

OSCE Human Dimension Implementation Meeting 2017
Statement prepared by Kazakhstan Feminist Initiative 'Feminita'
regarding situation with LGBT rights in Kazakhstan

Working session 8: Tolerance and non-discrimination

My name is Zhanar Sekerbayeva and this statement is made on behalf of Kazakhstan Feminist Initiative 'Feminita', COC Netherlands and Transgender Initiative 'Alma-TQ'. 'Feminita'. Our groups work on countering discrimination and hate crimes based on sexual orientation and gender identity (SOGI).

Combatting hate crimes. The Constitution of Kazakhstan includes a definition of 'discrimination'. It does not however include 'sexual orientation and gender identity' (SOGI) as a category that is protected from discrimination. The lack of legally bound normative definitions allows law enforcement authorities to interpret this constitutional provision as they see fit. OSCE participating States have agreed on developing a comprehensive approach to preventing and responding to hate crimes and discrimination and supporting civil society in OSCE Ministerial Council Decisions (MC Decision Nos. 13/2006, 10/2007, 9/2009, 3/2013), as well as its 2007 Bucharest Declaration.

In 2015 in the city of Ust-Kamenogorsk a man was murdered by his friends after revealing his homosexual orientation to them - they beat him to death. The court found both defendants guilty of the crime of 'intentional infliction of death with extreme cruelty out of hooliganism'. Although the defendants admitted in court that the murder was motivated by their hatred of homosexuals, the court did not reflect this in its judgement¹. This is an example of how the lack of adequate legislation to protect against discrimination and hate crimes based on SOGI result in sentences inadequate to the gravity of committed crimes, and as a result - to injustice.

Recommendations:

1. The State party should take all necessary steps to strengthen the legal framework protecting LGBT individuals from discrimination and violence and ensure proper and due investigation, prosecution and punishment of any act of violence motivated by the victim's perceived sexual orientation or gender identity.
2. The State party should adopt comprehensive anti-discrimination legislation, explicitly addressing all spheres of life and defining and prohibiting discrimination on any ground, including sexual orientation, gender identity and gender expression. The legislation should impose appropriate penalties for direct and indirect discrimination committed by both public and private entities, and should provide for effective remedies.

Non-discrimination of trans people. Trans people in Kazakhstan face intense social prejudice and discrimination. Bigotry on the part of police, healthcare staff, and other officials can mean trans people have few, if any, places to turn for refuge or services. One of the most significant obstacles to the realisation of the rights of trans people, including ensuring their protection from violence and discrimination - is the complexity of the legal procedure of recognition of their gender identity. When the gender marker of a trans person in their ID documents does not correspond to their identity and/or appearance, officials subject them to humiliating and

¹ Article 19. Methodological guidance on LGBT rights in Kazakhstan "I exist", 2016, p. 7.

unjustified inspections. This is aggravated by recent changes in Kazakhstan legislation concerning trans people².

In 2015, transgender people's initiative group AlmaTQ conducted a survey of 41 transgender people in Kazakhstan. When asked what needed to happen to help them become more fully integrated in society, nearly two-thirds of respondents answered that they needed to change their legal gender on documents, while only two respondents had actually been able to do so³. For transgender people in Kazakhstan, as detailed below, the legal gender recognition procedure requires humiliating, invasive, and abusive procedures in order to change gender on official documents.

Transgender people are denied education and employment because of the incongruence of their ID documents with their physical appearance. In 2017 transgender person S. received a triple refusal of an F-1 student visa from the US Consulate, after being forced out of her school ahead of receiving a diploma. She left the college after continued bullying on the part of teachers.

Recommendation:

1. Take necessary legislative, administrative and other measures to guarantee respect for the autonomy and physical and psychological integrity of transgender and intersex persons, including by removing abusive preconditions for the legal recognition of the gender identity of transgender persons, such as sterilisation and coercive and forced institutionalisation.

Violence against women and access to justice. In 2015-2016 'Feminita' conducted a needs assessment research of LBQ-women in 16 cities of Kazakhstan, documenting cases of police violence and indifference towards LBQ-women. Police officers do not accept reports from LBQ-women, mocking and humiliating them verbally and sometimes physically. Also policemen use sexual orientation and gender identity of victims as a base for blackmail not only towards LBQ but also their parents. In 2014 police ambushed A. and her friends before gay club, threatened them, forcefully dragged them into police cars, humiliating them verbally for being lesbian. A. didn't know whom she could complain because the police itself was against her.

Recommendation:

1. Provide trainings for law enforcement, police academy trainers, senior police officers and prosecutors in using the manual for policing hate crimes, in-country training of staff, refreshing and expanding their own knowledge and skills on working with LGBT communities and policing hate crimes against them.

² Human Rights Watch, That is When I Realised I was Nobody, research on LGBT people in Kazakhstan, 23 July 2015, 19 available at [<https://www.hrw.org/report/2015/07/23/thats-when-i-realized-i-was-nobody/climate-fear-lgbt-peoplekazakhstan>].

³ Ibid.