

# CONSTITUTIONAL DEMANDS OF LGBTI+ PEOPLE IN THE STRUGGLE FOR EQUAL CITIZENSHIP



Social Policy, Gender Identity and  
Sexual Orientation Studies Association





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# ABOUT US

Social Policies, Gender Identity, and Sexual Orientation Studies Association (SPoD), founded in 2011 by a group of academics, lawyers and activists, studies for developing permanent and comprehensive solutions for the problems of LGBTI+ community and for alleviating the oppression, violence, social exclusion, and discrimination LGBTI+ people are exposed to. In this framework, it gives support to the “+”s (LGBTI+), as the umbrella definition of the lesbian, gay, bisexual, trans and intersex people and other identities and sexual orientations, for fulfilling their material and moral existences, and for contributing to the social peace, rest and welfare, with their individual, social and cultural lives and actions by cultivating themselves.

SPoD provides free legal and psychosocial counselling to LGBTI+ people. It also provides training to key professional groups such as the mental health employees, social service experts and attorneys about working with LGBTI+ community; conducts campaigns and follows up lawsuits in the field of LBGTI+ and organizes academic meetings and seminars, monitoring studies, panels, schools of politics and activism and advocacy meetings. In addition to these, it provides counselling every weekday to the LGBTI+ community with its Hotline in matters such as coming out; violence and discrimination based on gender identity and sexual orientation; gender adjustment process; HIV and sexually transmitted infections; and gender identity and sexual orientation issues. All human-related issues affecting the LGBTI+ community including coming out, sexual orientation, relationship with the family and troubles in romantic relations are also discussed every Sunday between 14.30 and 16.30 in “Sunday Talks/ Talks without a Distance” meetings.

# SPOD POLITICAL PARTICIPATION UNIT

Political Participation Unit which has been a significant field of activity since SPoD's establishment, organises lobby and advocacy meetings, , workshops and trainings with the objective of increasing the capacities of the LGBTI+ community in the field of local and national decision making mechanisms, establishing safe spaces where they can talk about actual politics, making visible the expectations about the political establishment, the actors and institutions in the position of decision-makers, carrying in LGBTI+ rights within the active political agenda and mainstreaming the LGBTI+ rights through politics. The unit's studies also include organising campaigns and monitoring/reporting. In coordination with the other fields and units of the association, our political participation unit ensures that parliamentary questions are submitted to bring the activities and publications performed under the roof of the association in the parliamentary agenda. It organises meetings with the members of parliament, political party representatives and mayors, and issues publications to mainstream LGBTI+ agenda in the parliament/local administrations.

# LGBTI+ CITIZENS' DEMANDS FOR CONSTITUTIONAL EQUALITY" PROJECT

This publication has been prepared within the scope of the "LGBTI+ Citizens' Demand for Constitutional Equality" project which we carry out with the objective of empowering the LGBTI+ community in political and social life, as one the main targets of Social Policies, Gender Identity, and Sexual Orientation Studies Association (SPoD) in its advocacy activities since its establishment in 2011.

Constitutional studies have been an important focus among the advocacy activities carried out by our association for many years. Hence, we had important contributions in both carrying the demand of constitutional equality of LGBTI+ people on the public's agenda and making such demand the basis of the struggle for rights.

During the ten years period following our establishment, while we tried to contribute to a civilian, democratic and participatory constitutional process, we also tried to reflect clearly the main issues and developments about abuses of rights which people experienced based on their gender identities, sexual orientations and gender characteristics, with the campaigns and activities we organised for the LGBTI+ people to become an active part of this process.

Today, we think that besides redefining the state as a democratic, secular and social state of law, taking universal values into consideration is a necessity; it is also irrecusable to make a participatory, democratic and transparent constitution and a new definition of citizenship that shall include all. Therefore, we carried out this project for the LGBTI+ people to join this debate, to ensure the politicians to include the issues of gender identity, sexual orientation and gender characteristic on their agenda and to make our demands visible.

Our objectives in the project are to increase and support the capacities of LGBTI+ people in the fields of politics, political decision-making



processes and political participation; to identify and mainstream the constitutional demands of the LGBTI+ people; to develop joint fields of study with the political parties and civil society organisations for fulfilling the constitutional rights of the LGBTI+ community and to increase the visibility of the LGBTI+ people in the political field.

Under the scope of this project, to strengthen the activities of the LGBTI+ people in the field of political representation and participation, we first organised the SPoD's 4th School of Politics. We dedicated the final workshop of the school of politics where nearly thirty participants from various cities met, to the "Constitutional Demands Workshop". Together with the study groups formed during the workshop, we tried to identify the demands regarding the article of the constitution prohibiting discrimination as the most fundamental legal basis that can hold the state responsible for the LGBTI+ rights; adding phrases of gender identity and sexual orientation that may also be seen in international examples and clarifying the definition of equal citizenship in the constitution. Finally, we prepared this publication together with the contributions of the participants to the study groups.

Indeed, the constitutional demands that are identified in this publication are clear forms stemming from the years' old struggle for constitutional equality of the LGBTI+ movement, which has left thirty years behind. We hope this publication would keep the demands of the LGBTI+ movement for visibility and recognition and its insistence on taking place in political decision-making mechanisms fresh and create a memory that would contribute to the practices of political struggle of the LGBTI+ movement in the future.

Many thanks to primarily the LGBTI+ community and human rights defenders who became part of this study by continuing this insistence, and to all who contributed with their labour to this publication.

# INTRODUCTION

The resistance which started on June 26, 1969, in a bar called Stonewall in New York, against intense police coercion and violence under the leadership of Black and Latino sex worker trans women and which has spread to the entire LGBTI+ community became a milestone for the LGBTI+ people who were carrying out a global organised struggle. And in Turkey, the organised LGBTI+ people have been struggling against abuses of rights and discrimination in various fields for over 30 years.

In Turkey, like in the entire world, the LGBTI+ movement expresses the demand for equal citizenship from its first day onwards. The legitimacy and basis of the demand for equal citizenship stem from the fact that the basic rights and freedoms are birthrights and thus they are valid for all. Providing equal rights to LGBTI+ with all citizens is neither a radical nor a complex issue. The essence of these rights is based on the principles of equality and prohibition of discrimination, which also constitute the foundation of the international human rights law. The demand for equal citizenship makes up the basis of our project, of this booklet and even of our movement.

LGBTI+ people are either entirely deprived of various rights, primarily the right to life, housing, health, education, and employment, or they have to work harder in order to access these rights compared to the non-LGBTI+ people. This worldwide discrimination is felt more intensely, especially in the recent years in countries like Turkey where authoritarian tendencies and arbitrary practices exist. Processes like moving away from the social state of law, creating the belief that the religious values and sensitivities belonging to certain groups should prevail in the public sphere, political atmosphere, and daily life together with polarizing discourses and policies; criminalization of the right to organise, and abolition of separation of powers, created and continue to create, enormous obstacles in front of the equal citizenship of various groups in Turkey, including the LGBTI+ community.

Although such processes seem as the initiative and political preferences of the political power, the decay in Turkey in terms of human rights and departure from the principles of the state of law are too deep and rooted to be explained by the preferences of the political power alone. For reasons such as the constitution which forms the limits and responsibilities of the state is not based on social consensus; it is not pluralistic and inclusive; still a most significant part of has been written with militaristic and patriarchal dominated imaginations and intentions under the influence of the military tutelage; it is not designed in a manner that would limit the power of those who hold economic, political and social power and it was shaped for the aim of protecting the rights of a very small section of the society, it is not possible for the future political powers

to meet the demands for equal citizenship with the current constitution.

During our discussion processes, where we shaped our demands, we could not find any unfaulty parts of the constitution, so to speak. The current constitution, which mentions many headings about the rights, avoids imposing binding responsibilities and positive obligations to the state to protect the rights of the individuals, both because of its superficiality and lack of inclusiveness. The constitution, which in fact must determine the limits of the state, even blurs the responsibilities and obligations of it because of the concepts especially chosen by its founding political power. These deficiencies in the constitution both prevent achievement of new rights and cause the achieved rights to disappear in a single night. Such deficiencies and mistakes felt in all sections of the constitution were one issue that challenged us while we were preparing this publication. It was not possible to bring together all the problems we have identified in this publication. Thus, we have decided to take both the leading topics that emerged from our debates and the data that we obtained from the experience and accumulation of our movement as our guidelines due to (and at the same time, thanks to) this restriction. We have included our demands with utmost priority for ensuring equal citizenship in this publication.

The demand for equal citizenship should be raised in all fields holistically. Spreading the demand for equal citizenship in the national assembly, in the juridical field, in the streets, in the workplaces and schools, in short in every place where we can, is very important for the human rights of the LGBTI+ people. The constitutional demands, as a significant and integrated part of our struggle, have been on our agenda from time to time since the days our movement became stronger.

In such a period when the LGBTI+ people are targeted by the state authorities, LGBTI+ associations and right defenders are criminalized and the spaces of encounter for the social groups are undermined by the ever-increasing narrowing of the civilian sphere, we pursue our rights without being caught in the winds of polarization. While we are being deprived of our most basic rights, we relentlessly struggle to live a life with human dignity, to be able to work, to be housed, to access the rights to education and health and other public services equally and to get access to all our basic rights. Our aim in this programme and publication is also to broaden the opportunities for accessing our rights, by presenting the constitutional demands of the subjects of the LGBTI+ movement intersecting also with various fields in a basic framework and through peaceful solutions. We have come together, discussed, and prepared this publication with this belief and hope. We will work with the same determination for voicing and spreading further our demands.

# WHAT IS THE CONSTITUTION?

The constitution may be defined as the whole set of legal rules of a constitutional nature which regulates the foundation and operation of the main bodies of the state, the relationship between such bodies, and the basic rights and freedoms of the citizens in front of the state, and their limits, and which also limits the “absolute” power of the state. When it is considered that law is not regulated by the constitution alone, what is meant by constitutional nature are the rules of law that occupy the top rank in the hierarchies of both in terms of contents and norms, and that can be established and changed with different and/or more difficult ways than the other rules of law. The basic rights and freedoms that are regulated by the constitution, in other words the constitutional rights, are important as they have been recognised and guaranteed by the constitution which stands at the top rank of the hierarchy of norms.

In the current legal systems, the approach which may be called as the presumption of freedom tells that the rights and freedoms that the individuals have can only be restricted in compulsory circumstances that are regulated by law. However, it is important to define the basic rights and freedoms to hold the state under negative or positive responsibility. Conclusively, although today the longest sections of the constitutions are related to guaranteeing the basic rights and freedoms, protecting the citizens, vis-à-vis the state by clearly listing these rights constitutes the essence of the logic of constitutionalism. When we look at the modern constitutions, it is generally seen that, as a system, the basic rights and freedoms are regulated following the sections on the basic principles. State is primarily responsible for those basic rights and freedoms subjects of which are human beings. The basic rights that may be listed as personal security, freedom of opinion, immunity of residence, right to engage in political activities, right to property, right to work, right to social security and right to health require both the negative obligation of the state in the sense of not touching certain areas and -often- its positive obligation which it would provide by assuming an active duty. This logic of the constitutions which are formed through the historical process provides the citizens the opportunity to assert and defend their rights and freedoms against the state. At the same time, this opportunity is the product of the need to prevent the abuse of state power and to limit this power. The constitutions which are one of the main texts that are referred for creating a common criterion and feeling of justice should be tools for establishing a consciousness for the right to citizenship and democratisation of the system with such guarantees. Taking the social demands into consideration in public negotiations where the constitution is discussed should be seen as a requirement for the functions of the constitution to maintain the balance among the social groups and individuals, to minimize conflict and to enable the individuals to exist freely in the society.

When the legal order is likened to a pyramid, it is seen that more than one

norm consisted of the constitution, laws, Presidential decrees, Presidential decisions, charters, regulations, and unnamed regulating procedures are listed in a subordinate-superior relationship in the hierarchy of norms, and at the same time, each of these derives their validity from the next higher legal norm. International conventions which are duly enacted have the force of law according to article 90 of the Constitution. At this point, the conventions related to the basic rights and freedoms are different from the others. Thus, according to article 90 of the Constitution, in the conflicts that may arise between the international conventions related to the basic rights and freedoms and the laws for the reason of containing different provisions in the same issue, the provisions of the international conventions are taken as the basis and deemed to be superior.

Protection of basic rights and freedoms is subject to international legal remedies/international protection in addition to internal legal remedies. For Turkey, we can divide this international protection system into two, as the United Nations framework and the European Council framework. Under the scope of the United Nations, though effectiveness of some is debatable, we may list the Universal Declaration of Human Rights, International Covenant on Civil and Political Rights, International Covenant on Economic and Social Rights, United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment, United Nations Convention against Racial Discrimination, etc. The committees that are formed in attachment to these conventions work with semi-judicial methods and may take non-binding decisions. On the other hand, it is possible to say that the European Convention on Human Rights under the scope of the European Council is one of the most important international conventions to which Turkey is a party. The European Court of Human Rights, which is the juridical body founded by the European Convention on Human Rights, takes binding decisions, and imposes the obligation to comply with the verdict for the contracting states. And enforcement of the verdicts is subject to the audit of the Committee of Ministers of the European Council. At this point, it should be noted that with the constitutional amendment made in 2010, the duty of "Discussing the individual applications made with the allegation that fundamental rights and freedoms that are guaranteed in the Constitution of the Republic of Turkey and European Convention on Human Rights have been violated" has been added to the duties of the Constitutional Court and also in the domestic law it is possible to make applications for violations of fundamental rights and freedoms which are included in the protection of the European Convention on Human Rights through individual applications.

Thus, the Constitutional Court has discussed thousands of applications made since the date of September 23, 2021, when the individual application remedy has been put in force.

# INTERNATIONAL LAW AND CONVENTIONS

The modern constitutions, as the most fundamental and binding legal texts that regulate the basic rights and freedoms, also reveal the will of the states about the human rights law. Especially after the Second World War, the practice of undersigning international conventions by the states for developing both their interstate relations and their relations with the persons who are subjected to their sovereignty within the perspective of human rights law has started. Even though the human rights struggle is a practice of struggle which is too multidimensional, and which has a history too long to be reduced to various international conventions, all kinds of international conventions in particular which the states undersign by revealing their political wills and protecting the fundamental human rights and freedoms are expected to bind the states. Also, the international conventions, which are undersigned by the states by their own statements of will, are expected to be texts that are de facto respected in the legal order. As an attempt that may be considered in this context and as a result of the constitutional amendment made in 2004, the phrase

***“In the conflicts that may arise between the duly enacted international conventions related to the fundamental rights and freedoms and the laws for reason of containing different provisions in the same issue, the provisions of the international conventions shall be taken as basis”*** has been added with a final sentence to article 90 of the Constitution regulating the international conventions.

During Turkey's journey of Constitutional amendments, with an exception brought in the hierarchy of norms, superiority has been provided for the conventions about the fundamental rights and freedoms to which Turkey is an undersigning party in the international sphere as a great achievement regarding the fundamental rights and freedoms. Accordingly, it became necessary for the courts to take the provisions of the conventions as the basis in conflicts that may arise between the laws and the conventions related to the fundamental rights and freedoms. As it is mentioned above, although Turkey by

adding a provision to the Constitution telling that the state should comply with the provisions of the conventions, in particular the European Convention on Human Rights to which it is a party also in its domestic law and even that such provisions are superior to the laws, has actually brought a Constitutional nature to such international conventions, we know that in Turkey the state, and consequently the law practitioners comply neither with the guarantees of the ECHR nor its binding verdicts depending on the political conjuncture. In particular, the European Convention on Human Rights, which is defined as a “living convention” also by the European Court of Human Rights, has expanded and developed its jurisprudence towards the LGBTI+ people in the recent years. We also expect the law practitioners in Turkey to act in care for following the relevant jurisprudence and to enforce it within the framework of article 90. Taking the necessary legal and administrative steps for the LGBTI+ people to enjoy their Constitutional rights, in particular protection of one’s material and moral existence, prohibition of discrimination, freedom of expression and the right to assembly and demonstrate with the consciousness of equal citizenship, is also necessary regarding the international conventions to which we are a party within the scope of article 90. On the other hand, it is not possible to explain at the constitutional level the decision to withdraw from the Istanbul Convention, which is an important international convention that has been ratified under the scope of fundamental rights and freedoms under article 90 of the Constitution, by showing LGBTI+ existences as an excuse. First, the method of withdrawal from the convention is enacted, as it has been widely discussed, by grasping the authority of the Turkish Grand National Assembly and by violating the duties and authorities of the President regulated by article 104 of the Constitution. Second, the pretext of the decision to withdraw from the convention has been explained in the official Internet website of the Presidency of the Republic of Türkiye Directorate of Communications (iletisim.gov.tr) as, “*The Istanbul Convention, (...) was hijacked by a group of people attempting to normalize homosexuality – which is incompatible with Türkiye’s social and family values*” (original trans.), in addition to the statements of the government bureaucrats. Such a justification pointing out the provision of the Istanbul Convention titled “fundamental rights, equality and non-discrimination” that no discrimination can be made based on sexual orientation and gender identity, is against the Constitution and the other international conventions to which Turkey is a party, particularly in the framework of equality. Therefore, we would like to remind the obligation to ensure actual enforcement of article 90 which is pretty sufficient as paper.

# CONSTITUTION-MAKING PROCESS AND LGBTI+ RIGHTS IN TURKEY

In 2008, the LGBTT Rights Platform founded by Kaos GL, Lambdaistanbul, MorEl, Pembe Hayat, Pyramid LGBTT Diyarbakır Formation and Siyah Pembe Üçgen Association, demanded constitutional equality from the National Assembly Human Rights Commission. This platform submitted its demand to the assembly for adding the phrases of gender identity and sexual orientations to the article of the Constitution, “Equality in front of law” (article 10).

During the 2010s, together with the LGBTI+ organisations increasingly getting organised in associations, the campaigns about the legal demands started to prevail. Legal struggles about issues such as hate murders, hate discourses and the right to work of the LGBTI+ people was brought at the forefront in the agenda of the movement. By 2011, one of the most basic legal struggles of the LGBTI+ movement was the campaign for adding the phrases of gender identity and sexual orientation to the article of the Constitution regarding equality during the New Constitution process. This process, at the same time, brought a period when the relationship between the LGBTI+ movement and the political parties in the parliament became closer. In 2011, SPoD has been also founded.


The common demand which emerged before the starting of the new constitution process was shared by various LGBTI+ associations, particularly SPoD, formations and independent LGBTI+ activists with the deputies and the public opinion. The LGBTI+ movement, which until then had very little and limited relationship with the existing political parties in Turkey, has started to become an important political pressure group as a result of this intense contact. The deputies started to submit successive parliamentary questions about the problems of the LGBTI+ community in the national assembly. In addition to the line of the Peace and Democracy Party (BDP) which clearly supports the LGBTI+ rights movement, together with the 2011 elections, some deputies who have an important sphere of influence in the Republican People’s Party (CHP) actively voiced the demands of the LGBTI+ movement in the national assembly for constitutional recognition.



Joint demand of the BDP and CHP deputies in the Reconciliation Committee for Constitution, for the struggle against discrimination based on gender identity and sexual orientation should take part in the constitution and opposition of the deputies of the Justice and Development Party (AKP) and Nationalist Movement Party (MHP) against these demands emphasised the constitutional demands of the LGBTI+ movement in the constitutional debates. In 2012, SPoD, under the framework of the campaign it had started during the new constitution process, submitted the constitutional demands of the LGBTI+ people by meeting with CHP, BDP and Reconciliation Committee for Constitution. It presented its views to the commission on issues such as discrimination draft law, training of the local administration employees and hate crimes draft law. Support also came from the European Parliament for this campaign. A letter of call signed by the Head of the Delegation of the European Parliament to Turkey, H el ene Flautre, LGBTI+ Rights Intergroup Co-chairs and members of the Intergroup was sent to Cemil  i ek, then Speaker of the Grand National Assembly of Turkey and to the member deputies of the Reconciliation Committee for Constitution.

The relevant article was among the ones on which no consensus was reached and could not pass from the commission. The demands and proposals for the process of writing a new constitution, which was particularly emphasised to be prepared based on a social consensus, were prepared by the LGBTI+ activists with great interest and sacrifice. Although the political climate of the period facilitated giving voice to the demands for equal citizenship and the constitutional demands, they were not so much appreciated by the decision-makers and the constitutional demands of the LGBTI+ people were not fulfilled.

SPoD has organised various activities (panels and forums) and a survey for the LGBTI+s and its members with the support of KONDA Research and Consultancy to broaden the interest of the LGBTI+ people and to share their demands and proposals with the Grand National Assembly of Turkey and the public, regarding the process and content of making the new Constitution. It shared a declaration comprising 14 articles, on December 16, 2021, with the Grand National Assembly of Turkey Reconciliation Committee for Constitution and the public opinion; and on January 16, 2011, it personally submitted the demands of the LGBTI+ people by meeting the subcommittee no 3. The activities supported by the Rainbow Coalition against Discrimination formed by TASCO Turkey and LGBTI+ organisations continued; two panels and two forums in Istanbul, and



forums in Ankara, Izmir and Diyarbakır were organised and the opinions of the organised and independent LGBTI+ activists were continued to be collected. During the panels, meetings with the representatives of various Constitutional study initiatives (New Constitution Platform, Constitutional Women's Platform, and Ecological Constitution Platform), representatives of the political parties (Republican People's Party, Green Party) and journalists took place. Both in the forums and in written opinions sent, it is seen that the idea that the 1982 constitution should be left behind and an entirely new constitution should be written was accepted by the great majority of the LGBTI+ people. And in the survey conducted with the support of KONDA Research and Consultancy, 76.5% of the LGBTI+ people gave the reply, "We need a new/updated constitution where everything should be written from the starch" to the question, "What is your opinion about a Constitutional change or a New Constitution?" The percentage of those who said "There is no need for a new Constitution" stayed at 2.9%.

In Turkey, since 2012, a constitutional change has been carried out once, however unfortunately, this process of change did not occur upon the consensus of the broad sections of the society. And also, during the most recent constitutional change process of 2017, involving also with the transition to the Presidential Government System from the Parliamentary System, participatory processes were not conducted and the demands of the LGBTI+ people, other disadvantaged groups and even the entire society did not become visible. Also, like in the other stages of the decision-making processes, while the constitutional change was debated, the LGBTI+ people were made invisible. Deficiencies of participation in the decision-making processes and lack of implementing positive regulations at the constitutional and legal levels about the LGBTI+ rights, caused our publication on constitutional demands, prepared by us in 2012, to keep its up-datedness to a large extent today. Our country did not make any progress in the road to human rights and democratisation during the past nearly ten years. For this reason, in this publication, the demands of the LGBTI+ community have been listed again and updated for a possible constitutional change that may be planned in the coming period in Turkey, which is essential also for us.

SPoD made studies for the political participation of the LGBTI+ community from the first day of its establishment, and one of the most concrete indicators of this is our publication, "Demands of the LGBT Citizens for the New Constitution", prepared by us in 2012. Even when the preparation processes of that publication and the present one is compared, the place of the LGBTI+ people in the political conjuncture of Turkey and urgency of their constitutional demands will become clear.

# INCREASING RIGHTS VIOLATIONS AND DISCRIMINATION BASED ON GENDER IDENTITY AND SEXUAL ORIENTATION

The principle of equality and the prohibition of discrimination as they are presented in international legislation are the fundamental principles that aim ensuring equal treatment to all and no discrimination is made among the persons. These principles are the building blocks of the state for the existence of democratic societies as well as they are the fundamental concepts which the human rights law is built on. And they have multi-dimensional appearances such as equality before law, equality of opportunities and special measures. The objective of these regulations which are enforced through the laws in the domestic law of all countries is to protect the rights of the persons who are treated differently and negatively with their peers, and to prevent the assaults against human dignity or esteem. Such regulations have the basic approach that all people are equal with no reason of discrimination.

However, although the principle of equality and prohibition of discrimination have been stated also in the Constitution of the Republic of Turkey, like in the other nations orientations, forms of expression and identities other than cisgender<sup>1</sup> and heterosexuality which are accepted as the norm and normality are exposed to discrimination.

This kind of discrimination is defined in the international legislation and laws as discrimination based on sexual orientation. However, such a definition does not clearly take place in the Constitution of the Republic of Turkey, and there are no legal protections against discrimination based on gender identity and sexual orientation.

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<sup>1</sup> For Cisgender, the translation in Turkish language is natrans. Cisgender refers to persons whose gender identities overlap with their assigned genders at birth. The term natrans was the contribution of activist Aligül Arıkan, whom we lost in 2013, in the Turkish. This concept is quoted from the brochure prepared by Kaos GL Association, "Sıkça Sorulan Sorular". For detailed information please access the brochure at <https://bit.ly/3v5qCCF>.

This legal vacuum which has been an obstacle in front of the participation of the LGBTI+ people in social life as equal and free subjects, while creating inequality in using many rights, from benefiting from the basic services to the human rights in various fields, from the employment relations to social life, also appears in various ways such as the impunity against psychological or physical violence against the LGBTI+ people.

Practices of discrimination are the primary problems which Turkey is confronted with both in the national and international legislation. One of the most basic reasons for this is the lack of a serious policy and strategy for preventing discrimination and implementing the principle of equality.

“In Turkey, there are no official reports and figures that measure and reflect the violations of rights against the LGBTI+s. However, in the Rainbow Europe Index, prepared by The International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA-Europe) which is an LGBTI+ umbrella organisation and reflects the legal and political status of the LGBTI+ people in the countries and measures their rights, Turkey is located second to last among 49 European countries.”

2015 became a significant turning point both for the LGBTI+ rights and rights defenders in Turkey. The Pride parades, which were for long years organised with peaceful open calls in the public sphere and where ten thousands of people took part in 2013 and 2014 with an increasing number, together with the activities organised by the LGBTI+ organizations and activists were prohibited in 2015 by administrative decisions. The same year, there was a police attack against the Istanbul LGBTI+ Pride Parade. Unlawful and disproportionate police interventions continued also in the following years against the prohibited marches; during the marches made in the months of June and July every year, many people were injured because of police interventions and were detained. Although cancellation cases launched against the prohibition decisions of the governorships and sub-governorships based on pretexts such as “public morality, public health and public order”, “social sensitivities” and “provocation of the public for hatred and hate” about Istanbul, Ankara, Izmir, Antalya, Mersin and Gaziantep Pride Parades and activities were won, prohibitions of the governorships were tried to be enforced every year upon the same pretexts despite the court decisions. Activities of the LGBTI+ community and their organisations were also prevented in Ankara with two separate decisions of indefinite

bans enforced by Ankara Governorship. Although the legal struggle conducted against the indefinite ban for the LGBTI+ activities (1<sup>st</sup> Ankara Prohibitions) declared by Ankara Governorship in December 2017, during the State of Emergency, was won in April 2019, despite the court decision and the fact that State of Emergency ended, another decision of prohibition about the LGBTI+ activities was declared in Ankara. The due process about the decision of prohibition (2<sup>nd</sup> Ankara Prohibitions), which the Ankara Governorship Legal Affairs Branch Directorate informed the Provincial Security Directorate on October 3, 2018, with the same pretexts, has continued until March 2020. Together with the decision declared on March 23, the second prohibition was also annulled.

In addition to the decisions of prohibitions which put great obstacles in front of the freedom of expression and organisation of the LGBTI+ people, the discriminating and marginalizing discourses against the LGBTI+ community, stemming successively from the top levels of the state, systematized targeting of the LGBTI+ people by the top-level bureaucrats and public officials. The statement of the Head of Religious Affairs in April 2020 that homosexuality causes diseases, and it is damned by religion in a Friday Khutbah (hutbe), the various discriminating statements of the Minister of Internal Affairs, Süleyman Soylu, that the LGBTI+ people are perverted, they spoil the morals of the children and they are promoted by the US-Europe-West to Turkey, the totally ignoring statements of President Erdoğan that LGBTI+ people are against the belief and culture of the society and perverted, the statement of Fahrettin Altun, the Head of Presidential Communication Directorate, that no one can stay silent against homosexuality propaganda, the statement of Justice and Development Party Vice Chairperson and Izmir Deputy Hamza Dağ where he defined LGBTI+ existence as moral disorder and a threat, may be shown as examples for the targeting and discourses of hate which are intensified by the hand of the state particularly in the last two years. Following such systematic discourses of hate against the LGBTI+ people, for instance, a decision was taken by the Ministry of Customs and Trade that the products on which there are signs of “LGBTI, rainbow etc.” can be sold in the Internet environment only with an 18+ age label. The bans were not limited with these examples, as many books and publications were declared as “harmful” by the Board of Protection of Minors from Harmful Publications affiliated with the Ministry of Family and Social Services, since they contained stories and contents for the LGBTI+ people.<sup>2</sup>

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<sup>2</sup> It should be noted that, according to the relevant law, the books that are considered as “harmful” “... may be only sold to persons older than 18, in an untransparent envelope or bag.” On such envelopes, there can be no writings and pictures other than the name of the work and the sign, “Harmful for Minors”.

During the democratic and rightful resistance that started after the appointment of a trustee rector to Boğaziçi University with a Presidential Decree released in the Official Gazette dated January 1, 2021, BÜLGBTİA+ (Boğaziçi LGBTİ+ Studies Club) was shut down in an unjust and unlawful manner on February 2, 2021. During the unlawful police search in the clubroom, rainbow flags were recorded in the police records as criminal evidence, it was declared to the public that rainbow flags were “seized”. The students were exposed to unjust and unlawful detentions and arrests, and their freedoms of expression and organisation were violated.

There is not any law or legislation in Turkey which prohibits the participation of the LGBTİ+ people in the labour relations, however, in the article 5 of the Labour Code regulating the ban of discrimination, any expressions which identify the gender diversities such as gender identity, sexual orientation and gender characteristic do not exist either. In this regard, the lack of a law prohibiting discrimination and supporting equality leaves the LGBTİ+ people in a legally insecure position in access to the right to work. Such insecurity at the same time causes the LGBTİ+ people to be exposed to various ways of discrimination, such as firing, non-employment, isolation, non-promotion, mobbing, abuse, humiliation and stigmatising while they are participating in employment. While discrimination and stigmatising cause the LGBTİ+ people to work without social security in non-permanent jobs and informally, it creates serious obstacles in front of the empowering of the LGBTİ+ people, their access to the labour force market, promotion in business life and access to jobs with human dignity.

“The “Survey on the Access of LGBTİ+ People to Social Services during the Pandemic”<sup>3</sup> which we held with 856 participants shows that 64% of the LGBTİ+ people did not work in any income creating jobs during this process. At least 10% of the LGBTİ+ people participating in the survey stated that they had problems with housing, at least 29% were exposed to violence and at least 33% that they needed social aids and 46% psychological support.”

The LGBTİ+ people deprived of social and legal securities become more fragile also by being deprived of life securities. COVID-19 global pandemic has revealed this problem to a larger extent, and the LGBTİ+ people also lost their daily jobs where they were working because of the discrimination in labour relations since the start of the pandemic.

**3** <https://spod.org.tr/wp-content/uploads/2021/05/Pandemi-Su%CC%88recinde-LGBTİ%CC%87İarin-Sosyal-Hizmetlere-Eris%CC%A7imi-Aras%CC%A7irma-Raporu.pdf> (Online Access Date: 12/11/2021)



Also, the applications coming to the SPoD LGBTI+ Hotline during 2020 under the impact of COVID-19 pandemic have increased almost two fold compared to the previous year.<sup>4</sup> Among the most common reasons of application to the hotline, with a total of 2085 applicants, demand for emotional support, demand for psychological and legal support, processes of coming out, receiving information about gender identity and sexual orientation and demand for support following discrimination and violence can be listed.



Although there is no legal regulation that directly prevents the right to education of the LGBTI+ people, the entire education system cultivates discrimination based on gender identity and sexual orientation. The fact that LGBTI+ existence is never referred to in the curriculum causes different appearances of discrimination against the LGBTI+ people within the society to spread in the schools. Direct or indirect exposure to discrimination such as peer bullying and stigmatisation prevents the LGBTI+ to use their rights to education. On the other hand, in almost all the legislation about the life of education, there are vague phrases such as morals, manners and chastity, and such phrases are especially mentioned in the texts of the disciplinary regulations. Uncertainty of the definitions and limits of such concepts causes the LGBTI+ to be stigmatised as immoral persons during the procedures or judgement processes in education institutions and to be distanced/dismissed from the schools/dormitories. Disciplinary punishments given due to gender identity and sexual orientation are also examples of the violation of the right to education.

The trans individuals who are in the gender adaptation process have troubles in access to hormone therapies due to the Statement of Health Practice and relevant legislation provisions. Besides, the trans individuals, according to article 40 of the Turkish Civilian Code, are subjected to the “condition of operation” for changing the gender digit in their identity cards. As it may be seen from the repeated verdicts given by ECHR, imposing the condition of operation for the legal recognition of trans individuals is a violation of the right to respect for private life. All these examples which implicitly allow and encourage violence and discrimination against the LGBTI+ people just because of their existences, provide a kind of reward by impunity and expose them to arbitrary practices with de facto criminalisation, are at the same time appear in front of us as violations of the constitutional rights.

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<sup>4</sup> <https://spod.org.tr/lgbti-danisma-hatti-2020-verileri-raporumuz-cikti/> (Online Access Date: 12/11/2021)

# CONSTITUTIONAL DEMANDS OF LGBTI+ PEOPLE IN THE STRUGGLE FOR EQUAL CITIZENSHIP

For the LGBTI+ community, their demand of being clearly stated and recognised in the constitution as a founding text which defines the fundamental functioning of the state through reforms and regulations, the nature of the relationship between the state and the society and the way of protecting the individuals before the laws, above all, is based on the requirement that their existences must be recognised.

It should be noted that, in the Republic of Turkey, LGBTI+ existence has never been declared as a crime. However, today the gender identity, sexual orientation, and gender expression forms, gender characteristics and categories etc., all such features with gender diversity, are not recognised by the laws either. The result of this appears in front of us as the legal invisibility of the LGBTI+ people and non-inclusion of the LGBTI+ community in the state's positive obligations. Since the state assumes obligations, may perform regulations for fulfilling their special needs and demands connected with their identities and can more efficiently struggle against discrimination to the extent that it recognises and defines the identities of its citizens.

Recognition of the identities of the individuals by the state also shortens the road reaching equality before law. Since the state actually shows whom it defines as acceptable citizens through the identities and existences it legally recognised. In a plane, where the demands of the LGBTI+ people for legal recognition are not fulfilled and discrimination against gender identity and sexual orientation are not clearly prohibited, it is not possible to provide equality in front of law for the LGBTI+ people in a genuine manner.

Starting from here, adding the demands for recognition of gender identity and sexual orientation in the constitution and making the necessary legal regulations have vital importance for the LGBTI+ community. Such reforms in the constitution shall also support the struggle against systematized maltreatment, such as discrimination and hate crimes, by providing a legal basis for the LGBTI+ people.



# A NEW, DEMOCRATIC CONSTITUTION-MAKING PROCESS AND POLITICAL PARTICIPATION OF LGBTI+ PEOPLE

New constitutions have been prepared in the constitutionalism journey of Turkey that has continued for more than a hundred year over various political and economic determinants and corresponding to changing national and international dynamics, however, all of them were performed during extraordinary periods and under the guidance of actors from without the civil politics. Consequently, although relatively more pro-freedom and equalitarian texts such as the 1961 Constitution were written, these finally did not lead to permanent social achievements. The 1982 Constitution came under the rule of the military approach which found the 1961 Constitution too pro-freedom and thus, not pro-security enough, and a pro-oppression approach got into the soul and text of this fundamental law of the society; for instance, in the amendment made in the second article, human rights ceased to be a basis for the constitution, and they were only in a respected position. This text, which has been changed 19 times in total since its declaration, has become more advanced regarding the human rights and freedoms with the amendments made particularly in 1995 and 2002 parallel to the process of candidacy of Turkey for EU membership. The 2020 amendment created a dual result; while on the one hand, the high judicial bodies were being reshaped with political motives, and on the other hand, various advances were also achieved regarding the regime of basic rights and freedoms. Various developments within the referendum environment questioned the significance attributed to this later part, which may be assumed to be positive, and created speculations about the real aim of the amendment. For instance, the political will of the LGBTI+ people during this process raising the demand for equal citizenship publicly was ignored and a phrase about gender identity and sexual orientation was not added to the amendment about the clause on equality. And the 2017 amendment, also under the influence of the security climate it was following, has proved to become a complete deviation from the story of search for a pro-freedom constitution of Turkey, and by abolishing fundamental balance and check mechanisms, provided a constitutional ground for policies with authoritarian tendencies.

At the point we have arrived now, the majority of the society needs a new constitution and a democratic, pro-freedom and egalitarian social order, foundations of which would be built by such a constitution. However, in the current political climate where the debates about the state of law are left behind since there is an increasing moving away even from a state of

legislation, the steps taken by the power bloc about the new constitution do not create any echoes in the society and any calls at the basic level about the social contract does not create serious excitement. The reason for this may be seen as the report of the political power in the fields of law and economy and it may also be told that the current political climate in the country is not feasible for a democratic constitution-making process. A democratic constitution, above all, requires a democratic discussion environment. For a new and democratic constitution to be put forth as a realistic target, the process of preparing such a constitution should also advance according to certain principles. Such a process including various aspects, from starting the debate to reaching consensus, from enlightening the public opinion to the inclusion of the stakeholders should be free, participatory, democratic, transparent, and in a manner giving priority and advancing the rights and freedoms and paying regard to the disadvantageous social groups and acknowledging their rights. A constitution whose preparation, discussion and reconciliation processes are not democratic cannot be democratic.

The LGBTI+ people, self-empowering despite being exposed to increasing violations of rights and whose grounds for social legitimacy are broadening, are in the position of being a critical indicator for all these criteria. It is not possible for a constitution in which LGBTI+ people are not given equal right to speak during its preparation; LGBTI+ people are not included in its process of making and are not sufficiently regarded, to be a text that would really fulfil the needs of the society in Turkey.

The LGBTI+ movement has been one of the most leading social movements constituting the backbone of the social opposition for more than thirty years. And a participatory, transparent, and democratic constitution-making process is an inevitable and urgent need for Turkey. When appropriate conditions are reached and a new constitution making process is started, inclusion of the academy, civil society, media, and active citizens in the process would be directly related to how transparent and democratic the process would advance. As it may be seen in the international examples, participation of lesbian, gay, bisexual, trans and intersex citizens is one of the most important indicators of a strong and consolidated democratisation.

Today such practices restricting the areas where various social sections, particularly the LGBTI+ people can express their ideas freely, as guaranteed by the Constitution, where they can come together for certain purposes and organise, are also staying obstacles in front of the participatory nature of a new constitution-making process. All obstacles in front of the free expression of ideas by all about the constitution should be abolished and facilitating participation mechanisms for groups which have troubles in carrying their voices in the public sphere should be implemented.

The new Constitution should be the constitution of all citizens. A constitution, including everybody living within the borders of the Republic of Turkey, would serve the highest interests of Turkey.

# OUR URGENT AND PRIMARY CONSTITUTIONAL DEMANDS

1

Gender identity and sexual orientation should be constitutionally recognised, by particularly adding these phrases to article 10; and the definition of equality in the constitution should be broadened under this framework. Equality should be considered as including the LGBTI+ identities, beyond the equality of woman-man.

2

Vague phrases such as “public morality”, “public order” and “public health” which are shown as the exceptions of the fundamental rights and freedoms and create obstacles for using the right should be eliminated from the clauses of the constitution.

**a)** Regulation about judge decisions that may be based on such pretexts and shown as an exception to the confidentiality of private life and residence immunity regulated in articles 20 and 21 of the constitution causes the restriction of the fundamental rights and freedoms of the LGBTI+ people in the same context.

**b)** Regulation about judge decisions that may be based on such pretexts and shown as an exception to the freedom of communication and freedom of press regulated in articles 22 and 28 of the constitution causes prevention of access to LGBTI+ themed communication channels, publications and broadcasting media and taking non-procedural decisions of closures.

**c)** Regulation about judge decisions that may be based on such pretexts and shown as an exception to the freedom to establish associations regulated by article 33 of the constitution can be used as a ground for the closure cases launched against the LGBTI+ associations. The same is also relevant for the right to establish trade unions regulated in article 51.

**d)** Regulation about judge decisions that may be based on such pretexts and shown as an exception to the right to assembly and demonstration regulated in article 34 of the constitution creates the basic rights violations

most widely seen leading to the result of restriction of the political rights of the LGBTI+ people. Total elimination of the relevant phrases from the constitution would contribute to the protection of freedom of expressing and spreading ideas/freedom to express regulated in article 26 of the constitution regarding the LGBTI+ people.

3

The right to live, ban on torture and personal immunity should be taken under guarantee for the LGBTI+ people. The phrase that no interventions can be made without the consent of a person in the body integrity upon the pretext of medical requirement in cases about gender identity, sexual orientation and gender characteristic should be added to the second sub-clause of clause 17 of the constitution, titled “personal immunity, material and moral existence”.

4

The right to not being exposed to discrimination should be taken under guarantee for the LGBTI+ people. Prohibition of discrimination should be defined in the constitution by also including gender identity and sexual orientation in a manner to provide the basis of defining the hate crimes.

5

The point of reference that would constitute the essence and spirit of the constitution should not be the state, family, or society, but the fundamental rights and freedoms of the individual.

**a)** The definition of the nature of fundamental rights and freedoms regulated in article 12 of the constitution should change; the phrase in the second sub-clause that the fundamental rights and freedoms also include the duties and responsibilities of the person towards the society, family and other persons should be eliminated.

**b)** The phrase in article 41 of the constitution that family is the basis of Turkish society should be eliminated.

6

In the constitution it should be emphasised that the fundamental rights and freedoms cannot be restricted in a manner that would touch the essence of the right or would target a section even in cases of emergencies.

7

The social and economic rights regulated in the third section of the Constitution should be defined as individual-based

and the social obligations of the state should be clearly written by considering the needs of the persons and groups.

8

The political rights regulated in the fourth section of the Constitution should be revised to fulfil the current needs of the LGBTI+ community by considering the discriminations against the rights to such as engaging in political activity and entering public services, and additional protections should be brought stating that no discrimination can be made based on gender identity and sexual orientation.

9

An additional clause should be added to the Constitution to guarantee the immunity of private life, freedom of organisation and freedom of opinion and expression, also including the right to housing and freedom of communication of the LGBTI+ people or special protections should be included in the clauses where such rights are regulated with an additional sub-clause.

10

The positive obligations and mechanisms of the state for access and use of fundamental rights and freedoms should be defined in the Constitution, and

a constitutional Independent Human Rights National Board should be established complying with the universal standards.

11

For the fundamental bodies of the state to be constituted in a pluralistic and democratic manner, the third section of the constitution regulating the legislative, executive and judiciary bodies of the state should be amended and in particular regarding the executive, the Presidential system should be abolished, and an improved parliamentary system should be introduced. Justice in representation in the elections should be the principle regarding the legislative; the principle of “stability” as the basis for election thresholds should be abolished and legislative immunity should be taken under guarantee. And regarding the judiciary, guarantees that would ensure independence of the judges should be set forth at the constitutional level.

# WHAT CAN POLITICAL PARTIES DO IN THE STRUGGLE OF LGBTI+ PEOPLE FOR EQUAL CITIZENSHIP

As it is mentioned in various sections of this publication, according to international legislation and law documents which have an important position in the hierarchy of norms, the states are put under obligation to protect and guarantee the rights and freedoms of the LGBTI+s. In this respect, the Grand National Assembly of Turkey and the political parties under the roof of the national assembly have great responsibilities for ensuring the state to fulfil its obligations. When the legislative and auditing function of the Grand National Assembly of Turkey is considered, the political parties would have influences on the presentation of the public policies based on a perspective of equality and prohibition of discrimination without any doubts.

Therefore, the equal citizenship and human rights struggle of the LGBTI+ people are now too urgent and vital to be issues to be ignored by the political parties which have access to the legislative body and are in the position of legislators. The political parties should develop institutional mechanisms that would ensure equality by remembering their roles and responsibilities and should accept the approach of struggling against discrimination based on gender identity and sexual orientation.

The political parties may avoid dealing with the LGBTI+ rights due to reactions that may arise from the centre, organisation, grassroots, or election constituencies of the party. However, in various examples that can be observed both in Turkey and in various other parts of the world, it is seen that the human rights should be dealt with and defended leaving no one behind or otherwise the achievements do not provide social improvements and transformations. The position assumed about the LGBTI+ rights is like litmus regarding the level of sincerity in defending the human rights. It should not be forgotten that the LGBTI+ people, with or without open identities, and their kinspeople, too make up an important part of the society. LGBTI+ people and their kinspeople are organised in the political parties, become visible, and of course, go to the ballot boxes. While the LGBTI+ people are increasingly becoming self-conscious about their rights and the citizens who defend that a pro-human rights and pro-democracy approach should also include the diversity of gender identities and sexual orientations go to the ballot boxes, they may determine their voting preferences by considering the attitudes of the political parties regarding the LGBTI+ rights. Regarding the methods of standing for human rights and democracy and against discrimination and hate in principle, the following are our proposals for you and for your political party:

**1** Adopt the principles for ensuring gender equality in your party bylaw; and clearly state that struggling against inequalities based on gender identity and sexual orientation as one of the fundamentals of such principles,

**2** Give place to promises that may address the constitutional and social equality demands of the LGBTI+ citizens in your election declarations,

**3** Bring the issue into the agenda of the Grand National Assembly of Turkey; and use all democratic tools regarding the solution to the problems of the LGBTI+ citizens, including parliamentary questions, legislative proposals and establishing research commissions,

Give support for the elected persons of the party (deputies, mayors, city council members) to use their authorities and channels also for ensuring equality for the LGBTI+ people and to be the voice of the LGBTI+ citizens in the parliament and city councils,

**5** Make research, prepare reports and develop solution proposals

regarding the solution of the problems of the LGBTI+ community in the field of education, health, housing and employment and with the public opinion share your plans in case you have decision-making authority.

**6** Establish pluralistic and participatory mechanisms in the party structures that determine, monitor and assess the practices that prevent the LGBTI+ people using their rights and freedoms,

**7** In your contacts with the other political parties, bring the problems and demands of the LGBTI+ people and your solution proposals on the agenda,

**8** Do not forget that your party members are persons from various gender identities and sexual orientations; establish spaces in your party for the LGBTI+ members to express themselves, and to engage in politics without being exposed to discrimination, introduce internal party mechanisms for struggling against discrimination and encourage the LGBTI+ people to become a member of your party and engage in politics together with you,



9

Take the necessary steps inside and outside of your party, including the regulations to be made in the Law on Political Parties, for the LGBTI+ people to participate in all levels of politics without being exposed to discrimination,

10

Ensure that in your party, issues such as discrimination, human rights, gender equality, gender identity and sexual orientation equality are on the agenda; and include trainings on such issues in your internal party trainings and ensure your party membership to access correct information,

11

Open spaces in your party structures and party grassroots levels for debates on equal citizenship, access to rights, living together and inclusive constitutionalism,

12

Come together with the representatives of the LGBTI+ and human rights defenders and civil society organisations which work in the field and develop common strategies about equalitarian practices, including the LGBTI+ people,

13

Examine the reports prepared by the civil society organisations and bring them on the agenda in the relevant bodies of your party,

14

Stand for a unifying, not a polarizing and discriminating discourse; object when you confront with a hate discourse and produce a rights-based discourse against it,

15

Make studies bringing various sections of the society together, and include the LGBTI+ people in such studies; and create spaces where everyone can tell their words, contact with each other and discuss together on common issues in the public sphere.





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