



**WAITING TO BE
“SAFE AND SOUND”:
TURKEY AS LGBTI
REFUGEES’ WAY STATION**

Field Research and Production by
Hayriye KARA & Damla ÇALIK



WAITING TO BE “SAFE AND SOUND”: TURKEY AS LGBTI REFUGEES’ WAY STATION

“Always missing what’s left behind and not leaving completely... Fear of death, being forced to live in another country, having no home... Travelling stories of LGBTI refugees from Iran and their way stations in Turkey for waiting to be “safe and sound”... Are ports of refuge and new places really freer to live?”

Field Research and Production by
Hayriye KARA & Damla ÇALIK

July 2016



AÇIK
TOPLUM
VAKFI

Canada

This report is published by Kaos GL with the support of Embassy of Canada within the scope of Monitoring Human Rights of LGBTIs Project supported by Open Society Foundation, Turkey. The content of this report does not reflect the official opinion of Open Society Foundation, Turkey and Embassy of Canada. Responsibility for the information and views expressed in the report lies entirely with the author.

CONTENTS

ACKNOWLEDGEMENTS	V
ABBREVIATIONS.....	VII
BASIS FOR THE REPORT AND SUMMARY FINDINGS	IX
I. INTRODUCTION.....	1
A. STUDY METHODOLOGY AND TERMINOLOGY	3
METHODOLOGY OF THE STUDY	3
TERMINOLOGY	3
1. Sex / Gender	3
2. Sexual Orientation	5
Homosexual	5
Gay	5
Lesbian	6
Bisexual	6
Heterosexual	6
3. Gender Identity	7
4. Trans	7
5. Intersex Conditions	8
6. Heteronormativity	8
Homophobia	9
Transphobia	9
B. SITUATION OF LGBTIS IN TURKEY	10
C. SITUATION OF LGBTIS IN IRAN	12
Same-Sex Relationships	12
Transgender Law	14
Lesbians and Bisexual Women	16

II. APPLICATIONS FOR INTERNATIONAL PROTECTION BASED ON SOGIIC IN INTERNATIONAL LAW17

- A. UNHCR GUIDELINES ON INTERNATIONAL PROTECTION NO. 920
- B. EUROPEAN UNION21
- C. UNITED STATES AND CANADA22

III. APPLICATIONS FOR INTERNATIONAL PROTECTION BASED ON SOGIIC IN TURKEY'S LAW25

IV. SITUATION OF IRANIAN LGBTI REFUGEES IN TURKEY AND ASYLUM PROCEDURE31

- A. APPLICATION, REGISTRATION AND INTERVIEWS33
- B. HOUSING37
- C. ACCESS TO RIGHT TO HEALTH38
 - Trans Reassignment Process39
 - Psychological Support39
- D. SOCIAL ASSISTANCE40
- E. WORKING LIFE42
- F. SOCIAL LIFE43
- G. HOMOPHOBIC AND TRANSPHOBIC VIOLENCE AND SEXUAL HARASSMENT45

V. CONCLUSION AND RECOMMENDATIONS.....47

ACKNOWLEDGMENTS

This report has been prepared by the Kaos GL Association as part of its Refugee Rights Program.

We are grateful to the Embassy of Canada in Ankara for supporting the project "Protecting Human Rights of Iranian LGBTI Refugees and Raising Awareness on Their Situation in Turkey"; Open Society Foundation for supporting Kaos GL's Human Rights Program; ASAM Mersin Branch for not refraining from supporting us during the interviews in Mersin; Yaşam Bellek Özgürlük Derneği for opening their place for interviews in Eskişehir; Nazlı Gizem Yıldırım for being with us during Denizli and Kayseri visits; Yıldız Tar, Tuna Semir Akpınar, Cavidan Soykan and Özgür Durmaz for contributing in the preparation of the report as well as our association's lawyer Hayriye Kara and Damla Çalık for interviewing refugees in 5 satellite cities and preparing this report.

Last but not least, we deeply thank all LGBTI refugees who shared with us their problems and expectations as well as their hopes for a better world where everyone is free and all colors can coexist.

Kaos GL

ABBREVIATIONS

CJEU	: Court of Justice of the European Union
EU	: European Union
GI	: Gender Identity
DGMM	: Republic of Turkey Ministry of Interior Directorate General of Migration Management
IC	: Intersex Conditions
IGLHRC	: International Gay and Lesbian Human Rights Commission
ILGA	: International Lesbian, Gay, Bisexual, Trans and Intersex Association
IRQO	: Iranian Queer Organization
HRDF	: Human Resource Development Foundation
LGBTI	: Lesbian, Gay, Bisexual, Trans, Intersex
NGO	: Non-Governmental Organization
OSCE	: Organization for Security and Co-Operation in Europe
ASAM	: Association for Solidarity with Asylum Seekers and Migrants
SSI	: Republic of Turkey Social Security Institution
SO	: Sexual Orientation
TPC	: Turkish Penal Code
UNHCR	: United Nations High Commissioner for Refugees
USA	: United States of America
LFIP	: Law on Foreigners and International Protection

BASIS FOR THE REPORT AND SUMMARY FINDINGS

The Kaos Gay and Lesbian Cultural Research and Solidarity (Kaos GL) Association has been founded in 1994 in order to struggle against violence and discrimination towards lesbian, gay, bisexual, trans and intersex people, and build solidarity against the problems faced by LGBTIs.

Since 2007, the Kaos GL Association has been involved in refugee rights work as part of its Human Rights Program. The work done in this context includes legal and social counseling for LGBTI refugees, organizing workshops addressing problems with participation of LGBTI refugees, lobbying and advocating in the light of knowledge obtained from the field.

The grounds of discrimination are not necessarily exclusive of one another. On the contrary, discrimination intensifies with the combination of various discrimination. As a result, groups that lie in the intersection of several discrimination grounds face discrimination and hatred much more severely. LGBTI refugees are one of the most vulnerable groups that face this harsh reality. Despite this, the problems faced by LGBTI refugees as well as their special needs and sensitivities are more often than not ignored by the state and civil society alike.

LGBTI refugees arrive in Turkey, escaping from discrimination and violence they face based on their SOGIIIC. However, discrimination, hatred, stigmatization and marginalization against LGBTI refugees continue in Turkey, if not increase. During their time in Turkey, they become the targets of homophobic and transphobic violence in their community, while racism and xenophobia are added to this equation by the local people and official bodies in Turkey. Therefore, LGBTI refugees are left out of solidarity networks among other refugees and either they cannot make use of aids provided by the official bodies or civil society in Turkey or they face homophobia and transphobia while making use of such aids.

This report aims at shedding light on discrimination that LGBTI refugees face, on their way in Turkey to a third country until they obtain a refugee status, regarding everyday life, access to basic rights, official bodies and social life in their satellite cities. To this end, we conducted in-depth interviews with Iranian LGBT refugees in five satellite cities and held meetings with Provincial Directorates of Migration Management, bar associations and local NGOs regarding the situation of LGBTI refugees in those cities.

The interviews with Iranian LGBT refugees show that despite having some commonalities to a certain extent, their problems differ due to various practices in satellite cities especially regarding access to rights and communication with official bodies.

All of the LGBT refugees interviewed said that they have faced verbal abuse or harassment by other Iranian refugees or the local people in their satellite cities, and more than half of them said that they have faced physical violence. Especially trans women stated that they are stared at or abused verbally every time they go out, due to their visibility. It has been found that violence on the streets is more common in conservative cities like Kayseri and that LGBT refugees are more likely to be targets of homophobia and transphobia than LGBT people from Turkey.

All of the LGBT refugees mentioned that they suffer from long case processing times. They said that they have heavy economic problems as they have no income whatsoever, that they work under harsh conditions informally as they don't have the right to work in Turkey and trans refugees highlighted that they are not hired due to their visibility. Some trans refugees told that they changed their identity in order to work and that it affected their psychology negatively. Those refugees who managed to get a job said that they lost their jobs once outed or that they had to leave their jobs upon harassment at work and they could not get their money.

All of the LGBT refugees interviewed says that they face difficulties regarding housing, that there is no official counselling provided for that and that Iranian LGBT refugees who came earlier help them with housing. They also mentioned that they have to pay higher rents because they are refugees and that several people share a flat. Trans refugees underlined that they cannot find a place to rent and when they could, they have to pay much higher rents, whereas gay refugees explained how they try not to "stick out like a sore thumb", fearing eviction if outed.

Regarding access to right to health, they told that they prefer not to go to the hospital because they cannot have access to health services especially due to language and they are teased. Trans refugees stated that they do not have information regarding trans reassginment process in state hospitals in their satellite cities and that they cannot fully make use of health services despite the help in the hospitals because of language barrier and general lack of knowledge.

Iranian LGBT refugees said that they did not have too many problems during registration at the ASAM and DGMM, however, that, especially the days when they have to put their signatures in the Provincial Directorates of Migration Management, they are subject to verbal abuse by some officials and other refugees and mocked for their sexual orientation and gender identity.



CHAPTER I

INTRODUCTION

A. STUDY METHODOLOGY AND TERMINOLOGY

METHODOLOGY OF THE STUDY

This report has been prepared based on the information obtained from in-depth interviews conducted with 83 Iranian LGBT¹ refugees in five satellite cities², densely populated by Iranian LGBT refugees, between 19 January 2016 and 2 February 2016 as part of the project "Protecting Human Rights of Iranian LGBTI Refugees and Raising Awareness on Their Situation in Turkey", supported by the Embassy of Canada in Ankara and Open Society Foundation.

The interviews did not concern the reasons for seeking asylum in Turkey but rather focused on difficulties the participants face during their time in Turkey until they obtain a refugee status in a third country, obstacles to their access to rights as well as discrimination and hatred in everyday life.

Before the interviews, LGBT refugees were informed about the basis and aim of the report and asked for their consent in order for the information obtained to be used in this report. In preparation of this report, no information that would risk the privacy or security of the refugees is used. In order to protect the refugees' privacy, the date or city information about the interview quoted is not included.

TERMINOLOGY

1. Sex / Gender

Sex defines people as "male" or "female" based on their genetic, physiological and biological characteristics. This categorization relies on biological difference. However, roles and responsibilities that come with social position and division of labor based on sex within a social context have nothing to do with sex.

¹ "I" is not used as there was no participant in the interviews who identified as intersex.

² Denizli, Eskişehir, Adana, Mersin and Kayseri.

These norms have been constructed through social process and change over time and from one society to another. Therefore, gender, as a dynamic concept, is defined by roles and behaviours deemed masculine or feminine at a particular time in a particular culture. These may broadly vary from hairstyle and clothing to the way people express themselves and even to their occupations. Moreover, the conceptualization of gender refers to diversity and reality in life that go well beyond the bias that there are only "two absolute biological/social gender identities and one sexual orientation". In other words, this definition includes our sense of self, expressions and experiences as men, women and trans people of various sexual orientations.

Gender inequality that can be observed in almost every field of public and private life is often justified by sex differences. Roles and responsibilities required and deemed "unchangeable" by unequal social positions, which are established and conserved by patriarchal norms, are attributed to sex. Inequality is predicated on natural or supernatural powers. Yet, such attempts of legitimization cannot deny the fact that gender relations and inequality are built through social process; shaped and conserved by power structures and that they are changeable.

As a matter of fact, Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention), signed and ratified first by Turkey, considers gender as the collection of socially-constructed roles, behaviors, acts and characteristics that any society finds suitable for women and men. Istanbul Convention is the first international convention that openly includes the categories of sexual orientation and gender identity together with gender.³

³ The Council of Europe, **The Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence**, <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168008481d> (Visited on 22 February 2017)

2. Sexual Orientation

It implies continuous emotional, romantic and sexual attraction towards people of a certain sex. It is one of the four elements that constitute sexuality. The other three are sex, gender identity (the psychological sense of being a man or a woman) and gender role (conformity to cultural norms that define what's masculine or feminine).

It is possible to define three sexual orientations. Homosexuality as attraction to people of one's own sex, heterosexuality as attraction to people other than one's own sex and bisexuality as attraction to people of both sexes. Sexual orientation is different from sexual behavior as the former includes emotions, continuity and spontaneity. Sexual orientation is an unchangeable component of the self and personality. Yet, people may or may not express their sexual orientation.

Homosexual

Man or woman who feels emotional/sexual attraction to people of their own sex. For a very long period of time, homosexuality had been defined by negative terms such as sexual identity disorder, disease or deviancy, even among scientists. In 1973, the American Psychiatric Association removed homosexuality from its Diagnostic and Statistical of Mental Disorders, Fourth Edition (DSM-IV), and in 1992, the World Health Organization no longer listed homosexuality as a mental illness in its International Statistical Classification of Diseases and Related Health Problems. Turkey, too, officially uses the DSM-IV.

Gay

Male homosexual. This term emerged with the gay rights movement and it signifies a political disengagement from "homosexuality." While "homosexuality" is defined by medicine, "gay" was brought forward by gays to define the existence of

people who feel emotional and sexual attraction to people of their own sex.

Originally used for both men and women, today it refers only to male homosexuals in Turkey, however, "gay" is internationally used for both sexes.

Adopting the word from English to Turkish, as it is, corresponds to 1980s. Since 2000s, it is written as "gey" in Turkish. For the first time in 1999, the word "gay" started to be used in Turkish in the Meeting of Homosexuals in Turkey. Since September 2006, the Turkish Language Institute, the official regulatory body of the Turkish language, defines "gey" as male homosexual in its online dictionary.

Lesbian

Female homosexual. The word comes from the island Lesbos where Greek poet Sappho lived in the 6th century B.C..

Bisexual

Man or woman who feels emotional/sexual attraction towards people of both sexes. A bisexual person may not feel equally attracted to both sexes and the degree of this attraction may vary over time. Bisexuality does not mean being attracted to a man and a woman at the same time or being in a relationship with two people at once.

Heterosexual

Man or woman who feels attracted to people other than one's own sex. Since everyone is assumed to be heterosexual as a prevalent and imposed norm in the society, heterosexual people more often than not do not define their sexual orientation.

3. Gender Identity

Gender identity, whether it be conforming or non-conforming to the sex assigned at birth, refers to living one's own gender based on how they feel it and reconstructing their appearance or bodily functions through dress, speech, mannerism and/or medical, surgical or other methods.

In other words, gender identity is each person's deeply felt internal and individual experience of gender, which may or may not correspond with the sex assigned at birth, including the personal sense of the body (which may involve, if freely chosen, modification of bodily appearance or function by medical, surgical or other means) and other expressions of gender, including dress, speech and mannerisms.⁴

4. Trans

An umbrella term that includes persons, behaviors and groups of different inclinations, diversified from culturally stereotyped gender roles. It means that a trans person's gender identity (identifying as male, female, both or none of them) does not match the sex assigned (as male, female or intersex after checking physical/genetic characteristics by others) at birth. The term trans does not refer to any sexual orientation. A trans person might be heterosexual, homosexual, bisexual or asexual or think that none of these labels of sexual orientation fit them. In Turkish, the established idea is that transvestite is a man who did not become a woman with surgery yet but disguise as a woman with appearance and mannerism, while a transsexual is a man who became a woman with surgery and not necessarily about appearance and mannerism. However, for both sexes, having a gender transition surgery should not be taken as a ground for acknowledging a trans person's gender identity. The identification based on how a person feels their gender must be accepted.

⁴ **The Yogyakarta Principles**, http://www.yogyakartaprinciples.org/wp/wp-content/uploads/2016/08/principles_en.pdf (Visited on 22 February 2017)

5. Intersex Conditions

This definition refers to people born with genital organ or reproductive system considered to be "atypical" for men and women. Intersex people cannot be classified by the norms of current medicine that consider what's a "men's or women's body" based on chromosomes, gametes or anatomical sex. Some people's reproductive organs might not be defined clearly as male or female so such people can be easily named intersex at birth. On the other hand, this might happen later in life, say during puberty or even after that. For example, due to not having their period or the body development does not take place in accordance with the sex assigned at birth. Although intersex conditions do not cause health problems, intersex people -most of the time while they are still a baby or very young- often go through irreparable medical or surgical "treatments" in order to match their physical appearance to one of the two sexes, without their informed consent. They are too often exposed to human rights violations due to prejudices, stigmatization and discrimination.

It is not right to consider intersex conditions a sexual orientation or a gender identity, or to classify intersex people as trans or "third sex". There is a great diversity among intersex people: Many of them identify as male or female, while others identify as both or none of them. Similarly, intersex people can be heterosexual, bisexual or homosexual. As a matter of fact, it is an umbrella term including people with "variations in sex characteristics".⁵

6. Heteronormativity

It refers to considering heterosexuality as the only normal sexual orientation as well as acceptance and imposition of social values, rules and politics as if everyone was heterosexual. It is a whole of beliefs, norms and politics that claim that people are separated into two as heterosexual men and heterosexual women, that all relations and relationships based on sex can

⁵ The Council of Europe Commissioner for Human Rights, **Issue Paper "Human Rights and Intersex People"**, [https://wcd.coe.int/ViewDoc.jsp?p=&Ref=CommDH/IssuePaper\(2015\)1&Language=lanEnglish&Ver=original&direct=true](https://wcd.coe.int/ViewDoc.jsp?p=&Ref=CommDH/IssuePaper(2015)1&Language=lanEnglish&Ver=original&direct=true) (Visited on 22 February 2017)

only be between people of different sexes and that each sex has particular and unchangeable roles

Homophobia

Generally defined as prejudiced, negative or hostile attitudes, behaviors and emotions towards homosexual people. Homophobia is more than an individual fear or an irrational belief. It refers to an intergroup process, which is formed in a political context related to systems of culture and meaning, power structures, institutions and traditions, and therefore, should be considered together. Homophobia can be understood as an "intergroup relation ideology", emerged out of conceptualization of homosexual and bisexual people as an external group and accompanied by certain stereotypes, together with more individual (personality, self-image, cognitive structures, etc.) process. The homophobic ideology does not emerge by itself as an individual characteristic but it is rather formed within a certain social, political, cultural context. Despite having roots in cultural and individual conditions, many social psychologists think that homophobia can be understood with its connections to racism and sexism. Homophobia, in this sense, is an important extension of sexism. The violence against people of sexual orientations other than heterosexuality becomes an imposition mechanism for "the protection and control" of humanity.

Transphobia

Refers to prejudiced, negative or hostile attitudes, behaviors and emotions towards trans people, such as hatred, fear, dislike of trans people. Just like homophobia, transphobia often results in individual or institutional discrimination, prejudice and violence. Again, just like homophobia, transphobia does not emerge by itself, however, it is encouraged or discouraged in a certain cultural context.

⁶ European Commission's Turkey 2015 Report states that respect for the basic rights of LGBTI people is a major area of concern, that there is no specific legislation affording protection against hate crimes as well as attacks and murders of trans people, and that trans people continue to be subject of arbitrary fines, house raids and police violence. The report also emphasizes that the principle of non-discrimination is not sufficiently enforced, in law and in practice, that one third of LGBTI people report discrimination in access to work, working conditions and salary, and that they do not take legal action due to mistrust towards the legal system and anxieties over possible breach of privacy. http://ec.europa.eu/enlargement/pdf/key_documents/2015/20151110_report_turkey.pdf (Visited on 22 February 2017)

⁷ This statistic is based on the compilation of 6 different reports by the Kaos GL Association. **LGBT People and Hate Crimes Report 2010**, <http://www.kaosgldernegi.org/kut-uphanedetay.php?id=23> **Kaos GL Human Rights Report 2011**, <http://www.kaosgldernegi.org/yayindetay.php?id=43> **Monitoring Report on Human Rights Violations Based on Sexual Orientation and Gender Identity 2012**, <http://www.kaosgldernegi.org/yayindetay.php?id=4>, **2013 Monitoring Report on Human Rights Violations Based on Sexual Orientation and Gender Identity**, <http://www.kaosgldernegi.org/yayindetay.php?id=64>, **2014 LGBT Human Rights Monitoring Report**, <http://www.kaosgldernegi.org/ayindetay.php?id=107>, **2015 Monitoring Report on Human Rights Based on Sexual Orientation and Gender Identity**, <http://www.kaosgldernegi.org/yayindetay.php?id=143> (Visited on 22 February 2017)

B. SITUATION OF LGBTIs IN TURKEY

In Turkey, there are no explicitly discriminatory legal provisions against LGBTIs except Turkish Armed Forces legislation and penal execution legislation. However, ambiguous terms in the legislation such as "public morality", "obscenity" and "the Turkish Family Structure" are used to limit or prevent LGBTIs from exercising their basic rights. Although the legislation does not discriminate against LGBTIs openly, there is no legal regulation or state's social policy regarding combating discrimination and hatred based on SOGIIC.

Judges and government officials in Turkey actively make use of such ambiguous legal provisions to discriminate against LGBTI citizens. Instead of taking notice of recommendations by bodies that monitor conventions openly and clearly condemning discrimination against LGBTIs and emphasizing the importance of protecting LGBTI's rights, the government officials ignore the initiatives calling for open protection for them, putting the blame on LGBTIs.

The Law on Human Rights and Equality Institution of Turkey, which does not protect against SOGIIC discrimination, came into force after being published on the Official Newspaper, despite criticisms of the civil society.⁶

Hate crimes against LGBTIs in Turkey: The concept of "hate crime" is defined in the Turkish Penal Code following the passing of "Draft Law Amending Various Laws in order to Improve Basic Rights and Freedoms", however, the current legislation does not provide any protection against hatred and discrimination based on SOGIIC. The mentioned Article stipulates penal sanction in case of discrimination motivated by hatred. Moreover, the Article does not include any regulation on what "hatred" is and how it can be determined as well as any regulation on collecting statistical data on hate crimes, which does not comply with the OSCE standards.

The State does not collect data on homophobic and transphobic hate crimes, nor it inquires into bias motive when investigating and prosecuting such crimes. For this reason, LGBTI organizations report on hate crimes that have media coverage. Between 2010 and 2015, 49 hate crimes had been reported.⁷

Discourses that directly target LGBTIs or organizations, legitimize discrimination and hatred and are used especially by public figures often have media coverage. There is not an effective legal mechanism against such discourses and when they are taken to court, the charges are dismissed.

LGBTIs' Freedom of Expression: Freedom of expression supporting sexual and gender diversity often face legal limitations. Despite there are no legal limitations on public discussion of SOGIIIC in the Turkish legislation, LGBTI existence are associated with "public morality", "prostitution" and "obscenity" and related publications are censored. Especially LGBTI news, tabloid and dating sites are arbitrarily banned without any reason.⁸

LGBTIs' Freedom of Assembly: The Governorship of Istanbul did not give permission for the 2015 LGBTI Pride March because it coincided with the month of "Ramadan". Those who wanted to march were attacked by the police with tear gas, water cannon and rubber bullets. Many were injured during the police intervention, however, criminal complaints did not give any results as investigation was denied.⁹

In 2016, the Governorship of Istanbul banned both the Trans Pride March and the LGBTI Pride March due to "security" concerns without providing a concrete justification. The police intervened disproportionately in both marches. Many were injured and arrested during the police intervention. In both marches, even the reading of press statements was not allowed.¹⁰

In a similar way, the Governorship of Ankara banned the March Against Homophobia and Transphobia on the occasion of May 17 International Day Against Homophobia and Transphobia, due to "certain social sensitivities". Following the filing of annulment action, the Ankara 15th Administrative Court granted a motion for stay of execution. After the objection of the Governorship to the Regional Administrative Court, the decision was lifted and the march that took place for 8 years without a single problem could not happen in 2016.¹¹

⁸ The Kaos GL Association, **LGBTI People's Freedom of Expression on the Internet**, <http://www.kaosglderne-gi.org/yayindetay.php?id=127> (Visited on 22 February 2017)

⁹ The Kaos GL Association, **2015 Monitoring Report on Human Rights Based on Sexual Orientation and Gender Identity**, <http://www.kaosgldernegi.org/yayindetay.php?id=143> (Visited on 8 October 2016)

¹⁰ **Human Rights Observation Report of 19 June 2016 Trans Pride March**, http://www.kaosgldernegi.org/publication_detail.php?id=150 (Visited on 22 February 2017)

¹¹ <http://kaosgl.org/page.php?id=21705> (Visited on 22 February 2017)

C. SITUATION OF LGBTIs IN IRAN

According to the Islamic Penal Code of Iran, consensual sexual activities between same-sex people are found guilty and punished by death or flogging. Trans and intersex people are considered to be homosexual and treated accordingly. Trans people who did not apply for the offered gender transition surgery are considered to be homosexual and illegal.

It is reported that a big majority of cases, verdicts and executions in Iran are related to accusations of "homosexual" relationship against boys or men. Therefore, it is extremely difficult to determine whether the accusations and executions related to same-sex affairs are indeed within the Iranian LGBT community or not. Equally difficult is to confirm the frequency of executions due to same-sex relationships. In practice, security forces as well as the paramilitary militia Basij, because of discriminatory laws, are able to harass and arrest those they suspect to be lesbian, gay, bisexual, trans or intersex. LGBTIs face many misconduct by the government officials such as beating, verbal harassment, rape, sexual harassment and torture.

Homosexual Relationships

Physical abuses in homosexual relationships, which are considered criminal in Iran, continue within the family, as well. For example, lesbians and bisexual women have reported that they face domestic violence, forced marriage or forced medical treatment. They have said that they are beaten up by family members but could not report the abuses to authorities fearing to be found guilty. Even the discussion of sexual rights, gender equality and homosexuality finds a harsh reaction by judiciary and law enforcement officers. LGBTIs are also discriminated in hiring, education and access to rights.

The law defines trans people as mentally ill and the government funds gender transition. Human rights defenders and civil society organizations have reported that some LGBTIs were told to go through the gender transition surgery despite the ambiguity of their gender identity, only to

escape legal and social consequences. The problems with the gender transition surgery are attributed to homosexuality. Trans people who did not apply for the offered gender transition surgery are considered to be homosexual and illegal. Such people are open targets to discrimination, arbitrary arrests and custody, torture and many other maltreatments.

Such treatments can be thought of as another form of torture. Many trans people have reported that they decided to go through the gender transition surgery as a result of stigmatization, rejection and violence. After the surgery, many of them were recommended to keep silent about their past. Because one of the mainstream negative stigmatization in the Iranian society is being trans and undergoing gender transition surgery. Such stigmatization and discrimination also have the same meaning as torture in individuals' files.

Article 233 of the Iranian Islamic Penal Code defines "sodomy" as penetration of a man's sex organ, up to or beyond the point of circumcision, into another male person's anus. If there is no penetration, partners are accused of tafkhiz, which is considered to be a lesser crime. Article 235 of the Iranian Islamic Penal Code defines tafkhiz as putting a man's sex organ between the thighs or buttocks of another male person. According to a clause added to Article 235, a penetration that does not reach the point of circumcision shall be regarded as tafhkiz. Sexual behavior between two women are defined by the crime of mosaheqeh.¹²

Article 238 of the Iranian Penal Code defines mosaheqeh as the placement of a woman's reproductive organ on another female's reproductive organ.¹³ Other sexual behaviors are discussed in Article 237. According to this Article, in addition to sodomy and tafkhiz, other homosexual acts such as kissing or touching for pleasure are forbidden.¹⁴

The Iranian security forces, police and paramilitary militia Basij implement discriminatory laws such as harassment, arrest, custody against people suspected of being gay. The incidents often occur in parks and cafes, but Human Rights Watch also documented cases in which security forces

¹² The Iranian Islamic Penal Code, Article 235

¹³ The Iranian Islamic Penal Code, Article 238

¹⁴ United Kingdom: Home Office, **Country Information and Guidance - Iran: Sexual Orientation and Gender Identity**, September 2016, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/556356/CIG_-_Iran_-_SOGI_-_v2.0__September_2016_.pdf (Visited on 22 February 2017)

¹⁵ Human Rights Watch, **"We Are a Buried Generation": Discrimination and Violence against Sexual Minorities in Iran**, 15 December 2010. Summary p. 4. <https://www.hrw.org/report/2010/12/15/we-are-buried-generation/discrimination-and-violence-against-sexual-minorities> (Visited on 22 February 2017)

¹⁶ Heartland Alliance for Human Needs&Rights, Iranian Queer Organization, International Human Rights Clinic, **The Violations of the Economic, Social and Cultural Rights of Lesbian, Gay, Bisexual, and Transgender (LGBT) Persons in the Islamic Republic of Iran**, March 2013. http://hrp.law.harvard.edu/wp-content/uploads/2011/01/JointHeartlandAlliance_IRQO_IHRC_Iran_CE-SCR50.pdf (Visited on 22 February 2017)

¹⁷ The International Gay and Lesbian Human Rights Commission (IGLHRC) and Iranian Queer Organization (IRQO), **Human Rights Violations of People in the Islamic Republic of Iran on the Basis of Their Sexual Orientation and Gender Identity**, 30 April 2014. II. State Persecution based on Actual or Perceived Sexual Orientation or Expression p. 5. <https://www.outrightinternational.org/sites/default/files/UPRSubmission.pdf> (Visited on 22 February 2017)

raided homes and monitored internet sites for the purpose of detaining people they suspected of engaging in non-conforming sexual conduct or gender expression.¹⁵

The Heartland Alliance, Iranian Queer Organization and the International Human Rights Clinic, in their shadow report submitted to the United Nations Committee on Economic, Social and Cultural Rights in March 2013, stated that they had both first-hand and second-hand reports confirming widespread acts of torture, detention, corporal punishment, rape, and sexual assault committed by state agents against individuals thought to be LGBT individuals.¹⁶

According to the report submitted to the United Nations Human Rights Council by the International Gay and Lesbian Human Rights Commission (IGLHRC) and Iranian Queer Organization (IRQO), the government of Iran actively pursues the policy of judging individuals based on their actual or perceived sexual orientation and anti-discriminatory opinions or because of supporting such opinions.¹⁷

Transgender Law

2014 report by Justice for Iran & Iranian Lesbian and Transgender Network states that transgender people are generally required to complete four main steps in order to change their legal gender. These are: receiving a psychiatric diagnosis of "Gender Identity Disorder" from a psychiatrist; obtaining an official permit for sex change provided by the Prosecution Office on the recommendation of LMOI [Legal Medicine Organization of Iran]; fulfilling a whole set of medical requirements, including hormone therapy, sterilization and genital reassignment surgeries; and applying to the court and the National Organization for Civil Registration to change their name and obtain new national identification documents reflecting their gender post-sex reassignment surgery. There is no legal certainty across the country about the criteria applied in each of these steps. There are many reports of that "basic human rights of those suspected of being homosexual or supporting gay and lesbian groups are systematically violated by the government." Furthermore, transgender people who

transgress socially constructed gender expectations without applying to become diagnosed as 'certified transsexuals' and undergo sex reassignment surgery face risk of being identified as "homosexual", and are targeted for discrimination, arbitrary arrest and detention, torture and other forms of ill-treatment.¹⁸

According to Justice for Iran report "Weapons of Mass Discrimination: The Islamic Republic Policies and the Economic, Social and Cultural Rights of Citizens in Iran", the applicants are not allowed to dress as a member of the other sex and live in society as such until they undergo hormone therapy and other medical procedures. Transsexual applicants must show that their body has been altered so as to resemble a body of the opposite sex by means of hormone therapy and sex reassignment surgeries.¹⁹ The surgical removal of uterus, ovaries and breasts is also a necessity. Medical conditions (e.g., hepatitis C, clotting disorders, AIDS) that may render surgery risky, prohibitive or undesirable or psychological, religious and financial constraints are not taken into account. The surgical requirements are deemed necessary for the protection of public order, public health and morals, yet this is full proof that these individuals are not provided with proper health care or given adequate psychological care or assistance in determining the effects the operation can have including physical aspects. Many of the lesbian and transgender persons that Justice for Iran interviewed held that their experiences of stigma, rejection and violence led them to make the decision to have sex reassignment surgery. There are reports that they were harassed and assaulted by police officers and forcibly dressed in old clothes worn by the opposite sex in a prison cell. During and after the operation, reports of degrading, inhumane treatment and many forms of torture are not uncommon. Nurses report that harassment as well as physical and verbal abuse is widespread.

Ignorance by the psychologists who are meant to analyze each individual prior to the procedure are known to act with prejudice and ignorance causing the patient to feel like they have to conform to the psychological and physical stereotypes required of them. In the context of Iran, non-recognition of transgender persons result in defining trans existence in relation to "homosexuality".

¹⁸ Justice for Iran & Iranian Lesbian and Transgender Network (6Rang). **Pathologizing Identities, Paralyzing Bodies: Human Rights Violations Against Gay, Lesbian and Transgender People in Iran**. June 2014. 4. Legal Gender Recognition Procedures in Iran. <http://6rang.org/english/wp-content/uploads/2014/06/Pathologizing-Identities-Paralyzing-Bodies.pdf> (Visited on 22 February 2017)

¹⁹ Justice for Iran, **Weapons of Mass Discrimination: The Islamic Republic Policies and the Economic, Social and Cultural Rights of citizens in Iran**, 14 March 2013. II. Transgender, Page 9. http://www2.ohchr.org/English/bodies/cescr/docs/ngos/Justicelran_Iran_CESCR50.pdf (Visited on 10 October 2016)

Human Rights Watch report suggests that transgender/transsexual Iranians, particularly trans women, are more likely be targeted and victimized by security forces because they are more easily recognizable.²⁰

Lesbians and Bisexual Women

According to Human Rights Watch's report of 2010, for lesbians and bisexual women in Iran, family and social control mechanisms might be the greatest threat to their safety and well-being. Research conducted by Human Rights Watch suggests that family members put pressure on Iranian lesbians to conform to acceptable social norms and repress their sexual orientation in a myriad of ways. For lesbians, in particular, there is well-founded fear of discovery. Social as well as official scrutiny of "deviant" behavior among non-conforming women is widespread in Iran, and it is exacerbated by the fact that women have less freedom to move than their male counterparts. It is not uncommon for lesbians to report family violence, forced marriages, and forced medical treatment.

Justice for Iran and the Iranian Lesbian and Transgender Network (6Rang) documents in its report, published in June 2014, that a considerable number of lesbian, gay and transgender people interviewed by JFI & 6Rang stated they were subjected to various forms of abuse by their family members because of their sexual orientation and gender identity. These included beatings and flogging as well as forms of psychological abuse such as enforced seclusion and isolation from friends and society, neglect and abandonment, verbal insults and death threats. For lesbians and female-to-male transgender persons, these abuses were often accompanied by threats or forced and arranged marriages. Lesbian, gay and transgender individuals in Iran often have no recourse to justice or support. As a result, they routinely suffer from abuse and violence in their families and impunity for homophobic and transphobic violence is encouraged.²¹

²⁰ Human Rights Watch, **"We Are a Buried Generation": Discrimination and Violence against Sexual Minorities in Iran**, 15 December 2010. X. Transgender and Transsexual Iranians, Sex Reassignment Surgery, s. 83-84. <https://www.hrw.org/report/2010/12/15/we-are-buried-generation/discrimination-and-violence-against-sexual-minorities> (Visited on 22 February 2017)

²¹ Justicefor Iran & Iranian Lesbian and Transgender Network (6Rang). **Pathologizing Identities, Paralyzing Bodies: Human Rights Violations Against Gay, Lesbian and Transgender People in Iran**. June 2014. 3.2.4. Abuse and Violence in the Family, s. 47/48 <http://6rang.org/english/wp-content/uploads/2014/06/Pathologizing-Identities-Paralyzing-Bodies.pdf> (Visited on 22 February 2017)



CHAPTER II

APPLICATIONS FOR INTERNATIONAL PROTECTION BASED
ON SOGIIC IN INTERNATIONAL LAW

LGBTIs face torture and persecution worldwide, due to their SOGIIIC. Such persecution can even end up with violation of right to life by the state. According to the International Lesbian, Gay, Bisexual, Trans and Intersex Association's (ILGA) May 2015 report *State-Sponsored Homophobia*, 75 countries in the world still criminalize same-sex sexual acts while in 8 UN Member States, those involved in such acts are sentenced to death.²² Persecution of LGBTIs can either be done by state or non-state actors.

It is generally accepted that asylum applications based on SOGIIIC should be assessed under "membership of a particular social group", one of the 5 criteria listed in the definition of refugee in 1951 Geneva Convention Relating to the Status of Refugees.

According to the UNHCR, the 1951 Convention does not refer to a specific list regarding certain social groups. Rather "Membership of a particular social group should be interpreted openly to various and changing group characteristics in different societies and international human rights norms, in an evolutionary way that allows for improvements." UNHCR defines a particular group as such: a particular social group is a group of persons who share a common characteristic other than their risk of being persecuted, or who are perceived as a group by society. This characteristic will often be one which is innate, unchangeable, or which is otherwise fundamental to identity, conscience or the exercise of one's human rights.

Two approaches reflected in the definition of "particular social groups", namely, "protected characteristics" and "social perception" are not cumulative but alternative analysis. The "protected characteristics" approach examines whether a group is united by an immutable characteristic or by a characteristic that is so fundamental to human dignity that a person should not be compelled to forsake it, whereas the "social perception" approach examines whether or not a group shares a common characteristic which makes them a cognizable group or sets them apart from society at large.

²² ILGA, *State-Sponsored Homophobia - A World Survey of Laws: criminalization, protection and recognition of same-sex love*, May 2015, http://old.ilga.org/Statehomophobia/ILGA_State_Sponsored_Homophobia_2015.pdf (Visited on 22 February 2017)

Whether the "protected characteristics" or "social perception" approach is employed or not, within the framework where the suitable one of these two is applied, it is generally accepted that LGBTs belong to "particular social groups" within the refugee definition. Relatively fewer claims made by intersex applicants are also qualified under either approach, according to their initial impressions.²³

A. UNHCR GUIDELINES ON INTERNATIONAL PROTECTION NO. 9

Claims to Refugee Status based on Sexual Orientation and/or Gender Identity within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees

UNHCR has updated its guidelines on the evaluation of asylum applications based on sexual orientation and gender identity in 2012.

Accordingly, "although the main international human rights treaties do not explicitly recognize a right to equality on the basis of sexual orientation and/or gender identity, discrimination on these grounds has been held to be prohibited by international human rights law. For example, the proscribed grounds of "sex" and "other status" contained in the non-discrimination clauses of the main international human rights instruments have been accepted as encompassing sexual orientation and gender identity. As respect for fundamental rights as well as the principle of non-discrimination are core aspects of the 1951 Convention and international refugee law, the refugee definition must be interpreted and applied with due regard to them, including the prohibition on discrimination on the basis of sexual orientation and gender identity."²⁴

The Guidelines underline that the five Convention grounds, that is, race, religion, nationality, membership of a particular social group and political opinion, are not mutually exclusive and may overlap and that more than one Convention ground may be relevant in a given case.

²³ The UNHRC, **Guidelines on International Protection No. 9** <http://www.unhcr.org/50ae466f9.pdf> (Visited on 22 February 2017)

²⁴ Ibid par. 6

The UNHCR emphasizes that refugee claims based on sexual orientation and/or gender identity are most commonly recognized under the "membership of a particular social group" ground and that other grounds may though also be relevant depending on the political, religious and cultural context of the claim. For example, LGBTI activists and human rights defenders (or perceived activists/defenders) may have either or both claims based on political opinion or religion if, for example, their advocacy is seen as going against prevailing political or religious views and/or practices.²⁵

B. EUROPEAN UNION

EU 2011/95 Qualification Directive defines both protected characteristics and social perception approaches and requires both criteria to be fulfilled. The directive states that "for the purposes of defining a particular social group, issues arising from an applicant's gender, including gender identity and sexual orientation, which may be related to certain legal traditions and customs, resulting in for example genital mutilation, forced sterilisation or forced abortion, should be given due consideration in so far as they are related to the applicant's well-founded fear of persecution."²⁶

The Directive also mentions that "gender related aspects, including gender identity and sexual orientation, shall be given due consideration for the purposes of determining membership of a particular social group or identifying a characteristic of such a group."²⁷

The 2013/32 Procedural Directive resolves that "certain applicants may be in need of special procedural guarantees due, inter alia, to their age, gender, sexual orientation, gender identity, disability, serious illness, mental disorders or as a consequence of torture, rape or other serious forms of psychological, physical or sexual violence." The Directive emphasizes that Member states shall ensure that the person who conducts the interview is competent to take account of the personal and general circumstances surrounding the application, including the applicant's sexual orientation and gender identity.²⁸

²⁵ Ibidpraf. 40

²⁶ **DIRECTIVE 2011/95/**
EU OF THE EURO-
PEAN PARLIAMENT
AND OF THE COUN-
CIL of 13 December
2011 on standards for
the qualification of
third-country nationals
or stateless persons
as beneficiaries of
international protec-
tion, for a uniform
status for refugees or
for persons eligible for
subsidiary protection,
and for the content
of the protection
granted par. 30 <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:337:0009:0026:en:PDF>
(Visited on 22 February 2017)

²⁷ **DIRECTIVE**
2013/32/EU OF THE
EUROPEAN PARLIA-
MENT AND OF THE
COUNCIL of 26 June
2013 on common pro-
cedures for granting
and withdrawing in-
ternational protection
<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013L0032&from=EN>
(Visited on 22 February 2017)

²⁸ IbidArticle 10/(1)(d)

The Court of Justice of the European Union states in its *X, Y and Z v Minister voor Immigratie en Asiel* judgment on 7 November 2013 that it supports to regard applicants as "forming a particular social group" in the presence of criminal laws that directly target homosexuality²⁹, and that assessing an application for refugee status, the competent authorities cannot reasonably expect, in order to avoid the risk of persecution, the applicant for asylum to conceal their homosexuality in his country of origin or to exercise reserve in the expression of their sexual orientation.³⁰

The Court of Justice of the European Union states in its *A, B, C v Raad van State (Netherlands)* judgment on 2 December 2014 that the assessments must be competent with the rights guaranteed by the Charter of Fundamental Rights of the European Union, such as the right to respect for human dignity and the right to respect for private and family life. Similarly, the examples are given in regard with what cannot be done during the assessments. The judgment dictates that the assessment of the applicant must be done individually, that no video or photograph could be requested as proof and that not fitting in stereotypes or not being knowledgeable about LGBT organizations as well as not declaring their sexual orientation when making the application cannot be assessed negatively.³¹

²⁹ CJEU, 199/12, C-200/12 and C-201/12, X, Y and Z v Minister voor Immigratie en Asiel, 7 November 2013 par. 48/49 <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62012CJ0199> (Visited on 19 October 2016)

³⁰ Ibid par. 71/76 (Visited on 22 February 2017)

³¹ CJEU, A (C-148/13), B (C-149/13), C (C-150/13) A,B,C v Raadvan State (Netherlands), 2 December 2014 <http://curia.europa.eu/juris/document/document.jsf?docid=160244&doclang=en> (Visited on 22 February 2017)

C. UNITED STATES AND CANADA

The US and Canadian courts adopt the unchangeable characteristics approach when assessing the criterion of forming a particular group. "The adoption of this approach is thanks to the judgments in the Matter of Acosta (USA) and Ward (Canada) cases. According to these, social group is defined as a group of individuals that share common and unchangeable characteristics (to change them is beyond the power of group members or they should not be changed as they are part of these individuals' identities and existence) and in the case of persecution directed to any of such groups' members, it is decided that there is a possibility of persecution based on

belonging to a social group. It is established that such characteristics might be gender, race or family ties, as well as shared past experiences."³²

The Canadian Supreme Courts, in its Ward judgment, explains three possible categories regarding the assessment of the "particular social group" criterion. "Groups defined by an innate, unchangeable characteristic" is one of these three. Moreover, the Supreme Court accepts that this category would embrace individuals fearing persecution on such bases as gender and sexual orientation.³³

Although this approach is still accepted by the Canadian courts, the US law requires more criteria to determine "a particular social group". "These criteria are 'particularity' and 'social visibility'. Particularity implies that the group should have certain boundaries; that boundaries of a 'particular' social group should also be particular and it should not have a subjective, too broad and indistinct frame. On the other hand, social visibility implies that individuals with common unchangeable characteristics should be recognized and distinguished from others in the society. In order to form a particular social group, the group should have a distinguishable visibility in the society."³⁴

The US *Gatimi et al. v. Holder* judgments has softened the "social visibility" criterion for the applications based on sexual orientation. According to this, "a homosexual in a homophobic society will pass as heterosexual. If you are a member of a group that has been targeted for assassination or torture or some other mode of persecution, you will take pains to avoid being socially visible; and to the extent that the members of the target group are successful in remaining invisible, they will not be "seen" by other people in the society 'as a segment of the population.'" Therefore, invisibility of the group in question does not mean that they cannot be defined as a group nor can they be recognized by the society.³⁵

³² Dr. Neva Övünç Öztürk, **Assessing the Legal Status of Refugees**, Seçkin Publishing Ankara October 2015, p. 277

³³ Canada (Attorney General) v. Ward <http://www.refworld.org/docid/3ae6b673c.html> Also see International Commission of Jurists, **Refugee Status Claims Based on Sexual Orientation and Gender Identity/ A Practitioners' Guide**, <http://icj2.wpengine.com/wp-content/uploads/2016/02/Universal-PG-11-Asylum-Claims-SOGI-Publications-Practitioners-Guide-Series-2016-ENG.pdf> p. 195 (Visited on 22 February 2017)

³⁴ Dr. Neva Övünç Öztürk, **Assessing the Legal Status of Refugees**, p. 282

³⁵ In the United States Court of Appeals For the Seventh Circuit, **ERIC H. HOLDER, JR., Attorney General of the United States**, 20 August 2009 <http://www.refworld.org/docid/4aba40332.html> (Visited on 22 February 2017) Also see International Commission of Jurists, **Refugee Status Claims Based on Sexual Orientation and Gender Identity/ A Practitioners' Guide**, <https://www.icj.org/wp-content/uploads/2016/10/Universal-PG-11-Asylum-Claims-SOGI-Publications-Practitioners-Guide-Series-2016-ENG.pdf> p. 199 (Visited on 22 February 2017)



CHAPTER III

**APPLICATIONS FOR INTERNATIONAL PROTECTION
BASED ON SOGIIC IN TURKEY'S LAW**

Turkey's first ever law on the field of asylum–Law on Foreigners and International Protection (LFIP)– came into force on 11 April 2014. The LFIP brought forward the foundation of the Directorate General of Migration Management (DGMM) as part of the Ministry of Interior in order to implement policies and strategies regarding immigration, coordinate among relevant agencies and organizations, and carry out works and operations regarding the entry into, stay in, exit from or deportation of foreigners, international protection, temporary protection and protection of victims of human trafficking. The geographical limitation in the 1951 Geneva Convention and the 1967 Protocol continues in the LFIP, therefore, Article 62 of the law states that individuals who apply for asylum as a result of events occurring outside European countries will be granted "conditional refugee" status following the assessment.

According to the LFIP, interviews to determine the status and assessment of applications are done by the DGMM. Due to the fact that the geographical limitation is still in place and that individuals who apply for asylum due to the events occurring outside European countries are granted "conditional refugee" status and allowed to stay in Turkey until they are resettled in a third country, interviews to determine the status and assessment of applications according to the 1951 Convention are done by the UNHCR. According to this practice named as 'parallel procedure', there are two different procedures implemented by both the UNHCR and the DGMM. However, being granted a refugee status by the UNHCR according to the 1951 Convention does not guarantee the status of conditional refugee in Turkey. Because UNHCR's decisions are not binding for the administrative authorities in Turkey.

Turkish asylum system does not have a clarity regarding whether asylum applications based on SOGIIIC are to be assessed under the criterion of "belonging to a social group" as in the international law. As well, there is lack of clarity in determination of applications consisting more than one criterion as mentioned in the UNHCR Guidelines and in which criteria

are to be considered in the applications of LGBTI refugees. Similarly, the Implementing Regulations on the LFIP, which came into force on 17 March 2016 after published in the Official Gazette, did not provide any clarification on the assessment of applications. After all, it is still controversial whether the immigration experts carrying out the interviews to determine status act with prejudices about gender, sexual orientation, gender identity or intersex conditions and how the assessment is conducted. Furthermore, Article 67 of the LFIP regarding people with special needs does not include LGBTIs and the law does not have any provisions regarding the sensitivities of LGBTI refugees.

There is no clarity about trainings on the international refugee law for migration experts that carry out interviews to determine status. The DGMM and UNHCR act together on trainings of migration experts. It is not known how often such trainings will be held and they are not structured in collaboration with civil society.

Likewise, there are no guidelines on which country of origin the assessment will be based on and how the assessment will be done. This loophole is also reflected in the judgments. The Ankara 1st Administrative Court states in its 2015/418 E. and 2015/2863 K. judgment that "In the case of an application for international protection, it should be assessed whether there is a fear of persecution based on justified reasons. This assessment should be evaluated both objectively and subjectively. The objective elements are important for considering the conditions in the country of origin of the applicant and determining the fear of the applicant in subjective elements. As it is impossible to expect everyone to act similarly in the face of certain conditions, the position of the applicant will matter. Therefore, those who are concerned should be able to express their fear of persecution in a reasonable degree. In the case of carrying out the interview without having clear input, it is necessary to assess the credibility and whether the fear is reasonable, which should be followed by a risk assessment." The judgment follows "In the concrete case, there are claims that the

plaintiff will be subjected to ill treatment due to having undergone sex change surgery, if returned to their country. Considering that the plaintiff has claimed in the interview that their sexual preference is not suitable for living in Iran and they will be under risk of ill treatment in their country of origin Iran, it is determined, based on the documents and information in the case file, that the defendant authority did not investigate enough the correctness of the situation with regard to information on their country of origin Iran", underlining the insufficient assessment.³⁶

Article 60 of the Council of Europe Convention on preventing and combating violence against women and domestic violence has decided that state parties shall take the necessary legislative or other measures to ensure that gender-based violence against women may be recognized as a form of persecution within the meaning of Article 1, A (2), of the 1951 Convention relating to the Status of Refugees and as a form of serious harm giving rise to complementary/subsidiary protection. Similarly, Article 4 of the Convention regulating non-discrimination clearly mentions "sexual orientation" and "gender identity" as protected grounds. Despite this, it is not known to what extent the authorities in Turkey take the Convention into account when assessing asylum applications.

³⁶ The Ankara 1st Administrative Court, 21 December 2015, 2015/418 E. and 2015/2863 K.



CHAPTER IV.

**SITUATION OF IRANIAN LGBTI REFUGEES IN TURKEY
AND ASYLUM PROCEDURE**

In Turkey, there are no reception centers for the moment. Refugees seeking asylum are settled in satellite cities. According to the satellite city practice, refugees are free to reside anywhere within their registered satellite city, however, they need a permission from the Provincial Directorate of Migration Management to travel out of the city.

For the moment, there are 62 satellite cities in Turkey, however, the three biggest cities in the country – Ankara, Istanbul and İzmir – are not satellite cities. Iranian LGBT refugees are not distributed to all satellite cities, yet usually transferred to 6 of them.

A. APPLICATION, REGISTRATION AND INTERVIEWS

As a result of the parallel procedure, refugees have to register at both the UNHCR and the DGMM upon their arrival in Turkey. In practice, refugees who pre-registered at the ASAM first are directed by the ASAM to the satellite cities where they will stay and then they register at the Provincial Directorate of Migration Management in their satellite city. During pre-registration, personal information and the reason for application are recorded. After that, refugees wait for the UNHCR registration procedure and interview to determine their status. Similarly, after being directed to a satellite city and registering at the Provincial Directorate of Migration Management, they wait for interviews to determine their status.

Most of the LGBT refugees interviewed said that they were aware about where to apply when they came to Turkey. They explained that they generally get the information from friends who already applied for asylum in Turkey or websites of Iranian organizations based out of Iran. Furthermore, refugees interviewed told that they found it difficult to declare their sexual orientation and gender identity as the reason for application, that it was not easy to talk about a part of themselves they were forced to hide all their lives and that they feared discrimination and violence if outed. They also explained that they generally did not face a negative attitude during

the pre-registration. However, they also stated that especially because of being in the same room with other refugees during the registration, they could not express the reason for application easily.

Refugees who came to Turkey and registered said that they usually chose the satellite city themselves but the choice of the satellite city varies due to several reasons. Iranian LGBT refugees who preferred Denizli and Eskişehir mentioned their acquaintances in these cities, whereas those who preferred Adana and Mersin said it was because they showed similar characteristics to the climate of the city they used to live in Iran. The reason for choosing Kayseri is expressed as having people they know there and that the city is known as inhabiting many LGBT people. However, LGBT refugees told that they did not have much information about the cities and the daily life there before choosing a city.

All of the LGBT refugees said that they faced difficulties due to long waiting time for resettlement. It is also observed during the interviews that refugees who can speak English and express themselves and their sexual orientation clearly as well as those who are knowledgeable about the international terminology and in touch with LGBTI organizations obtain the status faster.

They also mentioned that during the interviews to determine refugee status by the UNHCR, they were asked questions about their private and sexual life, however, despite feeling uncomfortable, they felt obliged to answer them fully.

"As someone born in Iran, I have always suppressed my identity. It has always been forbidden to talk about sexuality. Therefore, I do not feel comfortable answering questions about sexuality. Because I am used to not talking about it. But still, I have to answer every single question I am asked."

Although the UNHCR guidelines on the assessment of international protection applications based on sexual orientation and gender identity states that the use of vocabulary that is non-offensive and shows positive disposition towards diversity of sexual orientation and gender identity, particularly in the applicant's own language, is essential and that use of inappropriate terminology can hinder applicants from presenting the actual nature of their fear, some refugees told that interpreters do not have a good command of the terminology

"At the registration, they asked my reason for applying and I told that I am gay. But

When the interpreter asked again for confirmation, they uttered the expression used to define sex offenders. I did not accept and repeated that I am gay."

The abovementioned guidelines clearly state that decisions on LGBTI refugee claims should not be based on superficial understandings of the experiences of LGBTI persons, or on erroneous, culturally inappropriate or stereotypical assumptions and that it is possible for LGBTI refugees not to know the international terminology based on sexual orientation and gender identity. However, it is found that these guidelines are not always taken into account during the assessment of applications.

"I was rejected right after the first interview. They told me that I don't look like gay. How should I look like [to pass as gay]? Do I have to act femininely? Because I have a beard and I don't act femininely, they thought I cannot be gay. But this is how I am and I am gay. After the rejection, I appealed the decision. Now I am waiting for the second interview."

"In the first interview, I told them how I felt and what happened to me in Iran because of that. I didn't know what I am. I told them that I just wanted to be a woman, that I

was interested in guys and that I was gay. But they rejected me. And I appealed. Then, an Iranian organization helped me. After talking with them, I have learned that I am trans."

They called me for a second interview after the appeal. Then I told them that I had learned that I was trans. Now I got recognized and I am waiting for the [third] country."

Some of the migration experts working in the satellite cities said that they waited for the UNHCR assessment for interviews to determine status. Although the assessments of the UNHCR and DGMM generally do not differ, in some applications the results might be contradictory. Especially, when the UNHCR recognizes an application and the refugee expects to be resettled, the rejection by the DGMM blocks the process.

It is determined that LGBT refugees still call Provincial Directorates of Migration Management "foreigners' branch" and regard migration experts as police officers. LGBT refugees explained that they faced irritating and irrelevant questions during the interviews.

"In my interview with the police, when I told him that I am trans, he asked me whether I would be into women or him. I didn't get why he asked this. They asked many other silly questions about my genital area."

"During the interview, they asked me who usually cooked at home, who brought money and when I became homosexual."

Some of the refugees told that their interviews took about 30-45 minutes and that they did not understand whether these interviews were to determine status. In addition to this, some of the refugees stated that they did not know that refugee status determination interviews are done by the DGMM, too, that they thought it was only the UNHCR doing those interviews.

Some LGBT refugees told that they have been mistreated or humiliated.

"The attitude of the police is so bad, they make fun of us, they talk badly. They think we don't know Turkish and we don't understand but we do."

"The police in Denizli is so rude. I went there with a friend of mine who understands Turkish very well and my friend told us that the police said bad things about us and pointed us telling that we are lesbians. They told me that I came to Turkey so I have to learn Turkish. My friend translated for me, there was no interpreter."

B. HOUSING

Refugees in Turkey are in general obliged to cover all their expenses themselves during their stay in Turkey. In addition to the lack of financial support by the state regarding housing, there is no consultancy mechanism to meet the need for housing in a proper and safe way.

Our interviews reveal that LGBT refugees face serious problems regarding housing. Financial issues, language barrier, discrimination and exclusion from solidarity networks among refugees lead to housing problems for many refugees.

There is not a designated area for housing of refugees in Turkey and they have to find housing with their own means. Language makes up the biggest barrier in front of housing. This becomes even more challenging for LGBT refugees.

Refugees stated that many landlords increased rent just because they are foreigners and in some cities, LGBT refugees said that they couldn't find

housing because of their identity and that especially for people not fitting in the predominant gender roles it becomes even harder

"I didn't know the procedure when I came here. Some friends in Istanbul recommended Denizli so I came here. It is impossible for me to find a job because I am a trans, they did not want to rent out their houses to me or increased the rents a lot. Guesthouses turned their back to me, telling that they did not have any rooms."

Some refugees told that they hide their identity in order to find housing and that they are afraid of being evicted if they are outed. Due to the fear of being outed, they said that they are being cautious even about their talks at home.

The fear of being outed forces LGBT people into invisibility within the society where they cannot be themselves and causes them to be cautious in their private lives and hide their identity even inside their homes.

"When the landlord came to check the house, they asked why we brought the two beds together and whether we sleep together. We got so afraid. We speak quietly even in the house to ensure that nobody knows we are lesbians. We are afraid of being kicked out if the neighbors know it."

C. ACCESS TO RIGHT TO HEALTH

The most positive development that came with the LFIP is regarding the access to right to health. Accordingly, refugees can benefit from the general health insurance once they are registered. Although this development solved many issues, in practice there are still many serious problems regarding the access to right to health.

As with many other fields, while there is a language barrier in access to right to health, in some cases the ASAM and HRDF provide refugees with interpreters. Some of the refugees who came out to the doctors they visited expressed that they were asked questions violating their privacy and that they were frustrated by the fact that their identity took attention of the doctors more than their health situation.

"In the hospital, too, everyone treated me as if I wasn't normal. The doctor asked me to take him to Canada together with my girlfriend, laughing."

Trans Reassignment Process

Trans refugees who want to start or continue their trans reassignment process in Turkey said that they don't know how to do.³⁷ Trans refugees who visited a hospital for the process told that the doctors are not knowledgeable about this field. The hormone use might be disrupted due to the fact that the social security does not cover the hormones and that refugees don't have financial means to meet the expenses. This situation affects trans refugees' psychology negatively.

"I went to the hospital for transition and hormones. The doctor asked me if I have a penis, asked me which hormones I use and told me to come again after 15 days without a prescription."

There are no hospitals to refer trans refugees who completed trans reassignment process in Iran and/or faced physical problems due to unsuccessful operations.

Psychological Support

LGBT refugees need psychological support both for violence they were exposed to in their country and for adaptation problems, homophobic and transphobic discrimination and violence they face in Turkey. The lack of sufficient psychological support may unfortunately result in suicides.

³⁷ Trans reassignment process is regulated in Article 40 of the Turkish Civil Code. The regulation is imperfect in every aspect and it only applies to Turkish citizens. The practice will show how the process, which is already problematic for citizens, will affect refugees. For more information on the legal regulation in Turkey, see <http://www.kaosgl.com/page.php?id=21001> (Visited on 22 February 2017)

Psychological support is given by psychiatrists working for the UNHCR or psychologists and psychiatrists working for state hospitals or civil society organizations in satellite cities. Refugees explained that they couldn't express themselves comfortably due to having interpreters during counselling, psychology experts' limited knowledge on gender, sexual orientation and gender identity, and prejudices.

They mentioned that especially the counselling sessions with psychiatrists working for the UNHCR do not focus on solving their problems. They also expressed that since the counselling is provided in Ankara, they have to take days off from their work and this sometimes leads to lower salaries and even dismissal. They also stated that UNHCR covers the travel expenses of only one person and that they might need a companion, and that they have to wait for months for a new counselling session.

"I went to Ankara to see a doctor but he didn't listen to me, he just gave me pills. The pills make me sleepy and I cannot work so I stopped taking them."

D. SOCIAL ASSISTANCE

Both the LFIP and Application Regulations of the LFIP state that refugees in need shall have access to social assistance and services. However, it is not clear how to determine who is in need and which criteria will be used for identifying refugees to receive social assistance. According to the legislation, social assistance and services for those in need depend on the procedures and principles determined by the Ministry of Interior and Ministry of Family and Social Policies. However, it is not clear by which criteria the aforementioned ministries do their assessment or whether they work on determining refugees in need without their application.

The LFIP regulates procedural facilities and privileges for people with special needs. However, LGBTIs are not mentioned among the refugees

with special needs and there is no regulation regarding sensitivities of LGBTI refugees. This makes it harder for LGBTIs to access to social work and social assistance.

Similarly, the Implementing Regulation on the LFIP states that declarations of special needs would also be taken during the application. It is obvious that an appropriate environment where LGBTI refugees can comfortably express their special needs and identity is not provided. Finding it difficult to talk about their own identity as well as personal prejudices and lack of knowledge of the case worker on gender, sexual orientation, gender identity and intersex conditions prevents LGBTI refugees to express themselves, hence, benefit from social services.

The Law on Human Rights and Equality Institution of Turkey (TİHEK) does not mention "sexual orientation", "gender identity" and "intersex conditions" among protected grounds, which institutionalizes discrimination against LGBTIs. Impartiality of the TİHEK, founded with the law, has been criticized by the civil society, pointing that the law and the agency would be nonfunctional to prevent discrimination. This means legitimization of discrimination against LGBTIs.

Considering all these together, it is apparent that authorities do not take concrete steps regarding the special needs of LGBTI refugees and solutions of their specific problems and that the discrimination in refugees' access to social services will grow even higher.

To what extent LGBT refugees can benefit from social assistance provided by the Governorship varies among satellite cities. In general, refugees told that when they applied to the Governorship for social assistance, they were given a certain amount of financial aid. They also said that a social investigation was conducted to assess the application for assistance and that they had to wait too long for that. They underlined that they were not provided with any food aid.

"Winters are very cold here. My house is bad, cold... I went to them so many times for coal support but they didn't give me. They said 'we give it to families, they need it more.'"

E. WORKING LIFE

Based on the interviews, it is determined that there are more job opportunities in Denizli. Refugees who speak English told that they are hired as teachers in private institutes and that despite long working hours they relatively have better conditions. Specially due to the textile sector, it is told that many gay refugees can find work, however, the working conditions are not good at all. They told that they work for 12 hours every day, with only one day off a week, for a daily wage of 25 to 30 Turkish Liras; that they only pay their rent and bills with this wage and that they hide their identity to get a job. Trans refugees told that they couldn't find a job due to their visibility and some of them said that they have to dress as "male" or "female" in order to get a job.

"Like in Iran, when they know that we are gay, they kick us off, they mistreat us. I used to work in textile [workshop], working. They made me work 12 hours for 30 liras. No off days. I used to have problems in my back and knee, I couldn't work, they said bad things to me, they looked at me badly. And I had to leave."

"Because of being trans and our appearance, we cannot find a job."

"I just go to work and sleep, don't see anyone. At work, I told them that I had a girlfriend, to pass as straight."

Due to limited job opportunities in Adana, Mersin, Kayseri and Eskişehir in comparison with Denizli, many refugees told that they could only work as

a waiter, cleaner or dishwasher in cafes. Explaining that they work under harsh conditions, they said that they sometimes do not get paid.

"They paid 20 liras per night and I washed the dishes all night long."

"Since it is not possible to work legally, it is also difficult to find a job. Sometimes they even do not give us money at all."

F. SOCIAL LIFE

Iranian LGBTI refugees living in the satellite cities visited have no time for anything else other than working and sleeping. Refugees who turn back to their homes after a work day of 12 hours said that they rest, just to get up for the next working day. Although those who have friends from the community have someone to talk to, not all of them have spaces to meet other Iranian LGBT refugees in their cities to talk about their lives, in their own language.

There are many LGBT refugees who, in their social life, cannot meet anyone new partly because of the language barrier and are not involved in anything due to the fear of marginalization. Many prefer not to get out of their home except the signature days as they fear that their identity will be understood and they will get reacted.

"People irritate with their eyes."

"When Turks notice us, they do irritate us, that's why I don't want to be visible. I usually stay at home, everyone is talking about me being trans and it irritates me, therefore, I don't trust anyone."

In Eskişehir and Denizli, where LGBT refugees are higher in number and relatively visible, one can talk about a social life within their own

community. However, those who do not want to or cannot be part of this community have no other environment to socialize. Iranian LGBT refugees told that social life in Kayseri, Adana and Mersin is almost non-existent and that they often spend days without meeting anyone. Loneliness, one of the biggest results of lack of socialization, becomes one of the biggest problems in LGBT refugees' survival in Turkey.

Having limited or no space to socialize due to social pressure or economic issues, LGBT refugees said they usually stay at home. However, they added that getting together at each other's home is also risky and they fear that their neighbors will figure out their identity.

"I was walking to give my signature but I was made fun of, I just went there and came back, therefore, I was always going late, not to be seen and made fun of."

Grounds of discrimination do not separate with sharp lines, so refugees who belong in the intersection of such grounds face extra difficulties. In the absence of a structure that considers their sensitivities and focus on solving their specific problems, living in Turkey for such refugees becomes almost impossible.

A visually-impaired lesbian refugee told that she needs others to go out, however, more often than not she cannot find anyone. This shows how she might be completely isolated from the social life and even her most essential needs might not be met.

"I want to go to the doctor but I couldn't find anyone to take me for 4 days. I cannot communicate with anyone, including Turks. I go out twice a month."

G. HOMOPHOBIC-TRANSPHOBIC VIOLENCE AND SEXUAL HARASSMENT

In all the cities where we conducted our interviews, homophobia and transphobia were the mostly mentioned problems. In more conservative cities, such as Kayseri, rising homophobia and transphobia keep most of Iranian LGBT refugees in the closet. Trans women interviewed in Kayseri expressed that they hide their gender identity in order to work and avoid transphobia, and that it affects their psychology deeply.

Iranian LGBT refugees said that in Denizli and Eskişehir they live relatively openly, however, that they are still subjected to homophobic and transphobic discourses.

"They point at me and call me a faggot. Then they laugh."

It is also underlined that the police and authorities do not take homophobic or transphobic violence seriously; act immediately to find the offenders; and implement the necessary procedure. This creates an unsafe living atmosphere for refugees and results in a constant anxious mood.

"No one supports us. No one understands our situation. The police were laughing at us. They asked my gay friend if he is a top or a bottom and they laughed. They asked it as if it was a joke."

"Someone threw a bottle to our window because we are lesbians. We went to the police station and they told us to go home, claiming that it might just be a drunken and that there is nothing to do."

Our interviews found that lesbians are being sexually harassed both by refugees and Turkish people. However, many told that they hide it, worrying that it might have a negative effect in their case. Lesbian refugees said that

they were being sexually harassed, especially by their Turkish employers, and that, most of the time, either they left their jobs because of harassment or they were dismissed when they told their sexuality.

LGBT refugees are deprived of lives they want to live due to homophobic or transphobic assaults or sexual harassment and forced to leave their identities which help them hold on to life.

"Adana does not accept me and there is homophobia."



CHAPTER V.

CONCLUSION AND RECOMMENDATIONS

CONCLUSION

Social violence on women and LGBTIs in Turkey has increased. Gender-based discrimination and violence exists in all cities, despite the varying levels from city to city. This becomes even harder for Iranian LGBT refugees. Due to the fact that authorities do not take necessary measures to protect LGBTI refugees, refugees are being exposed to even more discrimination and violence.

Iranian LGBT refugees, who escaped from a life full of fears and pressure to Turkey to create a space where they can be themselves, start to feel even more pessimistic following the difficulties they face in Turkey. Refugees repeatedly told that all they want is "to be themselves", that Turkey is no better than Iran, that life has stopped for them here and that it can only continue in a place where they can be free.

"Before I came to Turkey, I had wanted to stay here, but I don't want anymore."

"They treat me as if, as a refugee, I have no rights."

RECOMMENDATIONS

- The Law on Human Rights and Equality Institution of Turkey must be regulated to include protections on SOGIIIC and revised to consider recommendations by the civil society on its impartiality. Statistical work should be conducted to reveal discrimination.
- An active struggle must be taken against homophobic, transphobic and racist hate speech of politicians, public authorities and opinion leaders.
- The regulation on Hate Crimes should be expanded to include right to life, bodily integrity, fundamental rights such as education and housing as well as hate speech. SOGIIIC should be mentioned in the hate crimes regulation. Punitive measures should be taken against hate

crimes against LGBTIs, a regulation in the law must state that reduced sentence for "grievous provocation" cannot be applied for hate crimes.

- All public bodies, particularly the Directorate General of Migration Management, must develop sensitivity and policies for various problems of LGBTI refugees.
- Measures should be taken to prevent discriminatory and/or biased attitudes of the police forces and judicial bodies, which increase victimization during investigation and prosecution after violations LGBTI refugees face such as hate crimes, discrimination and police violence.
- The obstacles in front of obtaining a work permit should be abolished. Social and institutional trainings should be implemented and followed up as the state's positive responsibility in order to prevent violations of the rights of LGBTI refugees in terms of employment, health and access to public and private institutions as well as services.
- Necessary regulations should be made for LGBTI refugees to benefit from social assistance and social services effectively; all measures should be taken to prevent discrimination in this field. Criteria for getting social assistance should be clarified and discriminatory practices against LGBTI refugees should be prevented.
- While directing LGBTI refugees to satellite cities, their requests should be considered and they should be informed about the available cities. Especially during registration, they should be informed about the asylum procedure in Turkey as well as their rights and responsibilities, in an understandable way.
- LGBTI refugees must be informed about the safe places in the satellite cities; official consultancy should be given regarding housing. LGBTI refugees who cannot meet their housing expenses should be provided with a safe housing.

- International developments should be followed regarding the DGMM assessment of asylum applications based on SOGIIIC; necessary legal regulations should be made in accordance with international conventions to which Turkey is a party; the UNHCR assessment should be considered.
- Trainings on international refugee law, gender and SOGIIIC should be organized for migration experts making interviews to determine status and these trainings should be coordinated with LGBTI organizations.
- Trainings on discrimination, gender and SOGIIIC should be organized for the DGMM personnel (including interpreters and security staff). During registration, LGBTI refugees' privacy should be respected in an environment where they can express their sensitivities and special circumstances.
- There should be an effective struggle against violations of public personnel; administrative and criminal investigation should be conducted.
- The applications of LGBTI refugees' should continue to be assessed according to the accelerated resettlement procedure.
- Trainings for the UNHCR, ASAM and HRDF personnel on discrimination, sexual orientation and gender identity should continue.
- All interpreters working for the UNHCR and DGMM should be provided with necessary trainings on LGBTI terminology in the language the applicant speaks.
- Within this framework, dialog and collaboration must be established between LGBTI organization, public bodies and the Parliament.




Tunus PTT PK 12 Kavaklıdere 06680 Çankaya - Ankara

T +90 312 230 03 58 F +90 312 230 62 77

 /KaosGL94

 /Kaosgl

 www.kaosgl.org

 bilgi@kaosgldernegi.org