



European network of legal experts in gender equality and non-discrimination

NEWS REPORT

Country:	Turkey
Title:	Local court finds discrimination in access to services in a case brought by a LGBT individual
Date:	18 February 2015
Expert:	Dilek Kurban
<u>Context</u>	
Issue at stake:	Discrimination against a LGBT individual
Ground of discrimination:	Sexual orientation
Source:	National court decision (42 nd Civil Court of First Instance in Istanbul, decision no. 2014/230) ¹
Field:	Access to goods and services

Content

Case: An LGBT woman was denied entry to the women's section of a Turkish bath in Istanbul during the opening hours although other female customers were granted entry. She brought a discrimination case against the owner of the bath under Article 122(1) of the Turkish Penal Code, which prohibits the denial, due to hatred based on language, race, colour, gender, disability, political thought, philosophical belief, differences of religion or denomination, of: a) the sale, transfer or rent of movable or immovable property in public use; b) provision of services to the public; c) employment; d) the carrying out of an ordinary economic activity

Decision of the Court: The 42nd Criminal Court of First Instance in Istanbul issued its verdict during the second hearing which took place on 29 January 2015. The Court found the defendant to have committed "the crime of discrimination" prohibited under Article 122(1)(a) of the Turkish Penal Code, without specifying the ground which was violated. The Court sentenced the defendant to 3,000 New Turkish Lira (around 1,000 Euros), equivalent of a judicial fine of 150 days. The court deferred the execution of the sentence for five years, during which time the defendant will be subject to judicial supervision. Unless the defendant intentionally commits a crime during that time, the verdict will be revoked thereafter.

Notwithstanding the lenient punishment, this landmark ruling is the first time a court in Turkey found discrimination against a LGBT individual. In light of the courts' reluctance to enforce Turkey's already limited anti-discrimination legal framework, which is accentuated in cases brought by LGBT individuals, this ruling is a victory for the anti-discrimination movement in Turkey.

The judgment is also significant in that the court expansively interpreted the text of Article 122, whose personal and material scope have been narrowed by the Parliament on 2 March 2014.² Once open-

¹ The text of the court decision has been obtained from the lawyer of the applicant.

² These amendments were reported to the Commission through flash report 1251-TR-43.

ended, the list of anti-discrimination grounds under Article 122, which has never included sexual orientation, is now exhaustive. Furthermore, while the title of the provision retains a reference to discrimination, the text of Article 122 no longer explicitly prohibits discrimination. In enforcing Article 122 to protect an LGBT individual against discrimination, the court set an important precedent.

On the other hand, it is curious that the court ruled under Article 122(1)(a), which prohibits the denial of the sale, transfer or rental of property, rather than (b), which prohibits discrimination in the provision of services to the public.

Internet link source and additional information: The decision of the court is not publicly available.