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End violence and discrimination on the basis of sexual orientation and gender identity in Turkey

Reply to Written question[1]: Written question No. 557 (Doc. 11796)
Committee of Ministers

1. Question from Mr Hancock

The decision of Turkey's Supreme Court of Appeals, announced on 27 November 2008, to overturn the decision of a lower court ordering the closure of Lambda Istanbul, a group advocating for lesbian, gay, bisexual and transgender (LGBT) people's human rights, is very much to be welcomed.

However, a recent report by Human Rights Watch, "*We Need a Law for Liberation" -- Gender, Sexuality, and Human Rights in a changing Turkey,* makes it clear that the human rights challenges faced by LGBT people in Turkey are not limited to freedom of association. The report documents, *inter alia:*

– disturbing evidence of endemic homophobic violence;

– detailed accounts of police malpractice and violence;

– vague laws on, for example, "offences against public morality" which are used to harass LGBT people;

– the violence and harassment faced by some lesbians and bisexual women, particularly in the context of family "honour";

– the extreme prejudice and social exclusion faced by many transgender persons;

– Turkey's treatment of gay men and transgender persons in the armed forces, which is in violation of judgments of the European Court of Human Rights.

Recalling the European Convention for the protection of Human Rights and Fundamental Freedoms to which Turkey is a signatory,

Mr Hancock,

To ask the Committee of Ministers,

what action the Committee of Ministers is to undertake to request Council of Europe member state Turkey to outline what plans Turkey has to implement the recommendations in the Human Rights Watch Report in order to end violence and discrimination on the basis of sexual orientation and gender identity namely with regard to:

– the enactment of a comprehensive non-discrimination law containing specific protections against unequal treatment based on sexual orientation and gender identity in all areas of life;

– the elimination of vague laws used to harass LGBT people;

– the amendment of military policy to eliminate sexual-orientation and gender-identity based exclusion from the armed forces;

1. adopted at the 1062nd meeting of the Ministers' Deputies (1 July 2009)

– measures to ensure full respect and legal recognition for each person's profound self-esteem;

– the training of all criminal justice system officials on principles of human rights and non-discrimination as they relate to LGBT people;

– the adequate investigation and prosecution of crimes of violence and rape against LGBT people;

– ensuring that measures to address domestic violence are applied without discrimination and in a manner sensitive to issues of sexual orientation or gender identity;

– ensuring that LGBT organisations are able to enjoy freedom of association without hindrance**.**

Reply by the Committee of Ministers

1. In reply to the Honourable Parliamentarian's question, the Committee of Ministers recalls that it is strongly attached to the principle of equal rights of all human beings. The Council of Europe's message of tolerance and non-discrimination applies to all European societies, and discrimination on grounds of sexual orientation or gender identity is not compatible with this message.

2. In a series of judgments, the European Court of Human Rights (the Court) has emphasised that any discrimination based on sexual orientation is contrary to the Convention.[2] The Court has also recognised that state parties have a positive obligation to lead effective investigations into any suspicious death or serious allegations of ill-treatment capable of leading to the identification and punishment of those responsible.[3] This positive obligation is irrespective of the personal characteristics of the victim, and applies not only to instances where state agents are deemed responsible but also to any serious cases brought to the authorities' attention. The Committee of Ministers recalls that all member states must observe the Convention when they draw up and apply national law, notably in the light of the case law of the Court.

3. The Committee of Ministers also draws attention to the decisions it took at the 1031st meeting of the Ministers' Deputies (2 July 2008) to strengthen the Council of Europe's action to protect the rights of LGBT persons. All committees involved in intergovernmental co-operation have been invited, within their terms of reference, to make proposals for specific activities to strengthen, in law and in practice, the equal rights and dignity of LGBT persons and combat discrimination towards them. The Steering Committee for Human Rights (CDDH) has also been asked to prepare a recommendation on measures to combat discrimination on the grounds of sexual orientation or gender identity, ensure respect for the human rights of LGBT persons and promote tolerance towards them. The Committee of Ministers also underlines that a recommendation is currently being prepared within the framework of the CDDH on human rights of members of the armed forces which will, *inter alia*, reflect the Court's established case law prohibiting the ban on homosexuals' access to the military.[4]

4. Like all member states, Turkey has ratified the European Convention on Human Rights (the Convention) and is committed to guarantee respect for all Convention rights, including freedom of association, to all individuals within its jurisdiction without any discrimination.

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2. Among other authorities, Salgueiro da Silva Mouta v. Portugal, judgment 21 December 2001; L. and V. v. Austria, judgment of 9 January 2003; Karner v. Austria, judgment of 24 July 2003; B.B. v. United Kingdom, judgment of 10 February 2004.

3. See for instance, M.C. v. Bulgaria, judgment of 4 December 2003 (paragraph 151) on Article 3 and Yasa v. Turkey, 2 September 1998, (paragraph 100).

4. See for instance, Smith and Grady v. United Kingdom, judgment of 27 December 1999; Lustig-Prean and Beckett v. United Kingdom, judgment of 27 September 1999.