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Amnesty International criticizes judicial harassment of LGBT association

Amnesty International has written to the government expressing its opposition to civil proceedings brought by the Izmir public prosecutor to close the lesbian, gay, bisexual and transgender (LGBT) association, Black Pink Triangle.

The first court hearing in the case will be heard on 9 February at Izmir Civil Court of First Instance (no.6). Amnesty International will send an observer to the hearing.

The Izmir-based association faces closure following a complaint by the Izmir Governor's Office (part of the Ministry of the Interior) that the aims of the association violated "Turkish moral values and family structure".

The case is the latest in a series of attempts by the Ministry of the Interior to close LGBT associations through the courts on similar grounds. Cases were brought against LGBT association KAOS-GL in 2005 and Pembe Hayat (Pink Life) in 2006. Following a long legal battle, Lambda Istanbul won its case against closure in April 2009 when the local court in Istanbul confirmed the decision of the Supreme Court of Appeals to overturn the closure ruling.

As in previous cases, Amnesty International opposes the closure case against Black Pink Triangle, which forms part of a pattern of judicial harassment targeting LGBT associations. The closure of Black Pink Triangle on such grounds would violate the right of all persons to freedom of association, expression and non-discrimination and runs contrary to Turkey's obligations under the European Convention on Human Rights.

The notice of civil charges filed by the Izmir Chief Public Prosecutor also cites Black Pink Triangle's failure to comply with a 30-day time limit in producing documents as justification for the closure of the association. Amnesty International expressed its concern to the government that any closure of the association on the grounds of its failure to file documents would amount to an unlawful and discriminatory restriction of the right to freedom of association.

Background

Black Pink Triangle association was founded in February 2009 to become the first lesbian, gay, bisexual and transgender association in Izmir. The association aims to combat discrimination against LGBT individuals through law, to mobilize the public against hate crimes and to create a forum where LGBT individuals can feel safe and secure to share their experiences.

Following the founding of the association the Izmir Governor's Office requested that Article 2¹ of Black Pink Triangle's constitution be amended and that the documentation be returned complete with the signatures of all the founding members of the association within 30 days. Black Pink Triangle told Amnesty International that it submitted the documentation complete

¹ Article 2 is not cited in detail here, because of its length (939 words)

with the required signatures but refused to alter its constitution, regarding this as a violation of the members' freedom of association.

Following this correspondence a complaint dated 25 May 2009 was issued by the Izmir Governor's Office stating that the aims of the association violates a provision in the Civil Code requiring adherence to Turkish moral values and family structure (article 56 of Law no. 4721).

The complaint -- if upheld and led to the closure of Black Pink Triangle -- would violate the rights to freedom of association, expression and non-discrimination. It also appears to have no basis in domestic law. The Supreme Court of Appeals ruled in the case of Lambda Istanbul that there were no legal grounds on which to close an association on the basis of morality, stating: "*no clause exists in our laws which prohibits lesbian, gay, bisexual, travesti and transsexual persons from assembly to form an association with aims of solidarity. As a result, it cannot be said that [these associations'] aims are unlawful or immoral.*" (Decision of 29 May 2008, number 2007/190 - 2008/236)

The frequency with which closure cases are opened against LGBT organizations underlines the urgent need to take steps to prevent these repeated violations of the rights to freedom of association, expression and the prohibition of discrimination.

Amnesty International has urged the government to take steps to ensure the rights of all persons to freedom of association are respected, without discrimination and that notions of public morals are not used as the basis to restrict any exercise of the right to peaceful association on the basis that the association affirms diverse sexual orientations or gender identities. Amnesty International also recommended that the Minister of the Interior remind provincial governorships and their association directorates of their obligation to respect and protect the rights of all persons to freedom of association, without discrimination, including on grounds of sexual orientation and gender identity, and to take measures to eliminate all forms of discrimination on grounds of sexual orientation and gender identity.

Amnesty International also requested that the Minister of Justice take steps to ensure that the Civil Code (law no. 4721) and the Law on Associations (no. 5353), on which the civil prosecution is based, are implemented in a manner that conforms to international standards on freedom of association, expression and non-discrimination. Such steps could include providing additional guidance to judges and prosecutors regarding these laws.

Amnesty International has also urged the authorities to take immediate steps to ensure a review of government policy on the issue of restrictions of the rights to peaceful association and expression on grounds of sexual orientation and gender identity.

The organization also urged the government to introduce comprehensive non-discrimination legislation which includes specific protections against unequal treatment based on sexual orientation and gender identity in all areas of life. Doing so would be consistent with the European Convention on Human Rights.

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