MONITORING OF THE IMPLEMENTATION OF THE JUDGEMENTS OF THE ECtHR

Implementation of the Judgment of

X - Turkey

(Aplication No and Judgment Date: 24626/09, 9 October 2012)

MONITORING REPORT

Prepared by:

Serkan Cengiz

İHOP insan hakları ortak platformu | HYD İHAD İHD İHGD UAÖ TÜRKİYE

Avrupa Birliği
Türkiye Delegasyonu

IHOP – MONITORING REPORTS OF THE IMPLEMETATION OF THE ECtHR JUDGMENTS, 2014/1

IMPLEMENTATION OF X-TURKEY JUDGMENT – MONITORING REPORT

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1st Print: December 2014

The electronic copy of this report and more detailed information are accessible at
http:/www.aihmiz.org.tr & http:/www.ihop.org.tr

This report is prepared in the context of the project "Enhancing human rights defenders' capacity in monitoring the implementation of judgements of the European Court of Human Rights in Turkey", supported by the EIDHR program of Delegation of the European Union to Turkey and implemented by the Human Rights Joint Platform (IHOP).

İÇİNDEKİLER

The case of X v. Turkey

Application no: 24626/09
Date of Judgment: 9 October 2012

Monitoring Report

A- The applicant's arrest and the relevant national trial proceedings

BThe applicant, X, who is a homosexual, was arrested on account of a number of criminal proceedings against him and was placed in Buca prison in Izmir.

Although the charges against the applicant and the subsequent decision for custody are not the subject matter of this report, it is pertinent to explain some aspects of the case in order to describe the dire situation of the current practices in Turkey.

The applicant had been subjected to violence by his brother due to his homosexuality and abandoned his family home in the Black Sea Region to settle in Izmir.

After living in Izmir for a while, due to economic straits, he used the identity information of one of his family members to forge an identity card with his own photo and applied for a bank credit with this document.

Before he committed the act in full, because of the burden on his conscience, on 24 October 2008, the applicant applied to the Çiğli Security Directorate of his own accord and made a detailed confession of the crimes which he had attempted to commit.

Although no criminal investigation had been launched against the applicant at the time of his confession and even though he confessed, of his own accord, fully to the crime he attempted, he was arrested on 25 October 2008 by the order of the Izmir 8th Criminal Court of Peace.

Following his arrest, the applicant was placed in a cell with heterosexual inmates at Buca prison.

On 8 January 2009, an indictment was filed and the applicant was charged under articles 158/1, 204/1 and 245/3 of the Turkish Criminal Code.

The trial court ruled for the continuation of his detention,

> "…In consideration of the nature of the charges against the accused, the existence of strong grounds for suspicion of criminal acts, the upper limit of the sentence foreseen for the charges, and the behaviour of the accused, the existence of concrete facts leading to a suspicion that the accused would escape, hide, or destroy, hide or alter the evidence against him, attempt to coerce witnesses, victims or others if he were to be released…"[1]

The applicant later applied to the Prison authorities and stated that he was being intimated by some of the inmates who had discovered that he was a homosexual, and requested that he

> "…be transferred to a block suitable for those in my condition.[2]

Upon this request, the Prison authorities drew up a report stating the following:

> "…On 05/02/2009 at around 15:00, the prisoner X who was staying in Block No.6, requested to see the prison governor due to his special condition. He was taken from the Block to see the prison governor. The prisoner, who stated that he has a homosexual condition, was placed in an individual cell in the new section instead of his current block. …"[3]

On the same date, the prisoner was placed in one of the cells intended for solitary confinement as a disciplinary measure or for inmates accused of paedophilia or rape.

Proceedings were started against the applicant at the Izmir 5th Assize Court. In the hearing held on 06/03/2009, the applicant sincerely confessed to all acts he was being charged with. In the relevant hearing minute, the applicant was described as follows:

> "…It has been observed that the accused is a young man of 1.75m with an athletic build, a white complexion and light brown hair, a decent appearance, appearing trustworthy at first sight since he is dressed up in a suit, and does not bear the appearance of a criminal…"[4]

1 The paragraph is copied verbatim from the said ruling of the Izmir 9th Criminal Court of Peace

2 Excerpt from the petition filed by the applicant with the Prison Authority

3 Excerpt from the report drawn by the Prison Authority on 05/02/2009

4 Excerpt from the record of proceedings on 06/03/2009

Although the applicant confessed that he had attempted to commit the said crimes and the applicant's lawyer stated that the applicant has faced problems at the Buca Prison due to his homosexuality, the Izmir 5th Assize Court issued the following ruling:

> "…in consideration of the nature of the charges against the defendant , the existence of evidence against him and strong grounds for suspicion of criminal acts, and because the conditions specified under Article 100 of the Criminal Procedures Law have not changed, the court hereby rules for the continuation of his detention…"[5]

At the hearing held on 17/04/2009, his lawyer requested the release of the applicant on grounds that "his client was being kept in solitary confinement, had developed depression, sleeping disorders and psychiatric problems". This request by the lawyer was denied on grounds of the following:

> "…in consideration of the number of crimes the accused is being charged with, the existence of evidence against him, the fact that not all evidence has been collected, the lower and upper limits of the sentences foreseen for the charges in question, and because the conditions specified under Article 100 of the Criminal Procedures Law have not changed, the court hereby rules for the continuation of his detention…" [6]

The objections filed by the applicant's lawyer against the decision for detention were denied on grounds that 'the court ruling is not against procedures and the law".

On 07/05//2009, the applicant lodged a request with the Izmir Execution Judge and stated that because of his homosexual condition, he had been kept in solitary confinement in a cell intended for disciplinary measures or paedophiles, was deprived of all rights granted to other inmates and that he had not been allowed to see anyone or go outdoors for 3 months and was confined to a cell with no sunlight. The applicant asked for necessary measures to be taken so that he may benefit from the rights granted to other prisoners.

On 25/05/2009, the Izmir 1st Execution Judge issued the following decision:

> "…further to an assessment of the case, it has been determined that, in accordance with Article 49 titled 'Measures that May be Taken by the Prison Administration' under Law No. 5275 on the Execution of Sentences and Security Measures[7], and Article 40 titled 'The Duties and Authorities of the Prison Administration and Monitoring

5 Excerpt from the record of proceedings on 06/03/2009

6 Excerpt from the record of proceedings on 17/04/2009

7 **Measures that May be Taken by the Prison Administration** (Enforcement: 01/06/2005)
Article 49 –
(1) The Prison Administration may change the room, and working place of the convicted prisoner subject to a disciplinary measure, may transfer the convicted prisoner to another section of the prison or separate him from other prisoners.
(2) In the event of a serious threat to order in the institution and to the safety of others, measures other than those expressly provided for in the present Law may be taken to preserve order. The enforcement of such measures shall not prejudice the implementation of disciplinary sanctions.

Committee' under the By-Law on the Administration of Prisons and the Execution of Sentences and Security Measures[8] and Article 69 of the same Law titled 'Placement in an Institution'[9], once convicted prisoners are admitted to an institution, their

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8 **The duties and authorities of the Prison Administration and Monitoring Committee.**
Article 40 –
(1) The Prison Administration and Monitoring Committee bears the following responsibilities and authorities:
   a) To group convicted prisoners according to the nature of the offense for which they have been convicted, to place them in prisons suitable to their circumstances, and to determine the execution and rehabilitation regime required for their sentence,
   b) To determine the cells in which prisoners are to be placed once they are admitted to the prison,
   c) To group convicted prisoners staying in prisons,
   d) To change the cells in which convicted prisoners are placed,
   e) To evaluate the extent to which convicted prisoners have individually adapted to the rehabilitation programmes prepared by the psycho-social help services as well as the outcome of such programs,
   f) To decide which prisoners may take part in activities held in sports areas, multi-purpose halls, libraries and workshops as well as those prisoners who may be employed in the internal services of the prison,
   g) To decide for the restriction of telephone calls, radio and television broadcast and internet access in the case of convicted prisoners who pose a threat or who are members o illegal organisations,
   h) To decide whether convicted prisoners in open prisons and training homes may take part in training activities outside the prison or participate in other social, cultural and sports activities such as planting trees, landscape restoration and cleaning, assistance after natural disasters and drama clubs,
   ı) To determine the types and amounts of the personal effects convicted prisoners may keep in their cells and other areas if they are staying in open prisons or training homes,
   j) To decide and issue certificates of good conduct, which constitute the basis for conditional release and the execution regime to be implemented,
   k) To fulfil other duties as specified by legislation.
(2) The administration and monitoring committee shall take into consideration the recommendations of other committees while performing the above-mentioned functions.
(3) In the event that there are discrepancies between the decisions made by the Administration and Monitoring committee with respect to its functions under paragraphs (b) to (i) and the decisions of other committees, the decisions accepted by the administration and monitoring board shall be implemented following the submission of the opinion of the staff working in the psycho-social help services.

9 **Placement in a prison**
Article 69 –
(1) Placement of convicted prisoners in a prison shall be made in accordance with the grouping set forth under Article 24 of Law No. 5275. The following principles shall be taken into consideration during placement:
   a) Convicted male and female prisoners shall be placed in separate prisons to the extent possible. In the event that they have to be placed in the same prison, the sections for male and female prisoners shall be completely separate from each other,

placement is to be made in line with the classification specified in Article 24 of Law No. 5275[10]. Although X is not a convicted prisoner, the absence of regulations on the placement of inmates in pre-trial detention requires that X be subject to the practice laid out in the same law. It is therefore understood that the request made by the applicant's lawyer , Mr Murat Akci, is under the discretion and authority of the Prison Administration and hence no decision may be issued by the court on the matter…"[11]

This decision was challenged by the applicant's lawyer on grounds that "the applicant was placed in solitary confinement under severe conditions, that he had become suicidal and was deprived of all outdoor exercise' and a request was made that "he be allowed outdoor exercise and placed in a cell where he can stay with suitable inmates".

The Izmir 2nd Assize Court overruled this petition on 04/06/2009.

In the hearing held on 12/06/2009, the Presiding Judge referred to two separate letters written by the accused at the prison and gave the following account:

"…In the two separate petitions lodged by the defendant while he was in prison, he states that he became involved in these matters reluctantly, that he was the victim of a family who was of low culture, that he wished the court to see for only a second that he was living in a blind cell, that he was not a transvestite or a transsexual, that he had done what he had done to refrain from stealing or plunder and that he had no

---

b) Convicted children and juveniles shall be primarily placed in prisons intended for these groups, however in the event that this is not possible, children and juveniles shall be placed in completely separate sections from other inmates,
c) Convicted prisoners shall be placed in separate prisons than those for remand prisoners or in completely separate sections in the same prison,
d) Convicted prisoners who have worked in general law enforcement services or in other public offices shall be placed in separate sections in prisons,
e) Convicted prisoners who have a different sexual orientation shall be placed in cells separate from other inmates.

10 **Grouping of convicted prisoners** (Enforced on: 01.06.2005)
Article 24 –
(1) Convicted prisoners shall be classified into groups such as;
a) Those who are first-time offenders, repeat offenders, habitual offenders or professional criminals,
b) Prisoners who must be subject to a special execution regime due to their mental or physical condition or their age,
c) Dangerous prisoners,
d) Prisoners convicted for terrorism,
e) Prisoners who are members of criminal organisations or for the purpose of obtaining a financial gain,
(2) Convicted prisoners shall also be grouped according to their age, the length of the prison sentence imposed and the nature of the offense for which they have been convicted

11 Excerpt from the relevant decision of the Izmir 1st Post-Sentencing Judge.

intention of engaging in fraud, that even Abdullah Öcalan, who was the murderer of 30,000 people lived in better conditions, that he had to eat in a toilet and had to take three pills to sleep..."[12]

The applicant's lawyer stated that his client was kept in solitary confinement in a cell, had suffered four nervous breakdowns and was therefore transferred to the Buca Seyfi Demirsoy Hospital, and asked for the release of his client as a preventive measure stating that they would make an application to the ECtHR.

The Izmir 5th Assize Court ruled for the continuation of the defandant's detention based on the following determination and rationale:

"…

6. The Court has hereby decided that a letter shall be sent to the Buca Prison Governor's Office in consideration of the fact that the prisoner, who has stated that he is gay, has said that he is being kept in a place resembling a toilet, that he is suffering emotionally and has experienced nervous breakdowns, that his lawyer would make an application to the ECtHR. In view of the fact that such individuals are human beings regardless of their character, preferences, sex and orientation, and must therefore be kept in conditions in line with human dignity even if they are remand prisoners, the Court orders for contact to me made with the Ministry of Justice and for the Court to be informed of the outcome of such communications,

7. In consideration of the nature of the charges against the defendant, the existence of evidence against him and strong grounds for suspicion of criminal acts, and because the conditions specified under Article 100 of the Criminal Procedures Law have not changed, the court hereby orders for the continuation of his detention…"[13]

B- Application to the European Court of Human Rights

Once the appeal made to the Izmir 1st Execution Judge was rejected, the applicant applied to the European Court of Human Rights on 15 June 2009 and stated that he was being kept in a cell on account of his sexual orientation. The applicant alleged that the following articles of the European Convention on Human Rights had been violated:

- Article 3 (Prohibition of inhuman treatment had been violated on account of the conditions of detention),
- Article 5 (prolonged detention),
- Article 6 (Violation of the right to a fair trial since the applicant was unable to

12 Excerpt from the record of proceedings on 12/06/2009

13 Excerpt from the record of proceedings on 12/06/2009

effectively make a defence due to damage to his mental integrity and severe depression),

- Article 7 (Violation of the legality of crimes and punishment since there is no court order or disciplinary measure requiring the applicant to be placed in a cell),
- Article 8 (Violation of the protection of private life because he was punished on account of his homosexual orientation),
- Article 14 (Violation of the prohibition of discrimination since the applicant was unable to enjoy the rights given to other remand prisoners on account of his sexual orientation)

In addition, the applicant requested the following:

- The conditions of his detention to be urgently notified to the Turkish government (Rule 40 of the Rules of Court)
- For priority to be given to the application, (Rule 41, Rules of Court),
- For the applicant to be referred to as "X"

On 19/06/2009, the Buca Prison authorities wrote a response letter to the Izmir 5th Assize Court:

> "…The place described as a toilet is the designated short-term stay unit in the prison, which is in compliance with international standards and the European Union Prison Rules. These cells are self-contained sections with toilets, surrounded by glass to monitor and control the personal and moral tendencies, sensitivities and reactions of each prisoner who has been convicted by law.
>
> Mr. X, who claims to be homosexual, is not the only prisoner staying in these units. There are dozens of convicted prisoners who have stay in these units by their own consent due to security issues and threats made against their life. Mr X faces reactions by most prisoners because of his homosexuality. It was he himself who requested to be transferred to the unit to for his own security. Other gay prisoners placed in these units have not made a similar request; therefore, the reasons put forward by X are aimed at justifying his demand for release.
>
> There are 2500 inmates in our prison, which is built to accommodate 1350 people. It is not possible for the prison to allocate a separate block for private use by this individual by disregarding the situation of other gays and the hundreds of other inmates…." [14]

It is understood that the Prison Authority has responded to the order of the Izmir 5th Assize Court with this communication and no further attempt was made to contact the Ministry of Justice.

On 24 August 2009, the ECtHR accepted the request for priority by the applicant.

14 Excerpt from the letter written by the Prison Authority on 19/06/2009

Due to the problems he faced in prison, the applicant was transferred to the Manisa Psychiatric Hospital on 7-8 August 2009 and remained there until 17 August 2009. The report issued after the medical examination stated that the applicant suffered from a homosexual identity disorder and depression and that his condition could be treated at the prison.

During the applicant's stay at the hospital, another homosexual inmate was placed in the applicant's cell. The criminal proceedings against the applicant continued throughout these events. The trial court ruled the following:

> "…In consideration of the nature of the charges against the defendant , the existence of evidence against him and strong grounds for suspicion of criminal acts, and because the conditions specified under Article 100 of the Criminal Procedures Law have not changed, the court hereby orders for the continuation of his detention …"[15]

Appeals made against the decision for the continuation of detention were rejected.

On 22 October 2009, the applicant and especially his cellmate were seriously beaten by a prison guard. In the detailed records prepared by the applicant's lawyer on 23 October 2009, the victims explicitly stated that the violence in question was homophobic in nature.

The applicant and his cellmate lodged a criminal complaint on 26 October 2009 on account of the violence which they had been subjected to. Following the complaint, on 11 November 2009, the applicant's cellmate was transferred to another cell.

On 18 November 2009, the applicant withdrew the complaint which he had filed against the prison guard due to the conditions he was in. The Izmir Public Prosecutor's Office issued 'a decision of non-prosecution' with regard to the complaint. The applicant did not object to this decision.

The applicant's detention continued and on 28/12/2009, the trial court convicted the applicant on account of the said charges and decided for the continuation of detention.[16]

Following his conviction, on 26 February 2010, the applicant was transferred to the Eskisehir Prison.

On 9 September 2010, the European Court of Human Rights decided to communicate the application to the government and requested a submission from the government with respect to the following points:

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15 Excerpt from the record of proceedings on 06/08/2009

16 The court decision ruling for the conviction of the applicant was partially reversed by the Court of Cassation on 26/09/2011, On 28/12/2011, the Izmir 5th Assize Court convicted the prisoner once again on account of the charges against him. This later court decision was upheld by the 11th Criminal Chamber of the Court of Cassation on 10/06/2014.

- Whether the applicant was being subjected to treatment in violation of Article 3 of the Convention,
- Whether the placement of the applicant in the individual cell fulfilled the criteria for being lawful in accordance with Article 7 of the Convention,
- Whether the proceedings conducted by the Izmir 1st Execution Judge in the absence of a trial were fair in terms of Article 6/1 of the Convention,
- Whether the treatment in question amounted to discrimination in violation of Article 14 of the Convention.

On 24 February 2011, the government lodged its submissions with the Court and maintained that there were no violations with respect to the four questions communicated by the Court, that the applicant was being kept in a cell in accordance with the laws, that his placement in a cell was a not a consequence of his homosexuality and therefor did not amount to discrimination.

In his final submissions to the Court on 28 March 2011, the applicant reiterated the complaints stated in his first application to the Court. The applicant made references to the UN standard Minimum Rules for the Treatment of Prisoners adopted on 30 August 1955 (amended in 1977), the European Prison Rules of 1987 and 2006, The Commentary issued by the European Committee on Crime Problems with regard to the European Prison Rules, Articles 2, 5, 6, 102 and 105 of the European Prison Rules (2006), The Recommendation of the Council of Europe Committee of Ministers on Conditional Release (2003/22). The applicant alleged that his conditions of detention were inhuman and in violation of the rules and principles in the reference international texts.

Furthermore, the applicant based his allegations on paragraph 40 of the ECtHR's judgment in the case of *Kochetkov v. Estonia* (41653/05, 2 July 2009):

> "40… Nevertheless, the State must ensure that a person is detained in conditions which are compatible with respect for his human dignity, that the manner and method of the execution of the measure do not subject him to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, his health and well-being are adequately secured (see *Kudła v. Poland* [GC], no. 30210/96, §§ 92-94, ECHR 2000-XI). When assessing conditions of detention, account has to be taken of the cumulative effects of these conditions, as well as of specific allegations made by the applicant (see *Dougoz v. Greece*, no.40907/98 § 46, ECHR 2001-II). The length of the period during which a person is detained in the particular conditions also has to be considered (see *Kalashnikov v. Russia*, no.47095/99, § 102, ECHR 2002-VI, and *Kehayov v. Bulgaria*, no.41035/98, § 64, 18 January 2005)."

The applicant repeated that the proceedings conducted by the Execution Judge were in violation of the right to a fair trial. He alleged that within the framework of Article 7 of the

Convention, being kept in a cell for over a year in the absence of a court order or a disciplinary measure invoked by the prison authority was in violation of the principle of the 'lawfulness of crimes and punishment'.

The applicant submitted that although Article 14 of the Convention does not explicitly mention 'sexual orientation' as ground for discrimination, the earlier judgments of the ECtHR have considered 'sexual orientation' as falling within the scope of Article 14 on account of the phrase 'without discrimination on any ground'. (See *Frette v. France*, no.36515/97, 26 February 2002, para.22).

The applicant made reference to Article 2 of the UN Universal Declaration of Human Rights, Article 2 of the International Covenant on Civil and Political Rights, Article 2 of the International Covenant on Economic Social and Cultural Rights, Article 2 of the African Charter on Human and People's Rights, and Article 1 of the American Convention on human Rights and alleged that he had been subjected to discrimination on account of his sexual orientation and deprived of the rights granted to other inmates and kept in inhuman conditions of detention for more than a year.

C- Judgement of the European Court of Human Rights

On 9 October 2012, the European Court of Human Rights announced its judgment in the case of *X v. Turkey*. The Court held unanimously that the conditions of detention the applicant had been subject to amounted to inhuman treatment. The relevant part of the Court judgment is as follows:

> "…39. With regard to the general principles governing the rights of prisoners to conditions of detention compatible with human dignity, the Court refers, among other authorities, to *Mouisel v. France* (no. 67263/01, § 37-40, ECHR 2002-IX) and *Renolde v. France* (no. 5608/05, §§ 119-20, ECHR 2008 (extracts)). In that connection it reiterates that Article 3 of the compels the State to ensure that a person is detained in conditions which are compatible with respect for his human dignity, that the manner and method of the execution of the measure do not subject him to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, his health and well-being are adequately secured (see *Kudła v. Poland* [GC], no. 30210/96, §§ 92-94, ECHR 2000-XI).
>
> 40. With regard to the conditions of detention, regard must be had to their cumulative effects and to the applicant's specific allegations (see *Dougoz v. Greece*, no. 40907/98, ECHR 2001-II). In particular, the period during which an individual has been kept in detention in the conditions complained of is an important factor to be taken into consideration (see *Alver v. Estonia*, no. 64812/01, 8 November 2005).

41. In the present case the Court observes that at the material time the applicant was awaiting trial for non-violent offences. He had spontaneously gone to the police to confess to the offences he had committed. His personal situation is thus radically different from that of the applicants in the cases of *Öcalan* and *Ramirez Sanchez* examined by the Court, which concerned convicted prisoners whose detention posed particular difficulties for the national authorities (see *Öcalan v. Turkey* [GC], no. 46221/99, §§ 32 and 192, ECHR 2005-IV, and *Ramirez Sanchez v. France* [GC], no. 59450/00, §§ 125 and 128, ECHR 2006-IX).

42. The Court observes that the applicant was placed in a cell measuring 7 m. sq, with living space not exceeding half of that surface area. It had a bed and toilets, but no washbasin. The Government did not dispute the applicant's submission that it was very poorly lit, very dirty and rat-infested. It was a cell intended for inmates in solitary confinement as a disciplinary measure or for inmates accused of paedophilia or rape. While in that cell the applicant was deprived of any contact with other inmates and of any social activity. He was given no access to outdoor exercise and was not permitted to leave his cell other than to see his lawyer or attend hearings, which were held at intervals of approximately one per month.

43. The Court observes that the applicant's isolation was neither complete sensory isolation nor total social isolation, but relative social isolation. However, the fact remains that certain aspects of those conditions were stricter than the Turkish prison regime for prisoners serving whole-life imprisonment (see paragraph 30 above). Whilst the latter can take daily exercise in an inner courtyard adjoining their cell and, depending on the circumstances, may be allowed limited contact with prisoners from the same unit, the applicant was deprived of such possibilities. Likewise, in the two cases referred to above, which concerned prisoners whose detention posed particular problems for the national authorities, there was no blanket prohibition on open-air exercise (see *Öcalan*, cited above, § 32, and *Ramirez Sanchez*, cited above, § 125).

44. In the Court's view, the blanket prohibition on open-air exercise – which remained in force throughout the applicant's detention in the individual cell – combined with his inability to have any contact with the other inmates, illustrates the exceptional nature of the applicant's conditions of detention.

45. The Court considers that these conditions are closer to those it examined in the case of *Payet v. France* (no 19606/08, 20 January 2011) in which the applicant had remained in solitary confinement for approximately two months in a small, badly lit cell in which the living space available to him was approximately 4.15 m². However, in that case the period of detention was shorter than in the present case, and the applicant was also able to leave his cell for one hour's daily exercise.

46. In assessing whether solitary confinement falls within the ambit of Article 3 of the Convention, regard must be had to the particular conditions, the stringency of the measure, its duration, the objective pursued and its effects on the person concerned (see *Rohde v. Denmark*, no. 69332/01, § 93, 21 July 2005). In that connection the length of the period in question requires careful examination by the Court as to its justification, the need for the measures taken and their proportionality with regard to other possible restrictions, the guarantees offered to the applicant to avoid arbitrariness and the measures taken by the authorities to satisfy themselves that the applicant's physical and psychological condition allowed him to remain in isolation (see *Ramirez Sanchez*, cited above, § 136).

47. The applicant was placed in solitary confinement and kept there on the basis of section 49(2) of the Execution of Sentences and Security Measures Act, which allows the prison authorities to take alternative measures to those provided for in that Act where there is a risk amounting to a "serious threat" (see paragraph 24 above). It is thus an entirely administrative procedure.

48. The Court notes the prison authorities' concern that the applicant risked being physically abused. Admittedly, such fears cannot be said to be totally unfounded in so far as the applicant had himself complained of intimidation and bullying while he had been detained with other inmates. However, even if those fears made it necessary to take certain security measures to protect the applicant, they do not suffice to justify a measure totally isolating the applicant from the other prison inmates. In that connection the Court notes that the Government were unable to explain why the applicant was not given the opportunity to take regular open-air exercise and, in accordance with his many requests (see paragraphs 12, 13 and 15 above), was not allowed even limited contact with other inmates).

49. The Court also notes that the applicant's attempts to have the measure in question reviewed by a post-sentencing judge and by the Assize Court did not yield any concrete result as his appeals were all dismissed without being examined on the merits. The judge merely pointed out that the prison authorities had a discretionary power in such matters, without even examining whether the measure placing the applicant in an individual cell was appropriate to the actual situation complained of by the applicant and without ruling on his requests for alleviation of the effects of his solitary confinement (see paragraph 14 above).

There is no doubt that it was a particularly serious measure, as, in addition to the psychological factor, his solitary confinement, whilst not being recognised as a punishment, imposed substantial material limitations on the applicant's rights.

50. Consequently, the Court concludes that the applicant was deprived of an effective domestic remedy regarding his complaint about the conditions of his detention and that he was not detained in appropriate conditions that respected his dignity.

51. The Court considers that in the present case the applicant's conditions of detention in solitary confinement were capable of causing him both mental and physical suffering and a feeling of profound violation of his human dignity. These conditions, exacerbated by the lack of an effective remedy, thus amount to "inhuman and degrading treatment" inflicted in breach of Article 3 of the Convention. …"[17]

With regard to the allegations that the aplicant had been subjected to discrimination on grounds of his sexual orientation, the court held, by six votes to one, that there had been a violation of Article 14 taken in conjunction with Article 3. The Court's elaboration on the matter is as follows:

"…55. The Court has already held on many occasions that Article 14 is not an autonomous provision. It only complements the other substantive provisions of the Convention and its Protocols. It has no independent existence since it has effect solely in relation to "the enjoyment of the rights and freedoms" safeguarded by those provisions. Although the application of Article 14 does not presuppose a breach of those provisions – and to this extent it is autonomous – there can be no room for its application unless the facts at issue fall within the ambit of one or more of them (see, among other judgments, *Van Raalte v. the Netherlands*, 21 February 1997, § 33, *Reports of Judgments and Decisions* 1997-I, and *Gaygusuz v. Austria*, 16 September 1996, § 36, *Reports* 1996-IV) .

56. It is not in dispute between the parties that the facts of the instant case fall within the ambit of Article 3 of the Convention. Article 14 is therefore applicable to the facts of the case.

57. The Court also reiterates that sexual orientation attracts the protection of Article 14 (see, among other authorities, *Kozak v. Poland*, no. 13102/02, § 83, 2 March 2010, and *Alekseyev v. Russia*, nos. 4916/07, 25924/08 and 14599/§ 108, 21 October 2010). Furthermore, where the distinction in question operates in this intimate and vulnerable sphere of an individual's private life, particularly weighty reasons have to be advanced before the Court to justify the measure complained of. Where a difference of treatment is based on sex or sexual orientation, the margin of appreciation afforded to the State is narrow, and in such situations the principle of proportionality does not only require that the measure chosen be generally adapted to the objective pursued; it must also be shown that it was necessary in the circumstances. If the reasons advanced for a difference in treatment were based solely on the applicant's sexual orientation, this would amount to discrimination under the Convention (see *Alekseyev*, cited above, § 102).

17 The Turkish translation of this text is unofficial and done by the Ministry of Justice, Directorate General for International Law and Foreign Relations, Department of Human Rights.

58. In the circumstances of the present case the Court notes that the situation complained of by the applicant, namely, the inappropriateness of the measure totally excluding him from prison life has led to the finding of a violation of Article 3 of the Convention (see paragraph 45 above). The Court reiterates its finding above that the prison authorities' concern that the applicant risked being physically abused if he remained in a standard shared cell are not entirely unfounded (see paragraph 42). However, as observed above, even though those fears made it necessary to take certain safety measures to protect the applicant, they do not suffice to justify a measure totally segregating him from the prison community.

59. Furthermore, the Court does not agree with the Government that the applicant was isolated at his own request. The applicant or his representative asked the prison authorities to transfer him to another shared cell with homosexual inmates or to a suitable block (see paragraph 8 above). In support of that request the applicant's representative specified that his client had been intimidated or bullied by his fellow inmates. The applicant, for his part, had stated that he had "had problems". In sum, the requested lodged with the authorities was for a transfer to a shared cell appropriate to the applicant's situation.

60. However, the applicant, who was charged with committing non-violent offences, was placed in a cell intended for solitary confinement as a disciplinary measure or inmates accused of pedophilia or rape. While in the cell he was deprived of any contact with other inmates and of any social activity. He had no access to outdoor exercise and was only rarely allowed out of his cell.

61. The Court observes, *inter alia*, that the applicant repeatedly disputed the measures in question, specifying in his request of 7 May 2009 that "these conditions of detention were imposed on him purely on the basis of his sexual orientation, on the pretext of protecting him from bodily harm" (see paragraph 13 above). Likewise, he expressly requested equal treatment to other inmates with access to outdoor exercise and social activities with other inmates, by means of measures capable of protecting him from bodily harm (see paragraphs 12, 13 and 15 above). Moreover, he specified that he was a homosexual and not a transvestite or transsexual (see paragraph 12 above). Those arguments were not, however, taken into account by the post-sentencing judge, who confined himself to observing that the prison authorities had a discretionary power to decide such matters and pointing to a hypothetical risk, namely, of "a transvestite being lynched", without, however, substantiating the argument that the applicant risked serious bodily harm on account of his sexual orientation and that totally excluding him from prison life was the most suitable measure (see paragraph 14 above).

62. The authorities have an obligation, which was incumbent on them under Article 14 of the Convention taken in conjunction with Article 3, to take all possible measures to determine whether or not a discriminatory attitude had played a role in adopting the

measure totally excluding the applicant from prison life (see, *mutandis mutandis*, *B.S. v. Spain*, no. 47159/08, § 71, 24 July 2012).

63. In any event, in the Court's view, the prison authorities did not undertake an adequate assessment of the risk posed to the applicant's safety. On account of the applicant's sexual orientation, the prison authorities believed that he risked serious bodily harm. Furthermore, as far as the Court is concerned, the measure fully excluding the applicant from prison life could not in any circumstances be regarded as justified. In particular, no explanation has been given as to why the applicant was completely deprived of even limited access to outdoor exercise.

64. Having regard to the foregoing, the Court is not satisfied that the need to take security measures to protect the applicant from bodily harm was the predominant reason for totally excluding him from prison life. In the Court's view, the applicant's sexual orientation was the main reason for adopting that measure. Accordingly, it considers it established that the applicant suffered discrimination on grounds of his sexual orientation. It further observes that the Government did not provide any justification showing that the distinction in question was compatible with the Convention.

65. Accordingly, the Court concludes that in the present case there has been a violation of Article 14 of the Convention taken in conjunction with Article 3. "

This judgment by the European Court of Human Rights was appealed by the government on 9 January 2013. The appeal made by the government on 9 January 2013 was dismissed by a panel of five judges on 27 May 2013. The judgment became final on 27 May 2013.

The ECtHR's judgment in the case of *X v. Turkey* sets a precedent in that it exposes the problems faced by homosexuals in Turkey and is important in that it is the first judgment of its kind. When the judgment is carefully examined, one gets a clear understanding of the shortcomings in the legislation on execution of sentences as well as the lack of planning regarding LGBT prisoners in prisons and detention houses.

D- Discrimination on grounds of sexual orientation in Turkey within the framework of the Judgment in the case of *X v. Turkey* – The legislation and the reflection of the problems in the lives of LGBT Prisoners

The domestic legislation is considerably narrow and has ambiguous arrangements. Article 49 titled 'Measures that May be Taken by the Prison Administration' under Law No. 5275 on the Execution of Sentences and Security Measures, Article 40 titled 'The Duties and

Authorities of the Prison Administration and Monitoring Committee' under the By-Law on the Administration of Prisons and the Execution of Sentences and Security Measures and Article 69 of the same Law titled 'Placement in an Institution' and Articles 22 and 26 of the Regulation on Monitoring and Grouping Centres (OG: 17.06.2005, no: 25848)[18] incorporate limited provisions about the subject. However, in practice, the grouping and placement of LGBT prisoners are done with the focus primarily on security concerns depending on the physical conditions of the prison and at the discretion of prison authorities in a rather random manner.

It has been observed that there is no uniformity in practice due to factors such as the absence of clear provisions in either the Constitution or execution law, the shortage of resources allocated to prisons and the lack of training of prison staff.

The observations made by a heterosexual inmate showing that even the most ordinary needs of a prisoner are not met in prisons clearly reveal the problems LGBT prisoners face or may face in prisons today[19].

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18 **Grouping of convicted prisoners**
Article 22 –
(1) Convicted prisoners shall be classified into groups such as;
   a) Those who are first-time offenders, repeat offenders, habitual offenders or professional criminals,
   b) Prisoners who must be subject to a special execution regime due to their mental or physical condition or their age,
   c) Dangerous prisoners,
   d) Prisoners convicted for terrorism,
   e) Prisoners who are members of criminal organisations or organisations for the purpose of obtaining a financial gain

Grouping according to age
Article 25 – The groups specified under subparagraph (b) in article 22 are further grouped as follows:
   a) ages between 12-15,
   b) ages between 15-18,
   c) ages between 18-21,
   d) Those over 65.

Grouping according to mental, physical conditions
Article 26 – Offenders specified under subparagraph (b) in article 22 are further grouped according to Article 25 and as follows;
   a) Those with physical disabilities,
   b) Those with mental disorders,
   c) Those with psychological conditions other than mental disorders,
   d) Those with drug or alcohol addiction,
   e) Those with a different sexual orientation.

19 For Att. Mahmut Alınak's evaluation on prisons see. http://www.odatv.com/n.php?n=mahmut-alinak-bulundugu-cezaevindeki-skandallar-zincirini-anlatti-2209141200, date of access 22.09.2014

This being the current state of events, Article 11 of the EU Directive No. 2000/78 states the following: 'Discrimination based on religion or belief, disability, age or sexual orientation may undermine the achievement of the objectives of the EC Treaty, in particular the attainment of a high level of employment and social protection, raising the standard of living and the quality of life, economic and social cohesion and solidarity, and the free movement of persons'. According to Article 12 of the same Directive, 'To this end, any direct or indirect discrimination based on religion or belief, disability, age or sexual orientation as regards the areas covered by this Directive should be prohibited throughout the Community'.

In the 2013 Progress Report for Turkey prepared by the EU Commission,[20] it is pointed out that discrimination based on sexual orientation is on-going in all walks of life, and underlined that legislation establishing an anti-discrimination and equality board has still not been adopted but waiting at the Office of the Prime Minister.

With regard to the subject matter of this monitoring report, the 2013 Progress Report makes the following evaluation:

> "…Substantial efforts are needed to effectively guarantee women's rights and protect vulnerable groups, including children and lesbian, gay, bisexual and transgender individuals, from abuse, discrimination and violence. There is a need for concrete legal and practical steps to address violence and discrimination based on sexual orientation and gender identity (p.14)."

The Human Rights Report on Turkey released by the USA also makes similar evaluations:

> "…Inadequate protection of vulnerable populations: The government did not effectively protect vulnerable populations, including women, children, and lesbian, gay, bisexual, and transgender (LGBT) individuals, from societal abuse, discrimination, and violence. Violence against women, including so-called honour killings, remained a significant problem, and child marriage persisted…"[21]

The fact that legislation in Turkey is not adequate for regulating matters concerning homosexual prisoners appears to be one of the most significant problems.

In addition, custody on remand is a frequently used measure; the regular increase in the number of convicted prisoners each year result in an increase in the prison population. According to the statistics published by the Ministry of Justice, Directorate General for Prisons and Detention Houses in June 2014[22] there are currently **151,047** prisoners. Of these, 131,080 are convicted prisoners (Men:125.966, Women:4609, Children:505) and 19,967 are remand

20 http://ec.europa.eu/enlargement/pdf/key_documents/2013/package/brochures/turkey_2013.pdf, Date of access:01.09.2014, p.60

21 Turkey 2013 Human Rights Report, http://www.state.gov/documents/organization/220551.pdf, Date of access:01.09.2004

22 http://www.cte.adalet.gov.tr/# , Date of access: 01.09.2014

prisoners (Men:18.109, Women:739, Children:1.119). As a result, the number of prisoners is at a level that the prison system cannot deal with.

As a consequence of this situation, prison authorities resort to rather random practices that they have developed. In some cases, even this is not possible.

The prevalence of discrimination on grounds of homosexuality in society has been stressed in many reports including the 2013 EU Progress Report.

The way that these issues reflect on the lives of homosexual prisoners is a matter of concern. Human rights and LGBT organisations receive a considerable number of applications regarding the problems faced by homosexual prisoners in securing even the most basic rights that are granted to other prisoners.[23]

The common theme in these complaints is that there is a prevalent perception that individuals of homosexual orientation are treated as transgender individuals in both the criminal proceedings and the subsequent execution process. In addition to other problems that this creates, the perception results in practices that treat LGBT prisoners as non-existent.

The case of *X v. Turkey* not only exposes the story of a homosexual individual who is treated as non-existing and his security concerns, the conditions of detention faced by LGBT inmates and the inhuman treatment they are subjected to, but also shows that the regime for the execution of sentences only includes separate arrangements for transgender individuals but fails to bring any regulations or uniform practices aiming to prevent the violation of the rights of other homosexual prisoners.

E- Statements made by the Government and Information Reflected in the Public Following the Judgment of the ECtHR

Following the judgment of the ECtHR, no detailed information was imparted to NGOs or the public concerning government activities for the execution of the judgment.

An evaluation meeting was held on 7 July 2014 in Istanbul with NGO representatives who are actively dealing with the issue and who have accepted our invitation [KAOS-GL: Attorney Hayriye Kara, The Transgender Counselling Centre Association: Attorney Sinem Hun, CİSST (Civil Society in the System for Execution of Sentences): Zafer Kıraç and Mustafa Eren]. As a result of the meeting, it was determined that none of the official agencies, including the

23 See. KAOS GL's report titled "2013 Human Rights Report on Sexual Orientation and Gender Identity", Published on: 9 April 2014, Source, http://www.kaosgldernegi.org/resim/yayin/dl/lgbt_insan_haklari_raporu_kaosgl_2013.pdf, Accessed: 01.09.014

Ministry of Justice, shared any information or engaged in an exchange of views and that the authorities did not even respond to information requests of a general nature concerning LGBT prisoners.

However, the Minister of Justice Bekir Bozdağ made a statement, which was published in Hurriyet Newspaper on 13 April 2014 under the heading '*We are building special prisons for homosexuals*'. The Minister said that they were planning on building prisons for homosexuals where they will not have to live with other prisoners.[24] On 14 April 2014, the same newspaper published another article under the heading '*Could there be a Special Prison for Homosexuals*?'.[25] After these news stories, the KAOS/GL Association made a public statement objecting to this practice and stating that "*Separate Prisons for LGBTI is Collective Segregation*". The association asserted that the planned intervention would make the existing individual segregation collective, thereby forcing homosexuals to disclose their homosexual identity and would result in a blacklisting of these individuals and their visitors.[26]

F- The response given by the Ministry of Justice to the Request for Information

Within the scope of this monitoring activity, on 19/06/2014, an application was made to the Ministry of Justice within the framework of the Right to Information Act and the following questions were asked to learn about the kinds of activities of the Ministry of Justice, which is the correspondent agency in the case of *X v. Turkey*, was carrying out or planning:

"…We kindly as for information to be given to our part on the following questions:

- Following the above-mentioned ECtHR judgment, whether or not any arrangements were made in the legislation for the execution of sentences regarding LGBT individuals and what these were, their dates and names,
- Following the above-mentioned ECtHR judgment, whether or not an official definition had been proposed for LGBT (lesbian, hay, bisexual, trans gender individuals) on which the execution laws could be based,
- Following the above-mentioned ECtHR judgment, whether or not criteria were established for the grouping of LGBT individuals deprived of their liberty,
- Following the above-mentioned ECtHR judgment, if no criteria had been established for the grouping of LGBT individuals deprived of their liberty, the nature and details of the current grouping and practices as well as the laws on which this was based,

24 http://www.hurriyet.com.tr/gundem/26210071.asp, Accessed:01.09.2014

25 http://www.hurriyet.com.tr/gundem/26216715.asp, Accessed: 01.09.2014

26 http://www.kaosgl.com/sayfa.php?id=16329, Accessed:01.09.2014

- Following the above-mentioned ECtHR judgment, whether there were plans to build separate prisons or detention houses for LGBT individuals in the Execution laws,
- Following the above-mentioned ECtHR judgment, if there were any plans to build separate prisons or detention houses for LGBT individuals, at what stage were these proposals and what was the aim, the principles and criteria in these endeavours,
- The total number of LGBT prisoners in prisons and detention houses as of today,
- Disaggregated data on the number of lesbian, gay, bisexual and transgender individuals,"

The Ministry of Justice, Directorate General for Prisons and Detention Houses responded to this request for information on 08/07/2014 with its letter No. 112830 in a rather narrow manner. The response focused more on the plans to build separate prisons for LGBT individuals:

> "…Our Directorate General has plans to build separate sections for these individuals within one of the Campus based Prisons hosting 7 to 8 separate prisons. The plan is to build single rooms to stay in overnight and a section where they may gather during the day.
>
> The reason for establishing these sections within a campus is the presence of trained staff, easy access to healthcare services and the fact that their visitors would be able to visit more freely wit other visitors within the campus.
>
> The main factor in building such a section is to ensure the security of this group, the opportunity for more effective training and reintegration into the society.
>
> The building of separate prisons for these individuals is still at the planning stage. Evaluation and other activities are on-going..."

As far as it is understood from the response to our request for information, the Ministry of Justice has no body of information about LGBT individuals kept in prisons or detention houses. This situation already shows the extent to which unilaterally proposed solutions will be effective.

It is understood from the statements made by the government to the public and the information obtained from the civil society organisations working in the field, and the action plan submitted by the government to the Committee of Ministers within the framework of this law, as well as the response given to our request for information, that nothing is really being done about the issue. The government is unable to provide data on the number of LGBT prisoners in Turkey, where they are kept, what their demands are or how their needs are determined. The only proposed solution by the government, who has none of this information, is to build a new prison and lock down LGBT prisoners there. This option is open to criticism in terms of both method and content.

i. At the time this decision was taken, the opinions of LGBT prisoners, their families, NGOs working in the area or experts working primarily at universities were not consulted. It is unknown exactly which needs were taken into consideration in the formula proposed by the government and who was responsible for the proposal;

ii. The advantages and disadvantages of such a decision were not discussed. It is also unknown whether other alternatives were discussed;

iii. No proposals are made regarding the possible severe consequences of the proposal to build a new and separate prison. With this method, LGBT prisoners will be separated from all other inmates as if they are diseased. Furthermore, the planned prison/detention house will be located in one area of Turkey, which is a very large country. All LGBT prisoners arrested and convicted in one part of the country will be collected in a single prison and will be placed at a location far from their families and social environments throughout trial proceedings and the time they will serve their sentences. The fairness of trials will also be affected by this practice. This kind of a burden, which is not placed on any other convicted or remand prisoner, will be a typical example of discrimination. Furthermore, it is highly likely that both LGBT prisoners and their families, who are under immense social pressure in Turkey, will be stigmatized by both the government and their communities when visiting these prisons.

As far as it was understood from the response by the Ministry of Justice given above, the government of Turkey is of the opinion that problems faced by LGBT prisoners can be solved by using a model of separate prisons and individual cells.

It is not possible to make any comprehensive analysis regarding the model proposed by the Ministry since no information is shared with the public or relevant NGOs regarding the details of the plans.

However, as it is understood from the response given to the request for information within the scope of this reporting activity, the Ministry is of the opinion that placement of LGBT prisoners (convicted prisoners) in a separate prison with one-person cells will solve the problem.

Turkey is a large country with many different types of prisons and detention houses. It is believed that the problem cannot be solved by means of building a couple of segregation units, separate prisons or sections. On the contrary, such a method would increase the segregation of LGBT prisoners rather than decreasing the discriminatory practices against them in prisons.

G- Calling on the applicant X and his Attorney to give statements as witnesses to the case

Although the ECtHR judgment in the case of *X v. Turkey* became final on 27 May 2013, both the applicant and the applicant's lawyer Murat Akci were called on to testify in October 2014 as 'witnesses' within the framework of an investigation.

This invitation, which we believe was made by the initiative of the Ministry of Justice, is of a nature that undermines the essence of the right to individual application protected by the Convention since X was once again forced to give a statement to confirm information already existing in the files, or for other purposes, in the absence of his lawyers, even if he was called on with the title of 'witness'.

This treatment of the applicant reminds one of the ECtHR judgment in the case of *Adivar and others v. Turkey*[27], where the right to individual application was violated due to the actions of the government. All actions that would result in an increase of the trauma created by the violation should be avoided, all attempts at preventing the right to individual application, changing the nature of the complaint or withdrawing it altogether should be abandoned.

In conclusion, whatever the reason for these actions, the utmost care and sensitivity should be shown to refrain from retraumatizing an applicant whose rights under Article 3 (prohibition of inhuman and degrading treatment) and Article 14 (non-discrimination) have been violated.

H- Activities carried out under Article 46 of the European Convention on Human Rights and the Action Plan Submitted by Turkey on 8 September 2014

According to Article 46 of the European Convention on Human Rights, the high contracting parties undertake to abide by the final judgment of the Court in any case to which they are parties and pay just satisfaction amounts to the applicant within three months as of the final date of the judgment.

Another aspect of article 46, which is significant for our report is the obligation of the state to adopt measures, in both legislation and practice, to prevent new violations similar to those found by the Court.

The high contracting parties are responsible for preparing an action plan within six months and an action report within nine months as of the final date of the judgment and submitting

27 *Akdıvar and others v. Turkey*, Application no: 21893/93, 06.09.1996, para.101-106; Translation. Prof.Dr. Osman Doğru, Emine Karacaoğlu
Source: http://aihm.anadolu.edu.tr/aihmgoster.asp?id=591, Date of access:10.10.2014

this to the Council of Europe Committee of Ministers Department for the Execution of Judgments. The Committee of Ministers of the Council of Europe, which is responsible for the supervision of whether these obligations are met, adopt recommendations on the basis of the evaluations submitted by the government, the applicant as well as third parties and ensures continuous supervision of the execution of the judgment until the required measures have been.[28]

On 8 September 2014, Turkey submitted its Action Plan to the committee of Ministers and contrary to the points elaborated above, claimed that neither the legislation nor the practice posed a problem for LGBT prisoners thereby requesting the closure of the case with a final resolution.[29]

In the Action Report submitted by the government of Turkey to the Council of Europe Committee of Ministers, information that had not been shared with the public or communicated to us in response to our requests for information was also submitted. The most striking piece of information in this document was that a penitentiary for '163 inmates with a different sexual orientation' was being built in Izmir.

In addition, the Action Report stated the following;

- According to official statistics, the number of LGBT prisoners in Turkey was **10**,
- LGBT prisoners are placed in prisons based on the information they provide as per Article 69 of the By-law on Administration of Penitentiary Institutions and the Execution of Sentences and Security Measures,
- LGBT prisoners are not subject to any form of discrimination,
- LGBT prisoners benefit from the same opportunities as other inmates,
- If there are no other LGBT prisoners in the same prison, LGBT individuals are placed in a solitary cell for the purpose of protecting their 'dignity and integrity',
- There is no problem with regard to LGBT prisoners in Turkey as of this date.

Under the section titled 'Facts and Complaints' in the Action Report, it is stated that 'the applicant X asked to be transferred to an individual cell' (see footnote 2 above for comparison). This statement is contradictory with the records kept about the said transfer. This contradiction has been established in terms of other information relevant NGOs have shared with the public.

In addition, the Action Report submitted by the government to the Council of Europe, Committee of Ministers, states the number of LGBT prisoners as ten whereas this figure is by far lower than the number of prisoners indicated in the letter of the Ministry of Justice,

28 For detailed information, see .Cengiz, Serkan "*Avrupa İnsan Hakları Mahkemesi Kararlarının İcrası ve Sürecin Denetlenmesi*", http://serkancengiz.av.tr/index.php?id=33&L=2 , Accessed:01.09.2014

29 https://wcd.coe.int/ViewDoc.jsp?Ref=DH-DD(2014)1073&Language=lanFrench&Site=CM

Directorate General for Prisons and Detention Houses, which was written on 24/07/2013 in response to the application made by Zafer Kıraç on behalf of the Association for Civil Society in the Penal system in line with the Law on the Right to Information[30]. In this letter dated 24/07/2013, the Ministry of Justice, Directorate General for Prisons and Detention Houses states that the number of LGBT prisoners is 79. Although there may have been possible changes in the figure over time, we are of the opinion that the statement asserting the number of LGBT prisoners as limited to ten should be taken with some caution.

In conclusion, we are of the opinion that the content of the Action Report submitted by the government of Turkey is not in any conformity with the evaluations shared by relevant NGOs with the public or the information and documents we have collected at the time of preparing this report.

The Action Report, both in terms of its approach to the issue and in that it affords no suggestions for a solution, clearly reveals that there are no proposed changes to legislation or practices aiming at solving the problems of LGBT individuals in similar conditions.

I- Recommendations to the Government

Following the ECtHR judgment in the case of *X v. Turkey*, which became final on 9 October 2012, in order to provide a real solution for the problems faced by LGBT prisoners (both convicted and remand prisoners) in prisons and detention houses,;

- The government should immediately abandon the perception that the problems faced by LGBT prisoners are confined to security concerns. All plans and projects that will have the effect of further isolating LGBT prisoners should be urgently discontinued.
- A series of informative meetings should be held with comprehensive participation by relevant stakeholders and/or NGOs in order to identify the problems faced with respect to the special needs of LGBT prisoners and individuals within this group.

30 'Final Report for the Project on Prisoners with Special Needs, pp. 56,57,58' Written by The Association for Civil Society n the Penal System - Özel İhtiyaçları Olan mahpuslar Projesi Sonuç Raporu s.56, 57, 58", Hazırlayan: Ceza İnfaz Sisteminde Sivil Toplum Derneği, http://www.cezaevindestk.org/belgeler/ozel_ihtiyaclara_sahip_mahpuslar_uzerine_el_kitabi2013.pdf , Erişim Tarihi:05.11.2014

- Once problems are identified, international standards and conventions regulating the rights of prisoners, with a special focus on the ***Yogyakarta Principles*** (article 9)[31], which set forth the rights of LGBT prisoners, should be taken into consideration while building cooperation and coordination with relevant stakeholders and exchanging information to prioritize the revision of the legislation on the execution of sentences. Initiatives should be taken urgently to bring about changes in legislation, including the Constitution, in an effort to ensure that LGBT prisoners fully benefit from all rights and freedoms granted to other inmates.
- In order to eliminate discrepancies in practice, the physical conditions in prisons should be improved; continuous training should be delivered to staff who is responsible for implementation and all such training should be planned and implemented in cooperation with relevant NGOs.

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31 **Yogyakarta Principles, "***Yogyakarta Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity*, 26 March 2007, http://www.yogyakartaprinciples.org/principles_en.htm, Date of Access:01.09.2014; çev. Zafer Salan, http://www.rightsagenda.org/attachments/479_Yogyakarta%20%C4%B0lkeleri.pdf, Date of access: 01.09.2014. The **Yogyakarta Principles** have been taken into consideration by the European Court of Human Rights as one of the international instruments in the issue. See. *Hamalainen v. Finland*, no. 39359/09, 16 July 2014.

Principle 9: Everyone deprived of liberty shall be treated with humanity and with respect for the inherent dignity of the human person. Sexual orientation and gender identity are integral to each person's dignity.

States shall:

A) Ensure that placement in detention avoids further marginalising persons on the basis of sexual orientation or gender identity or subjecting them to risk of violence, ill-treatment or physical, mental or sexual abuse;

B) Provide adequate access to medical care and counselling appropriate to the needs of those in custody, recognising any particular needs of persons on the basis of their sexual orientation or gender identity, including with regard to reproductive health, access to hiV/aids information and therapy and access to hormonal or other therapy as well as to gender-reassignment treatments where desired;

C) Ensure, to the extent possible, that all prisoners participate in decisions regarding the place of detention appropriate to their sexual orientation and gender identity;

D) Put protective measures in place for all prisoners vulnerable to violence or abuse on the basis of their sexual orientation, gender identity or gender expression and ensure, so far as is reasonably practicable, that such protective measures involve no greater restriction of their rights than is experienced by the general prison population;

E) Ensure that conjugal visits,where permitted,are granted on an equal basis to all prisoners and detainees, regardless of the gender of their partner;

F) Provide for the independent monitoring of detention facilities by the state as well as by non-governmental organisations including organisations working in the spheres of sexual orientation and gender identity;

G) Undertake programmes of training and awareness-raising for prison personnel and all other officials in the public and private sector who are engaged in detention facilities, regarding international human rights standards and principles of equality and non- discrimination, including in relation to sexual orientation and gender identity.

- Persons and organisations working in human rights such as the Ombudsman and the Human Rights Institute should assume a more active stand and working programme for the solution of problems faced by LGBT prisoners.

J- Recommendations to the Committee of Ministers

The judgment, dated 9 October 2012, by the European Court of Human Rights in the case of *X v. Turkey* became final on 27 May 2013. The judgment was given the status of 'standard' supervision. Because of the nature of the judgment and the problems faced by LBT prisoners in Turkey, we are of the opinion that it will be beneficial for the execution of the judgment to be monitored by the Committee of Ministers under an 'enhanced' supervision status.

The Action Report submitted by the government of Turkey presents neither a plan nor a will to identify the problems pertinent to the issue.

Therefore, we are of the opinion that a recommendation should be made to the Turkish government calling for the adoption of legal and administrative arrangements to solve the problems of LGBT prisoners and to ensure that the steps taken by the government in the execution of the judgment are not limited to a focus on 'ensuring the security of LGBT prisoners'.

ACKNOWLEDGMENTS

The human rights movement in Turkey is comprised of diverse advocates with exceptional experiences. This important study was prepared by Attorney at Law, Serkan Cengiz. We would like to thank our valuable colleague Serkan Cengiz, who is never reluctant to share his experience and knowledge and who actively advocates for human rights while practising his profession.

Recognizing the importance of bringing together the human rights movement and universities, IHOP has been cooperating with the Ankara University Human Rights Center since the day it was founded. We would like to thank Assistant Professor Kerem Altıparmak and Associate Professor Başak Çalı, who have contributed throughout the study, Assistant Professor Ahmet Murat Aytaç who has catered to the need of the human rights movement for a method and tool in collecting and analysing information by creating the monitoring data base which constitutes the backbone of this work.

Many lawyers and human rights advocates have contributed to the present work. We would like to extend our thanks, on behalf of IHOP, to Mustafa Eren, Attorney at Law Sinem Hun, Attorney at Law Hayriye Kara, Attorney at Law Kerem Dikmen and Attorney at Law Nilhan Erdoğan as well as our dear friends who have found this work important and valuable enough to make contributions.

Finally, we would like to thank the Delegation of the European Union to Turkey for providing the funding necessary to make this work possible.

Human Rights Joint Platform