

# KAOS GL HUMAN RIGHTS OF LGBTI+ PERSONS 2022 REPORT

## FACT SHEET



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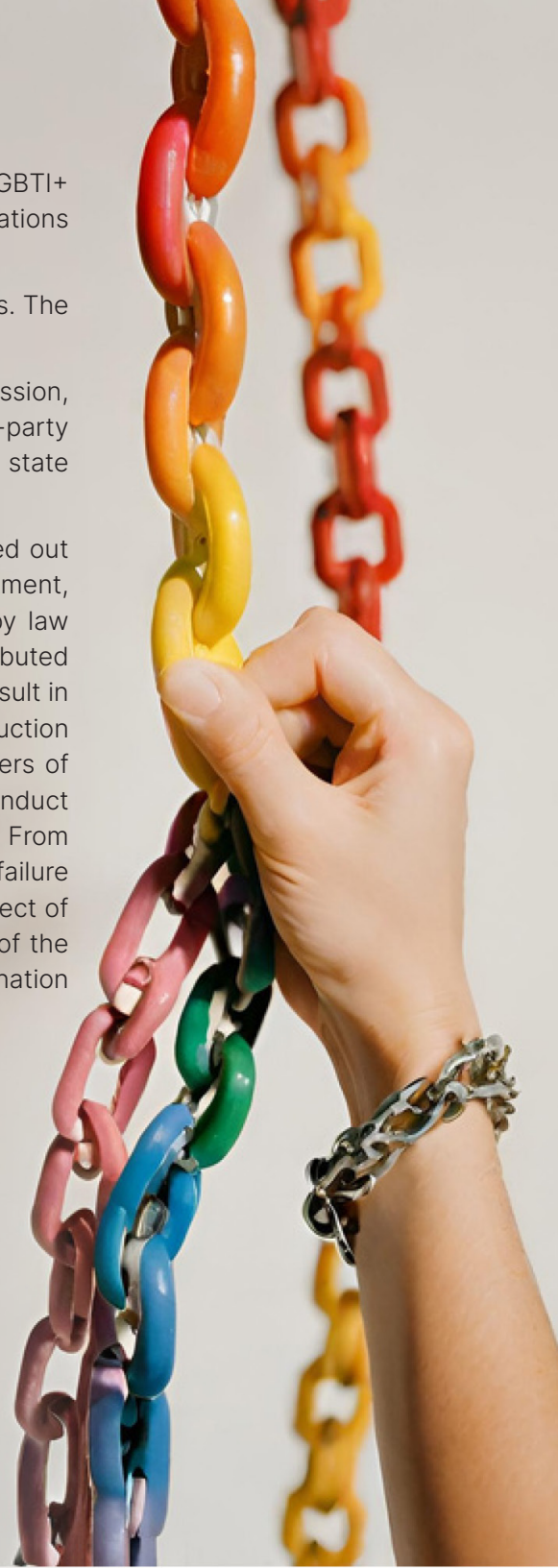
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Kaos GL has once again confirmed that rights violations against LGBTI+ persons are on the rise. Structural problems continue to cause rights violations and new structural problems are constantly being added.

There are no trials to ensure criminal justice in the reported hate crimes. The courts treat hate crimes as ordinary homicides.

Regarding almost all fundamental rights, in particular freedom of expression, LGBTI+ persons have either been victimized by the state or third-party interventions against LGBTI+ persons have been legitimized by the state through non-prevention or impunity.

Violations occurred in three ways. Sometimes public authorities carried out acts that they are prohibited from doing, such as torture and ill-treatment, or directly prohibited activities, as in the case of the use of force by law enforcement to prevent peaceful pride marches. The state itself contributed to violations by failing to intervene in acts between third parties that result in violations; by failing to use its powers of punishment, as seen in the reduction of sentences for good behaviour or unjustified provocation to the killers of transgender persons killed because of hate crimes; or by failing to conduct effective and efficient investigations into acts against LGBTI+ persons. From time to time, these violations have also been exposed by the State's failure to fulfil its duty to take precautionary measures and its deliberate neglect of its duty to create systematic tools. An example of this is the refusal of the Human Rights and Equality Institution to investigate claims of discrimination based on the identity of LGBTI+ persons as a matter of principle.



## KEY FINDINGS:

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In general,

- LGBTI+ persons have suffered violations in all categories of their rights.
- The most violated area is freedom of expression. The reason for this is the state's attempt to isolate LGBTI+ persons from the public sphere.
- In line with this political program, the ruling coalition is exerting a special effort to diminish the relatively limited constitutional guarantees of LGBTI+ persons.
- The Press Advertisement Agency provides funding for government-supported media organs that generate hate speech, despite no measures being in place to prevent it.
- Instances of discrimination in access to employment and post-employment workplace processes are systematic.
- Systematic violations for LGBTI+ persons occur within the prison system.
- The policy of requiring hormonal and surgical intervention for legal gender recognition forms a systematic violation of the bodily integrity of transgender individuals.
- Transgender sex workers are denied entry into legal working areas, and the sealing off of their homes due to sex work leads to systematic violations of their right to housing.
- Information regarding the hormonal and surgical procedures performed on intersex persons is not publicly accessible. The right to self-determination over their own bodies is not granted to intersex persons.
- The education and higher education systems marginalize LGBTI+ persons.

### Grand National Assembly of Turkey

- Mechanisms within the organization are dysfunctional with regard to LGBTI+ rights.
- There is no legislative process in line with universal human rights standards.
- Produces discriminatory legislation, does not change the discriminatory structure of existing legislation.

### Presidency

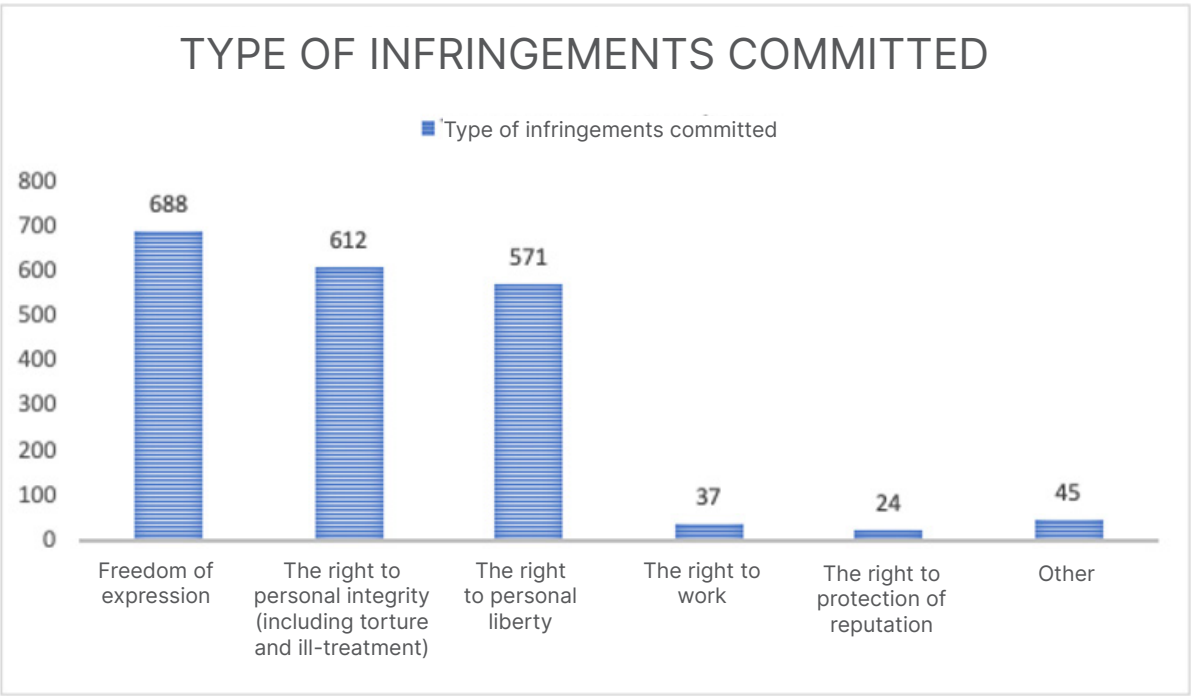
- Fails to fulfil its responsibility to ensure that state institutions fulfil their responsibilities in relation to LGBTI+ persons' access to human rights.
- Hate speech generated by the President and ministers in a polarized environment creates an unsafe environment for LGBTI+ persons.
- Public institutions under the presidency ignore LGBTI+ persons and their rights.

**Judicial mechanisms**

- Judicial mechanisms are dysfunctional for LGBTI+ persons.
- The individual petition mechanism at the Constitutional Court is ineffective for LGBTI+ persons.

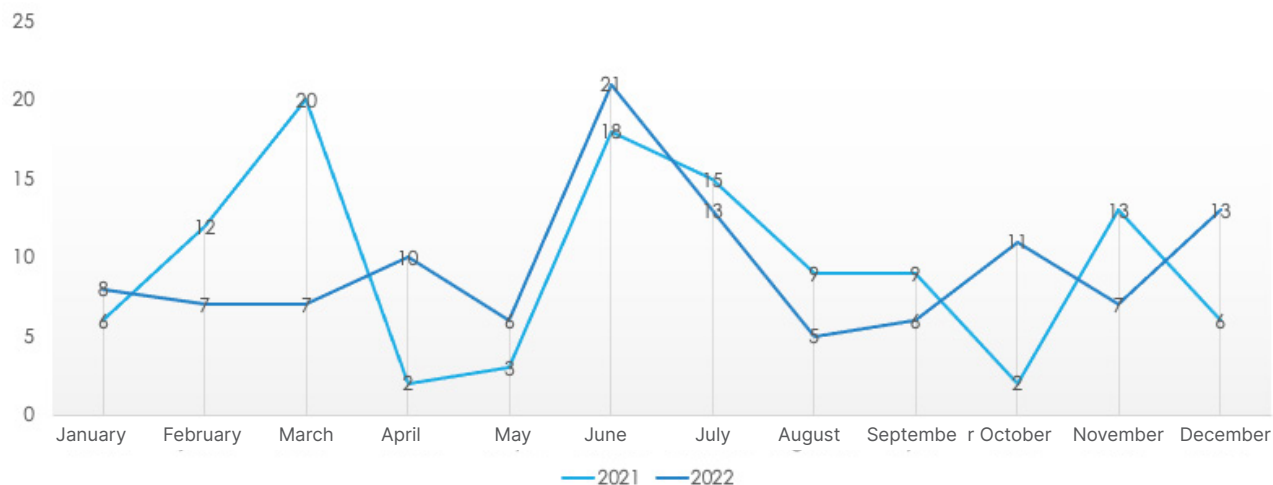
**Other mechanisms and public institutions**

- Structures such as TİHEK and KDK, under the guise of human rights mechanisms, process the counter-narrative that LGBTI+ existence and LGBTI+ rights are not fundamental rights.
- TİHEK makes special efforts to spread the counter-narrative through its collaborations, consultative relationships, and alliances in the field of human rights.
- Bodies such as the Advertising Board, the Board for the Protection of Minors from Obscene Publications, the Supreme Council of Radio and Television and the Press Advertising Agency are the instruments of the elimination of LGBTI+ from public life within the executive branch.



Compared to the previous year, there was no discernible increase in the number of violations in 2022, despite the absence of extraordinary and high-violation events such as the Boğaziçi University protests.

***In 2022, at least 571 persons were detained for participating in events such as pride marches organised by LGBTI+ persons, and held for hours in police vehicles or centres.***

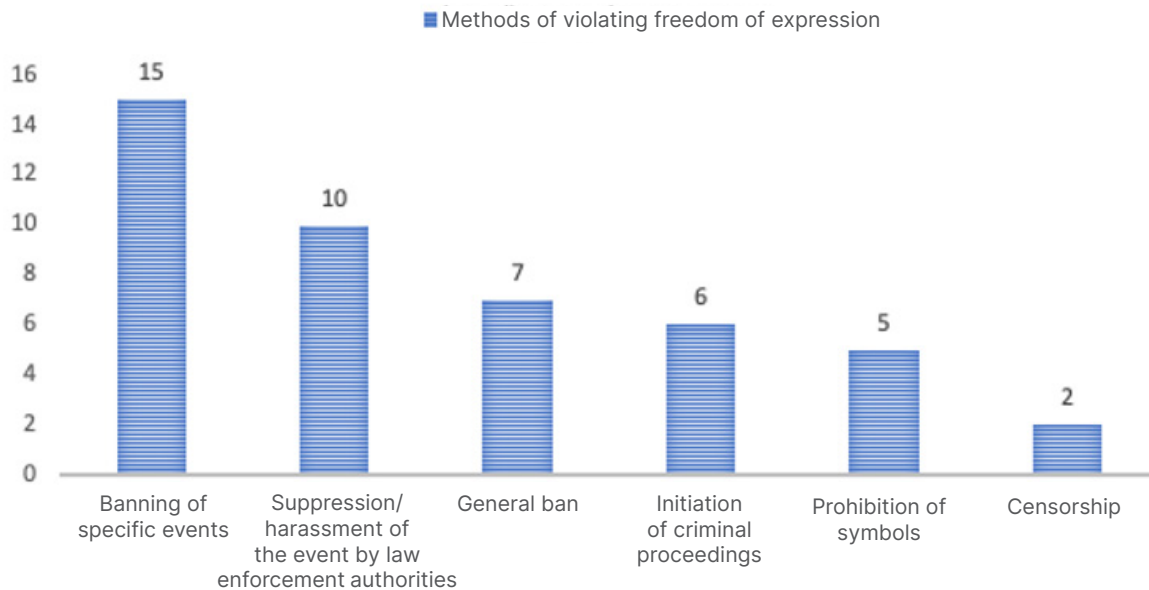


## THE TABLE OF LGBTI+ RIGHTS ON FREEDOM OF EXPRESSION SHOWS TURKEY'S RECORD

Turkey's record on "freedom of expression" is poor, as evidenced by the rising number of violations in this area.

Various means have been used to prevent LGBTI+ individuals from accessing freedom of expression, resulting in 688 violations. Rectors, district governors, or governors have all prohibited peaceful demonstrations. During 2022, a minimum of 571 individuals were arrested during peaceful protests organized exclusively by the LGBTI+ community. The judicial system subjected rights advocates to legal harassment by pursuing criminal charges against individuals who participated in prior peaceful events. In total, the judicial system arraigned individuals 25 times across 11 criminal cases, with 91 individuals facing trial.

## METHODS OF VIOLATING FREEDOM OF EXPRESSION



*Despite administrative courts cancelling the decisions made by governorates to ban Pride marches as unlawful, the governors and law enforcement forces persist in preventing the following marches, disregarding the court's rulings. Although none of the protesters arrested during the Pride marches have faced punishment for violating demonstration march laws, the procedures of arrest, detention and trial persist as a means of judicial harassment and a deterrent to the exercising of constitutional rights.*



## WHILE HATE SPEECH BECAME COMMONPLACE, AREAS CLOSED TO LGBTI+ WERE OPEN TO HATE ACTIVITY

The President, Minister of the Interior, and Minister of Trade have made hate speech against LGBTI+ persons at various times. This trivializes the issue of hate speech against LGBTI+ persons, as there is no legislation that sanctions hate speech. With the Constitutional Court's interpretation in this direction, hate speech that does not explicitly target an individual and lacks a call for violence is not subject to criminal investigation.

*The Broadcasting Authority has decided to air a video and audio message created by an association urging the public to attend rallies aimed at punishing homosexuality and shutting down LGBTI+ organizations. This message was broadcast as a public service announcement on radio and television to increase the number of persons attending the rallies. Kaos GL's lawsuit challenging this decision was dismissed on the grounds of family protection.*

All LGBTI+ organized peaceful demonstrations have been prohibited by governorships or district governorships in Turkey. Meanwhile, the administrative courts, which rejected the requests for suspension after a long period of time, have seemingly dispensed justice with decisions of acquiescence that do not bring about any change in concrete life, thus structuralizing the violations.

Public authorities who actively engage in hate speech instead of fulfilling their duty to take positive action, were among the participants of the rallies that demanded the criminalization of LGBTI+ existence and the closure of their related organizations.

*In 2022, hate rallies were held in fifteen provinces throughout Turkey, where hate speech was directed towards LGBTI+ individuals and some incited violence. In certain locations, university rectors and national education directors were present at these rallies, which were permitted by governing bodies. This included the rectors of Izmir Democracy University and Katip Çelebi University, both of which play a role in European Union exchange initiatives.*



## MONITORING MECHANISMS DO NOT MONITOR VIOLATIONS AGAINST LGBTI+ PERSONS

The Institution of Human Rights and Equality in Turkey, the Advertising Board, and the Board for the Protection of Minors from Obscene Publications, along with the Radio and Television Supreme Council, whose members are determined by the Turkish Grand National Assembly, and the Ombudsman's Office, which are directly or indirectly affiliated with the Presidency through ministries, have issued decisions that overlook LGBT+ individuals and infringe upon their rights.

LGBTI+ persons are deprived of constitutional guarantees and their non-existent family rights are made even more impossible by the provisions of the Constitution. Conversion therapy remains unprohibited, and there are no regulations in place to ensure equal access to goods and services. LGBTI+ individuals face additional hurdles when seeking employment, and those who are employed are not safeguarded against discrimination due to their sexual orientation, gender identity, or characteristics.

*TiHEK unequivocally rejects applications from LGBTI+ individuals, as sexual orientation, gender identity, gender expression and gender characteristics are not explicitly mentioned as forms of discrimination within Article 3 of its founding legislation. Nevertheless, according to Article 10 of the Constitution, all individuals must be treated equally before the law, regardless of any factor.*

Preparations are underway to amend the law to increase the complexity of gender recognition processes, but the current legal situation forces trans persons to accept surgical and hormonal interventions on their bodies. Non-consensual interventions on intersex bodies are not prohibited, and there are no monitoring or remedial mechanisms such as judicial or compensation mechanisms in place for non-consensual interventions on intersex persons.

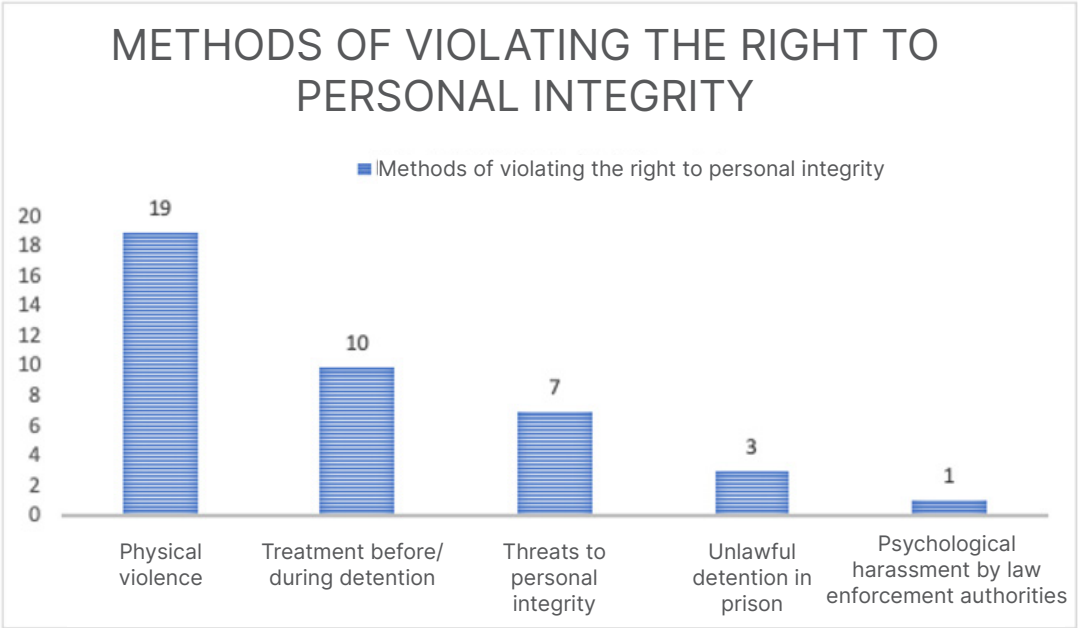
*Requests for information made to the Ministry of Health regarding the disclosure of statistical data on intersex births or gender affirmation procedures have been systematically denied.*

LGBTI+ organizations are made non-functional by audits conducted at least annually, and they are unable to access public funds.

# THE POLICY OF IMPUNITY REMAINS A SIGNIFICANT BARRIER TO JUSTICE, PARTICULARLY FOR LGBTI+ INDIVIDUALS WHO HAVE EXPERIENCED VIOLENCE ON THE STREETS

Criminal acts targeting LGBTI+ persons are often met with impunity, and courthouses are not effective means of ensuring criminal justice for LGBTI+ persons. Individuals who originate from outside the confines of the Council of Europe do not receive refugee status, and members of the LGBTI+ seeking asylum are another group who fall prey to the homophobic/transphobic society.

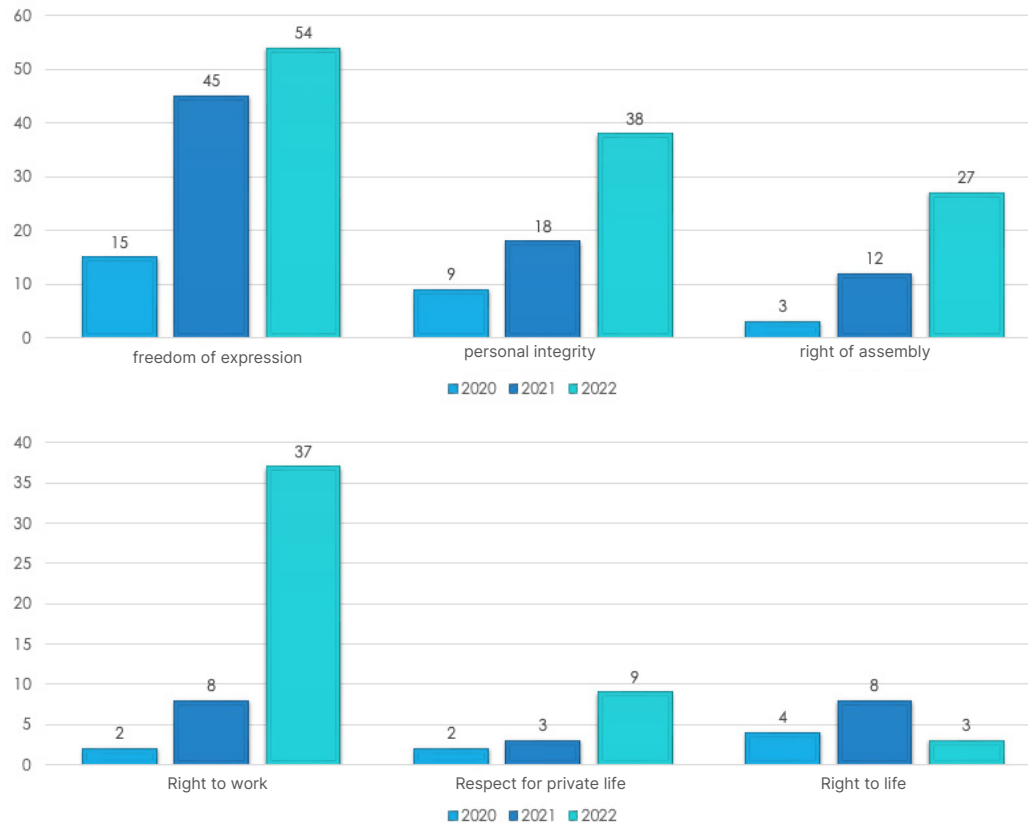
*Asylum-seeking and refugee LGBTI+ individuals are subjected to a policy of systemic impunity. Reporting an instance of wrongdoing against them, even if it leads to a decision of non-prosecution, can be grounds for their deportation. This deters persons from exercising their right to file a complaint, as they fear the individuals they report will retaliate with a false accusation.*



Decision-makers who disregarded the constitution for LGBTI+ citizens similarly disregarded international conventions for non-citizens.

*In the transition from female to male, some courts are not satisfied with the condition of permanent deprivation of reproductive capacity, although this is legally sufficient, and require phalloplasty (penis formation) operations. This is an interference with the bodily integrity of the person.*

## DATA SHOWS THAT TURKEY IS REGRESSING YEAR BY YEAR IN THE AREA OF LGBTI+ RIGHTS.



## RECOMMENDATIONS TO TBMM, THE LEGISLATIVE BODY

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- Include LGBTI+ rights organizations in the legislative process in accordance with their interests and through appropriate means.
- Reject legislative and constitutional proposals that aim to restrict LGBTI+ rights and thus human rights and review the conformity of laws with Article 10 of the Constitution.
- Ratify Protocol No. 12 to the European Convention on Human Rights on the General Prohibition of Discrimination, signed by the Republic of Turkey on 18 April 2001.
- Reform Articles 122 and 216 of the Turkish Penal Code, Article 40 of the Civil Code and Article 3 of the TIHEK Law.
- Differentiate the penalties for hate crimes so that they are higher than the penalties for simple forms of the same crimes.
- Amend the laws that ensure state funding of media outlets that have become the focus of homophobic and transphobic hatred.
- Make the parliamentary commissions and sub-commissions on human rights operational.

## RECOMMENDATIONS TO THE EXECUTIVE PRESIDENCY

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- Establish rules to sanction hate speech by ministers and bureaucrats under the presidency.
- Revoke the LGBTI+ exclusion orders sent to public institutions.
- Remove obstacles to LGBTI+ freedom of expression.
- Take steps to end discriminatory behaviour by law enforcement officials based on gender identity and sexual orientation.
- Develop specific mechanisms for law enforcement to combat hate crimes.
- End arbitrary and rights-violating enforcement of the Misdemeanours Act and the Road Traffic Act and Regulations.
- Introduce effective appeal procedures against arbitrary home closures and ensure that persons' housing needs are met when home closures are unavoidable.
- Record and publicize hateful acts and discourse against LGBTI+ persons.

- Reinstate the Istanbul Convention
- Condemn hate speech and acts against LGBTI+ persons.
- Organize on-the-job training, in cooperation with civil society, to guide public officials on how to implement rules prohibiting discrimination and ensuring equality.
- End the de facto barriers to the registered work of transgender sex workers, include them in the system and ensure their social rights.
- End the practice of inspections, which has become an obstacle to freedom of association, and revise the regulations in line with the Venice Commission's assessments.
- Establish a mandate for the Ministry of Labour and Social Security to combat homophobic and transphobic discrimination in employment; combat discrimination in this area, including access to employment.
- Remove administrative barriers to LGBTI+ access to social assistance and social support programmes under the equality before the law provision of Article 10 of the Constitution.
- Raise standards of gender reassignment surgery in public hospitals.
- End discriminatory and homophobic/transphobic practices in recruitment procedures.
- Improve the living conditions of LGBTI+ prisoners and detainees and end discriminatory practices.
- Plan to end discriminatory practices in universities, facilitate name change procedures on current documents such as diplomas and certificates that trans graduates use in their professional lives, and eliminate versions of these changes that are reminiscent of the past.
- Include content on LGBTI+ rights and anti-discrimination in general in training for judges and prosecutors.

## **TO THE EUROPEAN COUNCIL, THE REGIONAL MECHANISM**

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- Ensure effective follow-up to the High Commissioner for Human Rights' calls for Turkey to respect LGBTI+ rights.
  - Condemn hate speech by the Turkish authorities at every opportunity and in the press.
  - Implement mechanisms to ensure that all judgments on LGBTI+ rights by the European Court of Human Rights are implemented in member states.

- Work towards the effective implementation of the recommendations of the Committee of Ministers on LGBTI+ rights and discrimination in general.
- Highlight reports of widespread violations of LGBTI+ rights in all forms of communication with the Republic of Turkey and call on the authorities to act in accordance with the Council's standards in this regard.
- Make the necessary arrangements to include the Council's standards on LGBTI+ rights in the content of joint training projects with judicial bodies in Turkey.
- Increase and deepen information on LGBTI+ rights in the monitoring processes of the Parliamentary Assembly.
- Emphasise in joint meetings and press statements that LGBTI+ rights are a shared value of the Council of Europe.
- Actively follow up on the recommendations of the Council's bodies on LGBTI+ rights in Turkey.

## **TO THE EUROPEAN UNION, THE REGIONAL POLITICAL UNION**

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- Cancel cooperation protocols with homophobic/transphobic universities and create opportunities for students to benefit from programmes without the intermediation of universities.
- Develop criteria to measure the status of the public institutions you fund in terms of LGBTI+ rights.
- Be a spokesperson for the findings and recommendations contained in the monitoring reports of the European Commission against Racism and Discrimination, a body of the Council of Europe.





