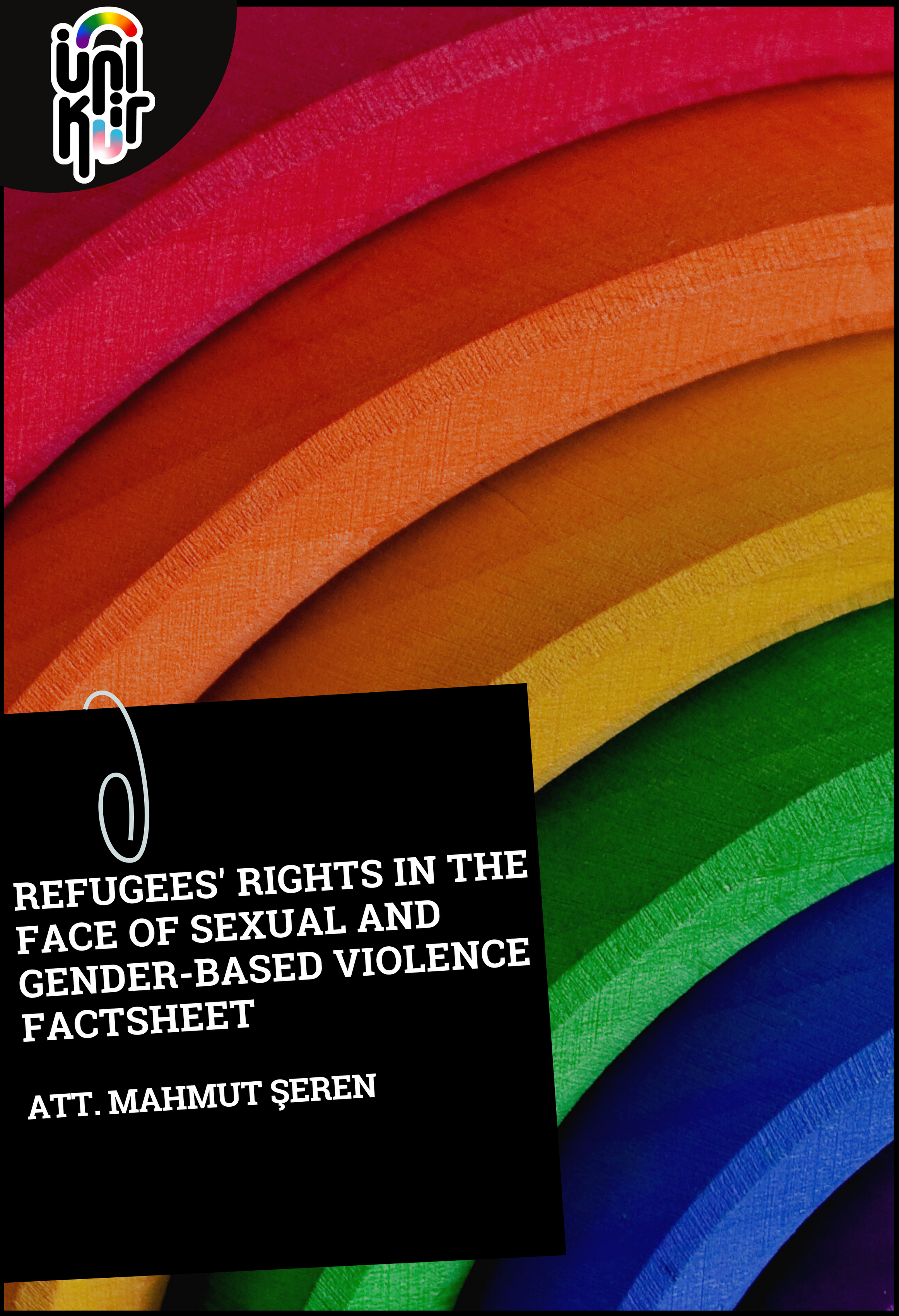

REFUGEES' RIGHTS IN THE FACE OF SEXUAL AND GENDER-BASED VIOLENCE FACTSHEET

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RIGHT TO PROTECTION FROM VIOLENCE

A large number of LGBTI+ refugees in Turkey[1] live in Turkey Because they are using their right to seek asylum in another country due to gender-based violence. Many LGBTI+ refugees, on the other hand, face gender-based violence in Turkey, where they sought refuge. This paper will explain the legal measures available to LGBTI+ refugees in Turkey to resist gender-based violence.

Article 10 of the Constitution of the Republic of Turkey stipulates that everyone is equal before the law, regardless of language, race, color, gender, political philosophy, religion, sect, or other factors. Even though the terms "sexual orientation" and "gender identity" are not specifically stated in this article, it is widely assumed that the phrase "and similar reasons" encompasses both. According to Article 17, everyone has the right to life, to be free of torture and ill-treatment, to protect and develop their bodily integrity, material and spiritual existence. The word “everyone” in these articles refers to every person within the borders of the Turkish Republic, regardless of their status or even if they have no status, as well as citizens of the Republic of Turkey. According to these two regulations, the state has affirmative obligations to prevent gender-based violence, to punish perpetrators when violence happens, and to compensate victims for their losses, for everyone living under the state's sovereignty, even if only temporarily. In other words, the state is obliged to take all kinds of measures and produce the policy to ensure these. Furthermore, the state should not only defend and help those who have been victims of specific acts of violence, but it should also refrain from committing gender-based violence against anyone. This is called a negative obligation.

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[1] In this text, taking into account the 1951 United Nations Convention Relating to the Status of Refugees, without being limited to the legal status in Turkey, the word refugee is used to encompass any person who is outside the country of their nationality and cannot benefit from the protection of that country because of a well-founded fear of persecution because of their race, religion, nationality, membership of a particular social group or political opinion, or who is unwilling to benefit from it because of the fear in question, or does not have a nationality, and is outside the country of their former residence as a result of such events, is unable to return there, or is unwilling to return due to such fear.

If the applicant is discriminated against because of his or her refugee status, sexual orientation or gender identity, or any other reason while using the legal remedies described below, legal action may be taken against the authorized public official who fails to fulfill his or her responsibilities or misbehaves.

ISTANBUL CONVENTION

One of the most important legislative resources for preventing gender-based violence is the Council of Europe Convention on the Prevention and Combating of Violence Against Women and Domestic Violence (Istanbul Convention), to which Turkey is the first signatory. It provides an important roadmap for states to combat violence. The Convention's Article 4/3 contains the most comprehensive anti-discrimination provision among international human rights convention. According to this article, actions to protect victims' rights will be implemented without discrimination based on sexual orientation and gender identity, immigrant or refugee status, or other factors.

Article 59 of the Convention regulates the right to a residence permit for victims of violence or forced marriage, independent of their spouse or partner. Article 60 governs the admission of gender-based violence as a legitimate ground for seeking asylum and ensures that the asylum process is gender-sensitive. Article 61 regulates the principle of non-refoulement. However, on the President's decision, the Republic of Turkey withdrew from the contract, to which it was the first signatory, on July 1, 2021. This does not, however, absolve the government of its responsibilities in the area of gender-based violence. Because the Istanbul Convention is not the only source of this obligation, there are many others that cannot be ignored, including the constitution, laws, other legislation, and judicial jurisprudence.

PREVENTING AND PROTECTING AGAINST VIOLENCE

The Law No. 6284 on the Protection of the Family and the Prevention of Violence Against Women is the most important domestic law that reflects the Istanbul Convention[2]. The purpose of the contract, pursuant to Article 1 of the Law, is to protect women, children, family members and people who are victims of violence or at risk of being subjected to violence, and to regulate the measures to be taken to prevent violence against them. Despite the fact that LGBTI+ people are not specifically mentioned in this article, it can be deemed inclusive, particularly for "victims of unilateral stalking."

Domestic violence is defined by the law as violence between family members, the household, or other family members when the victim and perpetrator do not live in the same dwelling. Physical, economic, sexual, or emotional violence are all examples of the violence depicted here. In the implementing regulation of the law, unilateral stalking is defined as any attitude and behavior of the perpetrator that will put pressure on the victim of violence, either verbally, in writing or by using any means of communication, regardless of the content and in a way that causes feelings of fear and helplessness, physically or psychologically, in a way that worries the person's safety, regardless of the content and regardless of whether they have family ties or relationships.

The law governs protective and preventive measures against violence that can be issued by a local government or a judge. Orders for injunctions can be obtained for free at the nearest family court, local authority, or law enforcement unit (such as the police, gendarmerie). It is important to note that the legislation does not need the submission of proof to obtain the injunctions listed below.

Depending on the precise circumstances of violence or the threat of violence, only one or more of the procedures described below may be implemented. The local authority is the governor of the province or the district governor. The judge meant in the law is the family judge.

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[2] https://www.mevzuat.gov.tr/MevzuatMetin/1.5.6284.pdf

- Protective injunctions that can be given by the local authority:

a) Providing shelter to the victim or accompanying children,
b) Providing temporary financial aid
c) Providing psychological, professional, legal and social guidance and counseling services,
ç) Taking him/her under temporary protection in the event of a life-threatening circumstance
d) If necessary, providing nursery facilities if the victim has children, by being covered from the Ministry's budget provided that it is limited to four months to support participation in working life, and to two months if the victim works, not to exceed half of the monthly net minimum wage determined every year for those over the age of sixteen and to be documented.

In an emergency, the law enforcement chief can also take the actions outlined in paragraphs (a) and (ç).

- ·Protective injunctions that can be given by the judge:

a) Changing the victim's workplace
b) If the person is married, determining a settlement other than the place where they live together,
c) Upon the victim's request, inserting an annotation of family residence in the land registry in accordance with the provisions specified in Turkish Civil Code No. 4721,
ç) If there is a life-threatening danger to the victim, and it is understood that other measures will be insufficient to prevent the threat, and with the informed consent of the relevant person, changing the official identity and other relevant information and documents in accordance with Witness Protection Law No. 5726.

- ·Preventive injunctions that can be given by the judge:

a) Not to use words and behaviors that include threats of violence, insults, humiliation towards the victim of violence,
b) Removal from the common home or the location where she is residing, with the common house being assigned to the victim.
c) Not approaching the victims, their homes, schools, or places of work

ç) If a decision is made to form a personal relationship with the children, the relationship should be accompanied by another person, and the relationship should be limited or terminated entirely.
d) If deemed necessary, not to approach the victim’s relatives, witnesses and children, without prejudice to the provisions of the Turkish Civil Code, even if she has not been subjected to violence,
e) Not to damage the victim's personal belongings and household goods,
f) Not disturbing the victim by means of communication tools or otherwise,
g) Delivering the gun to the law enforcement bodies,
ğ) Even if he or she is performing a public duty that requires the carrying of a gun, he or she should return the gun to his or her institution.
h) Not using alcohol or drugs or stimulants in the victim's area or not approaching the protected persons and their places while under the influence of these substances; in case of addiction, providing examination and treatment, including hospitalization,
ı) Applying to a health institution for examination or treatment and providing treatment.

In an emergency, the law enforcement chief can take the actions listed in paragraphs (a), (b), (c), and (d).

Anyone can report a situation involving violence or the threat of violence to the official authorities. Public officials who receive the notice are obliged to fulfill their duties without delay and to inform the authorities about other measures to be implemented.

Injunction judgments are taken for a specific length of time, up to 6 months. If the necessity for an injunction persists, the family court should be contacted and a continuation of the injunction decision obtained before the period expires.

In the event that the perpetrator violates the injunction, the victim has the right to apply to the family court and request that the perpetrator be sentenced to disciplinary detention. The ordered disciplinary detention period would last between 3 and 10 days. It is possible to apply in this direction in every repetition of the violation.

PUNISHING THE PERPETRATOR

The laws define what constitutes a crime and what the sanctions will be. The Turkish Penal Code No. 5271 is the most significant law to look into in this regard. This information note is intended to provide broad information to right holders, and it is recommended that an expert be consulted on what constitutes a crime and how to respond to a criminal act.

The Turkish Penal Code (TPC) governs actions that occur or have an effect in Turkey. The following are the acts that are classified as crimes under the law: Killing, wounding, directing suicide, insulting, threatening, disturbing peace and tranquility, preventing freedom of work, crimes against sexual immunity, torture, ill-treatment, violation of family obligations, deprivation of personal liberty, violation of the immunity of home, violation of privacy, theft, fraud, etc.

When confronted with violence, one can go to the nearest police station or prosecutor's office and file a complaint without having to pay a fee. The complaint can be filed in the form of a written petition or by recording the authorities' vocal utterances. Herein, the act of violence and its details, known information about the perpetrator, the place and time of the incident should be stated. During the complaint, it is important to present proof such as a medical report documenting the violence, messages, photographs or video recordings, and the identification and contact information of witnesses in order for the perpetrator to be prosecuted and punished.

FOREIGNERS AND INTERNATIONAL PROTECTION LAW

Those who have been subjected to extreme psychological, bodily, or sexual violence are classified as people with special needs under the law. Article 67 of the Law stipulates that people with special needs will be given priority in their rights and procedures, and appropriate opportunity will be offered to heal the damage that happens when they are subjected to violence. According to Article 55/d of the Law, deportation decisions for victims of psychological, physical, or sexual violence cannot be made before their treatment is completed.

COMPENSATION OF THE DAMAGE INCURRED

If a victim suffers material and/or moral harm as a result of violent conduct, the victim has the right to sue the perpetrator for material and moral damages in the Civil Court of First Instance. Even if the perpetrator is found guilty and sentenced as a consequence of the criminal complaint, the victim will not be compensated directly as a result of this situation. The victim must file a lawsuit to receive compensation. When filing a case, the petition must be written in chronological sequence, and the documentation establishing the events must be included to the petition. If the conditions are met, the perpetrator has the right to compensation through a lawsuit filed in the Civil Court of First Instance, even if the investigation initiated in conjunction with the criminal complaint is not filed, that is, it results in non-prosecution or the perpetrator is acquitted in the opened criminal case.

While filing this lawsuit, some litigation costs must be paid in advance. However, it is possible for those who cannot afford to pay these costs, to file the case with a "legal aid request". If the court agrees, it will be allowed to bring a lawsuit without paying any fees. This request must be expressed explicitly in the petition, as well as proof demonstrating financial inability to pay. (For example, insurance records indicating that she is unemployed, does not have a regular source of income, or does not have sufficient income)

Having the assistance of a lawyer when bringing a lawsuit will be very beneficial to the right holder in terms of not losing their rights and being able to access them.Individuals who can afford an attorney's fee can hire one and work with them. Those who cannot pay this fee can contact their local bar association's legal aid division and request an appointment of a lawyer.

RIGHT TO INTERPRETER ASSISTANCE

During the aforementioned processes of filing a criminal complaint, filing a complaint and requesting measures, according to Article 202 of the Code of Criminal Procedure No. 5271, "those who do not speak Turkish well enough to convey their meaning" are provided with the assistance of an interpreter free of charge.

In the case of pecuniary and non-pecuniary damages, during the hearings to be held after the lawsuit is filed, those who do not speak Turkish are provided with the assistance of an interpreter in accordance with Article 263 of the Code of Civil Procedure No. 6100.

IMPORTANT NOTE: The rights mentioned in this information note and the legal processes that can be carried out are summarized within the framework of legal regulations. There may be information and legal conditions about the process that are not provided here since they are unique to each instance. Thusit is critical to get a lawyer's expertise. Those who cannot afford the required cost for professional assistance might seek assistance from bar associations and non-governmental organizations.

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