

The Equal Rights Trust

Submission to the Human Rights Council at the 21st Session of the Universal Periodic Review

Turkey

1. ERT has been working in Turkey since 2012, in partnership with the organisation Black Pink Triangle on a project designed to strengthen civil society efforts to combat discrimination in the Aegean and Marmara regions, with a particular focus on discrimination on the basis of sexual orientation and gender identity.
2. In the course of this work, ERT has undertaken research on equality and non-discrimination in the country. ERT has coordinated field research on discrimination on various grounds and interviews with human rights defenders. ERT has also conducted secondary research on patterns of discrimination and inequality and legal research on the legal and policy framework in place to prevent discrimination and promote equality.
3. This submission is based on the findings of this research. It responds to the express wish of the Human Rights Council that “[t]he second and subsequent cycles of the review should focus on, inter alia, the implementation of the accepted recommendations and the developments of the human rights situation in the State under review”.¹ The submission focuses on recommendations concerning: the enactment of comprehensive anti-discrimination legislation; and the situation facing persons with disabilities, women, LGBT persons and persons speaking minority languages.

Comprehensive Anti-Discrimination Legislation

4. Turkey received a recommendation to adopt comprehensive anti-discrimination legislation,² to strengthen its anti-discrimination laws and their implementation,³ and to ensure non-discrimination on the basis of sexual orientation and gender identity in anti-discrimination legislation.⁴ Turkey accepted these recommendations, with the exception of the inclusion of sexual orientation and gender identity as protected characteristics, but ERT found no evidence of progress in implementing them.
5. The constitutional basis for the legal framework on equality and non-discrimination is found in Article 10 (equality before the law) of the Turkish Constitution. While there are non-discrimination provisions in the Constitution and various criminal, administrative

¹ Human Rights Council, *Resolution 16/21: Review of the work and functioning of the Human Rights Council*, A/HRC/RES/16/21, April 2011, Annex 1, Para 6.

² See above, note 1, Paras 100.27 (Brazil), 100.28 (Bolivia), 102.9 (Denmark), 102.10 (Czech Republic), 102.12 (Netherlands), 102.13 (Ireland).

³ See above, note 1, Para 100.29 (Australia).

⁴ See above, note 1, Paras 102.10 (Czech Republic), 102.12 (Netherlands) and 102.13 (Ireland).

and civil laws, Turkey does not have specific equality or non-discrimination legislation. None of the existing provisions include sexual orientation and gender identity as protected characteristics. ERT found no evidence that Turkey has taken concrete steps towards the adoption of anti-discrimination legislation, with or without sexual orientation and gender identity as protected characteristics.

6. ERT suggests that states repeat recommendations that Turkey adopt comprehensive anti-discrimination legislation, inclusive of sexual orientation and gender identity as protected characteristics.

Persons with Disabilities

7. Turkey was recommended to take steps to implement the Convention on the Rights on Persons with Disabilities⁵ and to take steps to prevent discrimination based on disability.⁶ While Turkey accepted these recommendations, ERT's research found that persons with disabilities continue to experience inequality in employment and lack of access to public buildings and transport infrastructure.
8. Turkey's state report to the Committee on Economic, Social and Cultural Rights in 2008 stated that, of the 1,175,561 "handicapped" persons in Turkey, only 21.7% (255,214) were considered as part of the labour force.⁷ Of this figure, 73,473 (29%) were in employment and 181,741 (71%) were unemployed.⁸ The Turkish Statistical Institute's figures of 2010 also showed low participation rates in employment. Of the 280,014 persons with disabilities considered, 19.7% were part of the labour force, with 73% in employment and 27% looking for work.⁹
9. The government has taken some measures to increase the number of persons with disabilities in employment. Article 53 of the Law on Civil Servants¹⁰ establishes a quota of 3% for employees with disabilities in all state-run institutions to which the Law applies. The implementation of this provision, however, has not been without criticism. First, although the Law specifies a minimum of 3% posts to be reserved for persons with disabilities, in practice, this is considered by many to be a maximum. Secondly, in order to obtain a position within the civil service, persons with disabilities are required to

⁵ See above, note 1, Para 100.31 (Morocco).

⁶ See above, note 1, Para 100.32 (Sudan).

⁷ The state report contains no definition of "handicapped", however a footnote indicates that it comprises "Orthopaedic, seeing, hearing, speaking and mental" disabilities.

⁸ Committee on Economic, Social and Cultural Rights: *Initial Reports Submitted by States Parties under Articles 16 and 17 of the Covenant: Turkey*, UN Doc., E/C.12/TUR/1, 28 January 2009, Para 133.

⁹ Figures extrapolated from Turkish Statistical Institute, "Survey on Problems and Expectations of Disabled People", 2010, Table 1.7, p. 8.

¹⁰ Law on Civil Servants, Law No. 657, Official Gazette, 23 July 1965, No. 12056, Adopted 14 July 1965.

undertake a Disabled Public Personnel Selection Exam (EKPS), while persons without disabilities undertake the Public Personnel Selection Exam (KPSS). While the EKPS has the aim of ensuring fair competition by tailoring the exam to the particular needs of the candidates,¹¹ there are concerns that the use of a different test reinforces negative stereotypes. Nevertheless, these measures have led to a significant increase in the number of persons with disabilities employed in the public sector. The government has stated that the number has increased from 5,077 in 2002 to 32,877 in 2014,¹² though this is still below the quota. In 2013, only 32,021 persons with disabilities were employed, against a quota requirement of 55,334 persons.¹³

10. Within the private sector, Article 30 of the Labour Law¹⁴ requires all workplaces with fifty employees or more to ensure that at least 3% of their workforce is constituted of persons with disabilities, in positions suitable to their professional backgrounds and physical and psychological conditions.¹⁵ The Law also states that where the workplace is a public sector institution, the quota is 4%. In October 2013, the Turkish Labour Institute published figures on the implementation of the quotas:

	Number of workplaces to which the quota applies	Number of employees with disabilities required to meet the quota	Actual number of employees with disabilities	Shortfall
Private Sector	17,386	102,391	78,693	23,698
Public Sector	844	11,688	11,008	660
Total	18,230	114,079	89,071	24,358

The figures show that while public sector workplaces have been largely successful in fulfilling their obligations, in the private sector, there is a shortfall of 21.4%.

11. The inaccessibility of buildings, transport and other infrastructure remains an obstacle for persons with disabilities. In 2010, for example, a study showed that 70% of persons with

¹¹ Ministry of Family and Social Policy, "Support will be provided in the EKPS exams according to the disability", 24 April 2014, available at: <http://www.aile.gov.tr/en/27536/Support-will-be-provided-in-the-EKPS-exams-according-to-the-disability>.

¹² *Ibid.*

¹³ Today's Zaman, "Over 15,000 spots reserved for disabled waiting to be filled at Ministry of Education", *todayzaman.com*, 3 December 2013.

¹⁴ Law on Labour, Law No. 4857, Official Gazette, 10 June 2003, No. 25134, Adopted 22 May 2003.

¹⁵ Article 30 in fact requires 6% of the workforce in such organisations to be made up of persons with disabilities, former prisoners and victims of terrorism. Of this 6%, at least half must be made up of persons with disabilities.

disabilities reported difficulties in accessing public buildings and services.¹⁶ The Law on Persons with Disabilities contains two “provisional articles” on accessibility, requiring changes to *inter alia* public buildings, structures and transport infrastructure and mass transport services, within seven years from the date of the Law entering into effect.¹⁷ The seven year period was due to expire in July 2012, though amendments extended the deadline by a further year.¹⁸ A requirement for public transport to be made accessible to persons with disabilities was added through amendments in 2014, with a deadline of July 2018.¹⁹ In July 2013, the government adopted a Regulation on monitoring and auditing the enforcement of the provisions on accessibility.²⁰

12. The Law has had some impact so far. In Istanbul, for example, the subway now contains lifts for persons with disabilities, ramps and special entrances and exits for persons using wheelchairs at most of the stations.²¹ However, many metrobus stations remain inaccessible for persons using wheelchairs; while some buses have ramps, these must be manually operated and bus drivers do not always operate them for those who need them.²² Many multi-storey buildings have yet to be adapted to ensure their accessibility, drawing criticism from NGOs.²³
13. ERT suggests that states repeat recommendations that Turkey take steps to implement the Convention on the Rights on Persons with Disabilities and to take steps to prevent discrimination based on disability, particularly in employment an access to infrastructure and public spaces.

Women

¹⁶ Hurriyet Daily News, “Study reveals lack of disabled access to public buildings, services in Turkey”, *hurriyetdailynews.com*, 11 April 2010,.

¹⁷ Law on Persons with Disabilities, Provisional Articles 2 and 3, Law No. 5378, Official Gazette, 7 July 2005, No. 25868, Adopted 1 July 2005.

¹⁸ Article 34 of the Law Amending Certain Laws and Decrees, Law No. 6353, Official Gazette, 12 July 2012, No. 28926, Adopted 4 July 2012.

¹⁹ Article 75 of the Law Amending the Law on the Organization and Duties of the Ministry of Family and Social Policy and Other Certain Laws and Decrees, Law No. 6518, Official Gazette, 19 February 2014, No. 28918, Adopted 6 February 2014.

²⁰ Regulation on Monitoring and Supervision of Accessibility, Official Gazette, 20 July 2013, No. 2871, Adopted 20 July 2013.

²¹ Today's Zaman, “Full accessibility for disabled still not achieved in Turkey”, *todayzaman.com*, 15 July 2012.

²² *Ibid.*

²³ *Ibid.*

14. Turkey was urged to promote women's rights and to strengthen efforts to achieve full gender equality.²⁴ Turkey accepted these recommendations; however, there remain significant areas of life in which progress has been slow, such as political participation and employment.
15. There are currently 79 women in the Grand National Assembly, representing only 14% of all members.²⁵ While the number and proportion of women has increased, progress has been slow: following the 2002 elections, there were 24 female MPs and in 2007, 50 female MPs. Within the government, of the 26 members of the Council of Ministers, just one is a woman.²⁶ At the local level, women make up less than 1% of mayors, 4.2% of city councillors and 3.3% of members of provincial assemblies.²⁷
16. Data from the Turkish Statistical Institute (TSI) shows significant disparities between men and women in the field of employment. In determining the labour force in Turkey, the TSI excludes various categories of people (those aged under 15, those still in education, those who are retired, those who are unable to work through disability and illness, and "housewives"). Whereas 71.5% of men are considered as part of the labour force, the figure for women is significantly lower: 30.8%.²⁸ The key reason is that 40.7% of all women are recorded as "housewives" and are thus excluded from the labour force; there is no equivalent category for men. The number of women recorded as "housewives" has decreased in recent years. Whereas in 2004, almost 54% of women over 15 were so classified, by 2013, this had decreased to just under 41% of women. Nevertheless, patriarchal attitudes which consider women to have the primary responsibility for housework, care for children and the elderly continue to result in millions of women in Turkey being excluded from the labour force. Even amongst those who participate in the labour force, the unemployment level for women is higher than for men: 11.9% compared to 8.7%.²⁹
17. ERT suggests that states repeat their recommendations that Turkey take measures to combat discrimination against women and to promote gender equality, particularly in participation in public and political life and in employment.

²⁴ See above, note 1, Paras 100.34 (Jordan), 100.35 (Algeria), 100.36 (Azerbaijan), 100.37 (Canada), 100.38 (Tunisia), 100.39 (Norway), 100.40 (Bangladesh), 100.41 (Ukraine), 100.50 (Kyrgyzstan), 100.52 (Chile), 100.54 (Germany), 100.56 (Argentina).

²⁵ Inter-Parliamentary Union, *Parline: Turkey*, 2013, available at: http://www.ipu.org/parline-e/reports/2323_A.htm.

²⁶ Government of Turkey, Council of Ministers, available at: http://www.basbakanlik.gov.tr/Forms/_Global/_Government/pg_Cabinet.aspx.

²⁷ Turkish Statistical Institute, *Gender Statistics 2013*, 2014, p. 132.

²⁸ *Ibid.*, p. 79.

²⁹ *Ibid.*, p. 82.

18. Turkey was recommended to take measures to eradicate gender-based violence.³⁰
19. The level of violence against women is a serious human rights problem in Turkey. In 2013 alone, there were 28,000 reported cases of violence against women and 4,500 women were given state protection from abusive partners or relatives.³¹ In 2011, the Ministry of Justice announced that the number of women murdered had increased by 1,400% between 2002 and 2009, from 66 to at least 953.³² Much of this violence comes from partners or ex-partners: according to a 2008 report, 39% of women in Turkey who had ever been married had experienced physical violence at least once at the hands of their husband or an intimate partner.³³ Between 2009 and 2013, 802 women died as a result of domestic violence.³⁴
20. In May 2011, Turkey – then Chairing the Council of Europe’s Committee of Ministers – hosted the adoption of the Convention on Preventing and Combating Violence against Women and Domestic Violence. Turkey was one of the first states to ratify the Convention, in November 2011. Shortly afterwards, in March 2012, Turkey adopted the Law on Family Protection and the Prevention of Violence against Women.³⁵ The name of the Law has been criticised: while the original title was the “Law on the Protection of Women and Family Members from Violence”, it was changed by the Cabinet of Ministers. NGOs have raised concerns that this sends the message to the judiciary that their first priority is to protect the family, “ensuring that the woman succumbs even if she faces violence so she does not jeopardize the unity of the family”.³⁶
21. The Law includes a number of improvements to the previous legislation. It uses a broader definition of domestic violence in Article 2(1)(b) which, for the first time, includes explicit protection for women who are not married to the perpetrator. Article 14 requires the

³⁰ See above, note 1, Paras 100.30 (Egypt), 100.41 (Ukraine), 100.50 (Kyrgyzstan), 100.51 (Philippines), 100.52 (Chile), 100.53 (Senegal), 100.54 (Germany), 100.55 (Czech Republic), 100.56 (Argentina), 100.57 (Morocco) and 100.58 (Japan).

³¹ See above, note 27.

³² Hürriyet Daily News, “Murder a fact of life for women in Turkey”, *hurriyetaidailynews.com*, 20 February 2011.

³³ Turkish Republic, Prime Ministry, Directorate General on the Status of Women: *Domestic Violence against Women in Turkey, 2008*, p. 46, available at: http://www.hips.hacettepe.edu.tr/eng/dokumanlar/2008-TDVAW_Main_Report.pdf.

³⁴ Today's Zaman, “Violence against women still rampant in Turkey”, *todayzaman.com*, 25 November 2011.

³⁵ Law No. 6284, Official Gazette, 20 March 2012, No. 28239, Adopted 8 March 2012.

³⁶ The Executive Committee for the NGO Forum on CEDAW - Turkey and the Women's Platform on the Turkish Penal Code, *Turkey Shadow Follow Up Report*, 26 September 2012, p. 4.

government to establish Violence Prevention and Monitoring Centres, open 24 hours a day, to provide protection for women who are victims of, or who have been threatened with violence, albeit with a pilot scheme for two years. As of 2014, 14 Violence Prevention and Monitoring Centres in pilot provinces have been established.

22. However, the Law also has some weaknesses. There is no reference to “sexual orientation” or “gender identity”, thus excluding women in same-sex relationships from the protections offered by the Law; similarly, the principle of “gender equality” was left out of the principles of the Law; and the prohibition of mandatory reconciliation and mediation was not included in the Law.³⁷ The Committee on the Elimination of Discrimination against Women (CEDAW) has also highlighted some of the law’s shortcomings:

*[T]he law does not contain provisions for prosecution and punishment of perpetrators and, while it provides for a general definition of violence against women, it fails to mention specific forms of violence against women including rape, marital rape, sexual harassment and other forms of sexual violence. In addition, the State party failed to adopt a law that exclusively focuses on violence against women.*³⁸

23. Article 14 of the Law on Municipalities requires municipalities with a population of over 50,000 to establish a shelter for women.³⁹ While a total of 197 municipalities have such a population, there are only 86 women’s shelters throughout the country: 55 run by central government, 28 by local government and 3 by NGOs.⁴⁰ CEDAW has raised concerns over “the limited number of shelters (...) and (...) that such shelters may lack proper facilities and resources”.⁴¹
24. ERT suggests that states repeat recommendations that Turkey take measures to combat gender-based violence.

Lesbian, gay, bisexual and transgender (LGBT) Rights

25. In addition to recommendations that Turkey adopt comprehensive anti-discrimination legislation including sexual orientation and gender identity as protected characteristics (see above, Paragraph 4), Turkey was recommended to take steps to eliminate

³⁷ *Ibid.*

³⁸ Rapporteur for Follow-up on Concluding Observations of the Committee on the Elimination of Discrimination against Women, Letter to the State Party, 8 March 2013.

³⁹ Law on Municipalities, Law No. 5393, Official Gazette, 13 July 2005, No. 25874, Adopted 3 July 2005.

⁴⁰ See above, note 36, pp. 6-7.

⁴¹ Committee on the Elimination of Discrimination against Women, *Concluding Observations: Turkey*, UN Doc. CEDAW/C/TUR/CO/6, 16 August 2010, Para 22.

discrimination against lesbian, gay, bisexual and transgendered (LGBT) individuals, including revising discriminatory legislative provisions.⁴²

26. Turkey did not accept this recommendation and there exist many legislative provisions which discriminate against LGBT individuals. Indeed, the International Lesbian, Gay, Bisexual, Trans and Intersex Association – Europe, recently published an assessment of the level of legal equality for LGBTI persons in all countries in Europe.⁴³ Turkey received a score of just 14%, ranking 41st out of 49 countries.
27. Many provisions of family law discriminate against LGBT individuals. The Civil Code does not permit marriages between two persons of the same sex and there is no legislation which recognises same-sex couples through civil unions or cohabitation. While single persons are allowed to adopt, only married couples are permitted to adopt a child jointly.⁴⁴
28. The law related to the armed forces also discriminates against LGBT individuals. Fifteen months’ military service is compulsory for all men between 19 and 40 in Turkey, with no alternative civilian service available. Article 17 of the Regulations on Turkish Armed Forces Health Capability⁴⁵ prevents gay men and transsexuals from being accepted to military service. Prior to 2013, the Regulations listed homosexuality and transsexuality as “psychosexual disorders”. In 2013, Article 17 was amended to replace this phrase with “gender identity and behavioural disorders”. For many years, military officials used Article 17 to require gay men who did not wish to serve long-term military service to provide embarrassing pornographic photographs and videos to prove their sexual orientation. Although this is no longer the case, gay men are still examined by the health committee, tested with the Minnesota Multiphasic Personality Inventory and forced to stay at a hospital for several days.⁴⁶ The Law on Turkish Armed Forces Discipline includes homosexuality, defined as “engaging in unnatural intercourse or voluntarily submitting oneself to such an act”, as unacceptable behaviour and justification for dismissal from the Armed Forces.⁴⁷

⁴² See above, note 1, Paras 102.10 (Czech Republic), 102.11 (Canada) and 102.12 (Netherlands).

⁴³ International Lesbian, Gay, Bisexual, Trans and Intersex Association – Europe, *Annual Review of the Human Rights Situation of Lesbian, Gay, Bisexual, Trans and Intersex People in Europe: 2014*, 2014.

⁴⁴ Civil Code of Turkey, Law No. 4721, Official Gazette, 8 December 2001, No. 24607, Adopted 22 November 2001, Articles 306 and 307.

⁴⁵ Regulation on Turkish Armed Forces Health Capability, Official Gazette, 24 November 1986, No. 19291 (Council of Ministers, 8 October 1986, No. 86/11092).

⁴⁶ Tosun, U., “Pembe teskere Nasıl Alınır?”, *Radikal*, 22 August 2009, available at: http://www.radikal.com.tr/hayat/pembe_teskere_nasil_alinir-951032.

⁴⁷ Article 20(ğ) of the Law on Turkish Armed Forces Discipline, Law No. 6413, Official Gazette, 18 February 2013, No. 28561, Adopted 16 February 2013.

29. The Regulation on the Administration of Penitentiaries and the Execution of Sentences and Security Measures requires prisoners with a different sexual orientation from the other prisoners to be provided with separate rooms (Article 69(1)(e)).⁴⁸
30. ERT suggests that states repeat recommendations that Turkey take steps to eliminate discrimination against LGBT individuals, including revising discriminatory legislative provisions.

Minority Languages

31. Turkey was recommended to remove the restrictions on the use of languages other than Turkish in political and public life and to provide possibilities for the teaching of minorities' languages.⁴⁹
32. Turkey accepted the recommendation in part. In September 2013, Prime Minister Erdoğan announced a package of democratic reforms, with some aimed at improving the situation for the Kurdish minority. One of these reforms was to allow teaching in Kurdish (and other languages) in private education for some classes.⁵⁰ The continued prohibition on the use of Kurdish in public schools, however, drew criticism from many, including Gulden Kisanak, a leader of the Peace and Democracy Party, who called it “an insult to the Kurdish people to say, ‘You can learn your mother tongue as a foreign language at a school only if you pay for it’”.⁵¹
33. The Kurdish alphabet itself has also been a source of controversy.⁵² The Kurdish alphabet uses letters not found in the Turkish alphabet such as “q”, “x” and “w”. Kurdish place names and personal names were prohibited for a long time. Thus, Kurds would use two names: one at home and another (a Turkish name) at school and in other public places. In September 2013, as part of a package of reforms, Prime Minister Erdoğan announced the loosening of the restrictions governing alphabets and names, with Kurdish letters to be permitted in official documents and Kurdish place and personal names permitted.⁵³

⁴⁸ Regulation on the Administration of Penitentiaries and the Execution of Sentences and Security Measures, Official Gazette, 6 April 2006, No. 26131.

⁴⁹ See above, note 1, Para 102.15 (Austria).

⁵⁰ Butler, D. and Fraser, S., “Turkey Reform Proposals Include Changes on Use of Kurdish Language and Islamic Headscarves”, *The Huffington Post*, 30 September 2013.

⁵¹ Arsu, S., “Turkish Premier Announced Proposals Aimed at Kurds”, *The New York Times*, 30 September 2013.

⁵² For more detail, see Aslan, S., “Incoherent State: The Controversy over Kurdish Naming in Turkey”, *European Journal of Turkish Studies*, Volume 10 (2009).

⁵³ See above, note 50.

34. ERT suggests that states recommend that Turkey remove restrictions on the use of languages other than Turkish in political and public life and provide possibilities for the teaching of minorities' languages.