



Mr. Sadullah Ergin
Ministry of Justice
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November 2, 2011

Your Excellency,

On behalf of seven international human rights organizations¹, we write to express our deepest concern at the recent conviction of three transgender human rights defenders from the organization Pembe Hayat LGBTT Dayanışma Derneği². On October 26, Naz GÜdümen³, Buse Kılıçkaya⁴, and Selay Tunç⁵ were sentenced to prison terms ranging from five months to one and a half years. As we have noted in our previous communications with the Turkish authorities, we believe that their arrests and now their prosecutions were arbitrary, unjustifiable and provide evidence of the systematic discrimination of transgender people in Turkey, including by the police and courts.⁶ We request that the government of Turkey drop all charges against these women, amend vague laws that permit abuse of police

¹ The organizations that authored this letter include the International Gay and Lesbian Human Rights Commission (IGLHRC), COC Netherlands, GATE - Global Action for Trans* Equality, the European Region of the International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA-Europe), Transgender Europe (TGEU), ARC International, and STP 2012, International Stop Trans Pathologization Campaign.

² Pembe Hayat (Pink Life Lesbian, Gay, Bisexual, Transgender and Transsexual Solidarity Association) is an Ankara-based organization that works to eliminate all forms of discrimination and violence motivated by homophobia and transphobia.

³ Legal given name Burhan. Child of Ibrahim and Ayşe Farma, born in 01/07/1982.

⁴ Legal given name Bülent. Child of Mustafa and Bahtisah, born in 01/01/1977.

⁵ Legal given name Derya. Child of Ali Haydar and Nuriye, born in 28/08/1973.

⁶ See joint letter to Turkish Ministers of Justice and Interior regarding the arrests of three transgender activists; available online:

<http://www.iglhrc.org/cgi-bin/iowa/article/pressroom/pressrelease/1288.html>

Also see Joint Letter to Turkish Officials on the Upcoming Trial of Pink Life Activists; available online in English <http://www.iglhrc.org/cgi-bin/iowa/article/takeaction/resourcecenter/1208.html> and Turkish :

<http://www.iglhrc.org/cgi-bin/iowa/article/takeaction/resourcecenter/1209.html>. See also letter from IGLHRC, HRW,

ILGA-Europe, COC Netherlands and Pembe Hayat to Prime Minister Recep Tayyip Erdoğan on February 26, 2010; available

online at <http://www.iglhrc.org/cgi-bin/iowa/article/pressroom/pressrelease/1095.html>.

power, and commit to concrete steps to improve the safety and well-being of transgender individuals.

On October 26, 2011, Ankara's 15th Criminal Court of First Instance rendered its verdict. In its final ruling, Ms. Tunc was sentenced to six months in prison for "resisting the police". Ms. Gdmen was sentenced to one year in prison for "insulting the police" and an additional six months for "resisting the police". Ms. Kılıkaya was sentenced to five months in prison for "resisting the police". While the jail sentences for Ms. Tunc and Ms. Gdmen were suspended as long as they do not repeat the same alleged offense, if the Court of Appeal upholds Ms. Kılıkaya's sentence, she will be imprisoned.

The convictions of Ms. Kılıkaya, Ms. Tunc, and Ms. Gdmen began with their arrest on July 19, 2010. Police stopped a car on the women were driving down Seyranbaglari Mah street in Ankara and informed them that they were under arrest. The police officers forcefully dragged the women into a waiting police van. Ms. Kılıkaya informed the police that they hurt her arms; a remark that we believe could have subsequently been misrepresented as insulting a police officer. The women were transported to the police station and held for approximately five hours before being released. On June 24th, the women were formally charged with *Damaging Public Property, Insulting Police, and Resisting the Police and Preventing Them from Performing Their Duty.*⁷

We believe that the initial arrests and brutality as well as the subsequent indictments and convictions may have been motivated by a combination of factors: transphobia; disregard for the law in the case of people who are, or may be perceived as, sex workers; and a specific desire to deter transgender human rights defenders from activism. Ms. Kılıkaya and Ms. Tunc are co-founders and current board members of Pembe Hayat, and Ms. Gdmen is an active member. We are particularly concerned with what appears to be the repeat targeting of Ms. Kılıkaya and Ms. Tunc. As described in our communication to you on 18 October 2010, this was the second time in less than one month that Ms. Kılıkaya and Ms. Tunc were arbitrarily arrested by the police.⁸ Notably, the court in that instance dismissed the charges, citing the lack of evidence against the defendants.⁹ During the case, the judge also reprimanded the police officers for their mistreatment of the human rights defenders, stating that their style of intervention was "totally wrong".

Police mistreatment of transgender human rights defenders violates Turkey's own laws, including Article 10 (which guarantees the equality of all citizens before the law without discrimination), Article 20 (which protects an individual's privacy) and

⁷ Inquiry Number: 2010/75420, Docket Number: 2010/26414, Indictment Number: 2010/9063

⁸ See Turkey: Drop Charges Against Transgender Rights Defenders available online at: <http://www.iglhrc.org/cgi-bin/iowa/article/pressroom/pressrelease/1222.html>

⁹ See Case Dismissed Against Transgender Activists in Turkey available online at: <http://www.iglhrc.org/cgi-bin/iowa/article/takeaction/resourcecenter/1234.html>

Article 23 (which guarantees freedom of movement) of the Turkish Constitution.

Furthermore, the discriminatory treatment of transgender people in Turkey contradicts international human rights law. At the European level, the Commissioner for Human Rights of the Council of Europe, Thomas Hammarberg, recommended that member states, “[E]nact hate crime legislation which affords specific protection for transgender persons against transphobic crimes and incidents.”¹⁰ In its 2011 *Progress Report*, the European Commission reiterated Turkey’s obligation to provide genuine protections to all minorities, including LGBT people.¹¹ The European Parliament previously affirmed this obligation on February 10, 2010, reminding the Turkish government that the protection of LGBT minorities is a non-negotiable condition for entry into the European Union.¹² Moreover, Turkey, in agreeing to the Council of Europe’s Committee of Ministers Recommendation on combating discrimination on the grounds of sexual orientation or gender identity, accepted its obligations with regard to these principles:

*“Member states should ensure effective, prompt and impartial investigations into alleged cases of crimes and other incidents, where the sexual orientation or gender identity of the victim is reasonably suspected to have constituted a motive for the perpetrator; they should further ensure that particular attention is paid to the investigation of such crimes and **incidents when allegedly committed by law enforcement officials or by other persons acting in an official capacity, and that those responsible for such acts are effectively brought to justice and, where appropriate, punished in order to avoid impunity.**”¹³*

The United Nations has been similarly clear and direct in its prohibitions on discrimination against transgender individuals, including with regard to Turkey specifically. In its July 2010 periodic review of Turkey, the United Nations Committee on the Elimination of Discrimination Against Women (CEDAW) expressed concern over the “vulnerable situation of various disadvantaged groups of women,” including transgender women and asked the government “to take effective measures to eliminate discrimination” against this community.¹⁴ In May

¹⁰ “Report of the Working Group on the Universal Periodic Review”. United Nations Human Rights Council. Fifteenth session, agenda item 6. 17 June 2010. Available at <http://www2.ohchr.org/english/bodies/hrcouncil/15session/reports.htm> .

¹¹ Available at

http://ec.europa.eu/enlargement/pdf/key_documents/2011/package/tr_rapport_2011_en.pdf

¹² Gay and Lesbian Rights Intergroup, "European Parliament reaffirms LGBT rights are a condition to join the European Union," February 18, 2010, available at <http://www.lgbt-ep.eu/news.php> .

¹³ Recommendation CM/Rec (2010) 5 of the Committee of Ministers to member states on measures to combat discrimination on grounds of sexual orientation or gender identity, (Adopted by the Committee of Ministers on 31 March 2010 at the 1081st meeting of the Ministers’ Deputies) available at: <https://wcd.coe.int/ViewDoc.jsp?id=1606669>

¹⁴ See Concluding observations of the Committee on the Elimination of Discrimination Against Women in Turkey, CEDAW/C/TUR/CO/6, July 30, 2010, available at <http://www2.ohchr.org/english/bodies/cedaw/docs/co/CEDAW-C-TUR-CO-6.pdf>

2010, Turkey accepted a recommendation during its Universal Periodic Review by the United Nations Human Rights Council to ensure non-discrimination on grounds of sexual orientation and gender identity.¹⁵ Most recently, the UN Special Rapporteur on the Independence of Judges and Lawyers recommended that States, “adopt criminal law provisions that do not directly or indirectly discriminate on the grounds of gender during criminal proceedings. Sentencing should include a gender perspective... The specific needs of women and transgender persons should be taken into account when sentences of detention are ordered.”¹⁶

We request that:

1. All criminal charges against Ms. Kılıçkaya, Ms. Tunç, and Ms. Güdümen relating to this case be dropped.
2. An independent investigation be launched into the discriminatory treatment by the police and courts of transgender people under the pretext of implementing the law.
3. Laws that are often used to target transgender individuals, such as the *Law on Misdemeanors*, be amended or revoked.
4. The *Police Duty and Authority Law* and other laws governing the powers and duties of the police be amended to prevent police officers from harassing transgender individuals and human rights defenders and to hold them accountable when they do.
5. The Turkish government should pass legislation to protect the rights of transgender people, including, *inter alia*, a non-discrimination law inclusive of sexual orientation and gender identity and a law prohibiting hate crimes motivated by homophobia and transphobia.
6. Comprehensive national training for law enforcement officials on the treatment of vulnerable minorities, including transgender people, be provided to prevent future cases of police harassment, brutality and mistreatment.

We would appreciate your response with regard to this case as well as the opportunity to enter into dialogue with the government of Turkey about implementing action to protect transgender individuals and human rights defenders from violence and discrimination.

¹⁵ “Report of the Working Group on the Universal Periodic Review”. United Nations Human Rights Council. Fifteenth session, agenda item 6. 17 June 2010. Available at <http://www2.ohchr.org/english/bodies/hrcouncil/15session/reports.htm> .

¹⁶ “Note by the Secretary-General transmitting the interim report of the Special Rapporteur on the independence of judges and lawyers.” Sixty-sixth session, Item 69 (b) of the provisional agenda. 10 August 2011. Available online at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N11/449/71/PDF/N1144971.pdf?OpenElement>.

Sincerely,



Cary Allan Johnson
Executive Director,
International Gay and Lesbian Human
Rights Commission



Koen van Dijk
Executive Director,
COC Netherlands



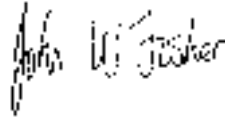
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CC:

President. Abdullah Gul, President of the Republic of Turkey,
Mr. Recep Tayyip Erdoğan, Prime Minister of the Republic of Turkey
Mr. Sadullah Ergin, Minister of Justice
Mr. İdris Naim Şahin, The Minister of Interior
Mrs. Fatma Sahin, The Minister of Family and Social Policies
Mr. Ayhan Sefer Ustun, President of the Turkish Parliamentary Human Rights
Investigative Commission