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Commission internationale de juristes - Comisión Internacional de Juristas

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Public Prosecutor v. Siyah Pembe Üçgen Izmir Association In the 6th Court of First Instance of Izmir Indictment No. 2009/42

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Written Comments of the International Commission of Jurists

I. Introduction

The International Commission of Jurists is a non-governmental organization working to advance understanding and respect for the rule of law as well as the protection of human rights throughout the world. It was set up in 1952 and has its headquarters in Geneva (Switzerland). It is made up of 60 eminent jurists representing different justice systems throughout the world and has 90 national sections and affiliated justice organizations. The International Commission of Jurists has consultative status at the United Nations Economic and Social Council, the United Nations Organization for Education, Science and Culture (UNESCO), the Council of Europe and the African Union.

The International Commission of Jurists (ICJ) works towards full respect of human rights and the end of human rights violations, including those based on the grounds of sexual orientation. We offer legal expertise in international human rights law and work in both country specific and thematic areas in international human rights law. Our mode of operation includes making legal interventions by way of amicus briefs in important and relevant cases of interest.

The subject of sexual orientation and gender identity in international human rights law is an area that we command expertise and have given focused consideration and study. The ICJ was a co-facilitator of the expert process that led to the Yogyakarta Principles. It has recently published the Practitioner's Guide to Sexual Orientation, Gender Identity and International Human Rights Law. In addition, the ICJ issues regular compilations of jurisprudence relating to sexual orientation and gender identity from the UN, European and OAS systems. It is for the foregoing reasons that the ICJ is interested in the case of *Public Prosecutor v. Siyah Pembe Üçgen Izmir* in the 6th Court of First Instance of Izmir .

Siyah Pembe Üçgen Izmir (Black Pink Triangle Izmir), an organization that supports the rights of LGBT individuals, presented its charter to the Governor of Izmir in February 2009. The aim of the association, as stated in its charter, is "to support all lesbian, gay, bisexual and transgender men and women to adopt equality as a value, to realize their inner selves and to help bring peace and welfare by developing themselves." In May 2009,

the Governor asked the association to amend its charter on grounds of public morality and protection of the family, and it refused to do so. On 16 October 2009, the Public Prosecutor of Izmir filed a motion in the 6th Court

of the First Instance of Izmir to close Siyah Pembe Üçgen Izmir for failure to amend its charter.

A court order closing Siyah Pembe Üçgen Izmir would be a severe interference with the freedom of association of Siyah Pembe Üçgen's members and thus run counter to Turkey's obligations under international law. Freedom of association is guaranteed in all international and regional human rights instruments, and the state must refrain from as well as protect against conduct that interferes with freedom of association. Closing Siyah Pembe Üçgen on the grounds of public morality would not pass the test regarding permissible interference as set forth by the European Court of Human Rights and the UN Human Rights Committee. Moreover, the use of "public morality" to justify closure would in fact be discrimination on the grounds of sexual orientation. Such discrimination is prohibited by international treaties to which Turkey is a party.

This brief will first present an overview of freedom of association under international law. It will then analyze whether public morality is a permissible limitation in this instance. Finally, it will discuss the right to be free from discrimination.

II. Overview of Freedom of Association under International Law

Freedom of association includes the freedom of individuals to join and form groups to pursue a common interest. An association typically has an expressive purpose. Like the closely related rights to freedom of expression and to freedom of assembly, it is considered essential to a pluralistic and democratic society. Article 20 of the Universal Declaration of Human Rights provides: "Everyone has the right to freedom of peaceful assembly and association." The right to freedom of association is protected in human rights treaty law by the International Covenant on Civil and Political Rights (article 22) as well as by the four regional treaties, the Arab Charter on Human Rights (article 28), the African Charter on Human and People's Rights (article 10), and the American Convention on Human Rights (article 16) and the European Convention on Human Rights (article 11).¹

Both the International Covenant on Civil and Political Rights (ICCPR), which Turkey ratified in 2006, and the European Convention for the Protection of Human Rights and Fundamental Freedoms, which Turkey ratified in 1954, contain similarly worded guarantees of freedom of association and limitations clauses. Article 22 of the ICCPR provides:

Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.

No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right.

¹ Certain aspects of freedom of association are also contained in treaties concerning labour rights, such as the International Covenant on Economic, Social and Cultural Rights (article 8) and ILO Convention No. 87 (article 2).

Article 11 of the European Convention provides:

Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.

No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.

Judgments of the European Court of Human Rights interpreting Article 11 of the European Convention and views of the Human Rights Committee interpreting Article 22 of the ICCPR establish a four-prong test to determine whether there has been a violation of freedom of association.²

- (1) Has there been an interference with freedom of association?
- (2) Is the interference provided for by law?
- (3) Does the law have a legitimate aim, meaning is it one of the aims enumerated in the Article?
- (4) Is the interference necessary in a democratic society?

It is the last prong of the test that has received the most attention. A legitimate aim alone is insufficient. The interference must also be necessary. That is, it must meet a “pressing social need” and be “proportionate to the legitimate aim pursued.”³ The European Court has stated, “Only convincing and compelling reasons can justify restrictions on freedom of association.”⁴ The Human Rights Committee has similarly observed that the reference to “necessary in a democratic society” means that “the existence of any reasonable and objective justification for limiting the freedom of association is not sufficient. The State Party must further demonstrate that the prohibition of an association is necessary to avert a real and not only hypothetical danger to national security or democratic order and that less intrusive measures would be insufficient to achieve this purpose.”⁵

The European Court takes into account the nature and severity of the interference when assessing proportionality.⁶ Thus it has been particularly concerned about instances where associations are denied registration or dissolved before they have even begun to operate. In the case of *United Communist Party of Turkey*, it noted that because the organisation had been “dissolved immediately after being formed and accordingly did not even have time to take any action,” it was thus being “penalised for conduct relating solely to the exercise of freedom of expression.”⁷ The European Court concluded that “a measure as drastic as the immediate and permanent dissolution . . . ordered before

² For a general description of this test, see Report of the Special Rapporteur on the situation of human rights defenders, 4 August 2009, U.N. Doc. A/64/226, at paras. 26-30.

³ *Freedom and Democracy Party (ÖZDEP) v. Turkey*, Application no. 23885/94, Judgment dated 8 December 1999, at para. 43.

⁴ *UMO Ilinden and Others v. Bulgaria*, Application no. 59491/00, Judgment dated 19 January 2006, at para. 61.

⁵ *Aleksander Belyatsky et al. v. Belarus*, Communication No. 1296/2004, U.N. Doc. CCPR/C/90/D/1296/2004 at para. 7.3; see also *Jeong-Eun Lee v. Republic of Korea*, Communication No. 1119/2002, U.N. Doc. CCPR/C/84/D/1119/2002 (2005) at para. 7.2.

⁶ *Gorzelik and Others v. Poland*, Application No. 44158/98, Judgment dated 20 December 2001, at para. 60.

⁷ *United Communist Party of Turkey and Others v. Turkey*, Application no. 133/1996/752/951, Judgment dated 30 January 1998, at para. 58.

its activities had even started” was “disproportionate to the aim pursued and consequently unnecessary in a democratic society.”⁸

Because freedom of association is so closely linked with freedom of expression, and because both are foundations of a democratic society, the Court interprets Article 11 in light of the requirements of Article 10: “The protection of opinions and the freedom to express them is one of the objectives of the freedoms of assembly and association as enshrined in Article 11.”⁹ The link is especially relevant where the interference with the right of freedom of association is largely based on a reaction to the association’s charter and not its activities.¹⁰ The Human Rights Committee has likewise held that associations that “peacefully promote ideas not necessarily favourably received by the government or the majority of the population” are within Article 22 protection.¹¹

Although many of the Court’s cases have dealt with the registration of political parties, the role of other types of associations are no less important in ensuring pluralism. Many of the Court’s cases concern associations formed by ethnic or linguistic minorities. In the case of *UMO Ilinden and Others v. Bulgaria*, the Court noted that “associations formed for other purposes . . . are also important to the proper functioning of democracy. For pluralism is also built on the genuine recognition of, and respect for, diversity and the dynamics of cultural traditions, ethnic and cultural identities, religious beliefs, artistic, literary and socio-economic ideas and concepts.”¹² Furthermore, the State, as the “ultimate guarantor of the principle of pluralism,” must respect freedom of expression and association in order to ensure a pluralistic society.¹³

In light of the above, it is clear that under international law individuals have the right to come together to pursue a common purpose. Any interference with that right must be provided for by law, based on one of the enumerated aims, and necessary in a democratic society. The right to form an association extends not only to members of political parties and trade unions, but to individuals who form groups of almost any composition and purpose, including groups that are formed by minorities and express minority viewpoints. Because the right to freedom of association is closely linked to freedom of expression, and both are essential for democracy and pluralism, even associations that espouse ideas not favourably received by the majority or by the government are protected.

III. The ‘Public Morality’ Limitations Clause Cannot Justify Closure of Siyah Pembe Üçgen Izmir Association

Both the European Convention and the ICCPR refer to “public morality” as one of the permissible grounds for limiting freedom of association, as well as freedom of assembly and freedom of expression. There do not appear to have been any cases in which the European Commission, European Court, or Human Rights Committee have directly interpreted a restriction on the right to freedom of association based on a claimed justification of public morality. Nevertheless, decisions on related issues by both the European Court and the Human Rights Committee demonstrate that “public morality” cannot justify the interference with the freedom of association rights of the members of Siyah Pembe Üçgen. First, under the relevant jurisprudence, public morality must be narrowly construed. The European Court has repeatedly rejected public morality as justification for state

⁸ *United Communist Party of Turkey* at para. 61; see also *Siridopoulos and Others v. Greece*, Application no. 57/1997/841/1047, Judgment dated 10 July 1998, at para. 47 (holding that refusal to register the applicants’ association was disproportionate to the objectives pursued).

⁹ *United Communist Party of Turkey* at para. 42; *Vogt v. Germany*, Application No. 7/1994/454/535, Judgment dated 26 September 1995, para. 64.

¹⁰ *United Communist Party of Turkey* at para. 58; *UMO Ilinden and Others* at para. 59.

¹¹ *Viktor Korneenko et al. v. Belarus*, Communication No. 1274/2004, U.N. Doc. CCPR/C/88/D/1274/2004 (2006), paras. 7.3 – 7.7.

¹² *UMO Ilinden and Others v. Bulgaria*, para. 58.

¹³ *United Communist Party of Turkey* at paras. 43-44.

conduct that impairs fundamental rights, including the right to privacy and the right to freedom of peaceful assembly. Second, even when public morality a legitimate aim, its application here does not meet the test of being necessary in a democratic society because it neither responds to a pressing social need nor is proportionate.

A. Careful Scrutiny of Public Morality as a Claimed Justification

Any exception to the general right of freedom of association must be interpreted narrowly. The European Court of Human Rights has repeatedly indicated that “the exceptions set out in Article 11 are to be construed strictly; only convincing and compelling reasons can justify restrictions on freedom of association.”¹⁴ A State’s “margin of appreciation” in fulfilling its article 11 obligation, therefore, is limited and goes “hand in hand with rigorous European supervision.”¹⁵

European Convention jurisprudence reveals a clear trend towards a very narrow role for public morality justifications. In the freedom of expression case of *Open Door and Dublin Well Woman v. Ireland*, applicants challenged a law banning health care facilities from providing any information about the availability of abortion services outside Ireland.¹⁶ Ireland argued that it could ban such information for the protection of morals because the majority of people held the view that abortion was morally wrong. The Court disagreed. Although it accepted that public morality was the legitimate aim, it concluded that the ban on information was not necessary in a democratic society and thus violated Article 10.¹⁷

In the 1981 case of *Dudgeon v. United Kingdom* and *Norris v. Ireland*, the European Court held that laws criminalizing consensual same-sex sexual conduct violated Article 8 (right to privacy) of the Convention. In doing so, it took note of “the moral climate . . . in sexual matters.”¹⁸ The *Dudgeon* Court, for example, accepted that there was “a strong body of opposition stemming from a genuine and sincere conviction shared by a large number of responsible members of the Northern Irish community that a change in the law would be seriously damaging to the moral fabric of society.”¹⁹ It nevertheless found that the penal laws in question did not meet a “pressing social need” and were disproportionate to the aim pursued: “In particular, the moral attitudes towards male homosexuality in Northern Ireland and the concern that any relaxation in the law would tend to erode existing moral standards cannot, without more, warrant interfering with the applicant’s private life to such an extent.”²⁰

The Human Rights Committee and national courts have come to similar conclusions. In *Toonen v. Australia*, the Human Rights Committee rejected the notion that public morality might justify a law criminalizing same-sex conduct.²¹ In decisions from states as diverse as Fiji²², Hong Kong²³, India²⁴,

¹⁴ *Siridopoulos and Others* at para. 40; see also *United Communist Party of Turkey* at para. 46; *Freedom and Democracy Party (ÖZDEP)* at para. 44; *Linkov c. République Tchèque*, Requête no. 10504/03, Arrêt de 7 décembre 2006, para. 35.

¹⁵ *United Communist Party of Turkey* at para. 46.

¹⁶ *Case of Open Door and Dublin Well Woman v. Ireland*, Application No. 14234/88; 14235/88, Judgment, 29 October 1992.

¹⁷ *Id.* at para. 70.

¹⁸ *Dudgeon v. United Kingdom*, Application No. 7525/76, Judgment dated 22 October 1981, at para. 57.

¹⁹ *Id.*

²⁰ *Id.* at para. 61.

²¹ *Toonen v. Australia*, U.N. Doc. CCPR/50/D/488/1992, 4 April 1994, at paras. 8.4 & 8.6.

²² *Nadan & McCosker v. State*, Criminal Appeal Case Nos. HAA 85 & 86 of 2005, 26 August 2005 (High Court of Fiji).

²³ *Leung T.C. William Roy v. Secretary for Justice*, CACV317/2005, 20 September 2006 (Court of Appeal of the High Court of Hong Kong).

²⁴ *Naz Foundation v. Government of NCT of Delhi and Others*, WP(C) No. 7455/2001, 2 July 2009 (High Court of Delhi at New Delhi).

South Africa²⁵, and the United States²⁶, courts have held that the moral views of the majority were not sufficient justification for laws that criminalized same-sex conduct. As the High Court of Delhi stated recently, “Thus popular morality or public disapproval of certain acts is not a valid justification for restriction of the fundamental rights . . . Popular morality, as distinct from a constitutional morality derived from constitutional values, is based on sifting and subjective notions of right and wrong. If there is any type of morality that can pass the test of compelling state interest, it must be ‘constitutional’ morality and not ‘public morality.’”²⁷ In referring to “constitutional morality” the High Court meant the values of respect for human rights enshrined in the Constitution.

Norris and *Dudgeon* concern the role of public morality in limiting *conduct* that the majority deems contrary to public morality. The same reasoning, however, applies to freedoms of expression, association and assembly. If same-sex conduct is protected by the European Convention – and the decisions of the European Court make clear that it is – both expression about same-sex conduct and the expressive activity of forming an association that supports LGBT individuals are protected as well.

B. The Interference is not Necessary in a Democratic Society

Any interference on the exercise of freedom of association must not only be for a legitimate aim, but also must be necessary in a democratic society. That means it must meet a pressing social need and be proportionate to the aim pursued. This is so even when public morality is claimed as the legitimate purpose of the interference. For example, in the case of *Norris v. Ireland*, the Government of Ireland argued that restrictions imposed for the protection of morals could not be measured by the criteria of being “necessary in a democratic society” and that States should enjoy a wider “scope of appreciation.”²⁸ The European Court firmly rejected this line of reasoning. A contested measure that pursues “the legitimate aim of protecting morals” must still meet the requirements of “a pressing social need” and “proportionality.”²⁹

As is demonstrated below, the interference with *Siyah Pembe Üçgen İzmir* neither meets a pressing social need nor is proportionate.

First, *Siyah Pembe Üçgen* is an association formed by and for lesbian, gay, bisexual and transgender (LGBT) individuals. Its charter states that its purpose is to support LGBT men and women and to struggle against discrimination. Consensual same-sex sexual activity is not unlawful in Turkey. Given that same-sex conduct is not illegal, it is hard to understand how the closure of an organization that seeks to support and advocate for the rights of LGBT individuals responds to a pressing social need. In *Open Door and Dublin Well Woman v. Ireland*, the Court found significant that it was not illegal in Ireland for a pregnant woman to travel abroad to obtain an abortion. The Court emphasized, “Limitations on information concerning activities which, notwithstanding their moral implications, have been and continue to be tolerated by national authorities, call for careful scrutiny by the Convention institutions as to their conformity with the tenets of a democratic society.”³⁰ Since homosexuality is not illegal in Turkey, the limitation on freedom of association at issue in this case is incompatible with a democratic society.

²⁵ *National Coalition for Gay and Lesbian Equality v. Minister of Justice et al*, Case CCT 11/98, 9 October 1998 (Constitutional Court of South Africa).

²⁶ *Lawrence v. Texas*, 539 U.S. 558, 26 June 2003 (U.S. Supreme Court).

²⁷ *Naz Foundation* at para. 79.

²⁸ *Norris v. Ireland*, Application No. 10581/83, Judgment dated 26 October 1988, at para. 43.

²⁹ *Id.* at 44.

³⁰ *Id.* at para. 72.

Secondly, closing Siyah Pembe Üçgen İzmir Association would be disproportionate. A closure order based solely on the association's charter, and not on its activities, would directly implicate core freedom of expression concerns. As the Court has emphasized on many occasions, freedom of expression "is applicable not only to 'information' or 'ideas' that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb. Such are the demands of pluralism, tolerance and broadmindedness without which there is no democratic society."³¹

In the case of *UMO Ilinden and Others v. Bulgaria*, the European Court addressed the Government's claim that the association harboured separatist views and would pose a danger to the territorial integrity of the country. The Court made clear that unpopular expression could not justify the interference with Article 11 rights. "However shocking and unacceptable certain views or words used might have appeared to the authorities and the majority of the population . . . their suppression does not seem warranted in the circumstances of the case."³²

Thus even speech that is shocking, offensive or disturbing is protected. Unpopular expression is protected. Regardless of the popularity of Siyah Pembe Üçgen's viewpoints or the activities of its members, the members have a right to express those views and to form an association for such a purpose. Closing Siyah Pembe Üçgen would be a drastic interference with freedom of association and one that cannot be justified by the claim of public morality.

III. "Public Morality" Cannot Excuse Prohibited Discrimination

Individual members of Siyah Pembe Üçgen İzmir have the right to be free from discrimination on the basis of their sexual orientation. Article 14 of the European Convention and Article 26 of the ICCPR contain guarantees of the right to non-discrimination.³³ Although these provisions do not list "sexual orientation" as an enumerated ground, both the European Court and the Human Rights Committee have held that "sexual orientation" is a prohibited ground of discrimination.³⁴ In addition other treaty bodies as well as reports of the U.N. special rapporteurs and working groups have made clear that "gender identity" is also a prohibited ground of discrimination.³⁵

³¹ *UMO Ilinden and Others v. Bulgaria* at para. 60; *Freedom and Democracy Party (ÖZDEP) v. Turkey* at para. 37; *United Communist Party of Turkey and Others* at para. 43.

³² *UMO Ilinden and Others* at para. 76.

³³ Article 14 of the European Convention provides: "The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status." Article 26 of the ICCPR provides: "All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status." Thus Article 26 is a free-standing non-discrimination provision, while Article 14 only applies when some other right guaranteed by the European Convention has been infringed.

³⁴ For decisions of the Human Rights Committee, see *Toonen v. Australia*, U.N. Doc. CCPR/50/D/488/1992, 4 April 1994, para. 8.7; *Young v. Australia*, U.N. Doc. CCPR/C/78/D/941/2000, 18 September 2003, para. 10.4; *X v. Colombia*, U.N. Doc. CCPR/C/89/D/1361/2005, 14 May 2007, para. 7.2. For decisions of the European Court, see *Salgueiro da Silva Mouta v. Portugal*, Application No. 33290/96, Judgment dated 21 December 1999; *E.B. v. France*, Application No. 43546/02, Judgment dated 22 January 2008.

³⁵ See, e.g., Committee on Economic, Social and Cultural Rights, General Comment 20, U.N. Doc. E/C.12/GC/20, 10 June 2009, at para. 32 (holding that gender identity is recognized as among the prohibited grounds of discrimination); Committee Against Torture, General Comment 2, U.N. Doc. CAT/C/GC.2/CRP.1/Rev.4, 23 November 2007, at para. 21; Report of the Special Rapporteur on the question of torture and other cruel, inhuman or degrading treatment or punishment, U.N. Doc. E/CN.4/2002/76, 27 December 2001 (noting that discrimination on the grounds of sexual orientation or gender identity may contribute to the dehumanization of the victim, which is often a necessary condition for torture and ill-treatment to take place); Report of the Independent Expert on Minority Issues, U.N. Doc. E/CN.4/2006/74, 6 January 2006, at para. 28 (noting discrimination based on gender,

In the case of *Salgueiro da Silva Mouta v. Portugal*, which concerned the denial of custody to a father living in a same-sex relationship, the Court held that sexual orientation was “a concept which is undoubtedly covered by Article 14 of the Convention.”³⁶ “Just like differences based on sex. . . differences based on sexual orientation require particularly serious reasons by way of justification.”³⁷ Finding a legitimate aim – the best interests of the child – but no proportional relationship between the aim and the means employed, the Court concluded that the difference in treatment based on the applicant’s sexual orientation was discriminatory.³⁸

Bączkowski and Others v. Poland is also instructive here.³⁹ The applicants, members of LGBT associations wishing to organize a parade to promote equality, challenged the denial of a parade permit by the Mayor of Warsaw. They contended that the denial of a permit violated their freedom of assembly, in violation of Article 11, and was discriminatory, in violation of Article 14. The Court noted that on the same day the authorities permitted other assemblies to be held and that these assemblies had titles such as “Against propaganda for partnerships” and “Against adoption of children by homosexual couples.” Furthermore, in an interview with a newspaper, the mayor of Warsaw had stated that “there will be no public propaganda about homosexuality. . . .In my view, propaganda about homosexuality is not the same as exercising one’s freedom of assembly.”⁴⁰ Given this context, the Court concluded that the parade organizers’ rights to freedom of assembly and non-discrimination were both violated.

As these cases make clear, discrimination on the basis of sexual orientation is prohibited under the European Convention as well as the ICCPR. A decision by this Court to close Siyah Pembe Üçgen Izmir would violate the internationally-guaranteed right of non-discrimination.

IV. Conclusion

Freedom of association is protected by the ICCPR and the European Convention, as well as the Universal Declaration of Human Rights and all of the other regional human rights treaties. Together with freedom of expression and freedom of assembly, it is considered essential to the functioning of a democracy. Any interference with freedom of association must be not only provided for by law and have a legitimate aim, it must also be necessary in a democratic society. That means the interference must meet a pressing social need and be proportionate to the legitimate aim pursued. This is a strict test and one that the closure of Siyah Pembe Üçgen Izmir could not pass.

There is no pressing social need to interfere with the freedom of association rights of Siyah Pembe Üçgen’s members, especially given that homosexuality is not banned and that other LGBT organizations exist in Turkey. As for proportionality, closure of the organization is the most drastic curtailment possible of freedom of association.

Public morality, moreover, cannot be invoked by Turkish authorities to excuse what is actually discrimination on the basis of sexual orientation and gender identity. While it does not run counter to the values of the European Convention or the ICCPR for an individual to espouse a “private” morality

gender expression, gender identity and sexual orientation as an issue of multiple forms of discrimination); Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, U.N. Doc. A/64/211, 3 August 2009, at para. 21.

³⁶ *Salgueiro da Silva Mouta v. Portugal*, Application No. 33290/96, Judgment dated 21 December 1999.

³⁷ *S.L. v. Austria*, Application No. 45330/99, Judgment dated 9 January 2003.

³⁸ *Salgueiro da Silva Mouta* at para. 36.

³⁹ Application No. 1543/06, Judgment dated 24 September 2007.

⁴⁰ *Id.* at para. 27 & para. 97.

that condemns LGBT people or same-sex sexual activity, such a morality cannot be the basis for state action that intrudes on fundamental rights. To do so is discrimination, and that is in violation of international law.

Geneva, 24 November 2009

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