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Meeting: 1288th meeting (June 2017) (DH)

Communication from NGOs (Kaos Gay Lesbian Cultural Research and Solidarity Association (Kaos GL), Transgender Europe (TGEU) and the European Region of the International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA Europe)) (28/03/2017) and reply from the authorities (03/04/2017) in the case of Y.Y. v. Turkey (Application No. 14793/08)

Information made available under Rules 9.2 and 9.6 of the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements.

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Réunion : 1288^e réunion (juin 2017) (DH)

Communication d'ONG (Kaos Gay Lesbian Cultural Research and Solidarity Association (Kaos GL), Transgender Europe (TGEU) and the European Region of the International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA Europe)) (28/03/2017) et réponse des autorités (03/04/2017) dans l'affaire Y.Y. c. Turquie (Requête n° 14793/08) **[anglais uniquement]**

Informations mises à disposition en vertu des Règles 9.2 et 9.6 des Règles du Comité des Ministres pour la surveillance de l'exécution des arrêts et des termes des règlements amiables.



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28.03.2017

Joint submission by Kaos Gay Lesbian Cultural Research and Solidarity Association (Kaos GL), Transgender Europe (TGEU) and the European Region of the International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA Europe) in the case Y.Y. v. Turkey (Application no. 14793/08)

1. This joint submission is made in accordance to Rule 9(2) of the Rules of the Committee of Ministers for the supervision of the execution of judgments with a view to assisting the Committee of Ministers in its evaluation of the general measures proposed under the Turkish Government's communication dated 4 April 2016 ("the Government's Communication")¹ for implementation of the judgment in *Y.Y. v. Turkey*.²

2. Kaos Gay Lesbian Cultural Research and Solidarity Association (Kaos GL, www.kaosgl.org) was founded in 2005 as the first registered LGBTI association in Turkey. The purpose of Kaos GL is to support lesbian, gay, bisexual, transgender and intersex people to embrace libertarian values, to live a fulfilling life and to cultivate themselves in order to contribute to the development of social peace and welfare together with the development of their individual, social and cultural life and behaviour.

Transgender Europe (TGEU) is a European nonprofit, non-governmental umbrella organization working towards full equality and inclusion of all trans people in Europe.

ILGA-Europe seeks to defend at European level the human rights of those who face discrimination on the grounds of sexual orientation, gender identity, or gender expression. It represents more than 480 member organizations from across Europe.

¹ *Communication from Turkey concerning the case of Y.Y. against Turkey (Application No. 14793/08)/"Action plan"*, 4 April 2016.

² *Y.Y. v. Turkey*, no. 14793/08, ECHR 2015.



I. Summary of the case

3. *Y.Y. v. Turkey* involved a trans man who applied for court authorisation to undergo gender reassignment surgery. On 27 June 2006, the Court of First Instance in Mersin denied his request based on Article 40 of the Civil Code, which reads as follows:

All persons wishing to change their sex may, of their own initiative, initiate court proceedings with a view to obtaining authorisation in that respect. At the same time, for the authorisation to be granted, the claimant must be aged eighteen, not be married; in addition, he should have a transsexual predisposition and demonstrate, with a certificate issued by an official health commission of a hospital of research and learning, the necessity of a change of sex for his psychological health and that he is definitively incapable to procreate.³

The Mersin Court decision was upheld on appeal. Before the European Court of Human Rights ('the Court'), the applicant argued that the requirement to prove infertility before being able to undergo gender reassignment surgery was unreasonable.

4. In its judgment, the Court noted that the 'sexual identity and personal fulfillment', qualified as 'rights', were fundamental aspects of the right to respect for private life protected under Article 8 of the Convention (§66). The Court emphasized that the applicant had already assumed a male appearance and received psychological counseling at the time when he started proceedings before the Mersin Court (§113). In that respect, the Court recalled that the decision to undergo genital surgery had to be taken seriously, considering the intrusiveness and extent of procedures involved and the level of personal commitment required (§115). Considering that Turkey alone among Council of Europe Member States required transgender people to be sterile before undergoing gender reassignment surgery, the trends across Europe towards abandoning the sterilisation requirement (§110-112), as well as the Government's failure to adduce any valid justifications for this state of affairs, the Court concluded that there was a violation of Article 8 of the Convention. Judges Keller and Spano, concurring, questioned the validity under Article 8 of the sterilisation requirement as a prerequisite to legal gender recognition more broadly, based on a detailed review of relevant comparative and international law.

II. The proposed general measures

³ As included in *Y.Y. v. Turkey*, §26.



5. In its communication, the Government proposed two general measures in response to the Court's ruling in *Y.Y. v Turkey*. First, the Government mentioned the legislative amendments adopted in 2012 enabling individuals claiming a violation of their rights to lodge a petition with the Constitutional Court. Second, the Government announced that it published the judgment in the Turkish language and that it disseminated it among legal professionals.

It is recalled that general measures must be taken to prevent further violations similar to those found by the Court and/or to put an end to continuing violations. In that sense, the general measures proposed by the Government do not address the root causes of the violations identified by the Court in the *Y.Y. v. Turkey* case, and therefore they are not capable of preventing further similar violations.

6. The violation identified by the Court in *Y.Y. v Turkey* stems from the deficient manner in which the legal gender recognition procedure is regulated in Turkey. The Court's judgment singled out the sterilization requirement under Article 40 of the Civil Code as being in breach of the right to respect for private life under Article 8 of the Convention. In particular, demanding that people prove they were sterile even before being able to undergo gender reassignment surgery, generally understood as leading to sterilisation anyways, was an unreasonable requirement. The Court highlighted that Article 40 was at odds with the situation in other European countries as well as with documents issued by various Council of Europe bodies setting out the standards applicable to legal gender recognition procedures.

7. In our experience, far from being an isolated case, the situation exposed by the *Y.Y.* judgment occurs regularly in Turkey. National courts, particularly from smaller towns, regularly deny applications for authorisation to undergo gender reassignment surgery based on the failure to prove infertility under Article 40 of the Civil Code, including for example the Adana 4th Court of First Instance (2016), the Samsun 4th Court of First Instance (2014), the Adana 6th Court of First Instance (2016) and the Urfa Court of First Instance (2014). One of these cases is currently pending before the Turkish Constitutional Court.⁴

8. This situation leaves trans people in limbo, as hospitals usually require court authorisation before providing any treatment leading to sterilisation. Many transgender people decide to relocate to larger cities such as Ankara, Izmir or Istanbul where some doctors are known to be more accommodating and issue 'provisional' certificates of infertility designed to circumvent the Article 40 conundrum, with the expectation that they would go on and undergo the treatment in question. However, this avoidance strategy restricts access to gender reassignment surgery only to those with

⁴ Application number 2015/13077.



sufficient financial resources and whose personal circumstances permit relocation to a different city. In turn, the failure to undergo gender reassignment surgery has other dramatic consequences, in that trans people are then denied the possibility of obtaining personal documents that correctly identify their gender identity.

9. In light of the above, it follows that proper implementation of the *Y.Y. v Turkey* judgment requires a root-and-branch review of the legal gender recognition procedure as regulated under Article 40 of the Civil Code. The aim of the reform should be to achieve a procedure that is in line with international standards, particularly as stated under the documents issued by the Council of Europe. The Court has in fact mentioned these documents approvingly in the *Y.Y. v Turkey* judgment as evidence of trends towards the simplification and demedicalisation of legal gender recognition procedures.⁵ In that regard, we wish to refer in particular to the relevant documents issued by the Committee of Ministers itself,⁶ the Parliamentary Assembly⁷ and the Commissioner for Human Rights.⁸

10. The process of reviewing Article 40 of the Civil Code should include, but not be limited to, removing the sterilisation requirement. In addition, the authorities should take into account the above-mentioned standards, which recommend legal gender recognition procedures that are “quick, transparent and accessible.”⁹ Any medical treatment or certification pre-requisites should be abandoned, with any gender reassignment treatment having to be provided based on informed consent and without being linked to legal gender recognition. The same applies to other requirements that violate human rights such as forced divorce in the case of married transgender people. Ideally, legal gender recognition procedures should be based on self-determination,¹⁰ in the manner of regulations recently adopted in Malta, Ireland, Norway and Denmark.

11. The review process should also cover the principle that all gendered personal documents be changed seamlessly to reflect the initial correction in the Population Registry. Currently this is not the case, with transgender people facing overwhelming difficulties when attempting to amend other documents, and in particular university diplomas. The signatory

⁵ At §110.

⁶ *Recommendation CM/Rec(2010)5 of the Committee of Ministers to member states on measures to combat discrimination on grounds of sexual orientation or gender identity*, 31 March 2010.

⁷ Parliamentary Assembly, *Resolution 2048 (2015) - Discrimination against transgender people*.

⁸ Commissioner for Human Rights, *Human Rights and Gender Identity*, CommDH/IssuePaper(2009)2.

⁹ *Recommendation CM/Rec(2010)5 of the Committee of Ministers*, §21.

¹⁰ Parliamentary Assembly, *Resolution 2048 (2015)*, §6.2: legal gender recognition procedures should be based on “self-determination”.



organisations have documented an administrative practice across Turkey whereby universities refuse amendment requests by transgender people who had already officially changed their gender marker under the pretext that the diplomas in question remain correct as records attesting historical realities. Reported examples of this practice include a refusal by the Ege University Faculty of Engineering in 2012, Ömer Halisdemir University Rectorate in 2007 and the Marmara University Faculty of Dentistry in 2017.

III. Conclusions regarding the Turkish Government's proposed general measures

12. While the general measures proposed by the Turkish Government in its communication to the Committee of Ministers are welcome, they do not address the root causes of the violation identified by the Court. The Court's ruling in the case *Y.Y. v. Turkey* is predicated on a legislative defect in Turkish law that must be rectified. By including a sterilisation requirement, Article 40 of the Civil Code creates a situation of limbo, whereby transgender people are left without any possibility of accessing gender reassignment treatment and/or legal gender recognition.

We therefore respectfully ask that the Committee of Ministers:

- a. request from the Turkish authorities a detailed action plan, clearly identifying the need for legal reform in the area of legal gender recognition and proposing a timetable for taking the necessary legislative measures;
- b. maintain supervision of the case until all the measures have been fully implemented.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'J. Ehrt', is written over a horizontal line.

Dr. Julia Ehrt

Transgender Europe

Executive Director

also on behalf of co-interveners

DGI

03 AVR. 2017

SERVICE DE L'EXECUTION
DES ARRETS DE LA CEDH

30 March 2017, Ankara

EXECUTION

of European Court of Human Rights Judgment

in the case of Y.Y. (14793/08)

ADDITIONAL INFORMATION TO THE ACTION PLAN

On 22 March 2016, our Government submitted an Action Plan regarding the case of Y.Y. (14793/08).

Additionally, the authorities would like to indicate that on 21 May 2013 the Mersin District Court granted permission to the applicant Y.Y. for gender reassignment surgery in line with the medical reports drawn by the Forensic Medicine Department of the İnönü University Medicine Centre. Following the decision became final on 1 April 2016, in accordance with the surgery, the applicant's gender was changed to "male" and her 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.