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LGBTQ association achieves major legal milestone in Tunisia

By Amel al-Hilali

Al-Monitor (10.03.2020) – <https://bit.ly/33mhhcS> – In a first for Tunisia and the Arab world, Shams, an association founded in early 2015 to defend LGBTQ rights, was granted legal protection in a ruling handed down Feb. 21 by Tunisia’s Court of Cassation following the state’s attempts to shut down the organization.

In December 2015, Kamel Hedhili, head of state litigation, had filed a complaint against the organization, resulting in the Court of First Instance suspending the association's activities for 30 days beginning Jan. 4, 2016. Hedhili's charged that the association had violated the Decree of Associations and had failed to complete the legal registration procedures, ostensibly because its registration was rejected for publication in the Official Gazette, a decision made by the government and over which Shams had no control. In addition, he asserted that the organization violates the Arab-Islamic norms of Tunisian society because it advocates and defends sodomy, which is a criminal act under Chapter 230 of the Penal Code.

The Decree of Associations (2011) stipulates that associations in their statute, activity, and financing, shall respect the principles of the rule of law, democracy, pluralism, transparency, equality and human rights. It also prohibits them from advocating or involvement in violence, hatred, intolerance and discrimination on religious, sexual or regional grounds. According to Hedhili, Shams violated the decree because its defense of the rights of homosexuals represents sexuality-based discrimination.

On Feb. 23, 2016, the Court of First Instance ruled that Shams "does not violate the law" and allowed it to resume its activities. After additional judicial procedures and postponements, Hedhili challenged that ruling on Feb. 20, 2019, on the grounds that the association's bylaws state that its goal is to defend sexual minorities, which, he said, is inconsistent with "the Islamic values of Tunisian society, which rejects homosexuality and prohibits such inappropriate behavior," on the basis of Chapter 230 of the penal code.

Three days later, Amna Guellali, Tunisia director at Human Rights Watch, called on the government to stop its legal battle against Shams, especially after the ruling clearing the association of breaking any law and allowing it to continue functioning.

On May 20, 2019, the Court of Appeals rejected the appeal lodged by Hedhili, ruling in favor of Shams resuming its activities, and then last month, the Court of Cassation, the final arbiter in Tunisia's legal system, issued its opinion on Sham's legality.

Speaking to Al-Monitor, Shams executive director Bouhdid Belhedi called the ruling in favor of the association "a victory for the individual rights and freedoms and the civil character of the state established in the country's constitution."

He lamented the long, drawn out attempt by the government "maliciously" trying to stop Sham's activities, noting that the association's objective is to support sexual minorities "providing financial, emotional and psychological assistance and securing them a safe environment, regardless of their sexual orientation."

Belhedi stressed that the association will work to abolish Chapter 230 of the Penal Code, which calls for three years in prison for people convicted of sodomy. He also said that Shams, in coordination with human rights organizations, seeks to abolish the practice of authorities ordering "anal

examinations” for men arrested on suspicion of having had same-sex sexual relations.

In October 2018, a number of MPs had spoken about coordinating with civil associations in drafting a law decriminalizing homosexuality and prohibiting anal examinations, but no such law has been presented for consideration.

According to Bochra Belhaj Hmida, a former parliamentarian and chairperson of the Individual Freedoms and Equality Committee – created in August 2017 by President Beji Caid Essebsi to report on proposed legislative reforms on private and public rights and freedoms – the judiciary’s decision in favor of Shams is a “legal and judicial revolution” in post-revolution Tunisia.

Hmida told Al-Monitor how proud she was, as a human rights activist, that the judiciary had shown itself to be independent, free of political pressure, in handing an association defending gay rights a victory by legalizing its presence. Hmida stressed that the decision is a positive first step in that efforts at decriminalizing homosexuality and abolishing anal examinations can now be pursued within the framework of the jurisprudence of that case.

With this legal victory, Shams joins other LGBTQ associations in Muslim-majority countries in the region that have defied prevailing social attitudes in pursuit of human rights. In another example, in Turkey, 17 Mayıs (17 May) was established at the end of February to defend the rights of the country’s LGBTQ community. Its name refers to May 17, 1990, when the

World Health Organization declassified homosexuality as a mental illness.

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