

# **Resistance to LGBTI+ Equality**

**Anti-Gender Measures  
in Hungary & Turkey**

**DENİZ YILDIZ**

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## INDEX

<b>4</b>	Foreword
<b>5</b>	I. Introduction and Background
<b>6</b>	II. Scapegoating of LGBTI+ Community: Recent Political Developments
<b>6</b>	Debates Surrounding the Istanbul Convention
<b>7</b>	Discriminatory Speech in the Official Public Discourse
<b>8</b>	III. Silencing LGBTI+ People and Organizations: Recent Legal Developments
<b>8</b>	Legal Measures
<b>10</b>	Investigations and Prosecutions
<b>11</b>	IV. From Local to Transnational: Political and Legal Strategies
<b>11</b>	Litigation
<b>12</b>	Advocacy and Activism
<b>12</b>	V. Conclusion and Recommendations

## FOREWORD

Hafiza Merkezi Berlin (HMB) was founded within a global context of rising authoritarian governments, increasing nationalism, racism, anti-gender politics/discourse and right-wing extremist movements. This increasingly alarming trend of the erosion of the rule of law and a setback in human rights of all kinds at a global scale is accompanied by the criminalization of different political and social movements and the targeting of human rights defenders and activists.

HMB was established with the aim to fight this global trend in alliance with other international actors, with the goal of fostering change at a global level. We wanted to engage more directly with the international human rights system, grapple with the common human rights issues in different countries and build bridges between different countries, groups and activists through internationalization, knowledge production and civil engagement. To this end, we started our first activities in the summer of 2020. Within our first year, we focused on capacity building activities for international advocacy and workshops, where civil society actors from Turkey, Poland and Hungary came together.

From this perspective, we met with the civil society actors from Turkey and Hungary in March 2021 on issues surrounding the recent attack on the LGBTI+ community, the implication that these attacks have on the work of the LGBTI+ civil society actors and organizations, potential threats to the safety of the individuals advocating for LGBTI+ rights and ways in which LGBTI+ civil society actors are strategizing and building networks with international allies. Our aim was to encourage a comparative lens for deeper understanding for both national contexts as well as global trends. The relevance of discussing these developments with a specific focus on Hungary and Turkey derives from the fact that similar rhetoric and tools are being used in both contexts. Also, this discussion gave us the opportunity to analyse not only the similarities but also the differences between these two contexts, helping us to develop our understanding of both countries. We appreciate the contribution of all participants to our workshop and would like to thank Deniz Yıldız for her facilitation during the workshop and for drafting this report. We hope this report will provide some insights as to how we can develop comparative perspectives between these two countries and what steps to take next for common action.

## I. INTRODUCTION AND BACKGROUND

The number of European countries improving the human rights standards on gender identity and sexual orientation continue to increase. Significant advances in LGBTI+ rights were achieved in Europe over the last two decades – including gender recognition, recognition of partnerships, reproductive rights, adoption rights, discrimination protections and many more. Both the Council of Europe (CoE) and the European Union (EU) continuously seek to ensure the human rights of LGBTI+ people via their protection and monitoring mechanisms.<sup>1</sup>

Unfortunately, these big gains do not tell the complete story of Europe. Besides the great legal achievements, there is also a sharp rise in discriminatory speech and an alarming regression in hard-earned rights, especially in many Central and Eastern European countries.<sup>2</sup> Rising populist voices in these countries use similar patterns of anti-LGBTI+ rhetoric, using tropes such as “propaganda of homosexuality”, “western ideology” or “gender ideology”. Regardless of the majority religion of the country, these similar narratives attempt to designate the LGBTI+ community as scapegoats, aiming to solidify the power of the conservative politics.

Among these countries, Hungary and Turkey share specific similarities as to their current political developments and legal trends. Both countries announced their withdrawal from the Eurovision Song Contest (ESC) amidst intensifying attitudes against what they see as “homosexual propaganda”.<sup>3</sup> Both left the CoE Convention on Preventing and Combatting Violence against Women and Domestic Violence (Istanbul Convention) due to its “gender ideology”.<sup>4</sup> State representatives in both countries have made resembling anti-LGBTI+ statements over the last few years, and political polarization on LGBTI+ issues has sharply increased in both countries within less than a decade.

This study is based on a workshop organized by Hafiza Merkezi Berlin (HMB) on 23 March 2021, which facilitated an exchange between members of LGBTI+ rights organizations from Hungary and Turkey. The aim of the workshop and the resulting outcome is twofold. First is to identify similar patterns of increasing challenges to LGBTI+ rights in two different national contexts with a comparative perspective. Second is to discuss possible ways of transnational solidarity between LGBTI+ communities in Hungary and Turkey.

The report begins with an overview of the discussions on the Istanbul Convention and use of discriminatory speech in public discourse. Next, it focuses on the latest laws, legal decisions, investigations, and prosecutions that particularly affect LGBTI+ people in Hungary and Turkey. The following chapter examines varying political and legal strategies of LGBTI+ communities within the two countries. The report ends with conclusions and recommendations aiming to address how to better protect LGBTI+ equality in challenging political environments.

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1 For the CoE standards and mechanisms on LGBTI+ rights, see the webpage of the CoE SOGI Unit: <https://www.coe.int/en/web/sogi>; for the EU, see the webpage of the European Parliament’s LGBTI Intergroup: <https://lgbti-ep.eu>.

2 ILGA Europe, Annual Review 2020, available at [https://www.ilga-europe.org/sites/default/files/2020/full\\_annual\\_review.pdf](https://www.ilga-europe.org/sites/default/files/2020/full_annual_review.pdf).

3 Turkish public television cancelled the broadcast of the Eurovision finals following a lesbian kiss during the Finnish performance in 2013. Next year, the head of the Turkish public broadcaster declared that they cannot broadcast “someone like the bearded Austrian who wore a skirt, do not believe in genders and says that he is both a man and a woman” live at 21:00, when children are still awake. (See: <https://www.hurriyetdailynews.com/turkey-to-return-eurovision-if-no-more-bearded-divas-135427>). LGBTI+ visibility in the contest has also been cited as a determinant for Hungary’s withdrawal in 2020, although no official reason was given by a public representative. (See <https://www.theguardian.com/tv-and-radio/2019/nov/27/hungary-pulls-out-of-eurovision-amid-rise-in-anti-lgbt-rhetoric>).

4 See “Debates Surrounding the Istanbul Convention” in Chapter II.

## II. SCAPEGOATING OF LGBTI+ COMMUNITY

### Debates Surrounding the Istanbul Convention

The CoE Istanbul Convention is the first major human rights treaty establishing binding obligations to end gender-based violence. It was negotiated by the 47 member states of the CoE, and the final 25-page text was adopted on 7 April 2011 by the Committee of Ministers (CM).<sup>5</sup> On 11 May 2011, the Convention was opened to signature in Istanbul on the occasion of the 121<sup>st</sup> Session of the CM, hence carrying the city's name. Through the first years of its adoption, the Convention has been referred to as the “gold standard” to progress towards gender equality and widely acclaimed by human rights experts, civil society groups, lawyers, as well as politicians. Few years later, it suddenly became a symbol of anti-LGBTI+ rhetoric in some parts of Central and Eastern Europe, including Hungary and Turkey.

Hungary has never ratified the Istanbul Convention. It signed the Convention on 14 March 2014 after effective lobbying by the women's rights organizations and incorporated some of the Convention's recommendations into domestic law. However, despite the hard pressure of local civil society organizations<sup>6</sup> and several calls from the EU<sup>7</sup>, the Convention could not get the Hungarian Parliament's approval for years.

On 5 May 2020, the National Assembly of Hungary adopted a declaration officially blocking ratification of the Istanbul Convention, by majority vote.<sup>8</sup> The declaration stated that the Convention takes an “unacceptable approach to defining gender” which is ideologically inconsistent with Hungarian law, and it could also “speed up or simplify the immigration to Europe” by forcing Hungary to accept asylum-seekers who are victims of persecution on the grounds of gender and orientation.<sup>9</sup> The arguments of the government further underlined that “the Convention has not been ratified by several other EU member countries, such as Poland, Lithuania, Latvia as well as Great Britain”.<sup>10</sup>

Turkey, on the other hand, was one of the first state parties that signed the Istanbul Convention on the same day it was opened for signature. On 24 November 2011, the Convention was ratified by the Turkish Grand National Assembly, by unanimous vote.<sup>11</sup> Same year, Law No. 6284 was adopted in the Turkish Parliament in line with the Istanbul Convention, again, unanimously. In the following years, policy and lawmakers have actively worked towards incorporating the Convention into domestic law.<sup>12</sup> However, this progress was reversed drastically within the past couple of years.

First, several ultra-conservative groups and columnists started spreading false narratives about the Istanbul Convention, claiming that the Convention is victimizing the male spouses, it is a “trap” which is set to destroy the traditional family structure and it promotes homosexuality.

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5 Full text of the Istanbul Convention is available at: <https://rm.coe.int/168008482e>.

6 <https://www.womenlobby.org/Big-success-at-the-event-organised-by-the-HWL-in-Budapest?lang=en>.

7 Hungarian MEPs refused to join the EP resolution: <https://www.europarl.europa.eu/news/en/press-room/20191121IPR67113/istanbul-convention-all-member-states-must-ratify-it-without-delay-say-meps>.

8 <https://hungarytoday.hu/hungary-istanbul-convention-parliament-declaration/>.

9 <https://www.theguardian.com/world/2020/may/05/hungarys-parliament-blocks-domestic-violence-treaty>.

10 <https://hungarytoday.hu/press-istanbul-convention-hungary/>.

11 247 MPs joined the session on 24 November 2011. Only one abstention vote was cast. Parliamentary minutes is available (in Turkish) at: <https://www5.tbmm.gov.tr/tutanak/donem24/yil2/ozet/023.htm>.

12 A parliamentary commission was set up to monitor the effective implementation of the Istanbul Convention in 2018: [https://www.tbmm.gov.tr/develop/owa/komisyon\\_tutanaklari\\_mv\\_goruntule?pTutanakId=27348](https://www.tbmm.gov.tr/develop/owa/komisyon_tutanaklari_mv_goruntule?pTutanakId=27348). However, it never published a report.

Following a couple of digital campaigns, the Convention easily became the target of conservative politics. In April 2019, TIHEK (the National Human Rights Institution of Turkey) organized a symposium titled “Right to Protection of the Family” where the final declaration underlined that “the international norms that have negative effects on family should be revised”.<sup>13</sup> In June 2020, a government MP declared that “it was a mistake” to ratify the Istanbul Convention and announced that the government will consider withdrawal.<sup>14</sup>

On 20 March 2021, the Turkish Official Gazette published Turkey’s withdrawal from the Istanbul Convention by a presidential decision.<sup>15</sup> The next day, Turkey’s Presidential Communication Directorate released an announcement declaring, “Turkey is not the only country that has serious concerns about the Istanbul Convention”, citing Hungary and other hesitant countries.<sup>16</sup> Effective from 1 July 2021 on, Turkey is no longer a state party to the Istanbul Convention.

## Discriminatory Speech in the Official Public Discourse

Anti-gender rhetoric in the official public discourse is not limited to the debates surrounding human rights treaties. Both in Hungary and in Turkey, discriminatory speech by public officials against LGBTI+ people is on the rise, and also follows similar patterns.

In both countries, sexual and gender diversity is frequently equated with pornography and pedophilia in the official public discourse. Arguments in favor of protecting the family and children often follow this narrative. In May 2019, the speaker of the National Assembly of Hungary publicly declared, “there is no difference between the behavior of a pedophile and homosexuals who want to adopt. In both cases, the child is an object, an item of luxury, the tool used for self-realization and fulfillment”.<sup>17</sup> Similarly, on International Pride Day in 2020, the head of Turkish Red Crescent Society tweeted: “We will fight anyone who seeks to disrupt healthy creation and those who present the abnormal as normal [...] and those who impose their pedophilia dreams on young minds under the guise of modernity”.<sup>18</sup> ILGA Europe documents numerous other examples.<sup>19</sup>

Occasionally, ‘protection of the family’ rhetoric further includes arguments concerning public order or public health. In April 2020, the Head of Religious Affairs Directorate in Turkey blamed homosexuality and premarital sex for the spread of HIV, and urged people to “join the fight to protect people from such evil”.<sup>20</sup> In May 2020, the Prime Minister of Hungary commented that if “the community of homosexuals starts being more provocative, the current peaceful calm equilibrium will be no more”.<sup>21</sup>

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13 [TİHEK, Final Declaration of the Symposium on “Right to Protection of the Family” \(in Turkish\) available at: https://www.tih.gov.tr/ailenin-korunmasi-hakki-sonuc-bildirisi/.](https://www.tih.gov.tr/ailenin-korunmasi-hakki-sonuc-bildirisi/)

14 [https://tr.euronews.com/2020/07/02/numan-kurtulmus-istanbul-sozlesmesi-nin-imzalanmas-yanl-st-sozlesmeden-cikilir.](https://tr.euronews.com/2020/07/02/numan-kurtulmus-istanbul-sozlesmesi-nin-imzalanmas-yanl-st-sozlesmeden-cikilir)

15 [https://www.resmigazete.gov.tr/eskiler/2021/03/20210320-49.pdf.](https://www.resmigazete.gov.tr/eskiler/2021/03/20210320-49.pdf)

16 The Official Announcement of the Turkey’s Communication Directorate on withdrawal from the Istanbul Convention (in Turkish): [https://www.iletisim.gov.tr/turkce/haberler/detay/turkiyenin-istanbul-sozlesmesinden-cekilmesine-iliskin-aciklama.](https://www.iletisim.gov.tr/turkce/haberler/detay/turkiyenin-istanbul-sozlesmesinden-cekilmesine-iliskin-aciklama)

17 [https://kafkadesk.org/2019/05/19/hungarian-parliament-speakers-homophobic-comments-spark-outrage/.](https://kafkadesk.org/2019/05/19/hungarian-parliament-speakers-homophobic-comments-spark-outrage/)

18 [https://www.euronews.com/2020/06/30/kerem-kinik-turkey-defends-humanitarian-ngo-chief-over-controversial-lgbt-tweet.](https://www.euronews.com/2020/06/30/kerem-kinik-turkey-defends-humanitarian-ngo-chief-over-controversial-lgbt-tweet)

19 See ILGA Europe Annual Review 2020: [https://www.ilga-europe.org/sites/default/files/2020/full\\_annual\\_review.pdf](https://www.ilga-europe.org/sites/default/files/2020/full_annual_review.pdf) and ILGA Europe Annual Review 2021: <https://rainbow-europe.org/sites/default/files/annual-report/Annual-Review-Full-2021.pdf>.

20 [https://www.hurriyetdailynews.com/religious-authoritys-statement-on-lgbt-sparks-debate-in-turkey-154246.](https://www.hurriyetdailynews.com/religious-authoritys-statement-on-lgbt-sparks-debate-in-turkey-154246)

21 [https://www.theglobeandmail.com/politics/article-rising-populism-threatens-lgbtq-in-west-and-around-the-world/.](https://www.theglobeandmail.com/politics/article-rising-populism-threatens-lgbtq-in-west-and-around-the-world/)

Another narrative attracting increasing popularity in both countries is to designate sexual and gender diversity as a ‘corrupt influence’ imported from the West. LGBTI+ rights NGO’s receiving funding from abroad were often labelled as ‘foreign agents’ in both countries. In August 2020, PM Victor Orbán argued that western Europe had given up on Christian values, and instead it experiments with “godless cosmos, rainbow families, migration and open societies”.<sup>22</sup> In Turkey, LGBTI+ rights organizations and activists have also been regularly subjected to smear campaigns for receiving funds from European institutions or organizations.<sup>23</sup>

The discriminatory speech increasingly being delivered in the public discourse coincides with growing levels of bias-motivated crimes. In Hungary, far right groups attacked LGBTI+ events multiple times.<sup>24</sup> Human rights organizations have been reporting intensified levels of hate crimes against LGBTI+ people in Turkey.<sup>25</sup> This climate is also encouraged by the absence of official efforts to eliminate discrimination against LGBTI+ people in both countries.

### **III. SILENCING LGBTI+ PEOPLE AND ORGANIZATIONS: RECENT LEGAL DEVELOPMENTS**

#### **Legal Measures**

A long line of controversial legal measures directly impacting LGBTI+ people or organizations was recently introduced in Hungary and Turkey either by the parliament, government, or other administrative authorities. Although some were later repealed or overturned by court judgements, most of the measures resulted in significant restrictions on right to freedom of expression and right to freedom of assembly and association.

Both countries have introduced restrictions on LGBTI+ themed books and other products in pursuance of protecting the morals of children. In 2020, a number of children’s books including the popular “Good Night Stories for Rebel Girls” and “The Declaration of the Rights of Girls” were declared as ‘obscene publications’ in Turkey and ordered to be sold solely to those over 18 years of age.<sup>26</sup> In the same year, the Advertisement Board of the Ministry of Trade of Turkey imposed 18+ warning on LGBTI+ and rainbow-themed products.<sup>27</sup> Similarly in Hungary, publishers were ordered to print disclaimers on certain books, warning that their stories contain ‘behaviour inconsistent with traditional gender roles’.<sup>28</sup> In 2021, a presidential decree was issued in Hungary that forbids the sale of the books seen as ‘promoting homosexuality’ within 200 meters of schools or churches, and requires shops to sell these types of books in closed wrappings.<sup>29</sup>

Both countries have adopted “anti-NGO laws” aiming to tighten government control over civil society organizations.<sup>30</sup> In 2017, Hungarian Parliament passed a law requiring NGOs that receive more than €23,000 of donations from abroad to register themselves as “foreign supported”.<sup>31</sup>

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22 <https://www.nbcnews.com/feature/nbc-out/hungary-s-orban-calls-central-europe-unite-around-christian-roots-n1237460>.

23 [https://hrantdink.org/attachments/article/2832/07052020\\_Aydinlik.pdf](https://hrantdink.org/attachments/article/2832/07052020_Aydinlik.pdf).

24 <https://budapestpride.com/news/orban-friendly-neonazi-groups-make-budapest-dangerous>.

25 <https://kaosglidernegei.org/images/library/2020nefret-suclari-raporu-2019-kucuk.pdf>.

26 <https://susma24.com/arzulanan-sansur-cocuk-kitaplari-dosyasi-i-turkiyede-cocuk-kitaplarinin-sansurle-mucadelesi/>.

27 <https://www.pinknews.co.uk/2020/12/09/turkey-lgbt-rainbow-pride-children-18-ministry-trade-commerce/>.

28 <https://www.theguardian.com/books/2021/jan/20/hungary-orders-lgbt-publisher-to-print-disclaimers-on-childrens-book>.

29 <https://www.reuters.com/world/europe/hungary-orders-shops-cover-up-lgbt-themed-childrens-books-2021-08-06/>.

30 On 30 March, 2021 HMB organized a workshop entitled “Local Struggles – International Strategies: Hungary and Turkey Human Rights under Pressure – The means of the civil society”. The report can be found drafted on the discussions during the workshop by László Detre: <https://www.hm-berlin.org/publications/>

31 <https://www.hrw.org/news/2017/06/12/hungary-bill-seeks-stifle-independent-groups>.

Failure to comply with this requirement would result in court-ordered fines or dissolution. In 2020, Turkish Parliament adopted a law allowing Minister of Interior Affairs to suspend staff members or executives of NGOs prosecuted on terrorism-related charges, or to cease the activities of these organizations in case such measures are not sufficient.<sup>32</sup> Both legislations were reviewed and criticized by the Venice Commission.<sup>33</sup> Hungary later revoked the law in April 2021, after the European Court of Justice (ECJ) ruling stating that the restrictions on the financing of civil society organizations do not comply with EU law.<sup>34</sup>

Another set of measures concern restrictions of the freedom of expression and assembly at educational institutions. In October 2018, gender studies master programs were removed from Hungarian universities following a governmental decree. State representatives commented that the idea of gender as a social construct is ‘absurd’, and the subject was ‘diametrically opposed to the values of the government’.<sup>35</sup> Later in 2021, Hungarian parliament passed a controversial legislation prohibiting references to homosexuality and gender re-assignment in any educational materials in schools.<sup>36</sup> The European Commission has initiated a legal action in response to these regulations.<sup>37</sup>

In Turkey, legal measures concerning educational institutions were introduced in vague forms, and often in the form of ‘decisions’ and ‘orders’. In March 2020, during the first weeks of the Covid-19 quarantine, rainbow drawings were displayed in the windows by the schoolchildren as a symbol of hope for people in isolation. This trend only lasted for a couple of days, as certain local education directorates called on school principals to stop the project, stating that the rainbows were part of a “plot” to turn children gay.<sup>38</sup> In February 2021, the newly appointed rector of Boğaziçi University officially closed the student’s LGBTI+ club with an order,<sup>39</sup> amidst a wave of a smear campaign orchestrated by ultra-conservative groups. In April 2021, the Sexual Harassment Prevention Office (CITOK) was *de facto* shut down.<sup>40</sup>

Unlike Hungary, pride marches have been banned in Turkey since 2015 by the governorships. The authorities often cite the reason that “selected locations were not suitable for public assemblies” as well as security and sensitivity concerns.<sup>41</sup> Besides the pride marches, the Governorship of Ankara imposed an indefinite ban on ‘all public LGBTI+ related events’ in 2017 and 2018.<sup>42</sup> The ban applied to film screenings, forums, panel discussions, exhibitions, and meetings for a couple of months before being lifted by the Regional Administrative Court.<sup>43</sup>

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32 Law No. 7262 on “Preventing Financing of Proliferation of Weapons of Mass Destruction”, took effect on 31 December 2020. Available (in Turkish): <https://www.resmigazete.gov.tr/eskiler/2020/12/20201231M5-19.htm>.

33 Venice Commission, *Opinion on the Draft Law on the Transparency of Organizations Receiving Support from Abroad*, available at: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2017\)015-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2017)015-e) and Venice Commission, *Opinion on the Compatibility with International Human Rights Standards of Law No. 7262 on the Prevention of Financing of the Proliferation of Weapons of Mass Destruction*, available at: [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2021\)023cor-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2021)023cor-e).

34 CJEU Case C-78/18/Judgment European Commission v. Hungary, 18/06/2020, available at: <https://fra.europa.eu/en/caselaw-reference/cjeu-case-c-7818-judgment>.

35 <https://www.dw.com/en/hungarys-university-ban-on-gender-studies-heats-up-culture-war/a-45944422>.

36 <https://www.theguardian.com/world/2021/jun/15/hungary-passes-law-banning-lgbt-content-in-schools>.

37 European Commission, *EU founding values: “Commission starts legal action against Hungary and Poland for violations of fundamental rights of LGBTIQ people”*: available at: [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_21\\_3668](https://ec.europa.eu/commission/presscorner/detail/en/ip_21_3668).

38 <https://www.theguardian.com/world/2020/may/15/turkeys-lockdown-rainbows-have-become-another-symbol-of-division>.

39 <https://twitter.com/fahrettinaltun/status/1356376069557907456>.

40 Is Boğaziçi University Sexual Harassment Prevention Office (CİTÖK) de facto being shut down? / Interview with Cemre Baytok - Çatlak Zemin (catlakzemin.com).

41 Istanbul Governorship Official Press Release in 2019, available (in Turkish) at: <http://www.istanbul.gov.tr/basin-duyurusu-24-06-2017-40>.

42 <https://www.hrw.org/news/2019/02/14/turkey-end-ankara-ban-lgbti-events>.

43 <https://www.amnesty.eu/news/turkey-love-wins-as-outrageous-ban-on-all-lgbti-events-in-ankara-is-lifted/>.

Apart from the restrictions on freedom of expression and assembly, controversial measures restricting identity and family rights of LGBTI+ people were also introduced in Hungary. In May 2020, Hungarian parliament passed an omnibus bill that includes a section prohibiting transgender and inter-sex people to legally change their gender on their birth certificates.<sup>44</sup> Six months later, another legislation was approved, which *de facto* prohibits adoption by same-sex couples, followed by amendments to the Constitution stating that “mother is a female and father is a male” and that Hungary “protects self-identity of the children’s sex by birth”.<sup>45</sup>

## Investigations and Prosecutions

The legislative and administrative restrictions are not the only obstacles to the enjoyment of rights to freedom of expression and assembly for the LGBTI+ community in Turkey. LGBTI+ rights activists and protesters in Turkey regularly face arrests and prosecutions, often on the grounds of “violating the Law on Meetings and Demonstrations” (Law No. 2911) or “provoking the public to hostility and hatred or degrading the public” (Article 216 of the Turkish Penal Code-TPC).

Charges of violation of the Law No. 2911 have been frequently levied in events related to LGBTI+ rights in the recent years. In 2019, 19 students were arrested for taking part in a pride event at the Middle East Technical University (METU) campus. The students were later charged with “participating in an unlawful assembly” and “resisting despite warning” pursuant to Law No. 2911.<sup>46</sup> In 2021, 12 students of Boğaziçi University were arrested and indicted with the same charges for holding and carrying LGBTI+ rainbow flags during university protests.<sup>47</sup> Increasing numbers of similar investigations and prosecutions are being conducted pursuant to the same provisions of the Law No. 2911. This pattern has also been noted by the CoE Commissioner for Human Rights.<sup>48</sup>

Article 216 of the TPC is also often invoked in LGBTI+ related events, usually following a massive chorus of inaccurate and provocative information disseminated by the mass media. In 2020, two queer performance artists were targeted by several ultra-conservative media institutions for shooting a video in a historical graveyard in Istanbul.<sup>49</sup> The artists were immediately charged with “insulting the religious values adopted by a part of the public” pursuant to Article 216(3) of the TPC. The same year, criminal investigations were initiated against lawyers from Istanbul, Ankara, İzmir and Diyarbakır Bar Associations on the same basis, in connection with their statements concerning discriminatory language used by the Head of Religious Affairs.<sup>50</sup> The following year, “provoking the public to hostility” under Article 216(1) was used to arrest four students for being involved in an exhibition that features an artwork with the Kaaba alongside LGBTI+ flags at

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44 <https://www.dw.com/en/viktor-orban-expands-hungarys-anti-lgbtq-measures/a-53526969>. This measure was later found to be unconstitutional in March 2021: <https://www.ilga-europe.org/resources/news/latest-news/hungarian-constitutional-court-has-annulled-new-rules-prohibiting-legal>.

45 <https://www.euronews.com/2020/12/15/hungarian-parliament-adopts-anti-lgbt-laws-including-de-facto-ban-on-adoption-by-same-sex>

46 <https://ilga-europe.medium.com/turkeys-shocking-pride-march-trial-the-story-so-far-884b72c199b8>.

47 <https://www.dw.com/tr/bo%C4%9Fazi%C3%A7i-g%C3%B6kku%C5%9Fa%C4%9F%C4%B1-bayra%C4%9F%C4%B1-ta%C5%9F%C4%B1yan-%C3%B6%C4%9Fencilere-g%C3%B6zalt%C4%B1/a-57003754>

48 CoE Commissioner for Human Rights, Letter addressed to the Minister of Interior and the Minister of Justice of Turkey, [CommHR/DM/sf 022-2021], <https://rm.coe.int/letter-to-mr-suleyman-soylu-minister-of-interior-and-mr-abdulhamit-gul/1680a2e486>.

49 Mezarlıktaki klip üzerinden hedef gösterilen LGBTİ+’lara hapis istemi - Dokuz8haber. <https://www.dokuz8haber.net/mezarliktaki-klip-uzerinden-hedef-gosterilen-lgbtlara-hapis-istemi>

50 The indictment later charged the board members of the bar associations with “insulting a police officer on duty for his beliefs, thoughts and opinions” pursuant to Article 125(3) of the TPC.

Boğaziçi University.<sup>51</sup> During their questioning at the courthouse, the students were insulted and condemned by the ultra-conservative media as well as social media users. Four students were even called “LGBT deviants” on Twitter by the Minister of Interior Affairs.<sup>52</sup>

Although they have to deal with severe legislative restrictions, activists and protesters in Hungary do not face serious risks of arbitrary arrests and prosecutions for participating in or organizing LGBTI+ rights meetings, events and protests.

#### **IV. FROM LOCAL TO TRANSNATIONAL: POLITICAL AND LEGAL STRATEGIES**

##### **Litigation**

In both countries, litigation before the international and national courts as well as international human rights bodies have been persistently invoked by activists, lawyers, and civil society organizations.

KAOS GL initiated administrative proceedings to annul the blanket bans on LGBTI+ events in Ankara, and the bans were annulled by the Regional Administrative Court in 2019 and 2021 respectively.<sup>53</sup> In Hungary, a number of transgender people challenged the rules prohibiting the legal gender recognition, with the help of Háttér Society and the Hungarian Helsinki Committee. In April 2021, the Hungarian Constitutional Court annulled the new rule in Section 33.<sup>54</sup>

Litigation before the domestic courts is not always a success story, especially when it comes to symbolically important cases. In June 2021, the Council of State of Turkey (the apex court in administrative cases) decided by three votes to two to reject the interim request to annul the Presidential Decree on withdrawal from the Istanbul Convention.<sup>55</sup>

Litigators from Hungary and Turkey also went to the European Court of Human Rights (ECtHR – the Court) for recognition of LGBTI+ rights. In October 2012, the ECtHR decided that the Turkish authorities were in breach of the prohibition of inhuman and degrading treatment for placing a homosexual detainee in solitary confinement, after he complained about intimidation and harassment by his fellow inmates.<sup>56</sup> In March 2015, the Court reiterated that refusal to grant authorization for gender reassignment surgery on the grounds of a lack of permanent inability to procreate in Turkey breaches the right to respect for private life.<sup>57</sup> In November 2016, the Court held that the seizure of all the copies of an issue of a LGBTI+ rights magazine published by the KAOS GL violated the association’s right to freedom of expression.<sup>58</sup> As for Hungary, the LGBTI+ rights cases before the ECtHR intersect with asylum policies.<sup>59</sup> In July 2016, the Court found that the detention of a homosexual asylum seeker in Hungary was arbitrary, as the authorities had

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51 Human Rights Watch, Turkey: Student Protesters at Risk of Prosecution: <https://www.hrw.org/news/2021/02/18/turkey-student-protesters-risk-prosecution>.

52 Twitter put a warning on the Minister’s tweet, declaring that it violated its rules on hateful conduct. <https://www.reuters.com/article/turkey-security-bogazici-int-idUSKBN2A21C1>.

53 <https://www.lgbti-era.org/news/second-blanket-ban-lgbti-events-ankara-has-also-been-lifted>.

54 <https://ilga-europe.org/resources/news/latest-news/hungarian-constitutional-court-has-annulled-new-rules-prohibiting-legal>.

55 <https://www.danistay.gov.tr/assets/pdf/guncelKararlar/2021-06-29-09-20-9539359.pdf>.

56 ECtHR, *X v. Turkey* (App No: 24626/09, 09.10.2012).

57 ECtHR, *Y.Y v. Turkey* (App. No: 14793/08, 10.03.2015).

58 ECtHR, *KAOS GL v. Turkey* (App No. 4982/07, 22.11.2016). Cf. ECtHR, *Lambda Istanbul LGBTI Solidarity Association v. Turkey* (App No. 53335/08, 19.01.2021).

59 ECtHR, *O.M. v. Hungary* (App. No: 9912/15, 05.07.2016).

failed to make an individual assessment of the detention by taking into account his vulnerability in connection with his sexual orientation. In July 2020, the ECtHR ruled that Hungary has violated the right to respect for private and family life of a transgender man from Iran, as the Hungarian authorities refused to legally recognize his gender and name.<sup>60</sup>

## Advocacy and Activism

Besides litigation, advocacy and activism have also been used by individuals, lawyers, and civil society organizations in both countries as a tool to urge national and international mechanisms to take measures.

In both countries, thousands of people took to the streets countless times to protest the legal measures affecting rights of women and LGBTI+ people. In Turkey, withdrawal from the Istanbul Convention was protested for several weeks as a part of a political campaign organized by women and LGBTI+ groups and initiatives. Women and LGBTI+ rights protesters gathered for marches and street protests; civil society groups have organized various campaigns, and many people joined with hashtags #IstanbulConventionSavesLives on social media to point out the possible increase in violence against women and hate crimes against LGBTI+ people.<sup>61</sup> Similarly, in Hungary, thousands of people joined marches against the anti-LGBTI+ legislations introduced between 2018 and 2021, despite threats or attacks.<sup>62</sup>

LGBTI+ rights NGOs in both countries actively engage in documentation and advocacy work before the UN and CoE human rights bodies. Several reports assessing the effects of the newly introduced legal measures in both countries were issued by these bodies.<sup>63</sup> Apart from the UN and CoE bodies, Hungary is also monitored by the EU's human rights institutions. The EU Commission recently declared that infringement procedures will be initiated against Hungary for violations of fundamental rights of LGBTI+ people.<sup>64</sup>

## V. CONCLUSION AND RECOMMENDATIONS

The myth of “LGBTI+ ideology” has travelled through parts of Central and Eastern Europe and became a proxy in a rhetorical culture war between “traditional family values” and “human rights”. Rising ultra-conservative politics in Hungary and Turkey have significantly contributed to this narrative with many similarities, but with certain fundamental differences.

Both countries are member states of the CoE, therefore they are expected to follow the decisions and recommendations of its human rights bodies. However, both countries are actively distancing themselves from the CoE human rights instruments, due to the fabricated fear of destruction of the traditional social values. A noteworthy difference between the reservations of the two countries is the “anti-immigration” argument being delivered in the official public discourse in Hungary, alongside the protection of traditional values.

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60 ECtHR, *Rana v. Hungary* (App. No: 40888/17, 16.07.2020).

61 <https://www.euronews.com/2021/03/29/feminist-groups-protest-turkey-s-withdrawal-from-istanbul-convention>.

62 <https://www.reuters.com/world/europe/thousands-join-budapest-pride-march-protest-over-new-anti-lgbt-law-2021-07-24/>.

63 <https://www.coe.int/en/web/commissioner/-/commissioner-urges-hungary-s-parliament-to-postpone-the-vote-on-draft-bills-that-if-adopted-will-have-far-reaching-adverse-effects-on-human-rights-in-> and OHCHR | LGBT UN Resolutions <https://www.ohchr.org/en/issues/discrimination/pages/lgbtunresolutions.aspx>.

64 [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_21\\_3668](https://ec.europa.eu/commission/presscorner/detail/en/ip_21_3668).

Both Hungary and Turkey have introduced (or refrained from) general legal measures that have significant effects on the LGBTI+ community. In Hungary, a broader range of regulations resulting in restrictions of LGBTI+ rights were adopted in parliament. As for Turkey, the largest obstacle to the enjoyment of these rights and freedoms is the increasing numbers of investigations and prosecutions initiated against the people participating in LGBTI+ related events.

The most significant distinction between the two countries is that Hungary is also a member of the EU, and therefore the newly introduced legal measures in Hungary are duly reviewed by the EU human rights institutions. The EU Commission also recently announced that it is going to bring a new legislative proposal to combat gender-based violence by the end of 2021.<sup>65</sup> This means that regardless of the refusals to adopt the CoE Istanbul Convention, the EU would have another binding legal instrument that provides member states with obligations to protect gender equality.

The harmful and discriminatory speech in public discourse, the deliberate framing of LGBTI+ as an “ideology” and increasing legal and policy-based restrictions on LGBTI+ rights have ramped up in both countries due to the political benefits. The defenders of “traditional social values” often refer to or borrow from each other, despite the differences of religion or culture. These patterns should be recognized for their serious harm to LGBTI+ peoples’ lives and safety.

In light of the discussions at the workshop, the following reflections could be considered as possible ways of building transnational solidarity between LGBTI+ communities in Hungary and Turkey:

- LGBTI+ rights defenders in both countries could meet in regular workshops and panels in order to exchange experience, discuss ways of effective strategies, and also examine possible coping mechanisms. Viewing similar developments in different contexts could be beneficial to develop effective approaches.
- Lawyers and litigators in both countries could also come together to discuss about the current and possible legal strategies in civil, criminal, and administrative proceedings. Discussing the ways of effective application before the international human rights bodies is particularly essential.
- Lastly, civil society actors in both countries could benefit from coming together more often, in order to develop stronger counter-narratives to combat the increasing mobilization of the anti-gender movement, and also to explore common political and legal strategies for better protection of LGBTI+ equality in challenging environments.

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65 [https://ec.europa.eu/commission/presscorner/detail/en/STATEMENT\\_21\\_890](https://ec.europa.eu/commission/presscorner/detail/en/STATEMENT_21_890).

[www.hm-berlin.org](http://www.hm-berlin.org)

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