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Kazakhstan: Rejection of homophobic law welcome while concerns about pending discriminatory provisions remain

In a welcome decision, the Constitutional Council of the Republic of Kazakhstan ruled on 18 May to dismiss as unconstitutional the homophobic law that introduced sanctions for “propaganda of non-traditional sexual orientation” among minors.

By seeking to outlaw such “propaganda” – which could have been defined broadly enough to incorporate demonstrating for, providing information about, or even simply discussing, the human rights of LGBTI people – the law would have amounted to a breach of the country’s international obligations to protect lesbian, gay, bisexual, transgender and intersex (LGBTI) people from discrimination and equally ensure the right to freedom of expression for all. Additionally, potentially over-broad references to “propaganda” in the draft legislation could otherwise lead to restrictions on a wide range of speech and expression, in violation of international law.

The draft Law on Protection of Children from Information Harming their Health and Development (Law on Child Protection) containing this provision had been previously adopted by the Mazhilis (lower chamber) in three readings, and approved by the Senate (upper chamber) of the Parliament of Kazakhstan on 19 February, following which it was pending presidential approval. Kazakstani media have also reported that the parliament approved concurrent relevant amendments to other laws, including the Law on TV broadcasting, the Code of Administrative Violations, the Law on the Rights of the Child, the Law on Advertising, the Law on Mass Media, and the Law on Education.

Whilst the draft Law on Child Protection was in discussion in parliament, its exact text was not publicly available. Amnesty International’s requests sent to the Kazakhstani authorities to provide the latest copy of the draft law remained unanswered, and the organization has been unable to see the final text of the law as it was submitted to the Constitutional Council. This has made it impossible to assess the full potential impact of the law on rights-holders in Kazakhstan, including those who represent, or work with, LGBTI people in Kazakhstan. However, the Kazakhstani media have extensively quoted interviews by members of Kazakhstan’s parliament that clearly indicated that discriminatory provisions on “propaganda of non-traditional sexual orientation” among minors were included in the law and that the relevant provisions would violate Kazakhstan’s international obligations with regards to the right to freedom of expression and to the prevention of discrimination on the basis of real or perceived sexual orientation. Notably, the text of the decision of the Constitutional Council has also not yet been made public.

The media have reported that the Constitutional Council rejected the law on the grounds that it lacked sufficient clarity which, when implemented, could lead to breaches of several Constitutional provisions.

The parliament is now expected to re-consider the law. It is paramount that any future legislation on this and any related matter clearly avoids discriminatory provisions and, in turn, make provisions necessary to ensure equal rights for all, including LGBTI people amongst others.

The lawmakers should ensure that any revised legislation will avoid discrimination against, and stigmatization of, LGBTI people. The relevant bodies should also ensure greater transparency in the legislative process in order to promote civil society engagement in, and public scrutiny of, development of new laws.

Background information

Across Central Asia, state and societal homophobia is perceptibly on the rise. Local observers and LGBTI activists believe that a range of factors are behind this rise, from politicians seeking cheap

political gains to police extorting bribes. Among the possible contributing factors are the precedent set by Russia where “propaganda of non-traditional sexual orientation” among minors was outlawed through local legislation in a number of regions, and at the federal level in 2013, and the strong regional influence of the predominantly state-controlled Russian media in which openly homophobic content is quite common.

Sexual relations between men is still a criminal offence in Turkmenistan and Uzbekistan, as it once was in all former Soviet republics. It has been decriminalised in Kazakhstan, Kyrgyzstan, and Tajikistan. However, across the region LGBTI people experience discrimination, including from officials and the wider society, and gender-based violence.

Gay men are widely targeted for blackmail, including by corrupt police officials, threatening to ‘out’ them to family and colleagues unless they agree to pay a bribe. Lesbian women are at particular danger of violence and abuse from within their families and may be forced to marry against their will. Many LGBTI people decide not to seek redress for the abuse suffered. Numerous stories of suffering remain untold.

Following the introduction of the federal homophobic law in Russia in 2013 which banned ‘propaganda of non-traditional sexual relations among minors’, similar legislation has been proposed in Kyrgyzstan and Kazakhstan. In Kyrgyzstan in particular, the proposed bill envisages significantly more severe, criminal penalties.