ECOM

ANALYSIS OF THE NATIONAL LEGISLATION OF KAZAKHSTAN RELATED TO SOGI AND HIV

TALLINN
2024

Analysis of the national legislation of Kazakhstan related to SOGI and HIV / ECOM — Eurasian Coalition on Health, Rights, Gender and Sexual Diversity. — Tallinn, 2024. — 13 p.

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Special thanks to Nurislam Kalikhbaev ***for work on the report***.

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The publication was prepared by ECOM as part of the Regional Project «Sustainability of Services for Key Populations in the Eastern Europe and Central Asia Region» (SoS_project 2.0), implemented by a consortium of organizations led by the Alliance for Public Health in partnership with the Charitable Organization «100% Life», with financial support from the Global Fund.

The views expressed in this publication are solely those of the authors and do not necessarily reflect the views of the organizations of the consortium or the Global Fund.

The Global Fund was not involved in the approval or endorsement of either the material itself or any conclusions that may arise from it.

ACRONYMS AND ABBREVIATIONS

ART	Antiretroviral therapy
CC RK	Criminal Code of the Republic of Kazakhstan
EECA	Eastern Europe and Central Asia
HC	Hate crimes
HIV	Human immunodeficiency virus
LGBT	Lesbian, gay, bisexual and trans people
MSM	Men who have sex with men
NGO	Non-governmental organization
PCR	Polymerase chain reaction
PLH	People living with HIV
RK	Republic of Kazakhstan
SOGI	Sexual orientation and gender identity
TB	Tuberculosis
Trans	A term that describes a person who identifies as transgender, non-binary, or gender non-conforming, including but not limited to transsexual, genderqueer, gender fluid, agender, third gender, bigender people)
UNAIDS	Joint United Nations Programme on HIV/AIDS
UPR	Universal Periodic Review
WHO	World Health Organization

The goal of this comparative analysis is to identify legal barriers and issues in areas where the necessary legislation already exists, but does not fully ensure the realization of the rights and freedoms of lesbian, gay, bisexual and trans people and people living with HIV. Additionally, this document analyzes measures to prevent discrimination based on SOGI and HIV, as well as the effectiveness of legislative measures against hate crimes.

In order to analyze legal practice, judicial practice and state statistics, reports from activists, information and statistics from organizations involved in documenting human rights violations and protecting human rights, as well as data from open sources were taken into account.

Based on the materials obtained, a list of recommendations for the state, representatives of international organizations, and for civil society was compiled. This information can be useful in planning advocacy processes to promote the rights of LGBT people and PLH, as well as in eliminating barriers that prevent these groups from protecting their rights and freedoms.

INTERNATIONAL HUMAN RIGHTS STANDARDS HAVE BEEN ENSHRINED IN THE FOLLOWING LAWS AT THE NATIONAL LEVEL

LEGISLATION	YES	No
PROTECTION FROM DISCRIMINATION		
Separate law defining and prohibiting discrimination, including on the basis of SOGI		✗
Provision on the prohibition of discrimination (unequal treatment) in the field of education	✓	
Law on the prohibition of domestic violence	✓	
Including based on SOGI		✗
Provision on hate crimes in the Criminal Code of the RK		✗
Separate law on the rights of people living with HIV		✗
Provision on the rights of PLH in the Code of the Republic of Kazakhstan «on public health and the healthcare system»	✓	
Provision on the prohibition of discrimination (unequal treatment) in the field of health	✓	
Including based on SOGI		✗
HIV+ status	✓	
Prohibition on immigration or entry into the country for PLH		✗
Criminal liability for intentional and/or unintentional transmission of HIV	✓	
Prohibition on blood donation by LGBT people (formally no)		✗
Special screening procedures for LGBT donors	✓	
Legislatively enshrined procedure for legal transgender transition	✓	
Mandatory opinion of a psychiatrist for «sex change»	✓	
Regulated mandatory and optional surgical procedures for legal transgender transition	✓	
Medical protocol for trans people adopted in accordance with ICD-10		✗
Permission to use international medical protocols by doctors providing care to trans people (but can be advisory in nature)		✗
Legally enshrined list of contraindications to legal transgender transition	✓	
Recognition of same-sex partnerships at the legislative level		✗
Recognition by courts of unregistered cohabitation of same-sex couples as a legal marriage		✗
Criminalization of voluntary homosexual relations		✗

LAWS	YES	NO
PROTECTION FROM DISCRIMINATION		
Trans people able to enter heterosexual marriages after legal transgender transition	✓	
Adoption by same-sex couples		✗
Adoption by single LGBT people (for women — «yes», for men without children — «no»)		✗
Adoption by PLH		✗
Legislation regulating the procedure for holding a peaceful assembly	✓	
Criteria according to which permission for holding a peaceful assembly can be refused	✓	
Prohibition on peaceful assemblies for LGBT people		✗
Fines for holding a peaceful assembly without permission from the authorities	✓	
Law «on the prohibition of gay propaganda»		✗
Attempts to introduce a bill limiting the freedom of speech of LGBT people, including bills «on the prohibition of gay propaganda»	✓	
NGOs able to receive funding from national and/or local budgets	✓	
Actual working mechanisms for distributing state funds to NGOs working in the social sphere, excluding healthcare, for example in the fields of education, culture, sports, youth, social protection	✓	
Stable funding by the government of HIV-service NGOs		✗
State funding of HIV services for LGBT people		✗
Permission required for registration of public organizations	✓	
Registration of LGBT community organizations		✗
Opportunity to obtain donor support from international organizations and foundations (but strict public reporting requirements and fines apply)	✓	

INTRODUCTION

The Republic of Kazakhstan (hereinafter referred to as Kazakhstan or RK) asserts itself as a democratic, secular, legal and social state, in which the highest values are the individual, and their life, rights, and freedoms.

State guarantees on the protection of rights and the prevention of any forms of discrimination related to HIV are enshrined at the legislative level in the Constitution and the Code of the Republic of Kazakhstan «on public health and the healthcare system».

The country is implementing the UNAIDS «95-95-95» strategy, which is aimed at ensuring HIV prevention, testing, treatment, and care. Today, 82% of people living with HIV know their status, of which 88% are on antiretroviral therapy, and 90% of people living with HIV have a suppressed viral load[1].

An innovative type of prevention, pre-exposure prophylaxis, is being introduced in all regions of the country. Thanks to the project of the Global Fund to Fight AIDS, Tuberculosis and Malaria, 15 laboratories in regional HIV prevention centers have received automated PCR equipment. Every year, more and more representatives of key populations (people who use injection drugs, sex workers, and men who have sex with men) are tested for HIV. Women with HIV give birth to healthy children in 98% of cases. ART is becoming more accessible; it is prescribed to patients immediately after diagnosis and is provided free of charge.

In terms of international standards, Kazakhstan has ratified all necessary UN documents in the field of human rights. International law is part of the legal system of Kazakhstan. ***The following international human rights treaties have been ratified by Kazakhstan:***

- ☑ International Covenant on Civil and Political Rights;
- ☑ International Covenant on Economic, Social and Cultural Rights;
- ☑ International Convention for the Protection of All Persons from Enforced Disappearance;
- ☑ Convention on the Elimination of All Forms of Discrimination against Women;
- ☑ Convention on the Elimination of All Forms of Racial Discrimination;
- ☑ Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families;
- ☑ Convention on the Rights of the Child;
- ☑ Convention on the Rights of Persons with Disabilities;
- ☑ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

[1] 90 percent of people living with HIV in Kazakhstan have suppressed viral load. — URL: https://kncdiz.kz/ru/news/item/7741/

However, ***the country only recognizes six mechanisms for filing individual complaints to UN human rights bodies***, namely;

1. Human Rights Committee (International Covenant on Civil and Political Rights);
2. Committee on the Elimination of All Forms of Discrimination against Women;
3. Committee on the Elimination of All Forms of Racial Discrimination;
4. Committee on the Rights of the Child;
5. Committee on the Rights of Persons with Disabilities;
6. Committee Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

State bodies submit regular reports to the UN Treaty Bodies and reports under the Universal Periodic Review. Kazakhstan has repeatedly received recommendations on adopting comprehensive anti-discrimination legislation in relation to the rights of LGBT people and PLH. However, the recommendations of UN bodies have not been implemented into national legislation.

PROBLEMATIC ASPECTS OF LEGISLATION AND LAW ENFORCEMENT PRACTICE IN KAZAKHSTAN

The Constitution separately enshrines the principle of non-discrimination with an open-ended list of protected characteristics: «no one may be subject to any discrimination on the grounds of origin, social, official and property status, gender, race, nationality, language, attitude to religion, beliefs, place of residence or any other circumstances»[2].

There is no separate anti-discrimination law in the country. However, on 8 December 2023, the President of the Republic of Kazakhstan signed the Decree «on the action plan in the field of human rights and the rule of law», according to which, it is expected that, in March 2024, a permanent working group on anti-discrimination legislation and on the implementation of the International Convention on the Elimination of All Forms of Racial Discrimination and/or a separate structural unit in the National Center for Human Rights on the elimination of all forms of discrimination will be established[3].

For example, in 2019, the Supreme Court of Kazakhstan awarded compensation for the illegal posting of a photograph of two women kissing on a Facebook page without their consent[4]. The trial lasted a year and a half. The court of first instance found the man's actions illegal, but the appellate court reversed this decision, citing «protection of public morality» and the inadmissibility of same-sex unions in accordance with the law. The Supreme Court overturned the decision of the appellate court, emphasizing the violation of the plaintiffs' rights to privacy and freedom from discrimination, which are protected by the Constitution of Kazakhstan. However, such cases, decided in favor of persons whose rights were violated, are unfortunately rare.

[2] Constitution of the RK. — URL: https://www.akorda.kz/ru/official_documents/constitution

[3] Order of the President of the RK No. 409 of 08.12.2023 «on the action plan on human rights and the rule of law». — URL: https://www.akorda.kz/ru/o-plane-deystviy-v-oblasti-prav-cheloveka-i-verhovenstva-zakona-811622

[4] URL: Kazakhstan Supreme Court Upholds Privacy Rights

In 2019, the government of Kazakhstan also adopted a recommendation to ensure the freedom of human rights activities for LGBT groups[5].

In January 2019, by-laws of the Law of the Republic of Kazakhstan «on the protection of children from information harmful to their health and development» came into force, which were adopted without discriminatory provisions related to the LGBT community. This achievement was the result of joint efforts by experts from the organizations «Internews», the Bureau for Human Rights and Rule of Law, the Kazakhstan Transgender Initiative «Alma-TQ», the Kazakhstan Feminist Initiative «Feminita», Amnesty International, and the Soros Foundation-Kazakhstan. This case shows that legislative initiatives aimed at introducing provisions that discriminate against the LGBT community are a pressing issue that requires attention and the coordination of civil society efforts.

At the same time, according to activists and NGOs, LGBT and PLH communities continue to face discrimination, harassment and violence, despite the constitutional guarantee of protection from discrimination. Calls to limit discussion of LGBT issues have become frequent in recent years. One such case involved the government of Kazakhstan banning the animated film «Buzz Lightyear» due to a scene in which two female characters kiss[6]. In a petition for the ban, the authors pointed out the need to protect children from LGBT influence. In Kazakhstan, a month after its launch in 2024, the informational site Selftanu.kz, designed to help LGBTQ youth and their loved ones, was blocked. The authors of the resource received numerous threats. The project, developed with the participation of psychologists, scientists and medical specialists, was aimed at providing support for LGBT teenagers in Kazakhstan[7]. The Republican Public Association «Senimen Bolashak (The Future is With You)» initiated a petition against the site, which gathered approximately four thousand signatures. Selftanu.kz was also subjected to a DDoS attack, organized through Russian anti-gender sites. The Committee for the Protection of the Rights of the Children of Kazakhstan sent a recommendation to block the site to the Ministry of Culture and Information of the RK, citing the Law «on the protection of children from harmful information». Officials believed that the site contained information of a sexual and erotic nature, which was the basis for blocking it.

A video of a person dancing in a yurt in Kazakh national costumes caused a wide reaction in Kazakhstan in June 2024. A criminal case was opened against the performer under Part 1 of Article 174 of the Criminal Code of Kazakhstan «Incitement of social, national, tribal, racial, class or religious hatred». However, the main accusation was that the dance does not correspond to traditional values and promotes LGBT people[8].

In Kazakhstan, attempts to adopt a law «against LGBT propaganda» continue. In June 2024, a petition «against LGBT propaganda» collected 50 thousand signatures and is being considered by the Ministry of Culture and Information of the RK. The petition was initiated by the public organization «Kazakhstan Union of Parents».

[5] USAID-Supported Advocacy Efforts Protected the LGBT Community in Kazakhstan. — Kazakhstan, News, U.S. Agency for International Development. — URL: https://www.usaid.gov/ru/kazakhstan/news/usaid-supported-advocacy-efforts-protect-lgbt-community-kazakhstan

[6] Kazakh Authorities Block Website Dedicated To LGBT Relations. — URL: https://www.rferl.org/a/kazakhstan-website-blocked-lgbt/32817945.html

[7] Kazakhstan Blocks Website for LGBTQ Teens. — URL: https://kz.kursiv.media/2024-02-12/lsbs-lgbtsait/

[8] A criminal case under the article «incitement of hatred» was opened against a performer who danced in heels in a yurt in Kazakhstan. — URL: https://rus.azattyq.org/a/33043272.html

CRIMINALIZATION OF HIV TRANSMISSION

The transmission of HIV is criminalized by Article 118 of the CC RK, which establishes liability for «knowingly placing another person at risk of HIV infection» and «infection of another person with HIV by a person who knew that he or she had this disease». At the same time, it states that «a person who has committed the acts provided for in parts one or two of this article shall be exempt from criminal liability if the other person, placed at risk of infection or infected with HIV, was promptly warned about the presence of this disease in the first and voluntarily agreed to commit acts that created the risk of infection».

According to the Committee on Legal Statistics and Special Records of the Prosecutor General's Office of the Republic of Kazakhstan, 13 guilty verdicts were issued under Article 118 of the Criminal Code between 1998 and 2022. Up to 2019, 3 women and 9 men were convicted. In 2020-2022, 2 guilty verdicts were issued, however, a gender breakdown is not provided in the statistical reporting[9].

The criminalization of HIV transmission in Kazakhstan negatively impacts the rights of PLH. It contributes to the violation of the right to privacy and confidentiality, as HIV-positive people fear disclosing their status due to the possibility of criminal prosecution. In addition, the threat of criminal prosecution can deter people from HIV testing and accessing medical treatment. The social isolation and stigma surrounding HIV due to criminalization increase alienation and discrimination against people with HIV, which can lead to the breakdown of family relationships and a loss of employment. Criminalization creates obstacles to due process, when judicial practice does not pay sufficient attention to evidence of intentional infection, leading to unjust accusations and convictions. Thus, the criminalization of HIV transmission in Kazakhstan is not only ineffective from a public health perspective, but also seriously violates basic human rights, including the right to health, privacy and due process.

HATE CRIMES

The criminal legislation of the Republic of Kazakhstan does not contain a definition of hate crimes, but it can be argued that it establishes liability for such crimes. For instance, «committing a criminal offense motivated by national, racial and religious hatred or enmity» is recognized as an aggravating circumstance[10]. The law also establishes criminal liability for «violating the equality of man and citizen»[11]. However, it is nearly impossible to obtain protection when a crime is committed against an LGBT person. Moreover, the police, due to high levels of transphobia and homophobia, refuse to accept statements and investigate crimes against LGBT people[12]. Violence and stigma based on SOGI is increasing in Kazakhstan due to the increase in the number of media channels that use the LGBT community for their populist purposes in order to destabilize the work of human rights defenders and activists, given the general level of increasing hatred towards members of the community[13].

[9] The attitude of people living with HIV to Article 118 of the Criminal Code of the Republic of Kazakhstan «Infection with HIV». — URL: https://ewna.org/wp-content/uploads/2024/01/criminalisation-of-hiv-in-the-republic-of-kazakhstan-community-perceptions_ewna_2023.pdf

[10] Criminal Code of the Republic of Kazakhstan, Article 54.

[11] Id., Article 145.

[12] Hate crimes against LGBTI people / HCRW. — URL: https://hatecrime.osce.org/ru/prestupleniya-na-pochve-nenavisti-k-lgbti

[13] Hate Speech Online: Recognize, Counter, and Prevent. — URL: https://drfl.kz/ru/online-hate-speech/

Every month, human rights activists record crimes, including those committed by law enforcement officials, such as blackmail, extortion, refusals to accept statements and properly investigate crimes, and physical and psychological violence committed by police officers against LGBT people. The system, intended to protect citizens, becomes an aggressor and a criminal itself due to hatred towards LGBT people, which is not spoken about and covered up.

For example, in July 2023, an LGBT activist was nearly hit by a driver who recognized her. The man also verbally abused her. The activist filed a complaint with the police, but there was no investigation or follow-up[14].

In 2023, the transgender initiative «ALMA-TQ» recorded 59 cases of rights violations, discrimination, and violence based on SOGI. This is almost double compared to 2022, when 29 such cases were recorded[15]. A trans female sex worker was harassed, blackmailed and threatened with eviction when police officers showed up at her apartment posing as clients. The officers extorted money from her, as others have done in the past. Several other transgender sex workers have reported being harassed, detained and subjected to violence by police[16]. In July 2023, two men on a date in a legally parked car were attacked by patrol officers. Without showing identification or stating any legal grounds, the officers attempted to drag them out of the car, demanded their identification documents, and used derogatory homophobic language. They also threatened to distribute a potentially incriminating video allegedly taken on their work camera. After they threatened to file a complaint, the police left the scene, and the men later received an apology from the department. In 2023, a transgender woman in Shymkent faced the seizure of her business and forced expulsion from the city by law enforcement authorities. She was attacked in her own home, but the police refused to take any action.

LGBT people feel that they are not protected by the state, that legislation does not function properly, and that contacting the police can lead to even more dire consequences. Many of those who sought help prefer to forget about the incident as quickly as possible. In documented cases, people often indicated that it is useless to seek protection from the police.

Out of 440 participants in a study by the NGO «Education Community», 73 people, or 17% of LGBT people, reported experiencing violence in the past year. In addition, 40 people (or 9%) chose not to respond. The majority of the incidents of violence were classified as psychological (77%), physical (55%), sexual (32%) or economic (14%).

[14] Annual Review of the Human Rights Situation of Lesbian, Gay, Bisexual, Trans, and Intersex People Covering the Period of January to December 2023. — URL: https://www.ilga-europe.org/files/uploads/2024/02/2024_kazahkstan.pdf

[15] URL: https://www.alma-tq.org/

[16] Annual Review of the Human Rights Situation of Lesbian, Gay, Bisexual, Trans, and Intersex People Covering the Period of January to December 2023. — URL: https://www.ilga-europe.org/files/uploads/2024/02/2024_kazahkstan.pdf

PRIVATE AND FAMILY LIFE

Kazakhstan does not recognize same-sex marriage or any form of civil partnership for LGBT people. In June 2023, the President of Kazakhstan signed the Law «on amendments and additions to certain legislative acts of the Republic of Kazakhstan on education, mentoring and child safety»[17], which drew criticism from human rights activists. Kazakh authorities have taken measures similar to those in Russia that restrict the rights of LGBT people. According to new amendments, LGBT people will be prohibited not only from adopting children, but also from acting as their mentors. The adopted law stipulates that children left without parents or guardians can be assigned a mentor who will provide them with individual support and help them prepare for independent life. The document states that «persons with a non-traditional sexual orientation» cannot act as mentors. It also prohibits persons convicted of murder, intentional harm to health, crimes against public health and morality, sexual assault, extremist or terrorist crimes, as well as human trafficking from acting as mentors.

LEGAL BARRIERS FOR TRANS PEOPLE

Kazakhstan's legislation lacks tolerant procedures for legal gender recognition. Kazakhstan still requires surgical interventions and psychiatric examination for legal gender recognition. In June 2024, the UN Committee Against Torture called on Kazakhstan to «remove the requirement for mandatory sex reassignment surgery», which is part of Kazakhstan's invasive and humiliating procedure for legal gender reassignment[18]. The Committee expressed concern that, in accordance with paragraph 13 of Article 257 of the Code «on marriage (matrimony) and family», a mandatory condition for legal gender recognition is sex reassignment surgery, including sterilization. This also requires a psychiatric diagnosis, while no psychosocial support is provided to such persons (Article 16). Recommendations to abolish the requirement for mandatory sex reassignment surgery as a condition for legal gender recognition for transgender people were also addressed to Kazakhstan by the UN Committee on the Elimination of Discrimination against Women in 2019. However, Kazakhstan has not taken steps to adopt amendments to the legislation regarding legal gender recognition.

In 2020, with the introduction of the new Code of the RK «on public health and the healthcare system», the rules for medical examination of transgender people in Kazakhstan changed. It is possible to apply to a medical commission from the age of 21. There is only one commission operating in Kazakhstan in Almaty[19]. In order to receive hormone therapy, a trans person must undergo review by the commission at the Republican Scientific and Practical Center for Mental Health. During the first stage, after consultation with a psychiatrist and psychologist, the patient may be given either a certificate with an F64.0 diagnosis of «Transsexualism» or a referral to the psychosomatic department in a hospital for additional examination to exclude the presence of mental disorders.

[17] Tokayev signs law banning adoption and mentoring of orphans by LGBT+ people. — URL: https://rus.azattyq.org/a/32832434.html

[18] Concluding observations on the fourth period report of Kazakhstan. — URL: https://documents.un.org/doc/undoc/gen/g23/104/23/pdf/g2310423.pdf?token=cN7dxEjklVY8J9m5Hh&fe=true

[19] Code of the Republic of Kazakhstan «on public health and the healthcare system». — URL: https://online.zakon.kz/Document/?doc_id=34464437

The commission is usually conducted on an outpatient basis, but if a person is suspected of having mental disorders, a stay in a hospital for two to three weeks may be recommended for a full examination and to exclude concomitant diagnoses.

Human rights activists emphasize that transgender people in Kazakhstan face high levels of violence and discrimination. Problems arise in employment due to the lack of protection from transphobia, as well as in relation to accessing education and medical services[20].

FREEDOM OF ASSEMBLY AND MOVEMENT

In 2020, amendments were made to the law «on the procedure for organizing and holding peaceful assemblies, rallies, marches, pickets and demonstrations in the Republic of Kazakhstan»[21]. Despite the formal change in the legislation, moving from a permit-based to a notification-based system for holding peaceful assemblies, akimats (local executive bodies) continue to systematically refuse permission for rallies and meetings. In 2023, feminist movements submitted their first applications to hold a rally and march in 2024. However, the akimat rejected their requests, justifying their decision by citing a potential threat to public order if peaceful assemblies are held in connection with such issues, and by stating that the rallies would promote the LGBT agenda[22]. The authorities also stated that Ualikhanov Square, approved by the Maslikhat (local representative body) for the holding of events, would be occupied by repair work on 9 March, and the square near the Sary-Arka cinema would be occupied by another cultural event. The Almaty Akimat reported that it received more than 20 requests demanding the prohibition[23] of the planned feminist march and rally on 8 March 2024. As a result, the Akimat decided to ban the event due to concerns about public order. Almaty authorities noted that in the past few years, representatives of feminist movements have already held sanctioned rallies on 8 March. However, officials expressed displeasure over the fact that the organizers and participants repeatedly deviated from the stated theme, causing discontent among citizens, young people and participants of the December events.

There is no law in Kazakhstan banning LGBT symbols or «propaganda of the LGBT movement». Despite this, officials believe that feminist events in Almaty create risks of unauthorized gatherings and violations of public order. The Almaty Akimat gave permission for the women's march for the first and only time on 8 March 2021. About 1,000 people took part in the march, making it the largest in the entire five-year history of women's marches in Kazakhstan.

Instead of feminists, permission to hold a rally was given to public figures expressing a point of view that coincides with the official rhetoric of the state. On 7 March, they held an event in Gandhi Park, where they discussed the social vulnerability of Kazakhstani women and encouraged them to get married more quickly.

[20] Every transgender person in Kazakhstan has experienced violence or discrimination at least once in their life. — URL: https://orda.kz/kazhdyj-transgendernyj-chelovek-v-kazahstane-hot-raz-v-zhizni-podvergalsja-nasiliju-ili-diskriminacii-pravozaschitnica-viktorija-primak-385523/

[21] Pros and cons of the new law on assemblies in Kazakhstan. — URL: https://cabar.asia/ru/plyusy-i-minusy-novogo-zakona-o-mitingah-v-kazahstane

[22] Almaty Akimat on refusal to hold March 8 march: Requests to ban it due to LGBT propaganda. — URL: https://informburo.kz/novosti/akimat-almaty-ob-otkaze-provodit-mars-8-marta-prosili-zapretit-iz-za-propagandy-lgbt

[23] Why the Akimat did not allow a feminist rally to be held on March 8 in Almaty. — URL: https://kz.kursiv.media/2024-03-05/zhrb-akimat-alm-mal/

In their opinion, the difficult situation of women is not related to violence and discrimination committed by men who adhere to «traditional values». The organizer of the event was public figure Bibinur Sheralieva, a member of the regional public council on family and social protection of the population of the «Amanat» party. In January, an LGBT activist from the «Feminita» movement applied several times to hold an Equality March (Pride event) in June 2023 in Almaty. She was rejected by the local council. «Feminita» is still in court over the case.

In May 2023, an LGBT activist applied to organize a Pride march in Astana. The city administration falsely cited ongoing repairs and cultural events as justification for denying the request. In October, after an activist appealed the decision, a court hearing was held. The court upheld the previous court's decision and rejected the activist's appeal[24].

FREEDOM OF ASSOCIATION FOR LGBT PEOPLE AND PLH

In August 2023, the NGO «Education Community» applied to register on a job search website Headhunter (hh.kz), indicating its activities in the field of LGBT activism. Headhunter initially rejected the application, citing terms of use that prohibit associations that could harm the site's reputation. After a request for clarification of the denial of registration, the NGO was registered on the platform.

Civil society organizations continue to be subjected to persecution and raids by the authorities. The queer-feminist initiative «Feminita» continues to be denied registration by the Ministry of Justice of Kazakhstan on absurd and arbitrary grounds. The Almaty Department of Justice has refused to register the organization «Feminita» for 7 years. Since its founding in December 2017, members of the organization «Feminita», which defends the rights of lesbians, bisexuals, queer women, sex workers, and women with disabilities, have submitted applications for registration to the Ministry of Justice of the RK. However, each time, the application was returned with demands to amend the organization's charter, as a result of which the registration process was put on hold. In an effort to stop this cycle and obtain official registration, the organization went to court demanding that the actions of the Ministry of Justice of the RK be recognized as illegal and as violating their constitutional right to freedom of association. The main reasons for the refusal are related to the use in the charter of the terms «lesbians», «gays», «bisexuals», «trans people», «intersexuals» and «queer persons», whom, in their opinion, cannot be recognized as citizens of Kazakhstan[25].

On 21 September 2023, the State Tax Committee of the Ministry of Finance of the RK published a «register of recipients of foreign funding», which lists organizations and individuals receiving funds from abroad for research, legal assistance and other forms of activity. Civil society organizations in Kazakhstan and abroad have demanded that the register, which includes several groups working on LGBT rights issues, as well as journalists and bloggers, be immediately abolished.

[24] URL: https://parniplus.com/lgbt-movement/astana-sud-pride-month/

[25] Nasha Gazeta: «They want to shut us up or put us in jail». Activists from «Feminita» discuss a petition against «LGBT propaganda» and a workshop in Kostanay. – URL: https://www.ng.kz/modules/news/article.php?storyid=52722

RECOMMENDATIONS

FOR THE GOVERNMENT

- Introduce comprehensive legislation that guarantees the right to equality and protects against discrimination on all grounds, including sexual orientation and gender identity. This legislation should clearly define the term «discrimination» (both direct and indirect), and contain a list of actions, criteria, and assessments that demonstrate discrimination.
- Abolish the requirement to undergo mandatory sex change surgery for legal gender recognition and lower the age for transgender transition from 21 to 18.
- Introduce provisions on hate crimes based on sexual orientation and gender identity into criminal legislation.
- Provide law enforcement and investigative agencies with training, relevant procedures, and resources to effectively identify, investigate, and collect evidence of crimes committed on the basis of SOGI.
- Investigate negligence and crimes committed by law enforcement officers against LGBT people.
- Draw attention to the systemic problem of ongoing violence against LGBT people and openly express a position on the issue of discrimination based on sexual orientation and gender identity.
- Improve access to HIV testing centers for key populations. This can only be achieved if the testing process is strictly confidential, and if health care workers are adequately trained on the specific needs of patients.
- Carry out trainings for medical workers.
- Call on the media to monitor and cover rights violations and discrimination against LGBT people without prejudice, queer-phobia and stigma, and avoid using LGBT people as a tool to increase ratings and incite hatred.

FOR CIVIL SOCIETY

Provide financial support to organizations working with LGBT people in Kazakhstan to document cases of discrimination and crimes, and to develop measures to improve legislation that strictly prohibits any form of discrimination based on gender identity or sexual orientation, and combats hate crimes.


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