts.” Human Rights Watch interview with Göksel (name changed), Istanbul, October 24, 2007.

Transgender people—most of whose families severed contact with them after, or even before, they transitioned—tell particularly poignant, and disturbing, stories. Esmeray, who was raised in a Kurdish village in eastern Turkey, says that, when she entered adolescence and was identified as “girlish,” her brother suggested shutting her in an abandoned stable and burying her under its stones; “Otherwise I would create bigger problems in the future.” Human Rights Watch interview with Esmeray, Istanbul, October 1, 2003. Sinan, a 26-year-old transgender man, told us, “My mom would try to make me wear dresses. Between the age of 12 and 18 she did not let me cut my hair. She would verbally abuse me and I would respond. It was mutual torture. My family thinks, if you are going to be our ‘son,’ do it quietly.” Human Rights Watch interview with Sinan, Istanbul, October 20, 2007.

Ebru said, “My family cut off all relations with me. They were cultured, had lived in Germany for fifteen years, but they couldn’t stand it. Once, years later, I missed my family very much and I called them, but they hung up. Once, again, I found myself missing them so terribly—I went there with a friend in her car, and they didn’t let me enter the house. They said they didn’t want to see me again. And since then I have never seen them.” Human Rights Watch interview with Ebru, Istanbul, October 24, 2003.

<sup>105</sup> Article 26 provides that “[e]veryone has the right to express and disseminate his thoughts and opinion by speech, in writing or in pictures or through other media, individually or collectively.” Article 33 states that “[e]veryone has the right to form associations, or become a member of an association, or withdraw from membership without prior permission.”

<sup>106</sup> Human Rights Watch interview with Didem, Istanbul, October 4, 2004.

<sup>107</sup> Human Rights Watch interview with Yeşim, Istanbul, November 11, 2007.

afraid to do independent things because all their lives they are kept in a constricted area by men.”<sup>108</sup>

Nehir, who runs a small café with a largely lesbian clientele, told us, “It has to stay quiet. If the police knew it was a lesbian café, they would try to close us. Another café where lesbians went was closed—because of the police: they came and saw there were only women. They demanded bribes. ‘Where are the men?’ They came more and more often, would just come in and walk around, made all the people feel uncomfortable.”<sup>109</sup>

At the same time, Yeşim said, “[w]e are beginning to build our own social environment now. It must come out of our efforts and is more difficult than for men—you can’t just look for lesbians, find them, and join.”<sup>110</sup> When they do try to join existing groups largely composed of men, some face difficulties from their own families. “My mom found out I was going to Lambda [Istanbul]. She said: “you can’t go, you’re under eighteen and the police will take you. They will close it because of you!” said Ecem.<sup>111</sup>

Lesbians have haltingly become more visible in Turkish society, yet images of them in public circulation are often dangerously distorted. Zeynep noted that the press shows lesbians “as killers, kidnapping other women, sexual predators. ... In general lesbians are shown when a crime is involved, or a tragedy, or a rumor or scandal involving a celebrity, which gives her the opportunity to show off her beautiful body. Nothing positive is printed about lesbians in Turkey.”<sup>112</sup> She added that even at the progressive newspaper where she works, “I found the archive on lesbians was filed under ‘sexual problems.’”<sup>113</sup>

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<sup>108</sup> Human Rights Watch interview with Yeşim, Istanbul, October 4, 2003.

<sup>109</sup> Human Rights Watch interview with Nehir, Istanbul, October 7, 2003.

<sup>110</sup> Human Rights Watch interview with Yeşim, Istanbul, October 4, 2003.

<sup>111</sup> Human Rights Watch interview with Ecem, Istanbul, October 23, 2007.

<sup>112</sup> See, for a typical instance, “Lesbian murders,” *Sabah* newspaper, July 16, 2000. The article describes two killings: in one, a woman subjected to an “indecent proposal” (ahlaksiz teklif) from a lesbian responded by stabbing her to death; in the other, a lesbian lover slew the other after a quarrel.

<sup>113</sup> Human Rights Watch interview with Zeynep, Istanbul, October 2, 2003.

The result is growing awareness but also prurient curiosity about lesbians in Turkey—which increasingly translates into harassment on the streets as well as in the home. Didem told explained that she and her girlfriend

don't usually get harassed physically in society, or face violence—but there is verbal harassment. Last night, we were together, walking down a side street—and while we were just walking and talking, not even hand in hand, two guys shouted behind us, “You lesbians, you!” Not loud at first, but louder as they saw we didn't react. I said “Fuck off” and they stopped. And three of us in the street several days ago, a guy started shouting “Dirty dykes.” So they know we're there.<sup>114</sup>

Secin, who works as a waitress in a predominantly gay club in Ankara, recounted one night in March 2006 when a friend of hers was there with another lesbian:

They were dancing. Two men insisted on dancing with them. They said “no” and told the club's bodyguards. The guys were kicked out of the club. After a few hours they [the two women] left. While walking to the parking lot a car went past them. Three or four men stepped out of the car and kicked them and punched them. Two of them were the men trying to dance with them at the nightclub. The girls told the manager. He took them to the hospital. But they didn't complain to the police because they weren't openly lesbian [and feared the consequences of being identified as such].<sup>115</sup>

Ferda, a lesbian businesswoman, said that rumors about her sexual orientation have increasingly interfered with her work. “Sometimes a businessman comes to me and says, ‘We'll do business if you have sex with me.’ Not despite my being a lesbian,

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<sup>114</sup> Human Rights Watch interview with Didem, Istanbul, October 4, 2003. Emel faced a similar situation in Ankara. “I was walking with my girlfriend on the street. I was crying, so she hugged me. A man walking by shouted, “What are you doing? Are you having sex?” Then he threw himself at us and tried to hit us.” Human Rights Watch interview with Emel, Ankara, November 2, 2007.

<sup>115</sup> Human Rights Watch interview with Secin, Ankara, November 2, 2007.

but because of it. They keep insisting, because they think they can ‘cure’ me. They harass me. Some say, ‘Have sex with your girlfriend and me too.’”<sup>116</sup>

Devrim, a 19-year-old lesbian, told Human Rights Watch that in 2007 her choral professor at a music conservatory gave her a failing grade. “I knew she had seen me distributing bills about *MorEl* [a student LGBT organization meaning Purple Hand].” The teacher later “admitted to my mom that she had failed me because I was a lesbian.”<sup>117</sup> Esme, 17, told Human Rights Watch how stereotype and suspicion led to her expulsion from a reputable private school—and to family violence as well.

Last year I was 16, and I said, I am a lesbian and I will come out. So I told my friends at school. There was only one week left until the end of the first term. Then the whole school heard it. And all the parents in the school knew it. People in our street and their families heard it.

And the director’s assistant called my sister and they said they wanted to kick me out of school. They said, “She’s making the kids uncomfortable.” They said that I was sexually assaulting the girls! And that I wanted to sell them to men! I hadn’t had any problems with my friends. It was a lie!

I saw, most of the time, the people who wanted me out of school were the children’s families. Not the girls themselves. I was expelled from school. They gave me a paper. It said I had to take a forced leave of absence [*tasdikname*].

I didn’t even know that I’d been forced to leave. But my parents showed the paper to me and said I was making the girls scared in school. My family hit me. They searched my room. They said, we think you did the things that the director accused you of. They didn’t believe me. They kept me in the house without leaving for two weeks. Then

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<sup>116</sup> Human Rights Watch interview with Ferda (name changed), Istanbul, October 22, 2003.

<sup>117</sup> Human Rights Watch interview with Devrim, Ankara, November 1, 2007.

they sent me to a psychologist to cure me. I didn't go to school for a year.

After a year's halt in her education, "Now I am in a different school. The students are good and our relations are good." Esme also told Human Rights Watch that "I have alright relations with my family now. They've gotten used to it. But my sister calls all homosexuals 'devils.'" Esme added, "I just wanted to be honest. I don't have a community, I don't have lesbian friends. I am alone. Unfortunately, I don't have luck."<sup>118</sup>

In this case Esme's right to education under the Convention on the Rights of the Child (CRC) was violated, but as already noted, police and other state authorities have also been accused of general neglect toward abuses against women and girls in other spheres.<sup>119</sup>

Ferda's story, however, suggests that authorities still have not addressed the problem; confrontations with police continue and can be fraught. Outed in the 1990s by a journalist, Ferda faced steady harassment from neighbors: "They would call police and say that because I was a lesbian I was a terrorist, or I was pimping other women." She complained to the police. The policeman in charge of the investigation, she says, was the officer implicated in the death under torture of the journalist Metin Göktepe.<sup>120</sup>

He came to my house. He didn't find anything—he was actually very understanding about the case. But then he created a sexual threat over me for years. He said, "If you ever have a lover, I will come and make love to both of you." That was his fantasy. He tortured me in this way for years. He came once a week; and because I never had a lover

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<sup>118</sup> Human Rights Watch interview with Esme, Istanbul, October 20, 2003.

<sup>119</sup> Convention on the Rights of the Child (CRC), adopted November 20, 1989, G.A. Res. 44/25, annex, 44 U.N. GAOR Supp. (No. 49) at 167, U.N. Doc A/44/49 (1989), entered into force September 2, 1990, art. 28.

<sup>120</sup> Metin Göktepe was a 27-year-old journalist who worked for the left-wing daily newspaper *Evrensel*. He was detained by the police on January 8, 1996 in the Eyüp district of Istanbul, while covering the funeral of two prisoners killed by their guards during a prison outbreak. That same day he was beaten to death. On March 19, 1998, five of the 11 police officers accused of his death were sentenced to seven and a half years in prison. The six other police officers were acquitted. <http://www.ifex.org/fr/content/view/full/6097> (accessed March 23, 2008).

he took money—hundreds of millions of [Turkish] lira; all because I was a lesbian.<sup>121</sup>

#### **D. Organizing: Politics and Women’s Sexualities**

Lesbian and bisexual women have had difficulty finding political space within both the feminist and gay movements. Okyanus, a feminist activist, told Human Rights Watch that among women’s organizations, “The majority still have a negative atmosphere” toward homosexuality.

Some of them are now starting to question heterosexism. But there was a women’s conference over a year ago—and when people spoke about issues like disability or homosexuality, some said we were dividing the women’s movement. It seemed a majority of the women there felt that way. To say that you are dividing the movement is an attack. Not a physical attack: but a humiliation.<sup>122</sup>

In 2003, women’s groups organized a meeting to prepare a shadow report to the CEDAW. Burcu, 27, and active in the LGBT movement in Turkey since 1999 “was there as an open lesbian from KAOS-GL. ... One of the women said ‘you are a very nice girl, you don’t have to be a lesbian.’ ... I felt they were just thinking about my sexual orientation. Some of them never looked at my face. It was really disturbing.”<sup>123</sup>

Didem believes that “The feminism of the 1970s in the West is still predominant here in Turkey; and that is uncomfortable with sexuality. It says that women have to struggle against their sexualities, to repress them. And the result is that we—lesbians—are repressed.”<sup>124</sup>

However, Hasbiye suggests growing acceptance in the feminist movement.

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<sup>121</sup> Human Rights Watch interview with Ferda, Istanbul, October 22, 2003.

<sup>122</sup> Human Rights Watch interview with Okyanus, Istanbul, September 30, 2003.

<sup>123</sup> Human Rights Watch interview with Burcu, Ankara, November 1, 2007.

<sup>124</sup> Human Rights Watch interview with Didem, Istanbul, October 4, 2003.

Women organizations didn't know about us. LGBT people go there, they send representatives, they participate. We have come to their meetings and have come out. In time they [women movements] have realized that it is not a distant image, but something near them. We have caused them to overcome their homophobia and to cooperate with us. First we went to them and then in time they started to come to us. In Turkey women and LGBT people will go side by side.<sup>125</sup>

Lesbian and bisexual women also complain of sexism within gay and (nominally) lesbian organizations. Okyanus told Human Rights Watch, “Gay men are fed from the patriarchal values of Turkish society. They absorb values of discrimination against women. They are intolerant of letting women have their own space for their own needs.”<sup>126</sup>

Yet Yeşim said that before joining KAOS-GL, Ankara's mixed organization,

I felt I was alone, I felt I was not lesbian but just someone completely different. The most important thing was, I couldn't imagine that we could be a society, that these voices could form a community. I just felt my sexuality was a purely personal thing within me—because that was all I heard.

Two years ago, Lambda Istanbul and KAOS-GL had a joint meeting—and at the women's session, there were 24 women. I have never forgotten because it was the biggest number of lesbians in one place I'd ever seen till then!

After meetings in the day, we went to one of our houses to talk. For me that night was very difficult even to imagine. So many women, talking about our lives! ... We opened up and discussed and laughed. These were incredible things.

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<sup>125</sup> Human Rights Watch interview with Hasbiye, Istanbul, November 9, 2007.

<sup>126</sup> Human Rights Watch interview with Okyanus, Istanbul, September 30, 2003.



She added,

For lesbians the small deeds of activism—going to public demonstrations with our own banners and slogans, putting up posters— are not just a means, but an end in itself. They say, “I have the right to do this. To take my life in my hands.” At the same time, we must be much more visible, in streets, universities, everywhere. We have to continue to explore our emotions but also establish and make our principles stronger. And make our own law. There is a law which is written but we must make our own law. We need a law for liberation.<sup>127</sup>

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<sup>127</sup> Human Rights Watch interview with Yeşim, Istanbul, October 1, 2003.

## V. A Social Hell: State Violence, Abuse, and Harassment against Transgender People

### A. Hulya's Story

Hülya has left the country now. She lived as a transvestite and sex worker in Istanbul for over 10 years, and faced police abuse many times: in Turkey, she told Human Rights Watch, “people pretend that transvestites don’t exist and yet they try to destroy us.”<sup>128</sup> In November 2004, for example, one of her customers produced a gun, identified himself as a policeman, and demanded that she perform a sexual act, which she was unwilling to do. He then handed her over to other police, who beat her on the arms and feet. They arrested her and charged her with offenses against public morality.<sup>129</sup>

When we spoke to her in Istanbul in 2003, she showed Human Rights Watch researchers scars on her shoulders and feet left as the result of an incident that August. One night while she was waiting for customers on a street in the Kadıköy district,

People came who acted like customers. I saw only one person in the car but when I got in, there were two. They said they were police and they had uniforms under their coats. The car moved and I asked where we were going—I thought to the police station. But they said: “Shut up and do what we say. If you don’t, you’ll be killed.” And they put a gun against my head.

They told me to get undressed ... and the one who was the boss said, “Shut up: we will destroy you all.” I refused to undress. He took a knife and started to stab my leg. So I undressed.

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<sup>128</sup> Human Rights Watch interview with Hülya, Istanbul, Turkey, October 23, 2003.

<sup>129</sup> Communication to Human Rights Watch from KAOS-GL, March 30, 2005.

We were in a dark road on the edge of the city and they stopped. In the car, they made me go from front seat to back seat and give them blow jobs, then they took turns raping me from behind. And while that was happening the torture started. The one in the front of the car was saying *paşa*<sup>130</sup> to the other one—the officer in the back of the car was the one who was beating me. First the officer started hitting me with his hand—beating and slapping me, and pulling my hair. Then he started to smoke, and stamped out the cigarettes on my toes. Then he started pummeling me. If I said anything he would hit me harder and harder. And always saying they would destroy us all. I couldn't say anything because there was a gun against my head. He took my shoe and with the heel he started to hit my face. There were wounds on my lips and all my face was full of scars and the two men were raping me one by one. I said, "Please stop": now my face was unrecognizable. But he didn't listen to me. There was blood all over the car.

Then the car was moving on ... and the two men talked about what they would do with me. One said: "Let's burn her some more." The other said, "No, she'll shout and someone will hear." One wanted to stab me, the other wanted to smash my skull. ...

We got out of the car at another building which was under construction. They made me turn my face to the wall. Then they were hitting my head with bricks. I fell down; my head was spinning and they were kicking me. They hit my stomach very hard. Then I passed out and maybe they thought I was dead or dying. I was naked and I was bleeding a great deal.

When they kidnapped me, it was 2:00 or 2:30 a.m. When I woke up there was sunshine on my face. I was naked. There was nothing that belonged to me there. They acted like professionals because they'd left nothing to find them. They didn't say anything about where they

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<sup>130</sup> A title indicating the seniority of the person.

came from—they had no conversation except about what to do with me.

I got to my feet and started back, hiding my genitals with my hands. I saw a car, and I asked them to call the police. And the people in the car gave me a skirt and a T-shirt.

Police took Hülya to the police station in Tuzla, a district outside Istanbul,

It was morning, but I waited and waited, and it was evening before they took me to the hospital. They kept saying in the station, “Wash your face, wash your face.” I think they wanted me to lose the evidence. I didn’t. So they waited a while to take me to the hospital. Maybe they thought some of the evidence would be lost that way. First we went to the Çapa State Hospital, then to the Tuzla Hospital.

I was telling the doctors to do sperm tests but they didn’t. The doctors didn’t want to, they said the sperm test wasn’t their work—they said the same thing in both Çapa and Tuzla. It was a Friday or Saturday and they gave me another appointment to come back Tuesday.

Often doctors won’t let transvestites enter a hospital, even when they are wounded. I felt these doctors weren’t taking me seriously. They wrote a report saying that I had the scars on my face and on my body, but it was enough for them. ... They didn’t even give me medicine for the wounds on my shoulders or my feet or my lips.

I went to the Human Rights Association and Lambda Istanbul. When I went to the hospital on Tuesday it was with someone from Lambda Istanbul. And the doctors in the hospital told me then that two days had passed and any sperm was lost. We cannot use DNA to find the people, they told me, unless you have, for instance, some flesh in your fingernails.

“There are lots of people with stories like mine who are afraid to talk,” she said. “Lots of these things happen to transvestites in Turkey.”<sup>131</sup>

## **B. “The Police Should Protect Us, Not Beat Us”**

Police violence against transgender people in Turkey is regular and unabated. Many transgender people work as sex workers, often reflecting the impossibility of getting other types of jobs. They recounted repeated stories of abuse.

Ayla, who transgendered from male to female, recalled an incident that still haunted her in 2007:

In the summer of 2005 I was working in Tarlabası [a street in the Beyoğlu district of Istanbul, near Taksim Square]. It was around 8:30 p.m. Some girls broke the window of a police car. I saw everyone run and so I ran as well. I tripped. When I turned around I saw policemen around me with batons.

They started to hit me; they handcuffed me and took me to the police station. I wasn’t given a chance to say anything. When I tried to speak they shouted at me and didn’t let me talk. I was kept in jail overnight until my lawyer arrived. I knew some of the policemen that attacked me so I filed a complaint against four of them.<sup>132</sup>

Prosecutors started a case against the men, but Ayla faced further threats from the policemen she accused. During 2005 Ayla appeared twice at court hearings; in both instances, the accused police officers did not attend. At a third hearing in June 2006, the prosecutor’s office compelled the men to appear, but the hearing was postponed.

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<sup>131</sup> Human Rights Watch interview with Hülya, Istanbul, Turkey, October 23, 2003. On November 17, 2004, according to Hülya, she was again subjected to police abuse: one of her customers produced a gun, identified himself as a policeman, and demanded that she perform a sexual act which she was unwilling to do. He then handed her over to other police, who beat her on the arms and feet. She was arrested and charged with offenses against public morality; with the assistance of Lambda Istanbul and other human rights organizations, she filed charges against the police for torture, with the chief prosecutor of Kadikoy. Both cases are still pending. Communication to Human Rights Watch from KAOS-GL, March 30, 2005.

<sup>132</sup> Human Rights Watch interview with Ayla, Istanbul, October 26, 2007.

Shortly after, in July 2006, the defendants were transferred to work in Mardin, a city in southeast Turkey, even as the trial was continuing.<sup>133</sup>

Ayla recounted:

After the third hearing, other members of the Beyoğlu police station started to threaten me. One night they took me to a graveyard in Kasimpaşa. It was around 11 p.m. and I was again working in Tarlabası [Street]. They [the policemen] put me in a car that belonged to the police, but had no emblems. My flatmate saw them taking me and informed my friends.

They started to call the police and look for me. They [the police] finally let me go. After this incident I started a case against them for threatening me. At the same time they [the police] started a case against me for damaging state property.

If I had not been a transsexual, of course, they wouldn't have treated me like this. For two years I have been hiding from them, so I work irregularly to avoid them. ... I'm still afraid.<sup>134</sup>

Erin Keskin, who has represented transgender people in criminal courts for over five years, explained, “We have never won [criminal] cases against the police.”<sup>135</sup>

Legislative changes in recent years have given police additional powers to arrest people based on perception or prejudice. In March 2005 the *Kabahatler Kanunu*—“Law on Public Disgrace” or “Misdemeanor Law”—entered into force.<sup>136</sup> It lists, and

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<sup>133</sup> The most recent court hearing in Ayla's case against the police took place on October 23, 2007. The trial was postponed until June 2008. Ayla was ordered to bring witnesses to the abuse. Meanwhile, according to Ayla's attorney, “The police just take other policemen as witnesses, whether or not they have any real connection to the case.” Human Rights Watch interview with lawyer İlknur Batit, Istanbul, November 16, 2007.

<sup>134</sup> Human Rights Watch interview with Ayla, Istanbul, October 26, 2007.

<sup>135</sup> Human Rights Watch interview with Erin Keskin, Istanbul, October 27, 2007.

<sup>136</sup> *Kabahatler Kanunu*, Law No. 5326 (2005), available at <http://www.ceza-bb.adalet.gov.tr/mevzuat/5326.htm> (accessed April 25, 2008).

punishes with fines, a number of misdemeanors –among them begging, gambling, drunkenness, making a noise, disturbing the peace, “occupying” the street, smoking where restricted in closed places, failing to disclose one’s identity to a public official, polluting the environment, hanging posters in public places, or carrying an unlicensed gun. The law states that it “aims to protect public order, general morality, general health, the environment, and the economic order.”<sup>137</sup>

Some of the prohibited behaviors are specific, some sweepingly vague; the latter give wide license for prejudicial enforcement. Furthermore, the Law on the Powers and Duties of the Police (Polis Vazife ve Selahiyet Yasası) was amended in June 2007.<sup>138</sup> Article 4 for the first time formally gave the police discretionary powers to stop and ask for identification, “in order to prevent a crime or a misdemeanor [kabaha],” “to prevent people escaping after a crime and to identify perpetrators of a crime or misdemeanor,” “to identify individuals who have an arrest warrant or forced summons issued against them,” or “to prevent any present or potential dangers to the life, bodily integrity or property of individuals, or to society.”<sup>139</sup> It also gave police wide power to search people and vehicles.

These discretionary powers substantially increase the scope of policing without judicial scrutiny. Moreover, the interpretation of key terms in both these laws—the understanding of what is “moral,” the definition of “public order” and its dereliction—are left to the police.

Transgender people also report that unofficial police practices and orders, lacking any legal basis, contribute to harassment. For instance, “There are two police

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<sup>137</sup> Ibid., Article 1.

<sup>138</sup> Polis Vazife ve Selahiyet Yasası, Law No. 2559 (1934) as amended by Polis Vazife ve Selahiyet Kanununda Değişiklik Yapılmasına Dair Kanun, Law No. 5681, June 2007. The amendment introduced new provisions, including article 4, which introduced the stop and identification check. Available at <http://www.tbmm.gov.tr/kanunlar/k5681.html> (accessed April 25, 2008).

<sup>139</sup> Ibid., article 4: “(A) Police can stop a person or vehicle in order to a) prevent a crime from occurring; b) catch a culprit who has fled the scene and obtain their identification; c) determine whether a person has a standing arrest warrant, d) prevent harm to a person or the public). [Polis Vazife, madde 4: “A. Polis, kişileri ve araçları; a) Bir suç veya kabahatin işlenmesini önlemek; b) Suç işlendikten sonra kaçan failerin yakalanmasını sağlamak, işlenen suç veya kabahatlerin faillerinin kimliklerini tespit etmek; c) Hakkında yakalama emri ya da zorla getirme kararı verilmiş olan kişileri tespit etmek; d) Kişilerin hayatı, vücut bütünlüğü veya malvarlığı bakımından ya da topluma yönelik mevcut veya muhtemel bir tehlikeyi önlemek, amacıyla durdurabilir].

stations [in Istanbul] that forbid transgender people to pass by them,” explained Esmeray, a transgender woman and a human rights activist. Filiz told Human Rights Watch how in October 19, 2007, she made the mistake of passing one:

I was in a bakery in front of the police station [the Beyoğlu district police headquarters] in Tarlabası. ... A policeman that I knew saw me and came towards me. He said they wanted to see me at the police station. I asked him why and explained I had just come from the dentist. He said the chief wanted to see me, so I went. When I got to the station the main police officer asked why I was here since I knew I couldn't, and so once again I explained. He said, “If you come here again I will break your teeth.”<sup>140</sup>

Esmeray encountered more direct brutality when she infringed the rule. By day, Esmeray works part-time for a feminist organization. Her most direct route home leads by the Tarlabası police station, where the commander had issued informal instructions that forbade transgender people from passing in front of it. She recalls a late evening on June 2007.

I knew this “law” but the police have always considered me the “decent Esmeray” ... Then someone I didn't know asked me to stop. At first I didn't. Once again I heard, “I'm telling you to stop!” The police officer on duty at the [Tarlabası] police station walked towards me with an angry attitude. He punched me in the eye. Some other of his colleagues came and started hitting me. They beat me up.

Esmeray filed a complaint, and the policeman who attacked her apologized two weeks after the attack: “He said that the chief of the district had previously told officers, ‘You're not attacking them [transgender people] and that's why they are still passing the police station.’”<sup>141</sup>

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<sup>140</sup> Human Rights Watch interview with Filiz, Istanbul, October 19, 2007.

<sup>141</sup> Human Rights Watch interview with Esmeray, Istanbul, October 22, 2007.



Esmeray's work as a feminist and human rights activist, she said, gave her courage to stand up. Few transgender people we spoke to, however, said that they would report harassment by, or to, the police. "I'm not going to follow up," Filiz said. "We already know the law [the order not to pass the police station]. The details, we don't ask for them at all. We know how it goes."<sup>142</sup>

On April 9, 2007, Lambda Istanbul submitted a dossier documenting cases of police abuse and violence against transgender people to the Istanbul Provincial Human Rights Board, an entity subject to the Governor's Office in Istanbul. Months later, the Governor's Office responded that

In a September 4, 2007 meeting of the district committee, in response to information and complaints regarding transvestites and transsexuals in the vicinity, it was decided that when enforcing their public and safety security duties, police forces were not in violation of the rights of the individuals involved. Such forces have carefully abided by national legal measures when undertaking their duties, and in order for there to be no question of rights violations, the necessary sensitivity has been observed and was reported to the District Security Authority.<sup>143</sup>

However, when Human Rights Watch researchers asked the governor if he was aware of claims of police abuse against LGBT people he said, "No information has come to us. If there are complaints these should be sent to prosecutors and to us, because we haven't received them."

Human Rights Watch showed Lambda Istanbul's inquiry and the response. The Governor said,

You have misunderstood the petition. There cannot be such a reply from us. It has been researched and investigated [referring to the

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<sup>142</sup> Human Rights Watch interview with Filiz, Istanbul, October 19, 2007.

<sup>143</sup> Letter from the Istanbul District Committee of the Governor's Office to Lambda Istanbul, responding to its information inquiry," September 18, 2007 [Istanbul Valiliği, Sayı B054VLK4340300/521/37648, Konu: Başvurunuz].

possible violations by the police] and decided that these have not taken place. If the investigation reached this outcome, such a thing [the violations] never occurred.

### C. The Balyoz Team

Many transgender people in Ankara recounted to Human Rights Watch their experiences with plainclothes police who identified themselves as belonging to a mysterious team called *Balyoz* or “sledgehammer.” Accounts suggest that it is mandated to cleanse areas of Ankara, particularly the center, of sex workers as well as transgender people; members single out transgender victims for insult as well as intimidation—“They always call us ‘*ibne*,’ ‘*top*,’ they say ‘you are fucking your asses,’” Bahar, a transgender sex worker, told Human Rights Watch.<sup>144</sup> Human Rights Watch received reports of abuses against by this team dating back to 2001. Victims’ stories indicate that it has continued to harass transgender people in the city until now.

Fulden, a transsexual, told Human Rights Watch that one day in 2002,

I had sold my car and was living on what I had earned there, I was not in prostitution then, I was just on the street in daytime. A taxi stopped and I didn’t like the look of the driver and I had lots of cash with me. So I hesitated. There were plainclothes police near there, they saw me talking to the driver—and they stopped me. They were talking on their radios and using the word *Balyoz*. A bunch of them came, I don’t know how many. They beat me with clubs on the head and body, put me in a car and took me to the Morality Division of the police department. I wasn’t listed in their records—the records had my old name, before I got the pink ID. They registered me under my new name, with my photo and prints, as a prostitute.<sup>145</sup>

Deniz described how *Balyoz* squads work in concert with local gangs:

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<sup>144</sup> Human Rights Watch interview with Bahar, Ankara, November 5, 2007.

<sup>145</sup> Human Rights Watch interview with Fulden, Ankara, October 12, 2003.

It was about the beginning of summer 2003. My roommate who is also a transvestite and I were trying to find customers on the street. These men stopped in front of us with their car. They were psychopaths, with knife scars. There were four of them: they looked like the MHP gangs, in their early twenties. [The *Milliyetçi Hareket Partisi* or National Action Party, a neo-fascist political party, is known for its violent youth groups.] They had knives in their hands and wanted us to get in the car.

We saw the *Balyoz* team about twenty meters away. We thought they would treat these guys the same way they treat us. But they didn't come closer. We had to get in the car. But before we went 400 meters, *Balyoz* blocked the way. We thought they'd take us to the station and we were happy; it seemed better than what those guys would have done to us.

But the police officer greeted those guys one by one, kissing their cheeks. They were using nicknames; they knew each other. They just handed us back over to those guys. The guys drove us somewhere isolated, outside Ankara. They raped us and robbed us, took all our money. And left us there.<sup>146</sup>

Deniz told Human Rights Watch, “They usually ask for oral sex, and take it by force. But one time it wasn't oral. *Balyoz* team took me from car and took me to a side street and touched me everywhere there. It was a year ago. But it keeps happening all the time—being touched all over. Even inside.”<sup>147</sup>

Fulden recalls,

I was working in my car one night and they [referring to *Balyoz*] stopped me. They took me to Çankaya police station, the third floor, and covered my eyes with a black strip. I don't know where they took

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<sup>146</sup> Human Rights Watch interview with Deniz, Izmir, October 19, 2003.

<sup>147</sup> Human Rights Watch interview with Deniz, Ankara, October 12, 2003.

me but it was some other building. They wanted me to get undressed, they said not to undo my eyes—and they doused me with huge hoses. They made me open my legs because I am a transsexual, and they put this pressured water into my vagina. It was agony.

Giray, 27 when we spoke to her in 2007, described an attack:

I was going home. A civilian car with four people inside appeared. They came out and attacked me. They slapped me. They said “We are *Balyoz*—what are you doing?” A minibus appeared and the four men pushed me in and took me to the Morality Police. I was held at the police station for two days. There were other three transsexuals with me in the cell. We were not registered at the police station. They never took our names.

After two days five policemen took me and put me in the minivan. They slapped me again in the car and I was left in Mamak [a district in Ankara] in a garbage dump at around 3 a.m. I went to the military [28<sup>th</sup> Mechanized Infantry Brigade] there and they took me home.

I complained about this in Kavaklıdere police station. I gave a statement. They said they would call me back. It has been four years and they haven’t called.<sup>148</sup>

In the summer of 2005, Selay was walking on the street near her home when four men who said they were *Balyoz* members seized her, forced her into a car, and took her out of Ankara to a town called Gölbaşı. “There they attacked me with batons. They kicked my stomach and punched me in my face,” she remembers. While being beaten, Selay managed to take her cell phone and call her partner.

I said, “I am with *Balyoz* and they are killing me!” They [the members of the team] panicked. They tried to clean me up when they saw I had

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<sup>148</sup> Human Rights Watch interview with Giray, Ankara, November 6, 2007.

called someone. Then they put me back in the car. I was taken to Gasp Büro Amirligi Headquarters. The head of the *Balyoz*—I don't remember his name—called me into his office. He knew by then that my lawyer and my friends were looking for me and he asked me not to complain. "If you complain you won't be able to live in Ankara," he said. For an hour we talked and I was so scared. He said to me, "Phone your friends and lawyer and ask them not to come." I told him I just wanted one thing. I asked him to let me talk to the *Balyoz* that had attacked me. He called them. When I saw them I said, "Only you and me and God know this violence. I am the daughter of a mother and you will suffer because of this. I cursed them: 'God will make you suffer.'"

I decided not to complain. .... They wrote up a statement. I read it. It said that I was taken into the car voluntarily, that my head injury was because I accidentally hit my head against the window. *Balyoz* are famous for attacking transgender people. I stayed in constant fear they would take me again.<sup>149</sup>

In 2003 the Director of the Human Rights Presidency attached to the Prime Minister's office asserted to Human Rights Watch that: "In the organization of the police departments nationwide, there is no such subdivision as *Balyoz*. People might band together in a group, informally, as a team. I don't think they would call it *Balyoz*, though."<sup>150</sup>

## D. Fines, Arbitrary Detention, and Abuse

Transgender people in Turkey are used to "the standard way police treat transvestites: they catch us, they beat us, and they take us to the police station or

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<sup>149</sup> Selay was attacked by members of *Balyoz* one more time in 2006. This attack was witness by her friend Büse. "Around 11 p.m. members of *Balyoz* stopped the taxi she [Selay] had taken to go home. They screamed 'ibne get out of the car' and started to kick her." Selay was taken to the police station and the chief of the Police Station asked her to not complain. He threatened her, "you will be back in the street tomorrow and we will get you." Human Rights Watch, interview with Selay, Ankara, November 7, 2007; Interview with Büse, Ankara, November 4, 2007.

<sup>150</sup> Human Rights Watch interview with the Director of the Human Rights Presidency within the Prime Minister's Office, Dr. Vahit Bıçak, Ankara, October 2003.

the STD [sexually transmitted disease] hospital to ‘rest’ there for a while.”<sup>151</sup> Police also use the new powers in the revised police law and the Misdemeanor Law (Kabahatler Kanunu) to detain and fine transgender people, using articles on noise, disturbances, and disobeying orders against them.<sup>152</sup>

Belgin, a human rights activist from Lambda Istanbul stated that “[t]hese new laws give them [the police] more control. Police are so empowered they feel they can do whatever they want.”<sup>153</sup> Attorneys agreed. “With the misdemeanor law we have new problems. They [transgender people] are kept in police stations when they are caught in the street; they are subject to a 117 TRY [US\$88] fine, and they keep them for five or six hours,” explained Senem, a lawyer working with Pembe Hayat, an organization based in Ankara that defends transgender people’s rights. For example, the police took Ayla to the station twice in 2007, and though not charged she was fined. “I paid 20 [Turkish] lira [US\$15] in each case to be let go.”<sup>154</sup>

Şule, a 26-year-old transgender woman in Istanbul, was taken to the Pınarbaşı police station and detained at least four times in May 2007. “Each time we had to sign a report and got fined 117 TRY [US\$88] for indecency. If you don’t pay, the fine keeps going up and they can arrest you.” According to the Misdemeanor Law, the person fined has 15 days to pay at the *maliye vergi dairesi* (tax office). If the fine is not paid within the 15 days it accrues interests.<sup>155</sup> Şule lived in Izmir before moving to

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<sup>151</sup> Human Rights Watch interview with Büse, Ankara, October 11, 2003. According to several testimonies, forced STD (sexually transmitted disease) testing on detention has diminished or stopped since 2005, but the detentions and other abuses persist.

<sup>152</sup> See, article 32: “(1) Any person who disobeys the lawfully orders which are given by the authorized agencies with a purpose of judicial procedures or in order to protect public security, public order or common wealth is fined 100 TRY. The authorized agency imposes the fine.” Article 36: “(1) Any person who makes noise with a purpose of disturbing or breaking the peace of others will be fined 50 TRY. ... (3) The police and municipal force are authorized to fine.” Article 37: “(1) Any person who disturbs others to sell goods and services will be fined 50 TRY. (2) The police and municipal force are authorized to fine.” [Kabahatler Kanunu, madde 32: “(1) Yetkili makamlar tarafından adli işlemler nedeniyle ya da kamu güvenliği, kamu düzeni veya genel sağlığın korunması amacıyla, hukuka uygun olarak verilen emre aykırı hareket eden kişiye yüz Türk Lirası idari para cezası verilir. Bu cezaya emri veren makam tarafından karar verilir.” Madde 36: “(1) Başkalarının huzur ve sükununu bozacak şekilde gürültüye neden olan kişiye, elli Türk Lirası idari para cezası verilir. ... (3) Bu kabahat dolayısıyla idari para cezasına kolluk veya belediye zabıta görevlileri karar verir.” Madde 37: “Mal veya hizmet satmak için başkalarını rahatsız eden kişi, elli Türk Lirası idari para cezası ile cezalandırılır. (2) Bu kabahat dolayısıyla idari para cezası vermeye kolluk veya belediye zabıta görevlileri yetkilidir.”]

<sup>153</sup> Human Rights Watch interview with Belgin, Istanbul, October 20, 2007.

<sup>154</sup> Human Rights Watch interview with Ayla, Istanbul, October 26, 2007.

<sup>155</sup> Human Rights Watch interview with Çule, Ankara, November 5, 2007.

Istanbul. “All the people I know in Izmir have been take to the police and fined. [In Izmir] they would insult us, harass us and physically abuse us in front of the other people.”<sup>156</sup>

Many transgender people complained they are targeted for fines, and police harassment, whether engaged in sex work or not. Fulden, in Ankara, told Human Rights Watch that “If a transvestite or transsexual goes out after dark, even for a social reason, they will arrest you for prostitution. So we can’t even go out with boyfriends—we can’t have real relationships—because we may lose jobs or face trouble with the police.”<sup>157</sup>

Ceren, for example, told Human Rights Watch how in summer 2007 she was on her way home when “*Balyoz* came by my car and asked for my ID card. I showed it and they fined me, they then threw my ID and said ‘*İbne*, you won’t be able to work here.’ One month ago I was fined 325 TRY [US\$247] more. They caught me; they took me to the police station and there they fined me. They put me in a cell. There were other transsexuals. I was the seventh person there and they kept me for four hours. [Since summer 2007] I have paid 678 TRY [US\$515].”

The harassment goes beyond the streets and reaches into private homes. Ebru recalled a dinner party in Istanbul:

In early 2007 we were about to have dinner in a friend’s house. Three or four police officers came in and asked for ID’s. They put them through the general information database [taking the IDs to the police car, which had computer connection to the general database]. We were all cleared, but they took my friend who owned the house, and another friend with her boyfriend. All were taken to the police station and charged with supplying a place for prostitution. They had to spend the night there. They were released the next day without charges.<sup>158</sup>

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<sup>156</sup> Human Rights Watch interview with Çule, Ankara, November 5, 2007.

<sup>157</sup> Human Rights Watch interview with Fulden, Ankara, October 12, 2003.

<sup>158</sup> Human Rights Watch interview with Ebru, Istanbul, November 12, 2007. Ebru has a legal battle of her own. Her house was sealed in summer 2007 by the police by orders of the Commission for Combating Venereal Diseases and Prostitution, contending that prostitution was taking place. According to the closure order, the house was shut under article 104 of the 1961

According to Ebru’s attorney, “In court cases filed against transgender people the police often say they have proof of prostitution because condoms were found.”

The well-known transgender activist Demet Demir observed that police show an evident, general discriminatory attitude towards transgender people. “Just because we look the way we look, they fine us,” she explained.<sup>159</sup> Filiz also said, “Police are softer on female sex workers, but they are really hard on transgender people who do sex work.”<sup>160</sup> Vildan Yirmibeşoğlu, a member of the Istanbul Provincial Human Rights Board confirmed the unequal treatment towards transgender people, mentioning those who have to do sex work. “Transgender people,” she explained, “are not given jobs. Because they can’t find a job they do sex work. Even a lot of people who are not conservative still say that they don’t want to work or live with them. The public says they don’t want them.”<sup>161</sup>

## E. Client Violence, Gangs, and Impunity

On October 6, 2007, *Hürriyet* newspaper reported that two men knifed two transgender women in an apartment complex in Feriköy, a neighborhood in Istanbul. Simge died from a cut to the throat; Funda survived, severely wounded. According to the newspaper, they had reportedly brought the men home after agreeing on a price in Tarlabası Street. The men attacked them in the flat.<sup>162</sup> According to Lambda Istanbul, Funda remains in hiding, afraid to talk about the experience.<sup>163</sup> Lambda has not received updates on the case, nor has it received information that anyone has been arrested or prosecuted.

Transgender people in Turkey report steady abuse from the communities around them, as well as—among sex workers—from their own customers. Human Rights

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“Provisions about Common Women [sex workers] and Common Houses [brothels] and Combating Venereal Diseases Transmitted by Prostitution.”

<sup>159</sup> Human Rights Watch interview with Demet Demir, Istanbul, October 19, 2007.

<sup>160</sup> Human Rights Watch interview with Filiz, Istanbul, October 19, 2007.

<sup>161</sup> Human Rights Watch interview with Vildan Yirmibeşoğlu, Istanbul, November 13, 2007.

<sup>162</sup> Eray Erollu, “Simge was murdered, Funda was seriously injured”, (Simge öldürüldü Funda ağır yaralı), *Hürriyet* newspaper, October 6, 2007.

<sup>163</sup> Human Rights Watch interview with Belgin, Istanbul, October 19, 2007.



Watch heard stories both of individual and gang attacks, and of the authorities' failure to investigate or respond to such violations.

In the Ankara districts of Eryaman and Dikmen between 2004 and 2007, gangs systematically targeted transgender women. The attacks were similar in both districts: unidentified men in private vehicles harassed, beat, and raped transgender people doing sex work in the areas. The assaults in Dikmen took place in 2004 and 2005; the Eryaman attacks began in April 2006 and continued until December 2007. Transgender people in these neighborhoods learned to flee at the sight of a green Ford Taunus or a white car. We also heard reports of attacks starting January 2007 in the Esat district by the same assailants known in Eryaman.

Deniz talked about her experience in Dikmen in the summer of 2004; while telling the story she was shaking:

I was hitchhiking. Two guys came walking towards me. A white car came behind me and stopped next to me. I tried to run away, but I stumbled into the guys that were walking towards me. One was carrying a scalpel, the other one an iron stick. The guy with the knife grabbed my hair with one hand and put the knife on my throat with the other. The guy with the iron stick attacked me; he hit me on my shoulder. They threw me in the car.

I was frozen. They [three men in total] took me to a parking lot in an isolated zone in Dikmen. One of the guys was caressing my face with a scalpel, then took a clump of my hair and cut it off. Two of them—the guy with the scalpel and the guy carrying the iron stick—wanted to have sex with me, but the driver, said: “Don’t touch her.” He [the driver] took me 100 meters from there and raped me, while the others waited by the car. We were there for four or five hours. They took lots of pills and were waiting for them to come down. I thought I was going to die and since I didn’t want to die I played some love games with one of

them so that they would take me back where I was hitchhiking and they did.<sup>164</sup>

Stories from Eryaman are similar. Ceren, 37, and Bahar, 40, along with others, faced harassment and attacks. “They would regularly say ‘*ibne*, we will kill you; you can’t work here, *ibne*, you will die,’” said Bahar.<sup>165</sup> Ceren recalled that the first time she was attacked, in April 2006, “I ran away and went to my house. I thought it was normal.”<sup>166</sup> The second time, about two weeks after the first attack, “I was in the car with Bahar waiting for a red light to change. The same men stopped in another car next to us, shot in the air and threw rocks at us. This time I went to the Şehit Osman Aycı police station. I gave a statement and gave the car’s license plate number. They told me they would investigate it and sent me home.”<sup>167</sup> Ceren has not heard from the police about this case since.

Bahar remembered, “[t]he situation came to a point where we traveled in cars as a group because we were periodically harassed. When attacked we would complain [to the police] and give them the license plate numbers—and then the police didn’t investigate.” “We finally decided to confront the attackers,” Ceren recalls. “They said we had to leave and give them 5 million Turkish liras.”<sup>168</sup>

In January 2007, Deniz, 41, Mine, 26, and Selay, 34, were victims of a gang in the Esat district in Ankara.

We were hitchhiking in Bağlar [an avenue in Esat where many transgender sex workers work]. A green Ford stopped in front of us—a gray Opel Vectra was following us. Suddenly 9 or 10 men were jumping out of the cars. They had knives and started to attack us. We [Deniz and Mine] ran towards a restaurant nearby; Selay ran the other way. Two men followed me. I felt a stick hit my shoulder. I fell and turned

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<sup>164</sup> Human Rights Watch interview with Deniz, Ankara, November 7, 2007.

<sup>165</sup> Human Rights Watch interview with Bahar, Ankara, November 5, 2007.

<sup>166</sup> Human Rights Watch interview with Ceren, Ankara, November 5, 2007.

<sup>167</sup> *Ibid.*

<sup>168</sup> *Ibid.* The new Turkish Lira replaced the Turkish Lira on January 1, 2005. However, many people we spoke to still talk in terms of Turkish Lira with a “millions” denomination. The new lira is worth 1,000,000 of the old lira.

around he was swinging a baton. He hit me once on my head and ran away. I stood up and searched for Mine and Selay. When I saw Mine, her leg was bleeding. Her leg had been cut with a pair of scissors.<sup>169</sup>

Senem, one of Pembe Hayat's lawyers, told Human Rights Watch, "The phone is always ringing, and the phone ringing always means bad news."<sup>170</sup> In early 2007, four men accused of being members of the Dikemen gang were captured and charged with killing several policemen. However, alleged attacks against transgender people were not investigated. This case, together with another involving men accused of kidnapping, robbing, injuring, and threatening transgender people in the Esat case, is still pending. Pembe Hayat initiated a criminal procedure against several of the men allegedly involved in the April 2006 attacks claiming damage to Bahar's car. This case was resolved in Bahar's favor. However, no case was initiated by the authorities regarding the attacks against Ceren. "New attacks continue," said Senem.<sup>171</sup>

Reports suggest that few complaints lead to charges or convictions. Deniz filed a complaint in the Esat police station after she was raped in 2004. Police arrested four men and released them two hours later; no judicial process was started against them. "They were all freed before I left the police station. Police told me that they didn't have adequate proof to accuse them," Deniz explained.<sup>172</sup> She also complained at the Şehit Osman Aycı police station after she was knifed; the officers responded: "Leave Eryaman."<sup>173</sup> Frightened, she moved to Mersin in July 2006, a city on Turkey's eastern Mediterranean coast and lived there for a year. One week after Mine was stabbed she went to the Çankaya police station to give her statement. The attackers have not been caught.

Transgender people claim that justice after violence is hard to find, and that victims sometimes became defendants. Giray told Human Rights Watch researchers that in

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<sup>169</sup> Human Rights Watch interview with Deniz, Ankara, November 7, 2007.

<sup>170</sup> Human Rights Watch interview with Senem, Ankara, November 7, 2007.

<sup>171</sup> Ibid.

<sup>172</sup> Human Rights Watch interview with Deniz, Ankara, November 7, 2007.

<sup>173</sup> Human Rights Watch interview with Ceren, Ankara, November 5, 2007.

late 2005, two customers attacked her after she picked them up in Hoşdere Street and took them home. “They told me to lie down on the bed. The guy on the bed started touching my breasts; then he held my throat and gagged me. The other held me down and said ‘Let’s cut her.’ They knifed me in my stomach.” Giray’s flat mate Daria heard the struggle and came to her help: Giray spent four days in the hospital after undergoing surgery for the wounds.

The police caught the suspects and Giray identified one of them three days after the incident. The first court hearing took place in November 2006. Giray said that during the hearing the attacker claimed in his defense that he thought Giray was a woman; he also accused her of trying to attack him. The judge decided to prosecute Giray in that same hearing and accused her of attacking the defendant. They were both released pending trial. In the fourth and final hearing on May 24, 2007, “I was sentenced to one year of prison, charged [with felonious injury]. He got six months,” Giray said with utter frustration.<sup>174</sup> The defendant’s sentence was suspended, but Giray’s was not. “We appealed, but we are pessimistic: I think they didn’t believe our client,”<sup>175</sup> said Senem, Giray’s lawyer. She added, “We later learned that they had lost the fingerprints collected and that the evidence had not been properly recorded.”<sup>176</sup> The appeal is yet to be decided.

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<sup>174</sup> Human Rights Watch interview with Giray, Ankara, November 6, 2007.

<sup>175</sup> Human Rights Watch interview with Senem, Ankara, November 4, 2007.

<sup>176</sup> *Ibid.*

## VI. Discrimination and Abuse in Other Spheres

### A. The Military

In Turkey, where the military is seen—and sees itself—as the guardian of Atatürkist principles, 15 months military service is mandatory for any man between 20 and 40 years of age.<sup>177</sup> Article 72 of the Turkish Constitution states, “Military service is the right and duty of every Turk.”

Except for some. Turkey bans gay men from military service; it is the only member of the North Atlantic Treaty Organization to do so, other than the United States, and its ban persists nine years after the European Court of Human Rights ruled against a similar ban in the UK. Specifically, the Turkish Armed Forces Health Requirement Regulation bars people with “high level psychological disorders (homosexuality, transsexuality, transvestism).”<sup>178</sup> The commentary to the regulation reads, “It must be proved with documentary evidence that the defects in sexual behavior are obvious, and that when revealed in a military context would create problems.” What constitutes an “obvious defect” or one that would “create problems” is not spelled out.

As a result of the regulation and commentary, gay men seeking exemptions are compelled to undergo psychological and, sometimes, humiliating anal, examinations based on mythologies about homosexuality. Sometimes they are also forced to produce photographs showing them as passive partners in anal intercourse.

A discharge on the basis of “psychosocial illness” also cuts off the possibility of future state employment. Private employers who seek information about potential hires will usually only be informed that the man was “unable for military service,”

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<sup>177</sup> Article 2, Law on Military Service Act No. 1111 (1927).

<sup>178</sup> Turkish Armed Forces Health Ability Regulations. Appendix: List of Illnesses and Disabilities, Article 17.D.3 [Türk Silahlı Kuvvetleri Sağlık Yeteneği Yönetmeliği].

but even that classification can create a suspicion of homosexuality (or “psychosocial illness”), making employment difficult.<sup>179</sup>

Gay men who, despite the ban, try to serve in the military fear how they will be treated in an institution which one calls both “basic to Turkish manhood, and the most powerful in the state.”<sup>180</sup> Kerem told Human Rights Watch about violent harassment during his army service:

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<sup>179</sup> A reference to homosexuality as an “advanced psychological disorder” was mentioned in the case of Mehmet Tarhan in the final decision by the Court of Appeals in August 2005. The decision overturned his prison sentence but recommended that his sexual orientation be determined through the “proper examinations.” Tarhan refused. The Court of Cassation subsequently ruled that forced physical examination is a violation of human rights and the integrity of the person, but the examinations continue. Human Rights Watch interview with Mehmet Tarhan, conscientious objector, Istanbul, October 2, 2003 and October 18, 2007. Also see: Tolga Korkut, “Military Court Defies Medical Science,” *Bia News*, May 4, 2006, [http://www.bianet.org/2006/05/01\\_eng/news78618.htm](http://www.bianet.org/2006/05/01_eng/news78618.htm) (accessed January 31, 2008).

<sup>180</sup> Human Rights Watch interview with Mehmet Tarhan, conscientious objector, Istanbul, October 2, 2003. For a discussion of the role of the military in constructing masculinity, see Emma Sinclair-Webb, “Our Bülent Is Now a Commando: Military Service and Manhood in Turkey,” in Mai Ghoussoub and Emma Sinclair-Webb, eds., *Imagined Masculinities: Male Identity and Culture in the Modern Middle East* (London: Saqi Books, 2000), pp. 65-92. Turkey does not permit conscientious objection. The few people who have attempted to claim conscientious-objector status, on the basis of religious or philosophical conviction, have faced serious persecution or social marginalization as a result. Mehmet Tarhan, a leftist activist who is gay but chose to pursue conscientious objection to voice his pacifism publicly, says, “I can’t go abroad, I can’t take a passport. I can’t have a normal job where you pay taxes; the state can close any workplace that hires someone who has escaped the army in this way. I can’t vote. I am in a jail where I cannot see its walls.” (Human Rights Watch interview with Mehmet Tarhan, conscientious objector, Istanbul, October 2, 2003). His lawyers filed a complaint before the Military’s Prosecutor Office for the abuses Tarhan suffered. They alleged guards slapped Tarhan while telling him, “You look like a woman with your [long] hair: we can make you the woman of the solitary confinement [area].”

Tarhan has become a symbol of resistance to compulsory military service. On April 8, 2005, he was arrested by police in Izmir and sent to Sivas military prison. While there, he refused to apply for an army discharge on the grounds of his homosexuality, calling it discrimination. He stated that he was beaten severely by other prisoners because of his homosexuality; and that prison authorities did not intervene, and indeed actively encouraged the abuse. Tarhan went on a hunger strike for 28 days, demanding a separate cell to protect him from violence. Despite a court order for his release on June 9, the military continued to detain him. At his trial on August 12, 2005 he was sentenced to a draconian four-year prison term for “insubordination before the unit” under Article 88 of the Turkish Military Penal Code.

He was released after the March 9, 2006, appellate court decision. The military appeals court ruled that he be medically examined to assess his eligibility for military service, according to article 75 of the Criminal Code. The Court also determined the penalty was highly disproportional and asked the lower court to impose a proportionate penalty. The Criminal Court in Sivas later decided that it was not necessary to examine him since the offence was not related to this issue, but was silent on the penalty issue. Tarhan was never examined. In October 2006 the Sivas court imposed a penalty of 25 months in prison. His lawyer appealed and a appeal decision is pending. See “Lawyers Call Record Imprisonment for Conscientious Objector ‘Intimidation’,” *Turkish Daily News*, August 13, 2005; Complaint presented by Adv. Suna Çoşkun and Senem Doğanoğlu before the 5th Infantry Training Brigade Commandership, Military Prosecutor’s Office, Sivas, May 23, 2005. In the face of such punishment for claims of conscience, the consequences of being banned from serving in the military for “psychosocial illness” may seem less serious to many men.

My service started... After only 15 days I understood something would go wrong. People thought I was different. I looked and spoke differently. At first they thought it was because I was from Istanbul. But then they realized it was something else. I had a friend with whom I was very close and I told him I was gay. ... And then the nightmare started. Those who learned started teasing me and shouting at me. I faced lots of verbal violence. But this quickly became more aggressive, moved to a different level. I was beaten. I told the people above me. They said I couldn't tell anyone higher, but if they heard they would make worse violence on me, maybe starve me or kill me.

Things got harder and harder. I was afraid for my life. ... And therefore I did the worst thing a soldier can do. I escaped from the army. ...

In military prison, he faced further abuse from other prisoners and from guards. Guards “tried to take me to the showers in the jail where the soldiers committed gang rape. The soldiers wanted to rape me; they were saying, ‘We can have some fun. We haven’t seen a woman’s face. You’re like a woman, aren’t you?’” Finally he was placed in solitary confinement. “The soldiers told the other prisoners I was gay—they gave me a nickname, *pembe*, pink. They shouted at me all day long. There was one toilet, not in my cell, and I was taken there once a day. The soldiers made the other prisoners stand without moving, and I went to the toilet and came back like that.”

Kerem was finally freed, but only after going through an anal examination and producing photographs of himself in anal intercourse, to “prove” his homosexuality.<sup>181</sup> Such a succession of humiliations is common for men under military investigation to validate, or deny, an exemption.

The first stage is to appear before a committee of doctors at a military hospital. Yahya told Human Rights Watch, “It was very clear the doctors thought you were not normal. It is like labeling the sheep in a farm. But it isn’t sheep, it’s men.”<sup>182</sup> Many men—following lore widely circulated in gay communities about how to avoid

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<sup>181</sup> Human Rights Watch interview with Kerem, Istanbul, October 2003.

<sup>182</sup> Human Rights Watch interview with Yahya, Istanbul, October 9, 2003.

service—dress up in ways considered stereotypically homosexual. Can said, “I prepared myself and exaggerated on purpose. I felt I had to do this so that they would believe me ... I got some feminine clothes and put make up, but I didn’t want to. As we walked through the hospital the soldiers verbally harassed us.”<sup>183</sup>

Barbaros told Human Rights Watch,

I had to be the way they wanted to see me. They would only give me the report if I looked the way they wanted me to look. I shaved off my beard, I did my hair, I made up my eyes—I put some rouge on my cheeks. I wore a tight T-shirt and tight jeans. .... At the hospital, everyone was rude to me when I asked the way. I couldn’t stand to be in that situation for two hours and I wondered how transvestites were surviving all their lives.<sup>184</sup>

The committee orders applicants to undergo personality tests, and sometimes physical examination to detect “signs” of intercourse.<sup>185</sup> This can result in long periods of detention in the military hospital.<sup>186</sup> The examinations often include an abusive and intrusive anal examination. As A.A. told of such an exam, he hesitated nervously. He still has difficulty putting into words what he went through two years earlier.

The psychiatrist that saw me sent me to have a rectum examination. I came into the room and there were two surgeons. They made me pull my pants down and put my arms against a bed and bend forward. After the examination I asked if they had found what they were looking for.

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<sup>183</sup> Human Rights Watch interview with Can, Istanbul, November 16, 2007.

<sup>184</sup> Human Rights Watch interview with Barbaros (name changed), Izmir, October 19, 2003.

<sup>185</sup> Human Rights Watch has documented that these types of examinations to detect “evidence” of homosexuality “are not only medically spurious but, conducted without consent, constitute torture.” See: Human Rights Watch, *In a Time of Torture: The Assault on Justice In Egypt’s Crackdown on Homosexual Conduct*, March 2004

<sup>186</sup> In its 2007 mission to Turkey the Working Group on Arbitrary Detention stated that “whenever a Government, also for the most legitimate purposes, decides to deprive someone of his or her freedom, international law provides that it needs to do so on a sound legal basis and to provide an opportunity to challenge the deprivation of liberty before a court.” It recommended Turkey to “enact legislation governing involuntary commitment to psychiatric hospitals.” Human Rights Council, Report of the Working Group of Arbitrary Detention, Mission to Turkey, A/HRC/4/40/Add.5, February 7, 2007, paras. 91 and 103.



They said “no.” I asked what was they were looking for and they said “It should look like a funnel.” They wrote a report saying that there was no proof that this person is homosexual.<sup>187</sup>

Yahya described a similar ordeal:

The doctor came in and looked at my face and said the rest of his sentences without looking at my face. First, “Take your pants down.” My shirt was still covering my genitals. He told me to lift my shirt. He looked at my front, and after two seconds, “Turn around.” “Now, your front again.” He said I could let my shirt down. And told me to bend over the table, elbows on it. He was wearing a plastic glove. There, they check if your asshole is tight or not. ... And with his glove, he held my ass and opened the two cheeks. I couldn’t see what he was doing. But I think he first had a look. Then put his finger on my hole and pressed it in very hard. And after it was in, he told me to contract the rectal muscle. I didn’t do it much, deliberately: he told me to do it again. I did it just a little bit: He said very rudely: “I told you to contract!” ... It was very humiliating.<sup>188</sup>

Yahya showed us the resulting document:

In the examination made on the patient, the two breasts look normal for a male. External genitals have a normal male appearance. ...Upon the rectal touch, the ability to contract the external sphincter is somewhat lost; there are multiple anal fissures extant.<sup>189</sup>

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<sup>187</sup> Human Rights Watch interview with A.A. (name withheld), Ankara, November 6, 2007.

<sup>188</sup> Human Rights Watch interview with Yahya, Istanbul, October 9, 2003. Much like Turkish law, the 1801 Napoleonic code decriminalized homosexual conduct per se in France but continued to criminalize various “public offenses against decency,” a provision which was used against suspected “sodomites” into the Second Empire, and which created pressure for medico-legal proofs of homosexual conduct. See Victoria Thompson, “Creating Boundaries: Homosexuality and the Changing Social Order in France, 1830-1870,” and William Penniston, “Love and Death in Gay Paris: Homosexuality and Criminality in the 1870s,” both in Jeffrey Merrick and Bryant Ragan, eds., *Homosexuality in Modern France* (New York: Oxford University Press, 1996).

<sup>189</sup> The examination appears to reflect the discredited ideas of a 19th-century French forensic doctor, Auguste Ambroise Tardieu (1818-1879), who published his *Étude médico-légale sur les attentats aux mœurs* (“Forensic Study of Assaults against

Usually the applicant is made to complete psychological tests, particularly the Minnesota Multiphasic Personality Inventory (MMPI)—and the attitudes of presiding psychologists show a conviction that homosexuality is a sickness. Deniz Yıldız, a student who had studied psychology, told Human Rights Watch:

They gave me the MMPI. ... The doctor told me “We don’t give results of the test to ‘sick people’—her words. ... All the doctors made clear they thought of homosexuality as a sickness. One doctor said, he wanted to read something about homosexuality—showed me some things he had in English, by Charles W. Socarides.<sup>190</sup> Finally they gave me the report. In it was written, “Psychosexual illness (homosexuality) — “psikoseksuel bozukluk [homosex].”<sup>191</sup>

Oğuz was held in the military hospital for 10 days. “Involuntarily. They interviewed me over and over. They asked again and again if I shaved or waxed my body hairs. I said no, I am gay, but a gay *man*. I want to be with another man as a *man*.”

Finally, he was forced to take what was apparently sodium pentothal for a final “interview.”<sup>192</sup>

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Decency”) in 1857. Its blend of scientific tenor and prurient themes made it a bestseller, and it had considerable influence on medical investigations in areas—including the Ottoman territories—where the prestige of French medicine was high. The book laid guidelines for investigating three offenses: public “outrages against decency”; rape; and “pederasty and sodomy,” terms it used interchangeably for adult male homosexual acts. Tardieu believed that “habitual pederasty” left certain signs on the body, the “knowledge of which will permit the forensic doctor, in the great majority of cases, to direct with sureness the pursuits which involve public morality to such a high degree.” In the case of the “passive” partner these marks allegedly included an elastic and funnel-shaped anus. Dr. Lorna Martin, professor of forensic pathology at the University of Cape Town, South Africa, calls Tardieu’s theory of a permanently altered anus “bizarre and antiquated ... rubbish.” She adds, “It is impossible to detect chronic anal penetration; the only time the [forensic anal] examination could be of any use is for acute non-consensual anal penetration, when certain injuries may be seen.”

Yet the echoes of Tardieu’s theories persist in Turkey, marks of a persisting mythology about the physiological effects of homosexual desire. August Ambroise Tardieu, *Etude Medico-Legale sur les Attentats aux Moeurs*, 3rd ed. (Paris: J. B. Bailliere, 1859), p. 135. For a fuller discussion of Tardieu’s theories and the forensic examinations conducted on their basis in Egypt, see Human Rights Watch, *In a Time of Torture: The Assault on Justice In Egypt’s Crackdown on Homosexual Conduct*, March 2004.

<sup>190</sup> Socarides is well-known in the United States as a polemicist against the depathologization of homosexuality; his theories that homosexuality is a curable disease are widely discredited among the U.S. medical profession.

<sup>191</sup> Human Rights Watch interview with Deniz Yıldız, Istanbul, October 1, 2003.

<sup>192</sup> This is an “intravenous ultra-short-acting barbiturate” sometimes used during interrogations to weaken the resolve of the subject and make him or her more compliant to pressure.

One day one of the other “patients” woke me up, and said, “They are calling you. To the Cure Room. It is a bad room; they give the patients electroshock.” I was so afraid. I went there. I said I didn’t need a cure. The nurse said: “You must and you will.” Then she put an IV in my arm. “Why? What will you do to me?”

She said: “Medicine. It’ll be better this way.”

My doctor came. He said, “We will give you medicine so that you can talk. It is not hypnosis. But if you forget anything about your daily life, this will help you remember. It’s a truth serum. It will just make you feel drunk,” he said.

I counted down from 1000—I began to feel really drunk. Other patients said I was in there 45 minutes to an hour. I cried a lot. I talked about my first boyfriend who had been killed a couple of years before. I cry a lot when drunk. I know he asked me if I was passive or active, had I had sexual relations with women, had I liked sex? It was not so good for me because I didn’t know what I was saying.<sup>193</sup>

Perhaps still worse, many patients are required to produce pictures of themselves engaged in sexual positions. Seyhan applied for the exemption while still identifying as a gay man, before transitioning to a transgender identity. “They asked for pictures. I had to take 40 or 50 different pictures with two different people: they were very specific,” she said.<sup>194</sup> And a doctor told Barbaros: “You may be homosexual but the army has to document it. We can’t know on our own who is gay and who is not.”

I was surprised, I thought they wanted an arrest report or something. And from the bottom drawer of his desk he took out some photographs. Photographs of other homosexuals who applied for the report, taken when they are having sexual intercourse or giving blow

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<sup>193</sup> Human Rights Watch interview with Oğuz, Istanbul, October 4, 2003.

<sup>194</sup> Human Rights Watch interview with Seyhan, Istanbul, October 17, 2003.

jobs. “Documents like this,” he said. ... He said, “It’s enough that your face is recognizable in the pictures of intercourse. Of course, you must be in the passive position, and we don’t need to see the face of the other person.”

At first we were worried how we could get the pictures developed. We could not get them printed anywhere.. ... It was very difficult when we were taking them. There was a third person who was seeing me in that position, taking the pictures. It was funny on the one hand, but very tragic on the other. I was very uncomfortable and very humiliated.

Finally I gave the doctor the pictures, and he prepared the report that was the basis for my exemption. The text said: since his childhood he feels like a woman, the way he acts, the way he walks, the tone of his voice is like a woman. And he expresses himself like a woman.<sup>195</sup>

A.A., however, refused to “feminize” himself—making his exemption harder, but also making his the first known case to reach a military court

I went to the hospital to the psychiatric department and saw five psychiatrists one after the other. The last one that I talked to was a colonel. He was with two other doctors. I said, I am homosexual. He replied, “You are brave, but sincerity is not a problem for us. You can also be homosexual and be in the army. You are not feminine, you are

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<sup>195</sup> Dr. Nevzat Tarhan, former chief of Psychiatry Clinic at Haydarpaşa Training Hospital in GATA (Eski Haydarpaşa GATA Psikiyatri Kliniği Şefi) in Istanbul, where the examinations are often performed, told the press in 2000 that “When I was working at GATA we did ask for pictures to put in the file, but not that kind of photographs. I have never witnessed anything like this and did not ask for anything like this from any patient.” But he added that, “To diagnose homosexuality is not possible with only the word of the person himself. It has to be documented that it is his lifestyle. In these documents, you have to see solid examples related to the person’s history. If this person has been in an illegal action and if he has records in the Morality Department of the police, he is asked for these documents; or if he is walking around in transvestite or transsexual clothing, going to the clubs, we ask for the pictures taken there. These are extra documents. Psychiatric clinical examination, and psychometric measurements, and personality tests determine if the patient is gay or not. If what the patient tells clashes with what we discover, usually the decision is that he should perform military service. It is not obligatory in psychiatry to inspect the patient anally. This examination only happens in criminal cases. Some doctors may ask for this examination, but this is their fault of professional standards.” “I won’t recruit you if you prove it,” *Hürriyet* newspaper, June 11, 2000. However, victims of the tests quoted in the same article described being asked to submit photographs of sexual acts.

*delikanlı* [manly]. I responded “When it suits you, you say it’s an illness [referring to homosexual conduct] and when it suits you say it isn’t. If it isn’t, why do you fire people from the army for this reason?” ...

On January 20, 2006 we went to [a military] court to stop the procedure to take me to the army. .... On September 21, 2006, the court decided to send me to GATA Hospital for further examinations. ...

Ultimately, paradoxically, evidence that he had been a victim of violence helped to prove that A.A. was gay.

I said [to the psychiatrists], “If you send me to the army I will be the first homosexual in the army.” This was my last card to play. They told me to wait out of the room, and said “Come again with documents that prove that you are gay.” I took pictures having intercourse and police reports that I had been attacked and robbed. ... [Finally] the head of the department said “You’re lucky. We decided not to send you to military, you win.” I could have done other things. People dress like women but that doesn’t suit me. I thought, this is law, and this is my sexual orientation.<sup>196</sup>

These stories indicate how the military clings to powerful myths about both homosexuality and masculinity itself. They show how far the most powerful institution of the Turkish state will go—investigating anuses and producing its own pornography—to adhere to its exclusive definition of the meaning of being a man.

The Turkish ban on homosexuals serving in its armed forces – labeling homosexuality a “psychological disorder” – and the intrusive and humiliating questioning it enables are clear violations of the ECHR. Indeed, Turkey is the only European NATO member to persist with such practices, nine years after the European Court of Human Rights found the UK’s ban on homosexuals serving in the armed

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<sup>196</sup> Human Rights Watch interview with A.A. (name withheld), Ankara, November 6, 2007.

forces—and the questioning its armed forces carried out—to violate Article 8 (right to a private life) of the Convention.<sup>197</sup> In a strong opinion, the Court found that the UK could not justify its ban, and indeed should adapt similar methods to combat homophobic bullying in the army as it had already done to tackle racial and gender bullying.<sup>198</sup> The Court also found the intrusive questioning of the applicants into their private lives to breach the Convention, stating in effect that there was no justification for any questioning to continue once the persons had stated that they were homosexual.<sup>199</sup>

## B. Psychiatry and the Medical Profession

The accounts above also reveal the persistence of prejudice in the medical profession.<sup>200</sup> One prominent doctor told Human Rights Watch, “Turkish psychiatry is very conservative, very resistant to change.”<sup>201</sup>

Several young people told Human Rights Watch that when their parents learned of their sexual orientation in their adolescence, they were forced to seek “treatment” from a psychologist or psychiatrist. Some, indeed, found sympathetic help. Can said that when his parents insisted he seek psychiatric help at 17, the doctor told them: “You must help him adjust to his life, support him. You cannot change him.”<sup>202</sup> However, Esme—expelled from school at 16 when she declared she was a lesbian—

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<sup>197</sup> See *Lustig-Prean and Beckett v United Kingdom* (Applications nos. 31417/96 and 32377/96), Judgment of September 27, 1999, para. 95-103; *Smith and Grady v United Kingdom* (Applications nos. 33985/96 and 33986/96), Judgment of September 27, 1999, para. 90-105, both available at [www.echr.coe.int](http://www.echr.coe.int).

<sup>198</sup> *Lustig Prean et al. v United Kingdom*, para 95.

<sup>199</sup> *Smith et al. v United Kingdom*, para 103.

<sup>200</sup> Health professionals cannot turn a blind eye or act in violation of international human rights law. In the report on the Situation of detainees in Guantanamo Bay, the Working Group on Arbitrary Detention, the Special Rapporteur on the Independence of Judges and Lawyers, the Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, the Special Rapporteur on Freedom of Religion or Belief, and the Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health, stated that “health professionals also have some right-to-health responsibilities deriving from international human rights law.” It concluded, among other things, that “the UN Principles of Medical Ethics apply to all health professionals.” Human Rights Commission, 62<sup>nd</sup> session, E/CN.4/2006/120, February 15, 2006, paras. 68 and 73.

<sup>201</sup> Human Rights Watch interview with Ayşe Kayhan, psychiatrist specialist in transgender care, Istanbul, October 2003.

<sup>202</sup> Human Rights Watch interview with Can Yaman, Istanbul, October 1, 2003.

told Human Rights Watch that the psychologist gave her anti-depressants, which he said “would cure me of being a lesbian.”<sup>203</sup>

Deniz described how, when as a 16-year-old student he told his mother he was gay, “The family insisted I see a psychiatrist. And I was very willing, because I was depressed. But my problems were with my relationships with my family and friendships, not my sexuality.” He was “diagnosed” by a professor at Ankara University:

The professor met with me alone and asked me questions. He asked if I was imagining myself with men when I masturbated—he made it clear that he saw homosexuality as a sickness. ... Then he diagnosed me with transsexuality! And suddenly he called two or three of his students into the room. And he asked me questions in front of them, and said here is “someone with a sexual disorder.” I don’t remember the questions—it was a really, really negative experience. Then he called my mother in, and he talked to her about hormone therapy. Eventually we found a doctor at home, in Izmir. She told me the professor was not right to diagnose homosexuality as an illness: it wasn’t treated that way by international psychiatric definitions.<sup>204</sup>

Mustafa told Human Rights Watch that after a man raped him brutally, during his early twenties,

I went to a shrink, a psychologist after the event. He asked me: “How do you have sex? Why do you do it that way?” He prescribed a simple anti-depressant, and told me I was sick deep inside. In our country there is no proper counseling for gays. When transvestites or

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<sup>203</sup> Human Rights Watch interview with Esme, Istanbul, October 20, 2003. More than half the lesbian and bisexual women we spoke to were sent by their family to a psychologist or psychiatrist. The attitudes described by Esme evidently persist in some doctors; others are more open to issues of sexuality.

<sup>204</sup> Human Rights Watch interview with Deniz, Izmir, October 19, 2003.

transsexuals or gays are attacked, you cannot go to a psychologist and receive sympathetic counseling.<sup>205</sup>

And he added, “Many psychiatrists know nothing about this.”

They simply add to our troubles if you go to them with a problem. You cannot discharge your problems. You take drugs, build up aggression. Psychologists need training on how to deal with gays. And we need a hotline, a drop-in service, something.

This psychiatric treatment is often provided under a misperception that the sexual orientation of young people can or should be treated or cured. The use of psychotherapy to do this is contrary to human rights. The Convention on the Rights of the Child obliges States parties to take “all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence.”<sup>206</sup> Under article 24 of the same treaty young people have the right to health, which includes, as mentioned by the Committee on the Rights of the Child—which monitors compliance interprets the CRC—, having a supportive environment by family and others.<sup>207</sup>

### C. “Public Morals”: Restrictions on Association

Lesbian, gay, bisexual, and transgender activism has been publicly visible in Turkey for more than 10 years, but only after 2000 did groups move toward becoming legal entities. In 2003 there were no legally registered organizations devoted to defend LGBT rights in Turkey. Changes in the Law on Associations, easing the stipulations for recognition, made it possible for LGBT groups to achieve legal status.<sup>208</sup> Yet the visibility of these groups—Lambda Istanbul and, in Ankara, KAOS-GL and Pink Life—

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<sup>205</sup> Human Rights Watch interview with Mustafa, Istanbul, October 20, 2003.

<sup>206</sup> CRC, article 19(1).

<sup>207</sup> Committee on the Rights of the Child, “General Comment No. 4, Adolescent Health and Development in the Context of the Convention on the Rights of the Child,” 33<sup>rd</sup> session (2003), paras 10-11 in *UN Compilation of General Comments and Recommendations adopted by Human Rights Treaty Bodies*, HRI/GEN/1/Rev.7, May 12, 2004, p. 324.

<sup>208</sup> Law on Associations (No. 2908), available at <http://www.legislationline.org/legislation.php?tid=2&lid=7314&less=false> (accessed April 25, 2008). However, in this sense some restrictions remain. According to article 4, only people over the age of 18 may found an association. This raises concerns about young people’s ability to found organizations that may provide support to LGBT children.



along with that of other activists, has led to government repression. LGBT groups throughout Turkey today struggle to protect their right to exist, express themselves, and survive.

On July 1, 2007, local LGBT organizations hosted the fourth Gay Pride march in Istanbul under the slogan “Let us defend life together.” More than 1000 people walked down İstiklal Street, a central thoroughfare in Istanbul, marking the first time a gay pride march in Turkey drew so many.<sup>209</sup> The march gave new spirit to those supporting LGBT rights. Yeşim, 33, told Human Rights Watch, “I started to think, this is a movement—before that I thought we were just little groups.”<sup>210</sup>

Three months after the march, Lambda Istanbul, one of the LGBT organizations in Istanbul, appeared before a court to defend its right to exist. On October 18, 2007, its representatives appeared at a hearing before the court of first instance, an administrative court.<sup>211</sup>

The Provincial Associations Directorate of the Governor’s Office in Istanbul responsible for non-governmental organizations (NGOs) demanded in early 2007 that Lambda Istanbul be shut down. The Governor’s Office sent a letter to the group specifying that the words “lesbian, gay, bisexual, transvestite and transsexual” in Lambda Istanbul’s name and objectives are “against the law and morality,” in breach of article 56 the Turkish Civil Code<sup>212</sup> and article 41 of the Constitution.<sup>213</sup> The Governor’s Office also claims that the group’s name contravenes the Law on Associations because “Lambda” is not a Turkish word.

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<sup>209</sup> KAOS-GL participated in the May Day labor demonstrations in Ankara in 2001, with its own banner and signs. This was the first time LGBT organizations participated in a public forum. Ali, one of the founders of KAOS-GL, recalled, “It was the first time we were visible. We had pink poster boards and flags. All the NGOs and media and labor unions were shocked.” Human Rights Watch interview with Ali, Ankara, November 2, 2007.

<sup>210</sup> Human Rights Watch interview with Yeşim, Istanbul, November 11, 2007.

<sup>211</sup> Lambda Istanbul’s lawyer submitted experts’ opinions showing that the terms “lesbian, gay, bisexual, and transgender” should not be considered immoral. The judge accepted the opinions and appointed a specialist to analyze their veracity.

<sup>212</sup> Article 56 of the Turkish Civil Code states that “No association may be founded for purposes against law and morality.”

<sup>213</sup> Article 41 of the Turkish Constitution states that “[t]he family is the foundation of the Turkish society ...” and that “[t]he state shall take the necessary measures and establish the necessary organizations to ensure the peace and welfare of the family.”

In July 2007, the local Prosecutor’s Office rejected the complaint. The Governor’s Office then took the case to a higher court, the Beyoğlu Sıtlüce Court of First Instance No. 5, which held a hearing that same month and ordered a second hearing for October 2007. The hearing was adjourned pending an expert’s opinion on the definition of morality with regards to the word lesbian, gay, bisexual, and transgender.

Speaking to Human Rights Watch in October 2007, Istanbul Governor Muammer Güler acknowledged that Lambda Istanbul had legal status, but claimed that his office started proceedings against its name and purpose because those breached the law. Asked to explain this assertion, he told Human Rights Watch, “I’m supposed to apply the law, not interpret the law. The independent judiciary will decide, not us.”<sup>214</sup>

Governor Güler then added that morality issues “[are] just a thing that is provided by the law. It does not affect them [the NGOs] in practice; is there anything that limits their activities?”<sup>215</sup> In fact, there is. Until Lambda Istanbul’s legal situation is resolved, its uncertain legal status will continue to have political effects– some of its members fear to state their views or oppose state policies too openly – and economic limitations. The lack of official status “interferes with getting funds: embassies don’t want to fund us; we can’t even have a bank account until the situation is resolved,” Cihan, a member of Lambda Istanbul, said.<sup>216</sup> It will also affect them in their work with the community. “Being an association makes people trust you,”<sup>217</sup> said the director of another gay and lesbian organization, KAOS-GL. He speaks from the similar experience this group faced.

KAOS-GL and Pembe Hayat, an association that defends the rights of transgender people, faced similar threats of closure in Ankara. KAOS-GL also had initial difficulties becoming an association, registering first as a commercial company in

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<sup>214</sup> Human Rights Watch interview with Governor Mummer Güler, Istanbul, November 13, 2007.

<sup>215</sup> Ibid.

<sup>216</sup> Human Rights Watch interview with Cihan, Istanbul, October 15, 2003.

<sup>217</sup> Human Rights Watch interview with Oya Aydin, KAOS-GL, Ankara, November 8, 2007.

1999. “We had to because we were publishing the KAOS-GL magazine, and the Ankara police came and said a journal had to come from a company.”<sup>218</sup>

Later, in July 2005, KAOS-GL applied to the Ministry of Interior for recognition as a nongovernmental organization. The ministry initially approved the request, but Ankara’s deputy governor, Selahattin Ekremoğlu, responded by launching a lawsuit to close the organization. In a letter dated September 15, 2005 the governor informed KAOS-GL of the legal action:<sup>219</sup>

After reviewing the filing for “KAOS-GL Gay and Lesbian Cultural Research and Solidarity Organization” which was founded at G.M.K. Bulvarı No: 29/12 Demirtepe-Çankaya, Ankara:

Article 56 of 4721 Civil Code forbids “Establishing any organization that is against the laws and morality rules.” It was found that the name and the regulations of the below-mentioned organization are against the mentioned article.

Because of the breach of article 56 of 4721 Civil Code, it was decided to file a lawsuit to the Principal Registry in order to close the aforementioned organization and therefore I am requesting information from you regarding this issue.<sup>220</sup>

On October 12, 2005, the Ankara prosecutor Kursat Kayral rejected the governor’s petition. He explained that the words “gay” and “lesbian” found in KAOS-GL name and charter are everyday language also used in scientific research and clarified that homosexuality does not amount to immorality.<sup>221</sup> This decision should be a

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<sup>218</sup> Human Rights Watch interview with Umut Güner, KAOS-GL, Ankara, October 12, 2003.

<sup>219</sup> Available at <http://news.kaosgl.com/item/2005/9/19/establishing-a-gay-and-lesbian-organization-is-against-the-laws-and-ethical-rules-according-to-the-turkish-government> (accessed January 28, 2008).

<sup>220</sup> The letter was published by KAOS-GL on their website. Available at <http://news.kaosgl.com/item/2005/9/19/establishing-a-gay-and-lesbian-organization-is-against-the-laws-and-ethical-rules-according-to-the-turkish-government> (accessed April 25, 2008).

<sup>221</sup> Emine Kart, “Turkye’s gays will host global meeting against homophobia,” *Turkish Daily News*, March 5, 2006, [www.turkishdailynews.com/tr/article.php?enewsid=37227](http://www.turkishdailynews.com/tr/article.php?enewsid=37227) (accessed April 21, 2008); “Turkish Gay Group Survives Shutdown Attempt,” *San Francisco Bay Times*, [www.sfbaytimes.com/index.php?article\\_id=4228&sec=article](http://www.sfbaytimes.com/index.php?article_id=4228&sec=article) (accessed March 23, 2008);

precedent-setting decision for cases like the one against Lambda Istanbul given that the governors' offices accused both organizations using the same legal provisions (article 56 of the Civil Code and article 41 of the Constitution).

Pembe Hayat is registered as an association, giving it its own legal personality according to article 59 of the TCK. Senem, one of Pembe Hayat's lawyers, recalls that they "applied [to become an organization] before the governor in the beginning of July 2006. They [the Governor's office] presented a case to the prosecutor in October 2006 claiming that the association was against 'morality and family structure'; they did not specify why."<sup>222</sup> The Prosecutor dropped the charges on December 2006. Nevertheless, five months later, in May 2007, the governor's office started another administrative procedure against Pembe Hayat, this time accusing it of failing to have its first general council meeting within the time frame established by law.<sup>223</sup> "We had had our general board meeting and the governor sent an official document saying that there was no problem," explained Hakan, one of Pink Life's lawyers: "There were no legal grounds for a fine." At the end "[w]e got fined 500 TRY [US\$381]," said Senem, one of the lawyers representing Pembe Hayat. She added that when the trial ended the judge came up to me and said 'if I had an opportunity I would fine you one million Turkish lira'; you could see the abhorrence, the disgust on his face."<sup>224</sup>

Amargi Women Academy, a feminist organization founded in 2001, decided not to register as an association, fearing the harassment it might suffer. According to Pınar Selek, a sociologist and editor of the journal *Amargi* "We are registered as a cooperative. This doesn't fall under the Law on Associations. We didn't register

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"Turkish Court Not to Hear Case to Close down Gay Group," *UK Gay News*, October 12, 2005, <http://www.ukgaynews.org.uk/Archive/2005oct/1202.htm> (accessed December 8, 2007); "Request to ban Turkish gay rights group rejected," *Advocate.com*, October 13, 2005, [http://www.advocate.com/news\\_detail\\_ektid21550.asp](http://www.advocate.com/news_detail_ektid21550.asp) (accessed December 8, 2007).

<sup>222</sup> Human Rights Watch interview with Hakan, Pembe Hayat, Ankara, November 4, 2007.

<sup>223</sup> Article 14 of the Law on Associations states, "Associations must hold their first general council meeting and establish their organs within six months following the date on which their statute was published in a newspaper. If an association fails to conform to this requirement, the most senior local representative of government shall give a decision for the association to be considered to have wound itself up."

<sup>224</sup> Human Rights Watch interview with Senem, Ankara, November 4, 2007.

under that law, because when you are an association the governor's office checks and oversees everything.”<sup>225</sup>

The language of the Law on Associations poses no express restrictions to the formation of LGBT organizations. However, authorities in Istanbul and Ankara have shown they will use the neutral formulations of the law to restrain what they see as infectious immorality bleeding into political and social life. İdil Işıl Gül, a professor of law at Bilgi University, observes that “Authorities see more people [publicly] ‘out,’ so there is more reaction. Since they are now legal organizations seeking legal recognition, the reaction is also legal [meaning that the authorities attack these organizations through the existing legal norms]. State organs have made it a legal issue, and react in a legal way.”<sup>226</sup>

In some cases, police have actively harassed LGBT activists in their work. In 2001, members of the Ankara police's *Balyoz* team made a pointed visit to the KAOS-GL offices: “They said they were from a special team. When we asked, ‘Are you *Balyoz*,’ because everybody had heard of that, they said, ‘Yes.’”

There were five of them, in plainclothes, and they showed police IDs, but never a warrant of any kind. They said they wanted to learn what was happening here. KAOS was becoming more visible; they seemed to think it was a place for transvestites, perhaps a brothel. They weren't the big *Balyoz* thugs who arrest the transvestites on the street. They looked around for half an hour, checked the library. They were obviously surprised to see people in front of them saying, “OK, we're gay, so what.” They more or less expect you to deny it, and get ready to work on that. Their attitude meant, though they didn't say these words, “Oh, we thought you were transvestites. But you look like normal people.”<sup>227</sup>

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<sup>225</sup> Human Rights Watch interview with Pinar, Istanbul, October 26, 2007.

<sup>226</sup> Human Rights Watch interview with Professor İdil Işıl Ödül, Istanbul, October 25, 2007.

<sup>227</sup> Human Rights Watch interview with Umut Güner, KAOS-GL, Ankara, October 12, 2003.

A harsher incident happened in 2002. “The police raided KAOS. This gay guy had been stabbed”:

He wasn’t stabbed here but he came to KAOS from time to time. We were in the middle of a meeting; they rang the door and shoved their way in, bringing the stabbing victim with them, and started shouting—forced us to one side of the room: “What is this? What kind of place is this? Are you *ibne* [faggots]? What do you do here?”

When members explained the group published KAOS-GL, “The officer asked us, ‘Why are you publishing this kind of magazine?’” The police finally left, but threatened to return—and called later to demand more information about the group. “Our lawyer had to call them and threaten them with a civil suit, because they were acting outside legal procedure.”<sup>228</sup>

More recently, on April 7, 2008, between 12 and 15 men in street clothes entered the Lambda Istanbul Cultural Center, identifying themselves as members of the Financial and Moral Police. An officer from the City Department of Associations accompanied them. The police presented a warrant, but members of Lambda told Human Rights Watch they were not allowed to review it thoroughly. The officers refused to state the reason for their incursion.

Lambda’s lawyer later found the warrant was issued under article 227 of the Criminal Code, criminalizing actions that “encourage, facilitate or procure a place for prostitution.”<sup>229</sup> Beyoğlu Prosecutor Serdar Gür had demanded and received the

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<sup>228</sup> *Ibid.*

<sup>229</sup> Human Rights Watch interview with Belgin, Istanbul, October 20, 2007.

<sup>229</sup> The exact wording of Article 227 is as follows: “(1) Any person who encourages a child to become a prostitute, or facilitates prostitution, or shelters a person for this purpose, or acts as go-between during the prostitution of the child, is punished with imprisonment from four years to ten years, and also a punitive fine. (2) Any person who encourages another person to become a prostitute, or facilitates prostitution, or acts as a go-between or provides a place for such a purpose, is punished with imprisonment from two years up to four years, and also a punitive fine. Any act designed to draw on the income of a person engaged in prostitution to earn one's living, totally or partially, is considered encouragement of prostitution. (3) Any person who brings people into the country, or sends groups abroad, for purposes of prostitution is punished according to the provisions of the above subsection. (4) The punishment to be imposed according to the above subsections is doubled in case a person is encouraged to become a prostitute by use of threat or force, or malice, or taking advantage of one's helplessness. (5) The punishment is to be increased by one half in case of commission of offenses listed in the above subsections by a

search warrant from the Magistrates' Court of Beyoğlu No. 2. According to the attorney, Lambda had been placed under surveillance since early March.

Lambda's lawyer told Human Rights Watch the officers took records of decisions by Lambda's governing board, a list of its members, a register of its movable property, and records of receipts and invoices. The authorities did not make a list of the confiscated material, as ordered by law.

Through court actions and police raids, the ambiguous meaning of "public morals" has become one of the major obstacles for LGBT human rights defenders in Turkey.

Although Lambda Istanbul, KAOS-GL, and Pembe Hayat seek explicitly in their charters to protect rights guaranteed in international human rights treaties, the open-ended clauses of articles 41 in the Constitution related to the protection of the family, and of Article 54 in the Law on Associations, allow Turkish authorities to attempt to curb their activities under the elastic rubric of protecting a perpetually vulnerable public and its values.

Such action violates the ICCPR<sup>230</sup> and the ECHR.<sup>231</sup> Under these conventions, states may restrict freedom of association only on certain prescribed grounds such as to uphold national security or public order or to protect public health or morals, and then only in particular circumstances. States are given a "margin of appreciation" in deciding what is "necessary," but the interpretation of "necessary in a democratic society" is relatively strict. Furthermore, the interpretation must take into

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spouse, antecedent, descendant, brother/sister, adoptive parent, guardian, trainer, educator, nurse or any other person responsible for protection and control of a person, or by a public officer or employee by exerting his/her influence. (6) The punishment to be imposed according to the above subsections is increased by one half in case of commission of these offenses within the frame of activities of an organized criminal group. (7) Security precautions specific to legal entities are imposed in case of commission of these offenses by organizations that have legal personality. (8) Any person involved in prostitution is subject to treatment or therapy."

<sup>230</sup> Art. 19 (2). "Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice." Art. 22(2). "Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests."

<sup>231</sup> European Convention for the Protection of Human Rights and Fundamental Freedoms, 213 U.N.T.S. 222, entered into force September 3, 1953, as amended by Protocols Nos. 3, 5, 8, and 11 which entered into force on September 21, 1970, December 20, 1971, January 1, 1990, and November 1, 1998, respectively.

consideration tolerance and pluralism as basic elements of a democracy, and the fact that democracy does not mean the views of the majority must prevail. It also means that restrictions must be appropriate and proportionate to the legitimate aim pursued.

Article 11 of the ECHR sets forth “the right to freedom of peaceful assembly and to freedom of association with others... .” No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others.” Article 22 of the ICCPR permits restrictions on freedom of association only in certain defined circumstances: where they are “prescribed by law and necessary in a democratic society” and for the “interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others.”

Information gathered by Human Rights Watch illustrates how the existence of ambiguous clauses on public morality in Turkish law sets unacceptable obstacles in the path of human rights defenders. Organizations not yet registered, and unpopular causes round which movements are only beginning to form, will be deterred by the promise of similar problems in the future. People trying to access these institutions in need of protection and support, young girls and boys in particular, will also suffer. For instance, due to possible harassment by the police, organizations discourage children from participating.<sup>232</sup>

#### **D. “Obscenity” and Free Discussion of Sexuality: Restrictions on Expression**

Authorities’ harassment also encroaches on LGBT groups’ ability to express themselves freely. Police practice has simply reinforced the persistent Turkish

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<sup>232</sup> In 2001, the Committee for the Protection of the Rights of the Child manifested its concern that persons under 18 could not join organizations in Turkey. It recommended that the government of Turkey ensure that children could “form, join and leave associations freely... .” See: Committee on the Rights of the Child, “Concluding Observations of the Committee on the Rights of the Child: Turkey,” CRC/C/15Add.152, July 9, 2001, [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/CRC.C.15.Add.152.En?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/CRC.C.15.Add.152.En?Opendocument), paras. 37-38 (accessed April 27, 2008).



official habit of censorship. Provisions in the Constitution, the Law on the Protection of Minors against Harmful Publications, and the Law of the Press allow authorities to stop the distribution of publications, without a court order, for reasons of public order or public morals.<sup>233</sup> Administrative officials must inform a judge within 24 hours, and the judge must confirm the decision within 48 hours of the original seizure. Specific articles within the criminal code are also used to restrict freedom of expression.

On July 24, 2006, the Ankara police impounded 375 issues of KAOS-GL Magazine before distribution. They accused Umut Güner, editor of the magazine and director of KAOS-GL, under article 226(2) and 11(2) of the TCK.<sup>234</sup> “There is an article in a penal code about obscenity,” said Oya Aydın, KAOS-GL defense attorney “[w]hen something happens related to LGBT matters they always put it under this article. The article says you cannot publish obscene material, but what is obscene is never defined.”<sup>235</sup>

The magazine issue in question focused on the relationship between homosexuality and pornography. An article by artist Taner Ceylan, “Love without Touch” (Dokunmadan Aşk) and the accompanying pictures showing male nudity, drew the police objections.<sup>236</sup> “In Turkey newspapers have no problems with heterosexuals appearing naked, but they did when appearing in KAOS-GL magazine, so we argued

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<sup>233</sup> Article 28.6 of the Turkish Constitution states that “Periodical and non-periodical publications may be seized by a decision of a judge in cases of ongoing investigation or prosecution of offences prescribed by law, and, in situations where delay could endanger the indivisible integrity of the state with its territory and nation, national security, public order or public morals and for the prevention of offence by order of the competent authority designated by law. The authority issuing the order to confiscate shall notify a competent judge of its decision within twenty-four hours at the latest. The order to confiscate shall become null and void unless upheld by the competent court within forty-eight hours at the latest.” Article 25 of the Press Law establishes that “[t]he state prosecutor may confiscate three copies for examination at most of all printed matter.” Press Law (Law No. 5187), approved on June 9, 2004.

<sup>234</sup> Article 226(2) establishes that “[a] person who broadcasts or publishes obscene images, printed or audio material or who acts as an intermediary for this purpose shall be sentenced to imprisonment for a term of six months to three years and a judicial fine of up to five thousand days.”

<sup>235</sup> Human Rights Watch interview with Oya Aydın, KAOS-GL, November 1, 2007.

<sup>236</sup> Taner Ceylan, “Dokunmadan Ask,” in *KAOS-GL*, Summer 2006, pp. 14-15. The article showed two self-portraits of the artist naked while in an intimate relationship. These paintings had been previously exhibited in Istanbul in the “Families Only” exhibition in the Karşı Art Gallery in 2003.

discrimination. We also argued this was not pornography. We told this to the judge.”<sup>237</sup>

On February 28, 2007, Güner was acquitted, with the court holding no offence was committed since police seized the magazine before it was distributed.<sup>238</sup> The court file shows no attempt to define the “obscene,” or any discussion of a distinction between pornography and a critique of pornography. The issue of freedom of expression was not addressed.<sup>239</sup>

As with “public morals,” the ambiguity in defining obscenity has been used against organizations aiming at free discussion of issues related to sexuality. Legitimate interference by authorities in the exercise of freedom of expression should be guided by international human rights standards.”<sup>240</sup>

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<sup>237</sup> Human Rights Watch interview with Oya Aydın, KAOS-GL, November 1, 2007.

<sup>238</sup> Court Record File No. 20006/580; Trial date 28/02/2007; Session No. 2; Judge: Mehmet Nuri Öztürk 24379; Public Prosecutor: Yücel İldeniz 19205; Clerk: Murat Savaşçı 96494.

<sup>239</sup> Ibid. However, the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression recommend to Turkey in his 1997 visit that to fully guarantee freedom of expression, “policy measures requiring the courts to explain more explicitly the motivation for any judgment that restricts the right to freedom of opinion and expression and to link such judgments more directly to the obligation on the part of the State to protect the right to freedom of opinion and expression [should be adopted]. Such motivation should include the explicit consideration of the intent, purpose and effect of the opinion expressed. It should furthermore include the explicit consideration of the necessity, purpose, effect and proportionality of the restriction imposed by the courts.” Mission to Turkey, “Promotion and protection of the right to freedom of opinion and expression, report of the Special Rapporteur, Mr. Abid Hussain, submitted pursuant to Commission on Human Rights resolution 1996/53, Addendum,” E/CN.4/1997/31/Add.1, February 11, 1997, <http://www.unhcr.ch/Huridocda/Huridoca.nsf/TestFrame/17656039a505a24780256671004a98ad?OpenDocument> (accessed March 28, 2008), para. 58. Likewise, this Rapporteur has exalted the need to allow “marginalized and vulnerable groups” access to media “to be able to fully exercise their right to impart information” and has expressed that “diversity of content ... is a desirable goal that should be encouraged.” Human Rights Council, Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, Ambeyi Ligabo, A/HRC/7/14, February 28, 2008, paras. 27 and 28.

<sup>240</sup> Article 10 of the European Convention on Human Rights and article 19 of the ICCPR have as main their objective to protect everyone’s freedom of expression. They provide restrictions, but these must be interpreted in a strict manner. “[T]he restrictions must be “provided by law”; they may only be imposed for one of the purposes set out in subparagraphs (a) and (b) of paragraph 3; and they must be justified as being “necessary” for that State party for one of those purposes.” General Comment 10, para. 4. The European Court on Human Rights and the Human Rights Committee have stated that restrictions must be “prescribed by law,” pursue a “legitimate aim,” and be “necessary in a democratic society.” In *Observer and Guardian v. the United Kingdom*, Court said that “the adjective necessary” implies the existence of a “pressing social need.” It is not clear in these cases what the pressing social need is, nor has the government made this clear in its arguments for closure. *Observer and Guardian v. the United Kingdom* (Application No. 13585/88), Judgment November 26, 1991, available at [www.echr.coe.int](http://www.echr.coe.int). Meanwhile, Manfred Nowak, an important commentator on the ICCPR, observes that “there can be no doubt that every communicable type of subjective idea and opinion, of value-neutral news and information, of commercial advertising, art works, political commentary regardless of how critical, pornography, etc., is protected by Art. 19(2), subject to

This idea is reiterated in the *Siracusa Principles on the Limitation and Derogation Provisions in the ICCPR*, in addressing concepts such as “public health and morals.” According to the Principles, “a state which invokes public morality as a ground for restriction human rights while enjoying a certain margin of discretion, shall demonstrate that the limitation in question is essential to the maintenance of respect for fundamental values of the community;” the Principles add that “the margin of discretion left to states does not apply to the rule of non-discrimination as defined in the Covenant.”<sup>241</sup>

Democracy means free discourse. Freedom of expression applies to unpopular as well as accepted modes of speech; images and ideas that question norms central to a society or state—including those around sexuality and gender—deserve particular protection, despite opprobrium. Turkey’s progress toward democratic freedom entails an end to censorship and to the repressive regulation of ideas.

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the permissible limitation in para. 3. It is thus impossible to close out undesirable contents, such as pornography or blasphemy, by restrictively defining the scope of protection.” Manfred Nowak, *CCPR Commentary* (Kehl: N.P. Engel, 1993), pp. 358 and 341.

<sup>241</sup> Siracusa Principles 27-28. These principles were developed in 1984 by a panel of 31 international experts who met at Siracusa (Sicily) to adopt a set of interpretations of the limitation clauses set forth in the ICCPR. While they are not international law, they are an important and authoritative guidance as to the meaning of the terms. “The Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights,” *Human Rights Quarterly*, vol. 7, No. 1, February 1985.

## VII. Specific Recommendations

### To the Government of Turkey

*End violence and discrimination on the basis of sexual orientation and gender identity.*

- Enact a comprehensive non-discrimination law containing specific protections against unequal treatment based on sexual orientation and gender identity in all areas of life.
- Amend the Constitution to prohibit discrimination based on sexual orientation and gender identity.
- Ensure the participation of civil society, in particular that of LGBT organizations, in the development and discussion of these initiatives and reforms.
- Ratify Protocol 12 of the European Convention on Human Rights, to ensure that all people, without discrimination, are entitled to all rights set forth by law.

*Eliminate vague and sweeping laws against “indecent,” “exhibitionism,” and “offenses against public morality,” which are often used to harass, arrest, or persecute people based on their sexual orientation or gender identity.*

- Review the Misdemeanor Law (Kabahatler Kanunu) with a view to eliminating terms and articles that in their vagueness invite prejudicial and discriminatory application.
- Review other laws to eliminate ambiguous content and, if their inclusion is deemed necessary, to offer precise definitions of terms such as “public morals” and “obscenity.”
- Adopt policy measures ensuring protection of the rights of freedom of opinion and expression regarding issues of sexuality and gender.

*Change military policy to eliminate sexual-orientation and gender-identity-based exclusion from the armed forces.*

- End the ban on homosexuals serving in the armed forces, by amending the Turkish Armed Forces Health Requirement Regulation to exclude sexual orientation from the List of Illnesses and Disabilities.

- Allow conscientious objection, if compulsory military service is deemed necessary.
- End all humiliating medical examinations to test for homosexual conduct. End all questioning once a person has stated their homosexuality.
- Prohibit long periods of detention in military hospitals to test for homosexual conduct.
- Take action to identify and end bullying and harassment due to sexual orientation in the armed forces.

*Ensure full respect and legal recognition for each person’s profound self-defined gender identity, as set forth in the Yogyakarta Principles, an authoritative interpretation of how international human rights law applies to issues of sexual orientation and gender identity.*<sup>242</sup>

- Take all necessary legislative, administrative, and other measures to fully respect and legally recognize each person’s profound self-defined gender identity.
- Take all necessary legislative, administrative, and other measures to ensure that procedures exist whereby all state-issued identity papers which indicate a person’s gender/sex — including birth certificates, passports, electoral records, and other documents — reflect the person’s profound self-defined gender identity, regardless of whether surgical or medical interventions have taken place.
- Ensure that such procedures are efficient, fair, and non-discriminatory, and respect the dignity and privacy of the person concerned.
- Ensure that changes to identity documents will be recognized in all contexts where the identification or disaggregation of persons by gender is required by law or policy.

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<sup>242</sup> The Yogyakarta Principles, released in 2007, draw together international protections with regard to sexual orientation, gender identity and non-discrimination. They comprise 29 principles adopted unanimously by a group of international legal experts, with recommendations to governments, regional intergovernmental institutions, civil society and the UN. Principle three establishes the “right to recognition before the law, whereby “[e]ach person’s self-defined sexual orientation and gender identity is integral to their personality and is one of the most basic aspects of self-determination, dignity and freedom. No one shall be forced to undergo medical procedures, including sex reassignment surgery, sterilisation or hormonal therapy, as a requirement for legal recognition of their gender identity.” Available at [http://www.yogyakartaprinciples.org/principles\\_en.htm](http://www.yogyakartaprinciples.org/principles_en.htm) (accessed April 21, 2008).

- Undertake targeted programs to provide social support for all persons experiencing gender transitioning or reassignment.
- Ensure that such procedures are efficient, fair, and non-discriminatory, and respect the dignity and privacy of the person concerned.

*Examine laws and regulations affecting sex work to ensure that they are fair, do not discriminate on the basis of sexual orientation or gender identity, and fully protect the rights of all individuals in the sex industry.*

- Review the Law for Protecting Prostitution to extend the possibility of sex work to transgender people that do not have a pink card.
- Ensure that transgender people have access and are able to work safely in places authorized for sex work.
- Ensure that all persons engaging in sex work are protected against abuse or exploitation, by police or by any other agents.

*Comply with the European Union Directive 2000/78/ED “establishing a general framework for equal treatment in employment and occupation.”*

- Publicly endorse the directive and disseminate among all public entities.
- Eliminate the requirement of military service for men applying for state employment.
- Develop programs, in cooperation with transgender communities, to open employment possibilities outside sex work for transgender people.
- Guarantee adequate procedures of remedy and redress for people facing discrimination in employment based on sexual orientation or gender identity.
- Revise legislation to ensure that all elements of the Directive become part of Turkish law, including the shifting of the burden of proof, adequate and dissuasive sanctions, and the creation of an independent body to assist those suffering from discrimination.

*Train all criminal justice system officials on principles of human rights and nondiscrimination, including those relating to sexual orientation and gender identity.*

- Develop these training programs in cooperation with civil society groups, including lesbians, gays, bisexuals, transgender people, and sex workers.

*Adequately investigate and prosecute crimes of violence and rape regardless of the sex, sexual orientation, or gender identity of the victim.*

- Publish a directive from the Minister of Interior to the civil police and gendarmerie calling them to register and follow up on all complaints related to violence against lesbian, gay, bisexual, and transgender people.
- Follow up and report on compliance with this directive in police districts nationwide.
- Direct criminal justice officials to compile and publish disaggregated data on crimes against lesbian, gay, bisexual, and transgender people, as well as against other people targets of discrimination, including ethnic, linguistic, and religious identities.

*Ensure that domestic violence protection orders under the Law on Protection of the Family are available to all family members and to same-sex partners without discrimination; Guarantee that all services for victims of domestic violence are both non-discriminatory and sensitive to issues of sexual orientation or gender identity.*

- Comply with the recommendation made by the CEDAW in its 2005 report on Turkey and provide sex-disaggregated statistics and data relating to women and girls “in the judiciary, trafficked women and girls, as well as Kurdish women and *other groups of women* [emphasis added]” on issues related to violence committed against them.
- Issue a directive to community based services, including shelters, managed by the state guaranteeing the provision of services to all women and girls without discrimination on the basis of, inter alia, sexual orientation or gender identity.

*Ensure that all associations of lesbian, gay, bisexual, and transgender people are permitted to meet, organize, obtain legal status, and share and impart information.*

- Review the interpretations of “public morals” in the Law on Associations to ensure the protection of all activities in the defense of human rights.
- Ensure that children under the age of 18 have access to these organizations and are able to create their own.

*Engage in a constructive dialogue with lesbian, gay, bisexual, and transgender organizations to ensure effective support of their work as human rights defenders:*

- Secure trainings on the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (Declaration on Human Rights Defenders) for state officials, with particular attention to the work of activists on issues of sexual orientation or gender identity as human rights defenders.
- Ensure that organizations of lesbian, gay, bisexual, and transgender people participate in and are consulted on initiatives related to human rights.

### **To the Turkish Medical Profession**

*Disavow the notion that homosexuality is a mental or physical pathology.*

- Adopt and publicize ethical codes and standards setting forth the responsibilities of medical professionals when treating persons deprived of their liberty. Such codes and standards should be consistent with international standards barring the participation of medical professionals in torture or cruel, inhuman, or degrading treatment, and in non-consensual body searches of prisoners.

*Appropriately punish doctors who participate in degrading medical examinations to “prove” homosexuality.*

*Enact standards for therapeutic interventions with transgender people, including sex reassignment surgery, in consultation with transgender people.*

- Adopt and put into practice the “Standards of Care” set forth by the World Professional Association for Transgender Health.

*Create standards for non-discrimination in health care provision, including non-discrimination on the basis of sexual orientation and gender identity.*

- Develop these standards in cooperation with members of the lesbians, gays, bisexuals, transgender people, and sex workers organizations.



## **To the International Medical Profession and Bodies Including the World Medical Association and the World Health Organization**

*Condemn the participation of Turkish medical professionals in torture or cruel, inhuman, or degrading treatment, and in abusive and non-consensual body searches of those seeking military exemption.*

## **To the European Union**

*Ensure that issues of sexual orientation and gender identity are fully incorporated into its monitoring of Turkey, and work with Turkey on adapting its laws to EU standards, and in any judicial, police, or other training funded by the EU.*

*Press all countries entering the accession process to bring about legislative and policy-related change on issues of sexual orientation and gender identity, taking as a model the changes recommended above.*

*Ensure the integration of sexual orientation and gender identity issues in all new directives relating to the implementation of Article 13 of the Treaty of Union, so that protections on those bases extend beyond the sphere of employment.*

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## **Appendix I: International Law: Relevant International Legal Precedents Relating to Sexual Orientation and Gender Identity**

### *The United Nations System*

The ICCPR, which Turkey has signed and ratified, affirms the equality of all people, in its Articles 2 and 26.<sup>243</sup> In the 1994 case of *Nicholas Toonen v Australia*, the UN Human Rights Committee, which monitors compliance with and adjudicates violations under the ICCPR, heard a complaint concerning a “sodomy law” punishing consensual, adult homosexual conduct in the Australian state of Tasmania. The Committee held that such laws violate protections against discrimination in the ICCPR, as well as article 17, which protects the right to privacy.<sup>244</sup> Specifically, the Committee held that “sexual orientation” was a status protected under the ICCPR from discrimination, finding that “the reference to ‘sex’ in articles 2, para. 1, and 26 is to be taken as including sexual orientation.”<sup>245</sup>

This definitive intervention by the United Nations against discrimination based on sexual orientation has had far-reaching consequences. The Committee has elsewhere found that the prohibitions of discrimination in the ICCPR place a broad mandate on states to remedy unequal treatment in all areas of life. Thus it has declared that article 26 “prohibits discrimination in law or in fact in any field regulated and protected by the public authorities.” Any state that regulates private

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<sup>243</sup> Article 2(1) states: “Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Turkey ratified the International Covenant on Civil and Political Rights in 2003; Article 26 establishes: “All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”

<sup>244</sup> Article 17 reads:

“1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.

2. Everyone has the right to the protection of the law against such interference or attacks.”

<sup>245</sup> *Nicholas Toonen v Australia*, 50<sup>th</sup> Sess., Communication No. 488/1992, CCPR/c/50/D/488/1992, April 14, 1994, para 8.7.

employment, for example, therefore is responsible for offering protections against discrimination in that sphere—including protections against discrimination based on sexual orientation. The Committee has also found that the article bars acts and policies that are discriminatory in *effect*, as well as those that *intend* to discriminate.<sup>246</sup>

In a subsequent decision, *Edward Young v Australia*, the Committee held that the Covenant required that equality in pension benefits be given same-sex partners, founding this in the protection against discrimination.<sup>247</sup> This was reiterated by the Committee in *X v. Colombia*. The Committee called for an “effective remedy, including reconsideration of his request for a pension without discrimination on grounds of sex or sexual orientation.”<sup>248</sup> It has urged states to pass anti-discrimination legislation that expressly includes sexual orientation<sup>249</sup> and has urged states to include in their constitutions the prohibition of discrimination based on sexual orientation.<sup>250</sup> It has criticized states’ failure to protect people from sexual-orientation-based violence, saying in the case of transgender people assaulted in El Salvador that

The Committee expresses concern at the incidents of people being attacked, or even killed, on account of their sexual orientation (art. 9), at the small number of investigations mounted into such illegal acts, and at the current provisions (such as the local “contravention orders”) used to discriminate against people on account of their sexual orientation (art. 26).

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<sup>246</sup> Human Rights Committee, “General Comment 18: Nondiscrimination,” 37<sup>th</sup> Session, 1989, HRI/GEN/1/Rev.1, p. 26.

<sup>247</sup> *Edward Young v. Australia*, Communication No. 941/2000, CCPR/C/78/D/941/2000, September 18, 2003.

<sup>248</sup> *X v. Colombia*, Communication No. 1361/2005, CCPR/C/89/D/1361/2005, May 14, 2007.

<sup>249</sup> Concluding Observations: Slovakia, CRC/C/SVK/CO/2, June 8, 2007, para. 28; Concluding observations: Namibia, CCPR/CO/81/NAM, July 30, 2004, para. 22; Concluding Observations: Trinidad and Tobago, CCPR/CO/70/TTO, November 3, 2000, para. 11.

<sup>250</sup> “Concluding Observations of the Human Rights Committee: Poland,” Human Rights Committee, 66<sup>th</sup> Session, CCPR/C/79/Add.110, para. 23.

The State Party should provide effective protection against violence and discrimination based on sexual orientation.”<sup>251</sup>

Since then, numerous UN bodies and mechanisms have addressed such discrimination in their work. The Special Rapporteur on Extrajudicial, Summary, or Arbitrary Executions, for instance, has declared that

criminalization of matters of sexual orientation increases the social stigmatization of members of sexual minorities ... in turn makes them more vulnerable to violence and human rights abuses, including violations of the right to life. Because of this stigmatization, violent acts directed against persons belonging to sexual minorities are also more likely to be committed in a climate of impunity.<sup>252</sup>

A lengthy statement by the UN Special Rapporteur on Torture to the General Assembly is relevant in this regard. It examines, and condemns, many of the causes and consequences of abuses detailed in this report.

The Special Rapporteur notes that a considerable proportion of the incidents of torture carried out against members of sexual minorities suggests that they are often subjected to violence of a sexual nature, such as rape or sexual assault in order to “punish” them for transgressing gender barriers or for challenging predominant conceptions of gender roles.

The Special Rapporteur has received information according to which members of sexual minorities have been subjected, *inter alia*, to harassment, humiliation and verbal abuse relating to their real or perceived sexual orientation or gender identity and physical abuse, including rape and sexual assault. ... Ill-treatment against sexual minorities is believed to have also been used, *inter alia*, in order to make sex workers leave certain areas, in so-called “social cleansing” campaigns, or to

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<sup>251</sup> Concluding Observations: El Salvador, CCPR/CO/78/SLV, July 22, 2003, para. 16.

<sup>252</sup> “Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions,” E/CN.4/1999/39, January 6, 1999, para. 77.

discourage sexual minorities from meeting in certain places, including clubs and bars.

While no relevant statistics are available to the Special Rapporteur, it appears that members of sexual minorities are disproportionately subjected to torture and other forms of ill-treatment, because they fail to conform to socially constructed gender expectations. Indeed, discrimination on grounds of sexual orientation may often contribute to the process of the dehumanization of the victim, which is often a necessary condition for torture and ill-treatment to take place. The Special Rapporteur further notes that members of sexual minorities are a particularly vulnerable group with respect to torture in various contexts and that their status may also affect the consequences of their ill-treatment in terms of their access to complaint procedures or medical treatment in state hospitals, where they may fear further victimization, as well as in terms of legal consequences regarding the legal sanctions flowing from certain abuses. The Special Rapporteur would like to stress that, because of their economic and educational situation, allegedly often exacerbated or caused by discriminatory laws and attitudes, members of sexual minorities are deprived of the means to claim and ensure the enforcement of their rights, including their rights to legal representation and to obtain legal remedies, such as compensation...

Discriminatory attitudes to members of sexual minorities can mean that they are perceived as less credible by law enforcement agencies or not fully entitled to an equal standard of protection, including protection against violence carried out by non-state agents. The Special Rapporteur has received information according to which members of sexual minorities, when arrested for other alleged offences or when lodging a complaint of harassment by third parties, have been subjected to further victimization by the police, including verbal, physical, and sexual assault, including rape.<sup>253</sup>

The UN Working Group on Arbitrary Detention has affirmed that the detention of people solely on the basis of their sexual orientation violates fundamental human

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<sup>253</sup> "Report of the Special Rapporteur on the Question of Torture and other Cruel, Inhuman and Degrading Treatment or Punishment," UN General Assembly, A/56/156, July 3, 2001.

rights—even though the laws under which they are detained may not expressly refer to homosexual conduct.<sup>254</sup>

In its General Comment 14, the UN Committee on Economic, Social, and Cultural Rights specifically noted that the relevant Covenant, which has been signed and ratified by Turkey, should be read to bar “any discrimination in access to health care and underlying determinants of health, as well as to means and entitlements for their procurement, on the grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, physical or mental disability, health status (including HIV/AIDS), *sexual orientation* [emphasis added] and civil, political, social or other status, which has the intention or effect of nullifying or impairing the equal enjoyment or exercise of the right to health.”<sup>255</sup>

The UN mechanisms also touch upon the right to freedom of expression for human rights organizations working on defending the human rights of lesbian gays, bisexual, and transgender people considering “that all citizens, regardless of, inter alia, their sexual orientation, have the right to express themselves, and to seek, receive and impart information.”<sup>256</sup>

### ***The European Union***

As early as 1994, the European Parliament passed a sweeping resolution calling for comprehensive anti-discrimination measures protecting sexual orientation in all member states. It called on member states, “together with the national lesbian and homosexual organizations, to take measures and initiate campaigns against the increasing acts of violence perpetrated against homosexuals.” It also called on them “to take measures and initiate campaigns to combat all forms of discrimination against homosexuals.”<sup>257</sup>

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<sup>254</sup> UN Working Group on Arbitrary Detention, *Yasser Mohamed Salah et al. v. Egypt*, Opinion No. 7/2002 (Egypt), E/CN.4/2003/8/Add.1, <http://www1.umn.edu/humanrts/wgad/7-2002.html>, paras. 14-15.

<sup>255</sup> “General Comment 14: The right to the highest attainable standard of health,” Committee on Economic, Social, and Cultural Rights, 22<sup>nd</sup> Session, E/C.12/2000/4, 11/08/2000, paras. 18-19.

<sup>256</sup> Report of the Special Rapporteur on the Right to Freedom of Opinion and Expression, Mission to Colombia, E/CN.4/2005/64/Add.3, November 26, 2004, para. 75.

<sup>257</sup> European Parliament, “Resolution on equal rights for homosexuals and lesbians in the European Community,” OJ 1994 C 61/40, Resolution No. A3-0028/94, February 8, 1994.

In 1997, the European Union's Treaty of Amsterdam empowered the European Council to "take appropriate action to combat discrimination based on sex, racial, or ethnic origin, religion or belief, disability, age or sexual orientation."<sup>258</sup> It was the first mention of sexual orientation in a major international treaty.

In 2000, the European Union Charter of Fundamental Rights also prohibited discrimination based on sexual orientation. In the same year, as part of the implementation of Article 13, the European Council issued a directive "establishing a general framework for equal treatment in employment and occupation" (Directive 2000/78/ED). The "Employment Directive" barred discrimination based on sexual orientation in employment across the Union, and laid down measures toward its full elimination. The Directive is part of the *acquis communautaire* of the Union—required to be enacted into law and policy by all member states, and required to be integrated into the legislation of new members. The European Union Charter of Fundamental Rights, also prohibits discrimination on the grounds of sexual orientation under Article 21.

At the same time the EU created a Discrimination Action Programme, to fund projects over six years to combat discrimination, including sexual-orientation-based discrimination.

The European Commission is mandated closely to monitor the steps taken by applicant countries to reshape legislation and policy in conformity with the *acquis communautaire*.<sup>259</sup> In 2003, in its "Report on the conclusions of the negotiations on

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<sup>258</sup> Article 13.

<sup>259</sup> Any country seeking membership to the EU must comply with the conditions set forth in the Treaty on European Union. The Copenhagen accession criteria were established in 1993 by the EU heads of government, meeting in Copenhagen. They lay out three sets of criteria (economic, political and the acceptance of the Community *acquis*) that must be fulfilled. According to the EU, "[t]he *acquis* is the body of common rights and obligations that is binding on all the Member States," [http://ec.europa.eu/enlargement/glossary/terms/acquis\\_en.htm](http://ec.europa.eu/enlargement/glossary/terms/acquis_en.htm) (accessed February 12, 2008). A meeting of the European Council (heads of EU government) in Helsinki in December 1999 recognized Turkey as a candidate for accession. On March 19, 2001, Turkey announced the implementation of a National Program to comply with the *acquis communautaire*. Accession negotiations opened on October 3, 2005. On November 6, 2007 the Commission adopted an overall enlargement strategy that prioritizes three areas where Turkey should improve in moving towards accession. The short-term priorities include the promotion and protection of human rights and the protection of minorities. Commission of the European Communities, Proposal for a Council Decision on the principles, priorities and conditions contained in the Accession Partnership with Turkey and repealing Decision 2006/35/EC, COM(2007) 661 final, Brussels, November 6, 2007, [http://ec.europa.eu/enlargement/key\\_documents/reports\\_nov\\_2007\\_en.htm](http://ec.europa.eu/enlargement/key_documents/reports_nov_2007_en.htm) (accessed March 5, 2008).



enlargement” (the “Brok report”), the European Parliament observed that “in many candidate countries situations of abuse and discrimination persist due to shortcomings in the judicial and law enforcement systems ... the EU anti-discrimination *acquis* must be implemented as defined in Article 13 of the EC Treaty and according to the Charter of Fundamental Rights.”<sup>260</sup>

The European Union’s Enlargement Commission, tasked with evaluating the progress of each candidate toward compliance and admission, has drawn up regular reports on each. In its 2004 Regular Report on Turkey—published only days after the Turkish parliament passed its diminished version of anti-discrimination protections in the Criminal Code—it noted that the country “Still lacks legislation against discrimination on the basis of all prohibited grounds, *such as ... sexual orientation*” [emphasis added].<sup>261</sup>

Similarly in its 2007 report on Turkey it stated “Transposition of the EC Directives concerning discrimination on grounds of racial or ethnic origin, religion or belief, disability, age and sexual orientation is incomplete.” It called for “[a]n effective and independent Equality Body ... to promote non-discrimination and equal treatment... .”<sup>262</sup>

A 1976 directive of the European Council deals with equal treatment for men and women in employment.<sup>263</sup> In 1996, the European Court of Justice—the EU’s highest judicial body—made a major decision on gender identity under this directive. It held that a transsexual—that is, a transgender person who had undergone surgical procedures to accommodate physical appearance to gender identity—could not be dismissed on the grounds of change of sex. This finding protected the employment rights of post-operative transgender people throughout the European Union.

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<sup>260</sup> Committee on Foreign Affairs, Human Rights, Common Security and Defence Policy, “Own-initiative Report on the Conclusions of the Negotiations on Enlargement in Copenhagen,” European Parliament, A5-0081/03.

<sup>261</sup> Commission of the European Communities, “2004 Regular Report on Turkey’s Progress Towards Accession,” Brussels, October 6, 2004, SEC (2004) 1201.

<sup>262</sup> Commission of the European Communities, “Turkey 2007 Progress Report,” Brussels, November 6, 2007, SEC (2007) 1426, p. 54.

<sup>263</sup> European Communities Council Directive, February 9, 1976, “On the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions,” 76/207/EEC.

The Council of the European Union has also issued directives seeking to guarantee non discrimination. For instance, Council Directive 97/80/EC determines that “indirect discrimination shall exist where an apparently neutral provision, criterion or practice disadvantages a substantially higher proportion of the members of one sex unless that provision, criterion or practice is appropriate and necessary and can be justified by objective factors unrelated to sex” and shifts the burden of proof in cases of discrimination based on sex in civil and administrative procedures.<sup>264</sup>

### *The Council of Europe*

In three successive decisions, *Dudgeon v United Kingdom* (1981), *Norris v Ireland* (1988) and *Modinos v Cyprus* (1993)<sup>265</sup> the European Court of Human Rights held that laws criminalizing consensual homosexual conduct violated the right to privacy, protected in Article 8 of the ECHR. It did so in language relevant to the moral defenses of discriminatory conduct often heard worldwide. Thus in *Dudgeon*, the Court held that laws penalizing homosexual conduct could not be held “necessary in a democratic society,”

Although members of the public who regard homosexuality as immoral may be shocked, offended, or disturbed by the commission by others of private homosexual acts, this cannot on its own warrant the application of penal sanctions when it is consenting adults alone who are involved.<sup>266</sup>

In *Norris*, the court held that “such justifications as there are for retaining the law in force unamended are outweighed by the detrimental effects which the very existence of the legislative provisions can have on the life of a person of homosexual orientation.”

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<sup>264</sup> Council Directive 97/80/EC, December 15, 1997, [http://eur-lex.europa.eu/smartapi/cgi/sga\\_doc?smartapi!celexapi!prod!CELEXnumdoc&lg=EN&numdoc=31997L0080&model=guichett](http://eur-lex.europa.eu/smartapi/cgi/sga_doc?smartapi!celexapi!prod!CELEXnumdoc&lg=EN&numdoc=31997L0080&model=guichett) (accessed March 21, 2008).

<sup>265</sup> *Dudgeon v United Kingdom*, 4 Eur. HR Rep. 149 (1981); *Norris v Ireland*, 13 Eur. HR Rep. 186 (1989); and *Modinos v Cyprus*, 16 Eur. HR Rep. 485 (1993).

<sup>266</sup> *Dudgeon v United Kingdom* (Application No. 7525/76), Judgment of October 22, 1981, available at [www.echr.coe.int](http://www.echr.coe.int), para. 60.

Subsequently, the European Court of Human Rights has used defenses for private conduct and private life to strike down discriminatory provisions. In *Smith and Grady v. United Kingdom* and *Lustig-Prean and Beckett v United Kingdom*, it held that a ban on homosexuals in the military was incompatible with respect for their private life.<sup>267</sup> The Court held that concerns about “operational effectiveness” were based only on “negative attitudes of heterosexual personnel”:

To the extent that they represent a predisposed bias on the part of a heterosexual majority against a homosexual minority, these negative attitudes cannot, of themselves, be considered by the Court to amount to sufficient justification for the interferences with the applicants’ rights ... any more than similar negative attitudes towards those of a different race, origin, or colour.<sup>268</sup>

Meanwhile, in *Karner v Austria*, in 2003, the Court held that denying the same-sex partner of a deceased man spousal benefits violated anti-discrimination provisions in the ECHR.<sup>269</sup> It made the same finding in two cases, *L and V v Austria* and *S.L. v Austria*, both also in 2003, holding that a different age of consent for homosexual and heterosexual relations breached protections against discrimination.<sup>270</sup>

In 2002, the European Court struck a major blow against discrimination based on gender identity. It reversed previous decisions and held, in *Goodwin V. United Kingdom* as well as *I v. United Kingdom*, that the United Kingdom’s refusal to change their legal identities and papers to match their post-operative genders violated their right to respect for the private lives (as well as their right to marry). It stated resonantly that:

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<sup>267</sup> *Smith and Grady v United Kingdom* (Applications nos. 33985/96 and 33986/96), Judgment of September 27, 1999; *Lustig-Prean and Beckett v United Kingdom*, (Applications nos. 31417/96 and 32377/96), Judgment of September 27, 1999, available at [www.echr.coe.int](http://www.echr.coe.int).

<sup>268</sup> *Ibid.*, *Lustig-Prean and Beckett v United Kingdom*, para. 90, available at [www.echr.coe.int](http://www.echr.coe.int).

<sup>269</sup> *Karner v Austria* (Application No. 40016/98), Judgment of July 24, 2003, available at [www.echr.coe.int](http://www.echr.coe.int).

<sup>270</sup> *S.L. v Austria* (Application No. 45330/99), Judgment of January 9, 2003; *L. and V. v Austria* (Applications No. 39392/98 and 39829/98), Judgment of January 9, 2003, available at [www.echr.coe.int](http://www.echr.coe.int).

In the 21<sup>st</sup> century, the right of transsexuals to personal development and to physical and moral security in the full sense enjoyed by others in society cannot be regarded as a matter of controversy ... Society may reasonably be expected to tolerate a certain inconvenience to enable individuals to live in dignity and worth in accordance with the sexual identity chosen by them at great personal cost.<sup>271</sup>

In 2003, in *Van Kuck v Germany*, the Court considered the case of a transsexual woman whose health insurance company had denied her reimbursement for costs associated with sex-reassignment surgery. The Court found a violation of respect for private life; it stated that the decision denied “the applicant’s freedom to define herself as a female person, one of the most basic essentials of self-determination.” It also noted that “the very essence of the Convention being respect for human dignity and human freedom, protection is given to the right of transsexuals to personal development and moral security.”<sup>272</sup>

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<sup>271</sup> *Goodwin v United Kingdom* (Application No. 28957/95), Judgment of July 12, 2002, paras. 90 and 91, available at [www.echr.coe.int](http://www.echr.coe.int).

<sup>272</sup> *Van Kuck v Germany* (Application No. 35968/97), June 12, 2003, para. 73, available at [www.echr.coe.int](http://www.echr.coe.int).

**HUMAN RIGHTS WATCH**

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**Appendix II: Letter to the Commissioner of  
Istanbul Security Directorate**



[www.hrw.org](http://www.hrw.org)

**LESBIAN, GAY, BISEXUAL AND  
TRANSGENDER RIGHTS  
PROGRAM**

Scott Long, *Director*  
Boris Dittrich, *Advocacy Director*  
Jessica Stern, *Researcher*  
Juliana Cano Nieto, *Researcher*  
Iwona Zielinska, *Associate*

**ADVISORY COMMITTEE**

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Jeff Anderson  
Cynthia Brown  
Mauro I. Cabral  
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Philip Dayle  
Julie Dorf  
Hassiba Hadj-Sahraoui  
James C. Hormel  
Richard Kim  
Ronald Lwabaayi  
Thom Lynch  
Carmelyn Malalis  
Michael Marshall  
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Kathleen Peratis  
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Alejandra Sardá  
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Ann Snitow  
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Marcy Wilder  
Reid Williams  
Zonibel Woods

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Michele Alexander, *Development & Outreach  
Director*  
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Barbara Guglielmo, *Finance & Administration  
Director*  
Peggy Hicks, *Global Advocacy Director*  
Iain Levine, *Program Director*  
Andrew Mawson, *Deputy Program Director*  
Dinah PoKempner, *General Counsel*  
Aisling Reidy, *Senior Legal Advisor*  
James Ross, *Legal & Policy Director*  
Joe Saunders, *Deputy Program Director*  
Jane Olson, *Chair, Board of Directors*

March 1, 2008

Mr. Celalettin Cerrah,  
Commissioner of Istanbul Security Directorate  
İstanbul Emniyet Müdürü  
İstanbul Emniyet Müdürlüğü  
Vatan Caddesi  
Fatih  
Istanbul  
Faks: + 90 212 635 1832

Dear Mr. Celalettin Cerrah:

I am writing to you on behalf of Human Rights Watch, an organization based in New York City. With offices around the globe, we are devoted to exposing human rights violations throughout the world. Turkey is part of a much larger body of work that encompasses more than 70 countries worldwide. We have done extensive work on human rights abuses by the governments of the United States and European Union member states. To maintain our independence, we are a wholly private organization, accepting no funds from any government directly or indirectly.

The particular reason for this letter is in relation to research Human Rights Watch is conducting on the situation of lesbian, gay, bisexual and transgender (LGBT) people in Turkey. Through it we seek your response to various reports our organization has received regarding incidents involving members of the police force employed in Istanbul.

We have received information that members of the LGBT community have been subjected to attacks by members of the police forces in Istanbul. Please find enclosed questions related to the incidents

reported to our organization. We would like to know if you have been conducting internal enquiries into such allegations and if you have taken disciplinary action in any cases. We would also like information of whether criminal proceedings have been initiated in any cases, if any police officers have given statements to the public prosecutor in the course of preliminary investigations into complaints, and of the outcome of such criminal investigations.

In addition, I am hoping that you will be able to provide some information on specific reports about policing in Istanbul as it affects the LGBT community, and have included some further questions on this subject.

Human Rights Watch is committed to producing material that is well-informed, accurate and objective. We regard it as highly important to reflect the views of official bodies and government authorities in our reports and to give them the opportunity to respond to information about human rights violations that we receive. We would like to be able to include your views in our report and would therefore appreciate your response to this letter by March 31, 2008.

Sincerely,

Juliana Cano Nieto  
Researcher  
Lesbian, Gay, Bisexual, and Transgender Program

C.C.

Mr Beşir Atalay, Minister of the Interior, Ankara

## HUMAN RIGHTS WATCH

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### LESBIAN, GAY, BISEXUAL AND TRANSGENDER RIGHTS PROGRAM

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## Appendix III: Letter to the Superintendent of the Beyoğlu District Security Directorate

HUMAN  
RIGHTS  
WATCH

[www.hrw.org](http://www.hrw.org)

March 1, 2008

Mr. Tuğrul Pek,  
Superintendent of the Beyoğlu District Security Directorate  
Beyoğlu İlçe Emniyet Müdürü  
Beyoğlu İlçe Emniyet Müdürlüğü  
Tarlabasi Bvl  
Istanbul  
Faks: + 90 212 253 7110

Dear Mr. Tuğrul Pek:

I am writing to you on behalf of Human Rights Watch, an organization based in New York City. With offices around the globe, we are devoted to exposing human rights violations throughout the world. Turkey is part of a much larger body of work that encompasses more than 70 countries worldwide. We have done extensive work on human rights abuses by the governments of the United States and European Union member states. To maintain our independence, we are a wholly private organization, accepting no funds from any government directly or indirectly.

The particular reason for this letter is in relation to research Human Rights Watch is conducting on the situation of lesbian, gay, bisexual and transgender (LGBT) people in Turkey. Through it we seek your response to various reports our organization has received regarding incidents involving members of the police force employed in the Beyoğlu district.

We have received information that members of the LGBT community have been subjected to attacks by members of the police forces in the district of Beyoğlu. Please find enclosed questions related to the incidents reported to our organization. We would like to know if you have been conducting internal enquiries into such allegations and if you have taken disciplinary action in any cases. We would also like information of whether criminal proceedings have been initiated in any cases, if any police officers have given statements to the public prosecutor in the course of preliminary investigations into complaints, and of the outcome of such criminal investigations.

In addition, I am hoping that you will be able to provide some information on specific reports about policing in the Beyoğlu district as it affects the LGBT community, and have included some further questions on this subject.

Human Rights Watch is committed to producing material that is well-informed, accurate and objective. We regard it as highly important to reflect the views of official bodies and government authorities in our reports and to give them the opportunity to respond to information about human rights violations that we receive. We would like to be able to include your views in our report and would therefore appreciate your response to this letter by March 30, 2008.

Sincerely,

Juliana Cano Nieto  
Researcher  
Lesbian, Gay, Bisexual, and Transgender Program

C.C.

Mr. Celalettin Cerrah, Commissioner of Istanbul Security Directorate, Istanbul  
Mr Beşir Atalay, Minister of the Interior, Ankara



## “We Need a Law for Liberation”

### Gender, Sexuality, and Human Rights in a Changing Turkey

Turkey is changing rapidly, with an expanding sense of democratic possibility—for some. For others, stamped with stigma or left on the margins by imposed standards of “masculinity” and “femininity,” it is still a land of exclusion.

Across Turkey, lesbian, gay, bisexual, and transgender (LGBT) people are compelled to struggle for their freedoms. Social norms for what it means to be a man or a woman are deeply woven into Turkish society and state, and those who do not conform face discrimination and violence. Gangs harass, rob, and kill gay men. Police often neglect or dismiss these crimes. Transgender people often confront beatings or rape. Meanwhile, lesbian and bisexual women try to find personal autonomy under stifling family and social constraints. A proverb encapsulates those pressures: “A daughter can escape her father’s will either in her husband’s house or in the grave.”

Civil society has new room to work in Turkey, but the state still harasses groups that address issues of gender and sexuality. Police raids and court cases seek to close LGBT groups. As Turkey seeks to join the European Union, these abuses demand scrutiny—and action.

Turkey must comply with its obligations under international law—and with the principles of respect for human dignity and equality on which the human rights system is founded. Vague and sweeping laws used to harass individuals and civil society should be struck down. The armed forces must respect human rights, including the rights of LGBT people. Legislation must provide safeguards against unequal treatment based on sexual orientation or gender identity. To protect its progress toward democratic freedom, Turkey needs laws ensuring liberation.

*People demonstrate in support of lesbian, gay, bisexual, and transgender rights in Istanbul’s 2007 Pride March.*

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