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Meeting: 1318th meeting (June 2018) (DH)

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Communication from Turkey concerning the case of Y.Y. v. Turkey (Application No. 14793/08)

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Communication de la Turquie concernant l'affaire Y.Y. c. Turquie (requête n° 14793/08)
(anglais uniquement)

03 AVR. 2018

SERVICE DE L'EXECUTION
DES ARRETS DE LA CEDH

Y.Y. v. Turkey (14793/08)

Ankara, March 2018

ACTION REPORT

***Y.Y v. Turkey* (14793/08)**

Judgment of 10 March 2015, final on 10 June 2015

I. CASE DESCRIPTION

1. The case concerns violation of the applicant's right to respect for private life on account of the refusal of the domestic courts to accept the applicant's gender reassignment claims in view of the ability to procreate (violation of Article 8).

2. In 2006 the domestic courts denied to authorize the applicant to undergo gender reassignment surgery, despite the fact that the applicant had already been in a process of gender conversion, as could be seen from the on-going psychological support and masculine social behavior. The domestic courts applied Article 40 of the Civil Code (Law no. 4721) according to which inability to procreate prior to the process of gender reassignment was a prerequisite for the relevant surgery. The applicant ultimately obtained authorization to undergo the operation in 2013, five years and seven months after the first request was denied. The domestic courts then granted the request without considering whether the applicant was permanently unable to procreate.

3. The Court found that the prerequisite was not necessary to justify the regulation of gender reassignment operations. The change of approach of the domestic court which, in May 2013, had granted the applicant authorization to undertake gender reassignment surgery, even though he still had the ability to procreate, supported that finding. In denying the applicant for many years the possibility of undergoing such an operation, the applicant's right to respect for his private life had been breached.

II. INDIVIDUAL MEASURES

4. The Turkish authorities have taken measures to ensure that the violation at hand has ceased and that the applicant has redressed for its negative consequences. Moreover, the applicant has been fully redressed for the damage sustained.

II.a. The Case Concerning the Gender Reassignment Surgery

5. On 5 March 2013, relying on Article 40 of the Civil Code, Y.Y. lodged a fresh application with the Mersin District Court for authorisation to undergo gender reassignment surgery. On 21 May 2013 the Mersin District Court granted the application and authorised the requested surgery, finding it established that Y.Y. was transsexual, that protection of the applicant's mental health required change of gender, and that witness testimony had shown that the applicant lived as a man in every respect and suffered from the situation, such that the conditions laid down in Article 40 § 2 of the Civil Code were met and the request should be granted.

6. Following the decision became final on 1 April 2016, in accordance with the surgery, the applicant's gender was changed to 'male' and his name was also changed accordingly. On 1 April 2016 the relevant court decision was recorded in the registry; and the applicant was given an identity card of a man.

II.b. Just Satisfaction

7. The Court awarded the applicant just satisfaction of EUR 7,500 in respect of non-pecuniary damage. The just satisfaction amount was paid within the time-limit set by the Court (see Annex).

8. The authorities therefore consider that no further individual measures are necessary in the case.

III. GENERAL MEASURES

9. The Turkish Government has taken some measures aiming at preventing similar violations. These measures include in particular individual application before the Constitutional Court and development in the case-law of that Court, and measures on the publication and dissemination of the Court's judgment.

III.a. The Annulment Decision about the Rule in Article 40 of the Civil Code

10. At the outset the Turkish authorities would like to point out that the underlying reason for the violation found was Article 40 of the Civil Code, which sets forth the requirements for gender reassignment. In particular, the Court found that the reference in this provision to a permanent inability to procreate as a prior requirement for authorisation to undergo gender reassignment is in violation with Article 8 of the Convention.

11. It flows from the judgment that this particular requirement, namely permanent inability to procreate, resulted in the violation at hand (§§120 – 122 of the judgment). In its decision, the Constitutional Court, finding that this requirement in Article 40 of the Civil Code violated Articles 13, 17 and 20 of the Constitution, partially annulled this provision on 29/11/2017 (Application No. 2017/130¹).

12. As a result of the Constitutional Court's judgment the sentence including the requirement of permanent inability to procreate for having authorization to undergo gender reassignment was deleted from Article 40. Therefore, today, there is no such a requirement in Turkish law. In this respect the authorities are of the opinion that the annulment decision about the Article 40 of the Civil Code has the effect of preventing similar violations in the future.

III.b. Individual Application Right before the Constitutional Court

13. Although it is not a major response to the European Court's judgment in this case, the authorities would furthermore like to highlight that a person in the applicant's situation has at his or her disposal today an effective remedy to bring the violation to an end and obtain redress before the domestic authorities. In particular, following the European Court's case-law, in 2012, legislative measures were taken to introduce an individual application with the Constitutional Court in respect of human rights violations. An individual in the applicant's situation could therefore pursue today the avenue of lodging an individual application to uphold his or her Convention rights, including in the present case. The Constitutional Court is

¹ <http://www.anayasa.gov.tr/icsayfalar/basin/kararlarailiskinbasinduyurulari/genelkurul/detay/pdf/2017-165.pdf>

also able to award just satisfaction in cases where it finds a violation of human rights. In this respect, the Turkish authorities would like to recall that the European Court indicated in the *Hasan Uzun* case (application no. 10755/13) that the individual application to the Constitutional Court should be considered an effective remedy as of 23 September 2012.

III.c. Publication and Dissemination

14. The Turkish authorities ensured that the European Court's judgment has been translated in Turkish and published on its official website which has been made available to the public and legal professionals alike <http://hudoc.echr.coe.int/tur?i=001-155902>, which has Turkish interface.

15. The Turkish authorities also ensured that the translated judgment has been transmitted to the relevant courts and the relevant authorities, such as the Constitutional Court, the Court of Cassation, the Ministry of Interior, the Ombudsman Institution, the Council of Judges and Prosecutors and the Court which rendered the impugned judgment.

16. The authorities therefore consider that no further general measures are necessary and the above-mentioned measures are capable of preventing similar violations.

IV. CONCLUSION

17. In light of the information submitted above, the Turkish authorities consider that all necessary measures have been taken to prevent similar violations and the Committee of Ministers is respectfully invited to close the supervision of execution of this judgment.