

Human Rights Violations Against LGBT Individuals in Turkey in 2008

The human rights violations against LGBT individuals committed by the police in Turkey are monitored and reported by the LGBT Rights Platform consisting of seven LGBT organizations in Turkey. The LGBT Rights Platform also prepares reports about the attacks of civil people against LGBT individuals. The human rights violations monitored and reported by the Platform in 2008 occurred in Ankara, Aydın, Diyarbakır, Eskişehir, İstanbul, İzmir, Kayseri and Muğla. The Platform has also been working for the elimination of the existing barriers to the freedom of association of LGBT individuals in Turkey.

As a member of the LGBT Rights Platform, Lambdaistanbul LGBT Solidarity Association prepared 34 reports about the attacks of the police and civil people against LGBT individuals in 2008:

- 14 cases about police violence against LGBT individuals in public places such as streets, parks or bars
- 9 cases about police raid to transgender women's houses and ill-treatment of the police there
- 8 cases about violence of civil people against LGBT individuals
- 1 case about the police who did not help a victim who was a transgender woman and who wanted to complain about the attack against her by two civil men
- 1 case about ill-treatment of military psychiatrists and psychologists against a gay man who wanted to take a medical report in order to not to make compulsory military service
- 1 case about discrimination against a transgender woman at a television program

The LGBT Rights Platform submits the reports about the human rights violations of the police to the Grand National Assembly of Turkey Human Rights Investigation Commission (*T.B.M.M. İnsan Haklarını İnceleme Komisyonu*), Republic of Turkey Prime Ministry Human Rights Presidency (*T.C. Başbakanlık İnsan Hakları*

Başkanlığı), Provincial Human Rights Committee in Governorships (*Valilik İl İnsan Hakları Kurulu*), and Human Rights District Committees (*İnsan Hakları İlçe Kurulu*).

For example, Lambdaistanbul submitted 19 reports to Governorship of İstanbul Provincial Human Rights Committee in April 2007 and demanded an investigation about the cases. Governorship of İstanbul Provincial Human Rights Committee responded Lambdaistanbul's letter five months later in September 2007 and stated that there were some operations towards transgender women on the basis of several complaints about them but there was no human rights violation. However, Governorship of İstanbul Provincial Human Rights Committee did not talk to the victims whose cases were reported and to the activists who prepared these reports.

Lambdaistanbul applied to the Grand National Assembly of Turkey Human Rights Investigation Commission, Republic of Turkey Prime Ministry Human Rights Presidency and to the Governorship of İstanbul Provincial Human Rights Committee with 33 reports including 14 new and 19 old reports in December 2007 and demanded investigation about the cases stating that the Governorship of İstanbul Provincial Human Rights Committee did not investigate the previous cases properly. After the related human rights committees in the Assembly and Prime Ministry ordered the committee in the Governorship of İstanbul to investigate the claims, a special commission consisting of three people was established within the committee in the Governorship of İstanbul. This special commission prepared a report about the claims. This special commission also visited Lambdaistanbul and talked to the activists preparing the human rights reports. Then, Governorship of İstanbul Provincial Human Rights Committee sent a letter to Lambdaistanbul in June 2008 on the basis of the findings of this special commission which underlined the fact that the police had a harsh attitude towards LGBT individuals due to their own social norms, moral belief and occupational responsibility understanding. The special commission stated that there were problems both in institutional and individual levels and recommended that human rights education should be given to the police in coordination with municipalities, universities, civil society organizations, labour organizations and Prime Ministry Social Services and Protection of Children Institution (*Başbakanlık Sosyal Hizmetler ve Çocuk Esirgeme Kurumu*).

Lambdaistanbul LGBT Solidarity Association will prepare an education program for İstanbul police about human rights in general and the problems of LGBT individuals in particular and submit its proposal to the Ministry of Interior. If Lambdaistanbul's proposal is accepted and implemented as a pilot project in İstanbul, then LGBT Rights Platform will apply to the Ministry of Interior and demand a countrywide education program.

Lambdaistanbul made its third application to the Grand National Assembly of Turkey Human Rights Investigation Commission, Republic of Turkey Prime Ministry Human Rights Presidency, Governorship of İstanbul Provincial Human Rights Committee and Beyoğlu District Human Rights Committee in September 2008. It submitted 18 new human rights violation cases and demanded an investigation.

Examples of the Human Rights Violations Against LGBT Individuals and the Barriers to the Freedom of Association of LGBT Individuals

M.'s case, İzmir, December 2007:

A car, in which there were a man and a transgender woman, was stopped by the police barricade in İzmir in December 2007 because the driver, who was the man, did not stop at the red light and tried to escape despite the stop warning of the police. After the car was stopped by the police barricade, both of the individuals in the car were asked to leave the car. The transgender woman was wounded from her chest by a police officer who fired his gun intentionally for wounding her who was crouching after she was asked to leave the car and to crouch. The police officer was under indictment for "misusing his authority and wounding someone intentionally by gun" (*zor kullanma yetkisinin aşılması suretiyle silahla kasten yaralama*). The public prosecutor also stated in the indictment report that the claim of the police officer that the transgender woman attacked him with a knife was not true. The finger prints of the transgender woman were not found on the knife which was submitted to the court by the police as a proof.

The court case started in May 2008 and ended in November 2008. The police was given 135 days's imprisonment punishment for wounding M. However, the judge transformed this imprisonment punishment to fine punishment worth 2240 Turkish Lira which was equal to 1060 Euro. And this amount was divided to 24 payments. Moreover, by using a legal procedure, the judge decided that the decision about the police officer will not be announced in the following 5 years. If the police officer will not intentionally committ another crime in the coming 5 years, the court case and the decision about the police officer will be cancelled and there will be no criminal or police archive record for the police officer. In addition, there will be no chance to appeal the decision to Supreme Court of Appeals (*Yargıtay*).

Moreover, there is a continuing court case about M. for the same event. She is accused for resisting the police officer during the event. It can be seen that transgender women became victims of police attack, however, the courts do not give any punishment to the police, instead they behave the transgender women as criminals.

When the Head of İzmir Police Department Hüseyin Çapkın opened the new bulding of Tire Police Department in İzmir on 11 February 2008, he stated that "İzmir Police Department stopped crime in Alsancak [*which is a district in İzmir*] by stopping transvestite terror there" ¹ when he was listing the "achievements" of the İzmir Police Department. Here, it can be seen that the police sees transgender women as criminals and attack them. Because the police is protected by the courts and does not receive enough punishment, they continue their attacks against transgender women.

S.L's and M.D's case, Marmaris, January 2008:

Another transgender woman (S.L.) was insulted and beaten by four plainclothed police officers by using truncheons when she was walking on the road at night in Marmaris in Muğla on 12 January 2008. She was also given an administrative fine

¹ This statement can be read at the web site of Tire Municipality: http://www.tire.bel.tr/haber.asp?eylem=haber_detay&h_id=26

punishment worth 58 TL by the police officers on the basis of the Code on Misdemeanour (*Kabahatler Kanunu*) Article 37th which orders an administrative fine punishment to people who disturb other people around in order to sell goods or a service. She went to the state hospital and took a forensic medicine report after the attack. While she was walking on the same road at the same time the next day, she was insulted and beaten again by two of the four police officers who attacked her the previous night. She applied to the Office of the Head Public Prosecutor in Marmaris (*Marmaris Cumhuriyet Bařsavcılıđı*) the next day and made an official accusation about that four police officers and demanded that they would receive punishment. There are witnesses and forensic medicine report regarding this case. She also submitted some photographs, which showed physical harm over her body, to the Office of the Head Public Prosecutor in Marmaris.

M.D., who was also a transgender woman and a friend of S.L., saw that her friend was beaten by the police officers by using truncheons on 12 January 2008 and asked the police officers why they were doing it by going the crime place. She was also beaten and given an administrative fine punishment. She also made an official accusation about the police officers.

Human Rights Violations Against Transgender Women in Ankara:

- In a decision of the Court of Appeals dated 1999 about a case regarding someone who participated illegal prostitution activities and provided place for prostitution to transgender women, it is stated that “it is a known fact that people who are called ‘transvestites’ spread HIV and other contagious diseases through sex”. This decision is used as a reference in order to close down the houses of transgender women in Ankara in the name of “protecting public health”.
- After the transgender women started to come together and organize themselves in Pembe Hayat LGBT Association, the administrative fine

punishments² given to them by the police increased. Pembe Hayat LGBT Association have objected to 406 administrative fine punishments since May 2007. However, most of the objections of Pembe Hayat were rejected by the Court.

- In 2006, transgender women in different districts in Ankara were attacked by a gang group. The case is known as the case of Eryaman which was one of the districts in which the attacks were made. 4 people from the gang group were arrested as suspects and were taken to the court. The court case lasted for two years and ended in October 2008. During the trials, the four suspects were accused for organized crime and wounding transgender women intentionally. At the end of the trials, they were found guilty and were given imprisonment punishment on the basis of Turkish Criminal Code (*Türk Ceza Kanunu*).

This decision is very important in the sense that the judge considered the attacks against transgender women in Eryaman and in other districts as organized crime committed on the basis of hate. In other words, the judge decided that these 4 people formed a gang group in order to attack the transgender women and committed organized crime. The judge gave them imprisonment punishment on the basis of Turkish Criminal Code. Their punishment were not delayed or transformed to fine punishment because they did not feel regret. This is the good side of the decision. However, the judge punished them with the lowest level imprisonment for this crime. Moreover, the 2 years' period during the trials, in which they were arrested, was considered enough for this lowest level of imprisonment and they were released. It must be noticed that there is no specific legislation about hate crimes in Turkey. If there were a specific legislation about hate crimes, the

² Article 37th of the Code on Misdemeanour (*Kabahatler Kanunu*) orders an administrative fine punishment worth 50 Turkish Lira to people who disturb other people around in order to sell goods or a service. Article 32nd of the same Code orders an administrative fine punishment worth 100 Turkish Lira to people who do not obey the orders which are given by the authorized officials as part of criminal procedures or in order to establish public security, public order or public health.

attackers would receive more punishment. So, a specific legislation about hate crimes should be prepared by the legislative in Turkey.

- A transgender woman D.İ. was shot from her head with a pump action shotgun in Ankara on 10 November 2008 and died on the next day. A couple of people were taken under custody after the event and were questioned however no evidence was found. A couple of days later after this murder, another pump action shotgun attack was made at the same district. Noone died or got wounded in the second case. The police investigated the second event however they could not find any evidence showing that the two events were interrelated. The investigation about D.İ. murder is continuing.

Police Search to Lambdaistanbul Cultural Center, İstanbul, 07 April 2008:

Lambdaistanbul Cultural Center was searched by a group of more than 12 plainclothed police officers and officials from the Governorship of Istanbul Provincial Directorate of Associations (*İstanbul Valiliği İl Dernekler Müdürlüğü*) on 07 April 2008 on the basis of a search warrant taken from the Court (*Beyoğlu 2. Sulh Ceza Mahkemesi*). After the police received an accusation against Lambdaistanbul for “participating illegal prostitution activities, providing place for prostitution to transgender women and sharing their earnings” on 16 March 2008, the police observed Lambdaistanbul Cultural Center for some time, prepared an official report stating that the transgender women were coming into and going out of the cultural center of the association, and asked the Office of the Head Public Prosecutor in Beyoğlu (*Beyoğlu Cumhuriyet Başsavcılığı*) to take a search warrant from the court. As a result of the demand of the Public Prosecutor, the Court (*Beyoğlu 2. Sulh Ceza Mahkemesi*) issued a search warrant. According to the 6th article of the regulation regarding searches (*Adli ve Önleme Aramaları Yönetmeliği*), a search warrant can be issued on the basis of a plausible suspicion based on concrete facts. The search warrant issued regarding Lambdaistanbul is illegal because it is not based on a plausible suspicion based on concrete facts. In other words, the existence of transgender women cannot be equalized to doing prostitution and visits of transgender women cannot be considered as a plausible suspicion for prostitution

and for issuing a search warrant. As an association and cultural center for LGBT individuals, it is quite natural for Lambdaistanbul to be visited by transgender women.

The implementation of the search was also illegal. The police officers coming to Lambdaistanbul Cultural Center did not show their police identity cards and did not permit the officials of Lambdaistanbul to read the search warrant. The lawyer of the Association could be able to read it after he arrived in the Cultural Center. The implementation of the search warrant by the police and by the officials from the Governorship of Istanbul Provincial Directorate of Associations was also against the 121st and 122nd articles of the Code (*Ceza Muhakemeleri Kanunu*): Despite the fact that no evidence of criminal offence was found at the Cultural Center, some important documents regarding Lambdaistanbul's financial and membership systems were taken. No official report stating that no evidence of criminal offence was found and listing which documents were collected was submitted to Lambdaistanbul although the President of the Association asked it. Although the documents of an association can be read and analysed only by a judge or by a public prosecutor, the documents of Lambdaistanbul were collected to be read by the officials from the Governorship of Istanbul Provincial Directorate of Associations. The documents were submitted back to Lambdaistanbul on 14 April 2008. The lawyers of Lambdaistanbul objected to the search warrant and demanded from the Court (*Beyoğlu Nöbetçi Asliye Ceza Mahkemesi*) to decide that the decision for issuing the search warrant regarding Lambdaistanbul was illegal. However the Court (*Beyoğlu 9. Asliye Ceza Mahkemesi*), which analysed the objection of Lambdaistanbul, rejected the objection and stated that the decision for issuing the search warrant was legal. Lambdaistanbul applied to the European Court of Human Rights regarding the illegal police search based on illegal search warrant. Lambdaistanbul also made an application to the Public Prosecutor and demanded punishment for the person who made a false accusation against Lambdaistanbul for "participating illegal prostitution activities, providing place for prostitution to transgender women and sharing their earnings". However, the Public Prosecutor rejected Lambdaistanbul's application. Then, Lambdaistanbul objected this decision of the Public Prosecutor, but this objection was also rejected.

Closure Case Against Lambdaistanbul LGBT Solidarity Association:

Ministry of Interior Presidency of the Department of Associations (*T.C. İçişleri Bakanlığı Dernekler Dairesi Başkanlığı*) sent a letter to the Governorship of İstanbul on 01 June 2006 and stated that the concepts of “lesbian, gay, bisexual, transvestite and transsexual” (LGBTT) listed in the name of Lambdaistanbul LGBTT Solidarity Association and the aims of the association listed in the 2nd article of its charter were against general morality of Turkish society and Turkish family structure. Moreover, it was stated that the word of “Lambda” existing in the name of the association was not Turkish and the association had to add the Turkish equivalent of it to its charter. Governorship of İstanbul Provincial Directorate of Associations sent a letter to Lambdaistanbul on 09 June 2006 and demanded amendments regarding the “LGBTT” concepts in its name and the aims listed in the 2nd article of its charter and to add the Turkish equivalent of “Lambda” to the charter of the association. Lambdaistanbul added the Turkish equivalent of “Lambda” to its charter, but refused to make amendments regarding the “LGBTT” concepts in its name and the aims listed in the 2nd article of its charter because such a demand was totally against the aim of the association. Governorship of İstanbul Provincial Directorate of Associations applied to the Office of the Head Public Prosecutor in Beyoğlu on 18 July 2006 and demanded that a closure case was opened against Lambdaistanbul. The Office of the Head Public Prosecutor in Beyoğlu decided that there was no reason to open such a closure case. But Governorship of İstanbul Provincial Directorate of Associations appealed the decision to the Court (*İstanbul 5. Ağır Ceza Mahkemesi*) which accepted the objection of Governorship of İstanbul Provincial Directorate of Associations and decided that such an issue had to be decided by a judge rather than a public prosecutor and a closure case against Lambdaistanbul had to be opened.

The first hearing of the closure case was held in July 2007. In the second hearing which was held in October 2007, the judge appointed an expert from İstanbul University Faculty of Law to prepare a report about the case. Due to the fact that the expert did not submit his report before the third and fourth hearings in January and March 2008, the case was postponed to the fifth hearing on 17 April 2008. In his report which he submitted just one day before the fifth hearing, the expert, who is an

expert on civil law, states that the demand for closing Lambdaistanbul has no legal basis. He states that the Code on Associations (*Dernekler Kanunu*) does not prohibit words which are not Turkish and which exist in the name of an association. According to him, a refusal to add the Turkish equivalent of a word to the charter of an association cannot be an excuse for closing an association on the basis of the Civil Code (*Türk Medeni Kanunu*) Article 60th which states that a closure case is opened against an association which does not remove the deficiencies in its charter within 30 days after the association is asked to remove them. He also states on the basis of his personal opinion that the aims listed in the 2nd article of Lambdaistanbul's charter are not against law and general morality of the society. In other words, he states, the aims of an association which is established for social and economic solidarity between LGBT individuals who have "different sexual orientation and identity" cannot be considered against the general morality of the society. He adds that the aims of Lambdaistanbul are not against the Constitution of Turkey Article 41st which states that the state has responsibilities for protecting family structure.

In the sixth hearing on 29 May 2008, the judge decided that Lambdaistanbul would be closed down despite the fact that the expert appointed by the judge himself stated that "the demand for closing down Lambdaistanbul has no legal basis". The judge's reasons for deciding to close down Lambdaistanbul are:

- General morality of Turkish society should be protected.
- Children and youth should be protected.
- Turkish society is a patriarchal society and family is attached a sacred meaning. The state has responsibilities for protecting family structure.
- Number of people having different sexual orientations are rare.
- The demands of people having different sexual orientations exist for a short period of time.
- The demands of people having different sexual orientations exist only in metropolitan areas rather than rural areas.
- Almost the whole of Turkish society considers being an LGBT individual as immoral.

- Only gender change operations of transsexual individuals who do not have reproduction capacity are mentioned in Turkish Civil Code (*Türk Medeni Kanunu*), but gender change operations of them are done in order to protect their psychological health.
- The name of an association should also be in Turkish. Lambdaistanbul did not mention the Turkish equivalent of “Lambda” in its charter at first.
- Some articles in the charter of Lambdaistanbul extend the aim of solidarity: Lambdaistanbul wants to spread homosexuality among the society through its education activities. In other words, as a minority group they want to put pressure over majority.
- Education activities can be done on the basis of Atatürk principles which are not taken into account in the charter of Lambdaistanbul.
- In the 10th Article of the Constitution³, only male and female sexes are mentioned. So, an association of LGBT individuals is against the 10th article of the Constitution.

Lambdaistanbul appealed this decision to the Supreme Court of Appeals (*Yargıtay*) in June 2008. The hearing on the closure case against Lambdaistanbul was held at the Supreme Court of Appeals on 25 November 2008. The Supreme Court of Appeals overturned local court's closing down decision regarding Lambdaistanbul and stated that Lambdaistanbul's name and its aims listed in its current charter are not against law and general morality of the society. There will be a new hearing at the local court on **30 April 2009**. As Lambdaistanbul, we think that this time the local court will follow

³ **X. Equality before the Law** (As amended on May 22, 2004)

ARTICLE 10. All individuals are equal without any discrimination before the law, irrespective of language, race, colour, sex, political opinion, philosophical belief, religion and sect, or any such considerations.

Men and women have equal rights. The State shall have the obligation to ensure that this equality exists in practice.

No privilege shall be granted to any individual, family, group or class.

State organs and administrative authorities shall act in compliance with the principle of equality before the law in all their proceedings.

the decision of the Supreme Court of Appeals and will decide not to close down Lambdaistanbul. If it insists to close down Lambdaistanbul, we will appeal the decision again. This time the case will go to the highest chamber at the Supreme Court of Appeals. All the judges of the Supreme Court of Appeals will decide about the case together. But as it has been indicated before, we suppose that this time the local court will follow the decision of the Supreme Court of Appeals.

Despite the fact that the Supreme Court of Appeals overturned local court's closing down decision regarding Lambdaistanbul, the decision of the Supreme Court of Appeals includes a warning against Lambdaistanbul. In its detailed decision, the Supreme Court of Appeals stated that " ... the dissolution of the defendant association could still be demanded, if it would act counter to its charter, in the ways of encouraging or provoking lesbian, gay, bisexual, transvestite and transsexual behavior or acting with the aim of spreading such sexual orientations." In other words, the Supreme Court of Appeals told Lambdaistanbul to be careful in order to stay open. Before the hearing at the local court on **30 April 2009**, Lambdaistanbul will give a petition against this statement of the Supreme Court of Appeals. If the local court will use this statement in its decision, Lambdaistanbul will appeal the decision again, even if the local court will decide not to close down Lambdaistanbul, and will ask the highest chamber at the Supreme Court of Appeals to correct this statement.

In conclusion, LGBT individuals in Turkey face severe attacks of the police and civil people. Moreover, there are barriers to their freedom of association. But the LGBT organizations will continue their struggle in order to eliminate these human rights violations.

LGBT Rights Platform

İzmir Transvestite and Transsexual Initiative

Kaos GL Association

Lambdaistanbul LGBT Solidarity Association

MorEL (*PurpleHand*) Eskişehir LGBT Initiative

Pembe Hayat (*Pink Life*) LGBT Association

Piramid LGBT Diyarbakır Initiative

Siyah Pembe Üçgen (*Black Pink Triangle*) İzmir Association