

MONITORING REPORT ON THE PROPOSAL FOR CONSTITUTIONAL AMENDMENTS

in articles 24 and 41 of the Turkish Constitution

-2023-



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**PEMBE
HAYATI**

INTRODUCTION

LGBTI+ is a community playing a fundamental role in the fight for human rights and equality. However, they are still exposed to discrimination, violence and social exclusion in many countries. Also in Turkey, LGBTI+ rights represent a fairly sensitive issue among different segments of the society, and of course, media has a great effect in connection therewith.

The bill containing some proposed amendments in articles 24 and 41 of the Constitutional Law, already passed through the related commission of TGNA (Turkish Grand National Assembly) in Turkey, has become an issue being of particular concern to and leading to debates in many segments of the society, and during this process, it is observed that some media organs have focused on hate speeches against LGBTI+s.

A draft proposal of bill containing some constitutional amendments which may pave the way for discrimination due to sexual orientation and sexual identity has been presented to TGNA Speaker's Office by a group of 336 deputies of Justice and Development Party, supported by Nationalist Development Party and Grand Unity Party, under colour of "constitutional security to hijab and protection of family" on December 9th, 2022, and has then been negotiated in the Constitutional Commission between January 19th and 24th.

This monitoring report aims to inform the public, create awareness and provide information to the concerned organisations and institutions by reviewing the hate speeches in media against LGBTI+s during the process of the bill for constitutional amendments in Turkey. Just like many other countries of the world, the language adopted by politicians is not in general far from discriminative and hate speeches in Turkey as well. This study is going to review the discriminative speeches and hate speeches of politicians on the basis of meeting minutes of the constitutional commission during negotiations on the bill for constitutional amendments in articles 24 and 41 of the Turkish Constitution between January 19th and 24th, 2023.

This study is also going to make reference to certain definitions and court judgments for the sake of raising awareness in terms of hate speech, discriminative speech and freedom of expression.

CURRENT SITUATION

The Bill on Amendments Proposed in the Constitutional Law of the Republic of Turkey, no. 2/4779, is negotiated between January 19th and 24th, 2023.

The bill proposing some amendments in article 24 of the Constitutional Law dealing with the freedom of religion and conscience, and in article pertaining to protection of families and children provides that no woman may at any time be exposed to discrimination due to her religious beliefs, hijab and attire in any aspects or areas of life.

The article proposing amendments in article 41 of the Constitutional Law pertaining to protection of families and children clearly specifies that only individuals of two different genders, man and woman, may constitute a conjugal union through marriage, and any other types of cohabitation will in no case be accepted and treated as a conjugal union, i.e. union of marriage, and that conjugal union is accepted to be based upon equality between spouses, i.e. man and woman. In the justification for the article proposing amendments in article 41 of the Constitutional Law pertaining to protection of families, it is emphasized that the Turkish state can be strong only if and to the extent families are strong therein.

Even though the basic aim of this report is to review the hate speeches of media against LGBTI+s during the process of the proposed constitutional amendments in Turkey, the report also intends to reveal and display the violations of rights and other consequences caused or that may be caused by manipulations, finger-pointing and disinformation. Outputs presented in this report will be used to provide information to the concerned organisations and institutions and to reveal the discrimination imposed upon LGBTI+s. Also included among the intentions are to encourage the diversity and human rights values and to create awareness thereon in tandem with the international norms.

Place of Hate Crimes in the Turkish Criminal Law Before Such Hate Speeches

Hate crime is generally defined as “a criminal offence committed by perpetrator against victim, motivated by hostility or prejudice based on the victim’s actual or perceived religion, language, race, ethnical origin, disability, gender or sexual orientation”.¹ In hate crimes, perpetrator does not need to know the victim personally. By using victim as a messenger, perpetrator indeed intends to send a message to the group to which victim belongs, or is believed or thought to belong.

¹ Rayburn N. R./Mendoza M./Davison, G C.: Bystanders’ Perception of Perpetrators and Victims of Hate Crimes. *Journal Of Interpersonal Violence*. (2003). Vol. 18(9), p. 1055-1074 (quoted by Çolak Özlem: Eşcinsellere Yönelik Nefret Suçları ve Toplumun Bu Suçlar Kapsamında Faile ve Mağdura Yönelik Tutumları, unpublished post-graduate thesis, İstanbul 2009, p. 1).

In hate crimes, motive of perpetrator is denser, and damages intended to be caused by perpetrator are more comprehensive. In this regard, special arrangements must be made in criminal laws specifically for hate crimes. One of the important points required to be decided in terms of methodology of crime is whether hate crime will be considered and treated as a substantive felony or only as an aggravating factor of crime, and how the criteria will be formed and arranged in determination of a hate crime. Hate crime is considered and treated as a substantive felony in Great Britain and Czech Republic, while it is regulated only as an aggravating factor of crime in a great many of countries. Hate motive is accepted as a general aggravating factor in all crimes in 23 member shares of OSCE (Organization for Security and Co-operation in Europe), while it is accepted as an aggravating factor only in certain crimes in 25 member states of OSCE.²

In Turkey, though there is not any special law dealing with hate crimes, the Turkish Criminal Code punishes the acts of discrimination nurturing enmity towards individuals by article 115 (prevention of use of freedoms of faith, thought and opinion), article 122 (hate and discrimination), article 125 (defamation), article 153 (causing harm to places of worship and graveyards) and article 216 (public incitement to hatred and enmity, and humiliation). The hate and discrimination crime regulated by article 122 of the Turkish Criminal Code has first been introduced to our legislation as of June 1st, 2005, and has then been rearranged as "hate and discrimination" crime by the Act no. 6529 of 2.3.2014. That law amendment has made discrimination crime a hate crime by definition, but it is required to be proven to have been committed by hate motive. By introduction of the definition of hate in article 122 of the Turkish Criminal Code, it has indeed ceased to be a hate crime any more, and definition is narrowed, and it is practically turned into an uncommittable crime, because victim is expected to prove the hate crime. However, according to the European Court of Human Rights, in types of crime committed with hate motive, it is not victim, but the investigating and prosecuting authorities who are expected to play an active role. Motive is not a simple thing which may be proven only by statistics. Different types of evidences are required to be collected, and assessed in the light of the circumstances surrounding the concrete case.³ A look at the legislative instruments adopted in Turkey reveals that the burden of collection of evidences and burden of proof of concrete case lie with victim. So much so that a review of reports of non-governmental organisations reporting hate crimes demonstrates a systematic rise in hate crimes committed against LGBTI+s in Turkey.⁴

2 İnceođlu, p. 114 et seq.

3 See ECHR (European Court of Human Rights) D.H. et al. v. Czech Republic (GC), 13.11.2007, Application No: 57325/00, Par. 187.

4 <https://kaosgilderneji.org/images/library/lgbti-larin-i-nsan-haklari-raporu-2022.pdf>

Hate Crime, Hate Speech, Freedom of Expression, Discriminative Speech and International Norms

Fear and intimidation arising out of hate crime and hate speech are based upon stereotypes, generalisations and prejudiced approaches which preclude LGBTI+s from joining the society, because hate speech takes its source from long-standing roots in a society, and frequency and mobility of rise of such speeches are dependent upon many social and political factors and circumstances. In dissemination, promotion and regeneration of provocative hate speeches which are based upon wrong information and non-scientific grounds, contain security threats and induce and incite crimes occasionally exist as main sources thereof, but may from time to time be also positioned at a place usable as a tool therefor. At the same time, they may exert a significant effect on opinions and behavioural styles of people, and create an area fit for use by political actors in shaping and manipulation of said effects.

Hate speech refers to and stands for expression(s) and statement(s) inciting and encouraging hate, discrimination or enmity against any person or group due to for instance their sexual orientation or gender identity. Hate speech is the point of departure of the process proceeding towards hate crimes, i.e. a manifestation of intolerance and impatience paving the way for hate crimes.⁵

Though hate speech and hate crimes do not have a generally accepted joint definition, hate speech has been defined as follows in a recommendation no. R (97) 20 of the Committee of Ministers of the Council of Europe in 1997: "Hate speech concept shall be interpreted and understood in such manner to cover all kinds of styles of expression which represent and take the form of racial hatred, xenophobia or anti-semitism, or aggressive nationalism and ethnocentrism, discrimination and enmity towards minorities, immigrants and descendents of former immigrants, and disseminate, provoke, encourage or legitimize other intolerance-based types of hate, also including religious intolerance. Within this meaning, hate speech definitely covers comments directed towards a certain individual or group."²

Definition given for hate crimes by OSCE (Organization for Security and Co-operation in Europe) is as follows: "All types of crimes committed in such manner to cover also crimes against persons or properties, wherein victims, properties or other targets of crime are chosen due to their actual or perceived relation, link, connection, belonging, support or membership with a group having similar common features based on actual or perceived race, national or ethnic origin, language, colour, religion, gender, age, mental or physical disabilities, sexual orientation or similar other factors." (osce.org, ODIHR; 2005:12)

The European Court of Human Rights has stated in many law suits that "tolerance and respect to equal dignity of all humans constitute the foundations of a (democratic) pluralistic society, and for this reason,

in principle, in some democratic societies, it may be deemed necessary to impose sanctions and even prevent all types of forms of expression which disseminate, provoke, encourage, incite or justify and legitimize intolerance-based hate” (European Court of Human Rights, 2006). In the Turkish Constitutional Law, hate speech against LGBTI+s has not specifically been defined as a crime, but the legal rule has been generally formulated in a manner to protect human rights, and may hence be used to protect individuals. Non-imposition of any sanction against hate speeches in public realm and consequences of incitement and provocation created by such “absence” pave the way for political parties and environments to normalize hate and discriminative language, and to manipulate public perceptions, thereby leading to a rise in hate crimes.

In certain periods (such as the bill for constitutional amendments), use of media by political parties and candidates may emerge and appear as a tool shaping the public perceptions by causing hate speeches and use of wrong and untrue information. Media is a strong opportunity for direct communication with public and entering into contact with people, and may use used as an effective tool for creation and management of perceptions, because media does not only enable everyone to have more access to speeches, but may also be turned into an uncontrolled tool in dissemination of hate speeches and opposing views against a certain group. As use of hate speech or provocative language may lead to increase of polarization, violence or intimidation, the use of hate speech or wrong and untrue information by politicians in media may create a background for commitment of potential hate crimes by sparking off circumstances triggering public perceptions.

Within this context, it will be useful to remind Yogyakarta Principles containing standards of human rights and their applications on issues of sexual orientation and gender identity, accepted to be applicable on LGBTI+s and many other key segments of society. Following an expert meeting held in Gadjah Mada University in Yogyakarta, Indonesia on November 6–9, 2006, 29 prestigious experts having different backgrounds and experiences regarding the law of human rights from 25 countries have unanimously adopted the Yogyakarta Principles on Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity. Yogyakarta Principles confirm certain international binding legal standards required to be complied with by all States. Therein, a different future where all humans are believed to be borne with dignity and honour as equal and free individuals and so, have some certain rights arising out of such valuable birth is promised.

In Turkey, the Istanbul Convention, in force since 2011 and containing various different obligations aiming to protect women, LGBTI+s and children from hate crimes and violations of rights, has been repealed on

March 20th, 2021 by a “Presidential Decree” published in the Official Gazette. Just before this Decree, LGBTI+s were made scapegoat by speeches of some political actions and news published in pro-government media. Such finger-pointing acts were seen as a “so-called reason” for abandonment of Istanbul Convention, because Istanbul Convention was indeed an “obstacle” for hate speeches and hate crimes since it defines all types of physical, sexual, psychological and/or economic violence acts between spouses or partners as “domestic violence”, and contains clauses aiming to develop some protective mechanisms on points of inadequacy of legal system, and due to its inclusion of gender identity. Then, the bills for constitutional amendments passed through TGNA Commission after Istanbul Convention is repealed have emerged on the grounds and worries that LGBTI+s “will demolish the sacred family” and “legitimize aberrant homosexuality”.

The United Nations’ Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW), being a guide for Istanbul Convention, has entered into force in 1981 after being adopted in UN General Assembly, and has been ratified and signed by Turkey in 1985. CEDAW contains clauses against all forms of gender-based discrimination, social exclusion or restrictions which aim at or lead to preclusion of women from making use of political, economic, social, cultural or civil human rights equally with men. Thus, this Convention covering also women and LGBTI+s exposed to discrimination due to sexual orientation and gender identity may be used in events regarding hate speeches or crimes only in the initiative of law enforcers since the laws have not ever been amended in connection therewith.

METHOD

Speeches of politicians in respect of LGBTI+s are reviewed and examined by scanning the meeting minutes of January 19 and 24, 2023, where articles 24 and 41 of the Constitutional Law are negotiated in the Constitutional Commission. In this study, we have mainly focused on speeches targeting LGBTI+s. It is decided in principle to conduct a review of 2 months (1 December 2022 to 31 January 2023) on hate speeches included in news published specifically in respect of LGBTI+s in regard to the bill on amendments proposed in articles 24 and 41 of the Constitutional Law, which has passed from TGNA Commission. The news websites with the highest access rate, i.e. Cumhuriyet, Habertürk, Hürriyet, Milliyet, Sabah, Yeni Akit, Yeni Şafak, are determined as sample, and the news published during the aforesaid time interval are classified. In these news, the headlines, spots and opening paragraphs are examined. Also, lingual expressions and wordings (sentence structures) used, and words preferred, in the news are analyzed in the light of Yogyakarta Principles, and definitions of OSCE for hate crime and hate speech, by also taking into consideration the ECHR standards, and CEDAW and Istanbul Convention clauses pertaining thereto.

News circulated during the aforesaid time interval are closely analyzed, and factors and incidents, being the main generators of hate speeches, are determined, and the basic ideas, dynamics and contexts underlying them are also examined. Within this framework, the information note (fact sheet) aimed to demonstrate the hate speeches of media against LGBTI+s, and to provide reliable information and proofs. Data collected from news through media monitoring have revealed LGBTI+s as the main target group of hate speeches, as well as the news sites and main actors generating said hate speeches, and the most commonly used stereotypes and language, in reliance upon certain benchmarks identified in relation therewith.

We focused on three main criteria in order to detect and reveal hate speeches:

- I. Social aspect of the person generating hate speeches (such as governmental officers, political representatives and public personalities)
- II. Stereotypes, generalisations and prejudiced approaches in news circulated in media in respect of the monitored subject
- III. Public perceptions, consequences, effects and damages that may be caused by the text of news and the person generating hate speeches

The recommendation adopted by the Committee of Ministers of the European Council in 1997, and *Vejdeland and others vs. Sweden* decision of the European Court of Human Rights are relied upon in detection and determination of hate speeches because such rather recently accepted discrimination elements as ‘sexual orientation, asylum-seekers and refugees, and disablement’ are also included by them into the definition. In that decision, ‘hate speech’ is defined as “all kinds of styles of expression which represent and take the form of racial hatred, xenophobia or anti-semitism, or aggressive nationalism and ethnocentrism, discrimination and enmity towards minorities, immigrants and descendents of former immigrants, and disseminate, provoke, encourage or legitimize other intolerance-based types of hate, also including religious intolerance”.

Then, texts detected to contain hate speeches in line with the predetermined purpose and scope are grouped in categories depending on the character of speech adopted therein. These categories are:

- 1) Exaggeration, Inculcation and Perversion:** Speeches containing negative and adverse generalisations, perversions, exaggerations and negative references towards a segment of society by departing from an individual or incident
- 2) Swearing/defamation/humiliation:** Speeches directly containing swearing, humiliation and defamation about a community
- 3) Enmity/war speeches:** Speeches containing hostile speeches evocating war against a community
- 4) Symbolization:** Speeches where a natural identity element is used and symbolized as a reason of humiliation

What is Hate Speech?

Hate speech does not have a universally and generally accepted definition. However, it is possible to refer to the definition made in the Recommendation of the Council of Ministers of the European Council most commonly used as a reference in the literature. According to that definition, hate speech concept shall be interpreted and understood in such manner to cover all kinds of styles of expression which represent and take the form of racial hatred, xenophobia or anti-semitism, or aggressive nationalism and ethnocentrism, discrimination and enmity towards minorities, immigrants and descendents of former immigrants, and disseminate, provoke, encourage or legitimize other intolerance-based types of hate, also including religious intolerance.⁵ However, the recent developments and new judicial decisions deal with hate speech in such manner to exceed this definition which has fallen short nowadays, and include such rather recently accepted discrimination elements as ‘sexual orientation, asylum-seekers and refugees, and disablement’ also into the definition.⁶

⁵ Decision of the Council of Ministers of the European Council (97)20,1997

⁶ ECHR's *Vejdeland and others vs. Sweden* decision of 2012. It is a historical decision as it regulates the relation between sexual orientation and hate.

Though the document regarding Rabat Action Plan in the Report of the United Nations High Commissioner for Human Rights does not contain a definition of hate speech, it contains decisions dealing with criteria and recommendations to be applied for prevention of actions inciting nation, race and religion-based violence, discrimination and hate. The Report includes some certain criteria used for detection and determination of hate speech, namely, context of statement, statement giver, intention underlying statement, content or form of statement, width of audience addressed by statement, and probability of causing a danger.

Hate Speech in the Context of Limitation of Right to Freedom of Speech

Although freedom of speech (expression) is taken under assurance and interpreted widely by the European Convention on Human Rights, this right is not an absolute right, and article 10/2 of the European Convention on Human Rights allows limitation of this freedom if and to the extent certain conditions enumerated therein are met. Second paragraph lists legitimate circumstances wherein the state may interfere with the freedom of expression. Accordingly, as per the judicial precedents of the European Court of Human Rights, when states interfere with any expression or speech, they are under obligation to justify such interference. In order to decide to which extent the freedom of expression is required to be protected, the European Court of Human Rights takes into consideration and account the type of expression (political, commercial, artistic, etc.), the tool used for dissemination of expression (personal, written media, television, etc.) and the segment addressed by expression (children, adults, a certain group of society). Even the truth of expression/statement may have a different meaning depending on the aforesaid criteria.

Article 17 of the European Convention on Human Rights: "Nothing in this Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention."

As stated, a restriction may not be general in nature. Any restriction, conditioning, limitation or any other type of intervention on the freedom of expression may be applied only on a certain particular use of said freedom. The contents of the right to freedom of speech may in no case be touched or changed in any manner or for any motive whatsoever. A limitation on the contents of right will be construed as destruction of the right. A review of the related decisions of the European Court of Human Rights reveals

that the restriction is not only required to be determined by law, but also required to be legally envisaged.⁷

⁷ Kayasu vs. Turkey, 13-10-2018 (In the case in hand, the interventions on the freedom of expression of the applicant are based upon publicly accessible and open texts. Disciplinary punishments are inflicted on the applicant according to articles 65/a, 69 and 70 of the Law on Judges and

Those who believe and argue that prevention of hate speech and protection of victims by legal sanctions constitute an obstacle against the freedom of expression should recognize and understand that use of hateful expressions and statements against a minority group can by no means contribute to personal development or self-actualisation idea, and that use of such types of expressions and statements cannot be construed or defended as use of a human opportunity, and should not be protected by or under human rights, in terms of the rights and concerns of minorities of the society. As stated in Article 17 of the European Convention on Human Rights: "Nothing in this Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention.", which means to say that hate speech cannot be permitted to cause harm to the use of freedom of expression, but on the contrary, the rights of others are also required to be protected in tandem with the objective of the Convention.

As a conclusion, though the right to freedom of speech is interpreted widely, and is taken to constitute the substance of a lot of rights, in the judicial precedents of the European Court of Human Rights, if the socially disadvantageous groups are systematically repressed, and cannot self-actualize, and are marginalized and otherized by wide groups of society as the subjects addressed by hate speech, the consequences thereof will be even heavier. On the other hand, restriction of the freedom of speech in terms of hate speech will not narrow the sphere of influence of the freedom of speech, and will play a great role in realization of pluralistic democracy and human rights as needed for social peace.

Hate speeches towards LGBTI+s, as determined within the subject matter in hand, are categorized in such groups as how LGBTI+s are named (aberrant, marginal, etc.), social aspect of statement giver (politician, political party, civil servant, columnist) and its effects, type of speech (labelling, stereotyping, prejudices, defamation, disinformation, statements that may threaten security, incitement to violence, provocative speech, etc.) and common statements or words used in finger-pointing.

Lastly, in order to detect news texts not defined within the context of rights journalism, such subheadings as existence of homophobic hate speeches in text, and description of LGBTI+ identities and existences as "aberrant", "sickness", "marginal", "threat" and "danger", and context of hate speeches used in text, and whether hate speech statements used by news actors are further reinforced and criminalized in text or not, and use of words and/or groups of words threatening the security of LGBTI+s are employed.

Public Prosecutors no. 2802 and articles 159 and 240 of the Turkish Criminal Code. The Court is of the opinion that the applicant, being a public prosecutor, cannot "reasonably" argue that his acts and behaviours would not result in administrative and criminal sanctions on him pursuant to the aforesaid two law provisions. Therefore, the Court comes to the conclusion that the interventions in dispute "are legally envisaged" within the meaning ascribed thereto by article 10 of the Convention.)

MONITORING FINDINGS

Media Monitoring Findings

A total of 86 news are detected between 1 December 2022 and 31 January 2023 in regard to the bill on amendments proposed in articles 24 and 41 of the Constitutional Law, which has passed from TGNA Commission. 28 out of these 86 news are published specifically in respect of LGBTI+s.

In the light of data collected from a total of 28 news examined by methods described in the methodology between 1 December 2022 and 31 January 2023:

- *It is determined that actors included in the content of news have generated hate speech in 27 news in aggregate. It is noted that hate speech and discriminatory words and expressions are used directly in headlines of 10 out of these 27 news containing hate speeches.*
- *Number of news not included in the scope of rights-based journalism is noted to be 21, and all of these news are determined to use homophobic news language.*
- *Number of news criminalizing LGBTI+s and nurturing the prejudices in the news text is found to be 24, while number of news reinforcing and strengthening stereotypes is found to be 21.*
- *Actors generating hate speech in news are determined to be deputies, political party leaders, president, ministers and experts. It is observed that hate speeches generated in 23 news may have negative effects on public perceptions.*
- *LGBTI+ identities are defined as aberrant / pervert or as marginal in respectively 10 and 3 of the news. In the other news, they are defined as “queer-beer, morbid”, and it is stated that LGBTI+ is a threat, danger, problem or movement/trend.*
- *It is also noted that 3 woman organisations (Women for Equality Problem, Havle Women's Association, Mersin Women's Platform) expressing their opinions / protesting the bill of constitutional amendments are directly pointed as a target in some news of Yeni Akit.*
- *In 26 news, LGBTI+s are excluded from the definition of “acceptable” family concept.*

The data summarized in the preceding paragraphs prove that hate speeches and discrimination against LGBTI+s constitute a serious problem in the society. Language and expressions used in these news may further contribute to dissemination of discrimination and intolerance against LGBTI+ community. Such types of speech are indeed attacking the rights and human dignity of LGBTI+s. Homophobic and discriminative language used in news may marginalize and humiliate LGBTI+s in the society, and may be said to intend to show them as an inhuman group.

News Headlines Directly Containing Hate Speech and Discrimination

Headlines, directly containing hate speech and discrimination, of the news published between 1 December 2022 and 31 January 2023 in regard to the bill on amendments proposed in articles 24 and 41 of the Constitutional Law, which has passed from TGNA Commission, are as listed below.

- 01.12.2022 - Yeni Şafak

LGBT statement of Karamollaoğlu which may irritate and annoy his allies: Family is composed of a woman, a man and children.

- 04.12.2022 - Yeni Şafak

Ümit Özdağ backed up LGBT deviants: This is a choice, and the state does not have a right of speech therein.

- 08.12.2022 - Yeni Akit

It is going to be presented to TGNA in the coming days. No-one will have the right to undergo that operation any more.

- 08.01.2023 - Yeni Akit

The most dangerous group of LGBT lobby, 'Muslim feminists'! are opposing to the proposed amendments in Constitution

- 08.01.2023 - Yeni Akit

Again Cumhuriyet is the spokesperson of them! Queer-beers are said to raise the devil! Get away!

- 20.01.2023 - Yeni Akit

"Aberration" condition to hijab resolution... The opposition gave itself away.

- 20.01.2023 - Sabah

"ABERRATION" condition to hijab resolution... The opposition gave itself away.

- 25.01.2023 - Yeni Akit

'Yes' to homo, 'no' to hijab

- 26.01.2023 - Yeni Şafak

LGBT alliance: Table of 6 and HDP come to mutual agreement on aberration.

- 26.01.2023 - Sabah

Prof. Dr. Bayraktar unrolls the scaring picture of LGBTs: It is turning into an epidemic disease

The headlines of news listed above contain statements which clearly and directly include hate speeches against LGBTI+s. Such types of hate speeches are used in media in order to humiliate, socially exclude, and target the LGBTI+ community.

For instance, statement of Karamollaođlu targeting LGBTI+ community reflects a thought that family concept is composed of only a woman, a man and children. This is a discriminative statement excluding LGBTI+ individuals from family concept by disregarding other sexual orientations and gender identities. Such types of comments may promote an approach refusing the existence and equality of LGBTI+ community.

Statement of Ümit Özdađ also labels LGBTI+ individuals as “sexual deviants”. Such types of comments are examples of hate speech aiming to humiliate, discriminate and exclude LGBTI+ individuals. And to humiliate LGBTI+s due to their sexual orientations or gender identities may contribute to dissemination of hate in society.

Headlines of Yeni Akit also clearly demonstrate themselves with hate speech towards LGBTI+ individuals. For example, a headline states that access of LGBTI+ individuals to surgical interventions will be restricted with the sentence: “No-one will have the right to undergo that operation any more.” Such types of statements aim to restrict the access of LGBTI+ individuals to healthcare services, and to exclude them from society. This is a dangerous style of speech leading to discrimination and violations of human rights. In another headline, “Muslim feminists” are described as the most dangerous group of LGBTI+ lobby, and it is emphasized that they oppose to the proposed constitutional amendments, thereby humiliating LGBTI+s and the Muslim feminists. Such types of comments may pave the way for social exclusion and discrimination by accusing LGBTI+ community and ‘Muslim feminists’ for being in contradiction with religious beliefs.

Hate speeches included in these news headlines lead to finger-pointing towards LGBTI+s in conflict with human rights and equality and justice principles. Due to having the power to shape the opinions of society and raise awareness therein, media bears responsibility in terms of dissemination of hate speech towards LGBTI+ community. It is of vital importance to make sure that media acts within the frame of impartiality principle and journalism ethics in order to encourage tolerance, acceptance and equality culture in society.

MONITORING FINDINGS IN MEETING MINUTES OF CONSTITUTIONAL COMMISSION

What is Article 24 of the Constitutional Law of the Republic of Turkey?

Article 24 titled “Freedom of Religion and Conscience” discusses the freedoms of religion and conscience together, and imposes rules for interventions to them. Freedom of religion and conscience is one of the tools that may be used for accomplishment of objectives of a democratic society. It protects not only the freedom of belief, but also the freedom of disbelief. This freedom is further taken under protection of criminal law by Article 115 of the Turkish Criminal Code. In terms of its external aspects, this freedom is limited by Article 25 of the Constitutional Law and Article 9/2 of the European Convention of Human Rights.

A case where a breach of Article 24 of the Constitutional Law is determined by the Constitutional Court is related to a lawyer of one of the sides in a lawsuit heard in Ankara 11th Family Court, whose court trial is postponed, and who is not accepted to the subsequent trials because she uses a hijab. According to the Constitutional Court, fundamental rights of individuals may be limited only and only by a law. There is not any legal restriction prohibiting the lawyers to attend court trials with a hijab. In the case in hand, no reasonable or objective cause could be shown for precluding the applicant from attending court trials with hijab which she uses as a requirement of her religious beliefs, nor could any argument or concrete data be put forth for its being an obstacle on use of rights and freedoms of others or its being a source of social conflicts and tensions. As a result, a lawyer with hijab has been made disadvantageous against lawyers without hijab by being precluded from attending court trials (paragraph 53); thus, Article 10 of the Constitutional Law has also been violated together with Article 24 thereof.⁸

What is Article 41 of the Constitutional Law of the Republic of Turkey?

Article 41 titled protection of family and child rights⁹ sets forth two points in terms of protection of family: first, equality between spouses has been taken under constitutional security, and secondly, the government is held liable to take required actions and measures for protection of peace and welfare of family. Legislator points out the need for protection of family and children inside a family. Though it is positive to arrange the liability of the government to take actions in favour of protection of two fragile segments of society, it is criticisable on the other hand to draw attention to protection of only maternal women.

8 (Tuğba Arslan [GK], B. No: 2014/256, 25/6/2014, § ...)

9 <https://www.anayasa.gov.tr/tr/mevzuat/anayasa/#>

FINDINGS:

A review of meeting minutes of the Constitutional Commission reveals that in the negotiations on January 19th, 2023:

LGBTs are clearly mentioned 22 times, and this concept is used negatively, making them scapegoats, even at times reaching to a level of hate speech, in such manner to be instrumentalist for deputies to insult each other. The word 'pervert' is used once, and the words 'aberrant' and 'perversion' are used 14 times. The word 'gay' is used 5 times, and the word 'lesbian' is used 3 times, and they are included in negative accusations containing disinformation in a manner distant to the subject of discussion. Such expressions as gender, asexuality, different genders, gender assigned at birth, and societal gender are repeated 21 times, and mostly they contain statements negating transgenders. During negotiations, the people of Lut are mentioned 2 times with reference to Quran. LGBT human rights defenders and NGOs are targeted at 6 different places under the pretext of societal assertiveness of LGBT lobby.

- Yusuf Beyazıt, Tokat Deputy of the Justice and Development Party/Head of Commission, mentioned about proposed amendments in 2 articles of the Constitutional Law, i.e. articles 24 and 41, saying that marriage may be formed with two separate genders, or otherwise, it constitutes a threat towards human nature.

Y. Beyazıt: "... The proposed amendment clearly states in compliance with our laws that a union of marriage may be formed only by marriage of a woman and a man, with the intention of protection and reinforcement of union of marriage..."

- Saliha Sasa, Head of Legal Commission of Joint Family Platform, refers to deprivation of transgenders from the right of marriage, and proposes that the words 'woman' and 'man' included in the existing bill be superseded by the term 'gender acquired biologically at birth' so as to prevent marriage of individuals who undergo a gender reassignment operation to acquire male or female identity.

- Feti Yıldız, MHP Istanbul Deputy, describes LGBTI+ individuals as 'aberrant', 'imported from the Western world' and 'postmodern version of the people of Lut', thus stigmatizing them.

F. Yıldız: "The Western world has already severed all of its ties from the divine natural essence. You all know that gay and lesbian churches are established therein. They intend to export to our country as well the postmodern version of perversion of the people of Lut, and unfortunately, this has started to become a social problem for us due to subsidies and encouragement of some municipalities and even due to motivation by the Deputy Chairperson of a political party. Therefore, now, it is our duty to battle against such acts..."

- Ali Özkaya, AKP Afyonkarahisar Deputy, states that he sees the achievements of LGBTI+ individuals in Europe as a threat. A. Özkaya also states that he is uncomfortable with existence of politicians clearly identified as LGBTI+ in Europe. A. Özkaya: "... All of our fellow countrymen living there insistently say something to us: 'My deputy! In Europe, LGBT is unbelievably oppressive in the recent times. They are giving such courses to our children in elementary and secondary schools. When we say to them: 'No, my child, there is not anything like that,' we have nothing else to do but to remove our children from school..."
- Ahmet Özdemir, AKP Konya Deputy, states that the European Universal Declaration of Human Rights underlines the importance of reproduction in protection of family, and that it is required to take actions against LGBTI+s considered and seen as a danger. A. Özdemir: "Therefore, the measure we are going to take against this potential threat and danger is indeed an appreciable action, because this is something which destroys the composure of societies all over the world and it is the cause of perishment of societies in the history. Allah SWT sends his 3 angels to the people of Lut, asking them to stop their actions considered as sexual deviation and perversion, but the people of Lut don't stop and are perished..."
- Mustafa Yeneroğlu, Istanbul Deputy of DEVA Party, speaks about equality in marriage, and says that there is not any such demand of society, and therefore, such speeches destroy the social peace. M.Yeneroğlu: "... Look! The Constitutional Law should not be based upon some perceptions or some imaginary concerns, nor should our Constitutional Law create an impression that our society is so weak. First of all, if an amendment is proposed in laws, in any case it should also be passed through the Parliament, and it should be decided in this way by majority vote. So there is not any such picture, nor does anyone have any such demand. Then, why do we need to speak in it now? As a result of such needs, some very different perceptions are adopted in the society, and I am of the opinion that such different perceptions also cause harm to our social peace at the same time..."
- Bülent Tezcan, CHY Aydın Deputy, thinks that the equality in marriage is not important in debates on constitutional law, by saying that: "Our laws do not define a type of marriage other than a marriage between male and female, nor does our imagination contain any such thing (...). I said: 'Do your statistics contain any such demand?' I mean, till date, in the statistics of the Interior Ministry? Ombudsman is here, our public auditor. Is there any such dispute or application or complaint saying 'We, 2 men are not allowed to marry, or 2 women are not allowed to marry...'? Or is there any such application filed to the European Court of Human Rights? No, there is nothing like that. Even if there are, they are sporadic. No, there is nothing like that on our agenda. But now, you have put it on the agenda, you have put a non-existing problem on our agenda..."
- Engin Altay, CHP Istanbul Deputy, says "Let the sleeping dogs lie", thereby making nonsense of the rights of LGBTI+ individuals.

- *Sıdıka Aydın, Head of Women Commission of Memur-Sen Confederation, targets the struggle for rights of LGBTI+ individuals as a 'deviant ideology', saying: "... we observe that the humanity is face to face a great demolition risk due to asexuality policies generated and disseminated with 'freedom and equality' beautifications. These asexuality policies ignoring and overlooking the male and female realities are clearly and explicitly attacking the human and family structures..."*
- *Leyla Şahin Usta, Konya Deputy of the Justice and Development Party, stigmatizing LGBTI+ individuals and generating hate speech throughout the commission meeting, does not omit to say that they have indeed respect for choices: "... We are doing our best here in order to prevent any types of violence on any animals or anybody, whatever its gender is, but we must not forget that..."*

According to meeting minutes of the Constitutional Commission dated January 24th, 2003:

The term LGBT is used 10 times, homosexual 5 times, gay twice, lesbian once, bisexual 4 times, transsexual 7 times, intersex 4 times, hermaphrodite once, perversion once, sexual deviation 4 times, gender 7 times by making reference to body harmonization process of transgenders with negative statements and wrong information, and in addition, with such phrases as gender identity crisis, gender identity seek, sexual choice or preference, and uncompleted sexual development, homosexuals and transgenders are pathologized and criminalized, and with such phrases as LGBT lobbies, and aberrant movements and lobbies, LGBTI+ organisations are criminalized.

- *Bülent Tezcan, CHP Aydın Deputy, repeated his words in the Constitutional Commission meeting of January 19th, continuing his discriminative speech. He described marriage equality for LGBTI+ individuals as a threat, and combined child sexual abuse and marriage equality for LGBTI+ individuals: "... I asked the Minister of Justice to meet us when he comes. Then, when they came as a team, I was also there: "Mr. Minister, are there any such demands which we don't know? Please share them with us, so that we also see the real dimensions of threat, if any..."*
- *Eyüp Özsoy, AKP Istanbul Deputy, defines himself as a conservative revolutionist, yet says that LGBTI+ groups destroy the moral fiber and structure of society: "Turkish family structure is comprised of a man and a woman, and children who join this union of marriage, and to argue otherwise is a proof of being very far from the nationalist and moral values of this country. No-one can dare and will be able to destroy this structure. Let them know that we, as conservative revolutionists, will in no event permit destruction of our family structure..."*
- *Fethi Yıldız, MHP Istanbul Deputy, says that he cannot tolerate the debates on marriage equality on TV screens. F.Yıldız: "In the evening of Thursday, while we are discussing these issues here, I mean to say, I guess I may give the name of channel, Halk TV, someone says: '... According to an information received from inside...'. I guess someone has sent a message*

outside, and a lawyer friend has got only half of the information, I mean, what she says is not fully correct, and what she says is exactly as follows: "In Turkey, only a marginal group opposes against these LGBT marriage, or this type of free life styles or cohabitation, and they are only a small group, let them discuss these issues among themselves in whatever manner they like', and on that TV channel – later, they sent a band of the broadcast and I looked at it – any one person of sound mind doesn't raise an opposition saying: "Lady, what are you saying? Marriage of man with man, marriage of woman with woman... Are we the people of Lut?"

- Figen Şaştım, President of Women Lawyers Association, says that the pressure is not towards LGBTI+ individuals, but towards their visibility.

F. Şaştım: "... As for article 41, considering that all over the world, for the sake of humanity, foundations of family are undermined, and family agency is harmed, and LGBTQ movement is organised in connection therewith, and also in Turkey, in a conscious meaning, homosexuality is converted from being only a proprietary sphere of privacy into being a tool of propaganda, and homosexual marriages are encouraged, and not marriage of man and woman, but marriage of woman to woman and man to man is inspired, and considering marriages, also in terms of protection of family, the rearrangement proposed in Article 41 must definitely be made, I believe..."

- Prof. Dr. Zeki Bayraktar, from the Health Sciences University, describes intersexes as a disease, and as a field of urology, and says that psychiatrists do not look after intersexes. Prof. Dr. Zeki Bayraktar criminalizes homosexuals and transgenders, and argues that being a LGBTI+ leads to sexually transmitted diseases, substance abuse and addiction, and suicidal behaviours, and says that children must be protected from them: "... Homosexuality and transsexuality, whatever you call it, either a 'disease', or a 'preference', or an 'orientation', or a 'normative behaviour', is something which shortens the expected length of life of an individual by sixteen to twenty-seven years, i.e. shortens the life by twenty-five years in average. Why is that so? Because homosexuals, due to their behaviours specific for homosexuality, spend a life of multipartners, i.e. they have multiple partners of 100, 200, 300 or 500, and due to the venereal diseases and risks caused by this style of life, they catch all sexually transmitted diseases, particularly HIV, to a great extent, and for this reason, various different types of cancers and infections, especially Kaposi sarcoma, lymphoma and anal and genital cancers, are reported very commonly, and due to these diseases, their immune system is depressed, and their length of life is shortened by twenty – twenty-five years in average. Furthermore, they face a high rate of psychological problems during their lives, i.e. substance abuse and addiction, anxiety, depression, and suicidal behaviours are reported in these individuals 7 to 16 times more than the average. For this reason, I guess none of us wishes any such troubles for our own children or grandchildren..."

- Murat Emir, CHP Ankara Deputy, saying that all debates are full of ignorance, asks 'Is our Parliament doomed to such debates?':

M. Emir: "... now, in the session of last week, I have made a request. We are speaking about 'perversion' or 'sexual deviation', etc. At least, I have asked the Parliament to call a representative from the Turkish Psychiatry Association. Let us call a scientist, or a few experts, or experts also from the Turkish Medical Association, and ask them to enlighten us on these issues. Here, I see a deep ignorance about these points. Let me express my own personal position first of all, for the sake of prevention of misunderstandings. In Turkey, in our country, in our society, it is our primary duty to protect our children and adolescents, and to this end, I believe that there are many actions required to be taken in many fields, also including the nationalist education, and I believe we must not give free rein to this issue at all..."

- Fethi Yıldız, from MHP, defends that the amendment proposed in Article 41 is vital by nature, because it protects family against perverse and aberrant thoughts, saying: "... I mean, when we let our children to go outside and to play in streets, and we call them back to home at evening adhan, which types of dangers are waiting there in the streets for our children?..."

- Şeref Malkoç, Public Chief Auditor, says that he feels uncomfortable about the insistence on LGBTI+ rights in the course of their joint projects with the European Union, and describes the struggle for rights as a project.

Ş. Malkoç: "... We met with chairperson and members of the commission drafting the European Union progress report of Turkey; in all of their reports without exception, while listing the rights and freedoms, they insisted on LGBT issues and rights, and they insistently emphasized this issue as a project – as we are also a defender of rights. Again in the light of complaints filed to us, or as we have discussed, as stated by Professor Zeki, this issue is coming onto us just like a tsunami..."

- Hasan Tahsin Fendoğlu, Chairperson of Right to Information Assessment Board, accuses universities and associations, saying that gender equality activities are organised in universities for the sake of LGBTI+ propaganda: "As a professor currently lecturing in university, and as a professor in constitutional law, I am witnessing this issue very closely. And in seminars and conferences organized in universities, some propagandas are made under the pretext of gender equality, and these activities are also very effective. In addition, when we look at serials on Netflix or social media, or on films and videos in YouTube – since a long time, not an issue of recent times only – we see some very unpleasant incidents and things therein. We see the same things also when we look at the decisions of RTÜK on violations of rules on TVs. We also witness the organisation of such types of activities also by some non-governmental organisations. For these reasons, we must say that the amendment proposed in Article 41 is not only a need, but a necessity and a must, and it will be very useful and helpful..."

CONCLUSION

Although all kinds of discrimination, hate speeches and hate crimes based on sexual orientations and gender identity are already dealt with in some international conventions and organisations such as Yogyakarta Principles, OSCE (Organization for Security and Co-operation in Europe) decisions, European Court of Human Rights decisions, Istanbul Convention and CEDAW, given that any such crimes are not yet specifically sanctioned in Turkey, there is not any dissuasion against commission of sexual identity and orientation based hate crimes. The process proceeding by inclusion and regeneration in media of such speeches originally produced by political actors leads to restriction of the life areas of LGBTI+ individuals in all aspects. For this reason, the analysis of news regarding the amendments proposed in the constitutional law is important for creating awareness on an issue absolutely required to be discussed in terms of international conventions, treaties and organisations, and for being a tool for submission of demands to the concerned entities and organisations and for revision of policies in connection therewith. A review of the meeting minutes of the Constitutional Commission, and of recorded statements of the representatives of political parties in that commission, demonstrates clearly that even if hate crimes and hate speeches are included in the legislative instruments of Turkey, it will in no event be internalised by them. Deputies must recognize that their comments and statements in the Parliament and in the media make it difficult to fight against hate speeches in Turkey, and their speeches are polarizing the people and are laying the groundwork for violence. This means to say that it is a must to internalise the human rights for the sake of a sincere struggle against hate speeches.

Media plays an important role not only in informing the society, but also in shaping the social values. Therefore, it is greatly important to ensure that media adopts an approach supporting LGBTI+ rights and equality, refusing the discrimination, and encouraging the tolerance.

It must not ever be overlooked that the people voting for them generally act upon their speeches, and as a result, hate crimes will inevitably increase. If the political figures in Turkey neglect the potential destructive consequences of hate policies while trying to win their legitimization from their supporters, it is unequivocally evident that they will cause social crises. Furthermore, political figures are making reference to unscientific debates and issues in the course of efforts for amendment of constitutional law, i.e. a social contract and one of the most important printed documents of a country, and this will naturally exert a negative effect on the human rights report about Turkey.

LGBTI+s represent an integral part of the society the human rights of whom must definitely be shown

respect. If media demonstrates an emphatic approach trying to understand the lives, experiences and rights of LGBTI+ individuals, it may be helpful for them to be accepted as equal subjects in the society. In addition, it is also important for media to raise the visibility of LGBTI+s by giving positive examples, and adopt a perspective inquiring the heteronormative thoughts in the society.

The commission's negotiations and debates pathologizing and occasionally criminalizing LGBTI+ individuals in TGNA, legislator of Turkey, in the course of amendments in the Constitutional Law which constitutes the backbone of laws of the Republic of Turkey and is a social consensus text in nature are in fact contributing to further deepening of homo-bi-transphobia in the society. It further injures the fundamental duty of the State formulated in the principle of equal treatment of all citizens, and tries to create legal ways and remedies paving the way for subjective and discriminative treatment towards LGBTI+ individuals. Already being a social group which is deprived of the services of public administrations and organisations, and the right to access to justice, and the fundamental rights through some applications and practices in real life, LGBTI+s will be entirely abstracted from being equal citizens of this country if such constitutional amendments are legislated. This will in turn cause further increase in poverty, hate speeches and hate crimes. It will help the establishment of the policy of impunity as a governmental method protected by constitutional security.

As a conclusion, the liability of media is to raise awareness in the society and to create an atmosphere embracing diversity and challenging discrimination and intolerance. Being a power shaping the society, if media uses a language and contents showing respect to rights and human dignity of LGBTI+ individuals, it will definitely make contribution to creation of a more inclusive and fair society.

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