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# KOK.TEAM

Kazakhstani non-governmental LGBT rights organization

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## Submission to the Human Rights Council at the 34th Session of the Universal Periodic Review

(Third cycle, Oct-Nov 2019)

Kazakhstan

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## INTRODUCTION

1. Kok.team is a Kazakhstani non-governmental human rights organization officially established as LGBT media on March 1, 2017. Our LGBT media provides platform where the voice of LGBT-individuals can be heard.
2. Since March 2018 Kok.team has been collecting information on cases involving discrimination based on sexual orientation and gender identity (SOGI) in Kazakhstan. For this purpose, we created online form, which is also used as communication tool to ask LGBT-activists for consultation or help.
3. Kok.team made this submission in connection with the problem of discrimination in Kazakhstan: the report focuses on discrimination based on sexual orientation and gender identity.

## FOLLOW UP TO THE PREVIOUS REVIEW

4. Being subject to the UPR under the second cycle in 2014, Kazakhstan received three recommendations regarding discrimination based on sexual orientation and gender identity (SOGI)<sup>1</sup>:
5. Kazakhstan has supported the recommendation Enact specific legislation that prohibits discrimination against women and on the basis of sexual orientation, and develop a system through which all individuals can safely report cases of discrimination and access avenues of redress<sup>2</sup>. However, there is still no special legislation prohibiting discrimination on the basis of sexual orientation or system allowing individuals to report safely cases of discrimination and access avenues of redress in Kazakhstan.
6. Kazakhstan has also supported the recommendation Provide, in accordance with its obligations under international human rights law, effective protection for the family as the fundamental and natural unit of society<sup>3</sup>. Keeping in mind the recommendation given by the Committee on Economic, Social and Cultural Rights, that has called upon States to

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<sup>1</sup> Report of the Working Group on the Universal Periodic Review, Available at <  
<http://daccess-ods.un.org/access.nsf/Get?Open&DS=A/HRC/28/10&Lang=E> > (15 Feb. 2019)

<sup>2</sup> A/HRC/ 28/10, recommendation 124.6 (Canada)

<sup>3</sup> A/HRC/ 28/10, recommendation 124.38 (Egypt)

legally recognize same-sex couples<sup>4</sup>, we think that recommendation 124.38 (Egypt) includes Kazakhstani same-sex couples. Nevertheless, the State's Marriage and Family Code directly discriminates same-sex families by defining marriage as "an equal union of a man and a woman", moreover, article 11 of the Code states that same-sex relationship is a condition under which marriage is not allowed.

7. The State has not supported the recommendation Strengthen the legal framework for the protection and non-discrimination of lesbian, gay, bisexual, transgender and intersex people<sup>5</sup>. Due to lack of legal framework ensuring protection and non-discrimination LGBT individuals are subjected to hate crimes and discrimination at work, child rights are also infringed.

## THE NATIONAL FRAMEWORK ON LGBT RIGHTS

8. National legislation discriminates individuals on the basis of SOGI both explicitly and implicitly.

9. Explicit discrimination.

- a) The State's Marriage and Family Code defines marriage as "an equal union of a man and a woman", and also explicitly states that same-sex relationship is a condition under which marriage is not allowed<sup>6</sup>.
- b) According to the Marriage and Family Code adoption is prohibited for persons "adhering to non-traditional sexual orientation"<sup>7</sup>.
- c) Despite exclusion of homosexuality and bisexuality from the list of International Statistical Classification of Diseases and Related Health Problems (ICD-10), the State's legislation still prohibits homosexuals from working at the internal affairs agencies by defining non-heterosexual orientation as "personality disorder (F60-F69)"<sup>8</sup>.

10. Implicit discrimination.

- a) The State's Basic Law prohibits any discrimination and contains an open-ended list of possible grounds for such discrimination: "No one may be subjected to any discrimination on grounds of origin, social, official or property status, sex, race, nationality, language, religion, beliefs, place of residence or due to any other circumstances". Despite this the State's Labor Code contains a close-ended list of types of discrimination comprising 14 positions. Thus, the Labor Code not only contradicts the Basic Law, but also eliminates any opportunities for raising objections

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<sup>4</sup> A/HRC/31/37, Protection of family: contribution of family to execution of the right to adequate standard of living for its members, particularly through its role in poverty eradication and achieving sustainable development

<sup>5</sup> A/HRC/ 28/10, recommendation 126.24 (Spain)

<sup>6</sup> Marriage and Family Code, article 11. Available at <[https://online.zakon.kz/Document/?doc\\_id=31102748#pos=533;-54](https://online.zakon.kz/Document/?doc_id=31102748#pos=533;-54)> (15 Feb. 2019)

<sup>7</sup> Annex 8 to Order No 198 of the Minister of Education and Science of the Republic of Kazakhstan of April 13, 2015 On Approval of the Standards for Provision of Public Services in the Sphere of Family and Children Available at <<http://adilet.zan.kz/rus/docs/V1500011184>> (19 March 2019)

<sup>8</sup> Annex 18 to the Requirements for the Health Status of Persons Employed to the Internal Affairs Agencies <[http://adilet.zan.kz/rus/docs/V100006175\\_](http://adilet.zan.kz/rus/docs/V100006175_)> (19 March 2019)

against discrimination based on SOGI<sup>9</sup>.

- b) Article 145 of the Criminal Code provides for punishment for discrimination and contains an open-ended list of possible grounds for such discrimination<sup>10</sup> being almost word for word quotation from the text of the Basic Law. Discrimination based on SOGI is not mentioned explicitly in the Criminal Code, as well as in the Basic Law.

11. Enforcement of LGBT individuals' rights and freedoms is restrained seriously due to absence of anti-discrimination legislation in the State. Inclusion of an open-ended list of grounds on which discrimination is prohibited in the Basic Law gives hope for acknowledgement of SOGI based discriminatory motive in particular cases, however, leaves final decision to the court's discretion. Situation is aggravated due to the absence of official definition of the concept of discrimination in the legislation.

12. LGBT activists are also concerned about possibility of throwing SOGI based discrimination out when developing comprehensive anti-discrimination legislation. These fears are not unfounded because Kazakhstan often declares importance of tolerance and non-discrimination at different levels, at the same time demonstrably ignoring direct calls for inclusion of SOGI. For example according to the United States Mission to the OSCE<sup>11</sup> despite the fact that many participating States and NGOs at the OSCE Summit Meeting in Astana (2010) called for respect for diversity and protection of human rights of all individuals, including LGBT, this issue is not mentioned in the Astana Commemorative Declaration: Towards a Security Community<sup>12</sup> prepared by the Chairman-in-Office, i.e. Kazakhstan.

13. In 2015 Kazakhstan nearly passed a law prohibiting so-called "gay propaganda. Most probably the deputies of the Kazakh Parliament decided to follow the example of Russia and adopt the same discriminatory legislation in the form of the Law on Protection Children from Harmful Information. This law has already been passed by the both Houses of Parliament, but the international civil society, namely the Olympic community, intervened. Kazakhstan at that time participated in the contest where host city for the Winter Olympic Games was selected, and 27 Olympic athletes protested against the idea of holding the games in a country adopting homophobic legislation. The Constitutional Council of the Republic of Kazakhstan did not allow the law to be signed by the President. According to official statements the law was rejected due to some technical reasons.

14. In 2018 the Law on Protection of Children from Harmful Information was adopted without the discriminatory article, but a few months later the Government attempted to ban so called "gay propaganda" with a by-law. Thanks to the efforts of human rights defenders and experts from the OHCHR the by-law was adopted without the

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<sup>9</sup> Labor Code, Article 6. Available at < [https://online.zakon.kz/Document/?doc\\_id=38910832#pos=400;-18](https://online.zakon.kz/Document/?doc_id=38910832#pos=400;-18) > (15 Feb. 2019)

<sup>10</sup> Criminal Code, Article 145. Available at < [https://online.zakon.kz/Document/?doc\\_id=31575252#pos=2094;-54](https://online.zakon.kz/Document/?doc_id=31575252#pos=2094;-54) > (05 Mar. 2019)

<sup>11</sup> Statement by the Delegation of the United States on OSCE High-Level Conference on Tolerance and Non-Discrimination, held in Astana on June 29 and 30 in 2010. Available at < <https://www.osce.org/ru/pc/70876> > (15 Feb. 2019)

<sup>12</sup> Astana Commemorative Declaration: Towards a Security Community. Available at < <https://www.osce.org/mc/74985> > (15 Feb. 2019)

discriminatory article.<sup>13</sup> It is obvious that the State's authorities are not leaving attempts to strengthen legislative discrimination on the basis of SOGI.

## LGBT RIGHTS SITUATION ON THE GROUND

15. Due to absence of effective mechanism for fighting against discrimination on the basis of SOGI LGBT individuals are often subjected to hate crimes and discrimination at work, and the child rights are also infringed.

16. During 2018 Kok.team monitored cases of discrimination against LGBT individuals. As a result, in 2018 there were revealed 29 cases involving suicide, threat to life, assault, sexual abuse, blackmailing, police inaction, and violation of child rights<sup>14</sup>.

### 1. The Right to Live

17. 1 case of suicide committed due to homophobia and five cases of threat of homicide were reported. It is difficult to say how many suicides or murders are actually connected with homophobia, because relatives of victims conceal causes of death for fear of stigmatization. However, attention to severity of the problem is drawn by the study indicating that more than 50% of Kazakhstani gays and bisexual men participating in the survey think about suicide<sup>15</sup>.

18. *Case: A young man's father suspected him of being homosexual. The young man denied the allegation, then his father threatened to stab him with a knife if his homosexuality will be proven.*

### 2. Hate Crimes against LGBT – Assaults, Blackmail and Lack of Efficient Investigation

19. As a result of monitoring we received reports on 19 cases involving attacks and blackmailing. They demonstrate that LGBT individuals in Kazakhstan are not safe. Even though most of LGBT individuals keep their SOGI in secret, they cannot protect themselves from violence neither at home nor outside. Their private life is often under attack.

20. LGBT are regularly attacked near gay clubs. Individuals whose relatives and acquaintances learn about their SOGI are abused by their relatives and acquaintances.

21. *Case: A man, having learned about sexual orientation of his 19-year-old brother, severely beat him and his partner.*

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<sup>13</sup> More information at < <https://www.kok.team/ru/2019-01-16/detyam-kazahstana-mozhno-rasskazyvat-ob-lgbt> > (15 Feb. 2019)

<sup>14</sup> More information in Kok.team report at < <https://www.kok.team/ru/2018-11-27/prestupleniya-bez-nakazaniya-kak-lgbt-kazahstana-prozhili-2018-god> > (15 Feb. 2019)

<sup>15</sup> More information in research "Mental Health and Suicidality Among Gay and Bisexual Men in Kazakhstan" (2018). Available at < <https://www.kok.team/files/files/article/386/mental-health-of-gay-bisexual-men-azamat-seksenbayev.pdf> > (15 Feb. 2019)

22. *Case: Sexual orientation of a guy has become publicly known. About 20 college students tracked him down and tried to kill him. "Hunting" and bullying have been continuing for three years.*

23. Many incidents involving violence against gay men are connected with planned attacks aimed at stealing property or blackmailing. Evil-doers found men using dating websites and applications, invite them to go out, during the date they receive victim's property away, beat and sometimes rape victims, and later blackmail them using personal information, photo, and video obtained while chatting via dating websites and applications.

24. *Case: Evil-doer created Instagram account where he published photos of gay men, blackmailed those men and extorted money for removal of the photos.*

25. *Case: Evil-doer became friends with a guy in a social network and dated him. At the end of the date he threatened the guy with a knife and took his money and smartphone. Before this the evil-doer threatened the guy with a knife and forced him to say that he is gay for the camera. This record was made to guarantee that the victim will not go to the police.*

26. Aggressors exploit helplessness of their victims. LGBT individuals are afraid to go to the police, because policemen can also blackmail them. Over the past few years, there has been only one case in which an attacked gay appealed to the court to defend his rights.

27. We are aware of 2 cases where the police refused to accept victim's report.

28. *Case: Neighbors learned about a guy's sexual orientation (in Almaty). They began to "hunt" him, beat him. Policemen rejected his report and the man had to change his place of residence several times, since the aggressors discovered his new place of residence.*

29. Sometimes people cannot go to the police because policemen also attack them. We are aware of two cases where policemen raped gays.

### **3. Labor Discrimination**

30. LGBT individuals facing labor discrimination based on SOGI cannot take legal action, because the State's Labor Code does not provide any opportunity for that. Despite the fact that the Basic Law and other laws contain an open-ended list of types of discrimination comprising "any other circumstances" along with discrimination on the basis of race, gender, and religion, list of types of discrimination in the Labor Code is limited by 14 positions and does not allow to refer to "any other circumstances".

31. *Case: A young man works as web-designer. Having learned about his sexual orientation, the management reduced wages and created intolerable conditions for work.*

### **4. Child Rights Violation**

32. Our monitoring not only detects cases of discrimination and crimes against individuals, but also other difficult circumstances that LGBT individuals face such as

insults, pressure from relatives, crimes against property, etc. In 2018, 80 complaints were recorded on the widest range of problems in general. 22% of respondents are children under 18 years. They primarily face problems in family and at school.

33. *Case: Teenager, who is less than 18 years old, said that his parents had driven him away of home after learning about his sexual orientation.*

## RECOMMENDATION FOR ACTION BY THE STATE UNDER REVIEW

### **KOK.TEAM CALLS ON THE GOVERNMENT OF KAZAKHSTAN TO:**

#### THE NATIONAL HUMAN RIGHTS FRAMEWORK

- Eliminate direct discrimination of same-sex couples in the Marriage and Family Code;
- Eliminate direct discrimination of LGBT individuals in the rules for employment to the internal affairs bodies;
- Include ban on discrimination on the basis of SOGI in Article 145 of the Criminal Code;
- Develop and implement comprehensive anti-discrimination legislation that, in accordance with international standards, would give a clear definition of the concept of “discrimination” and directly prohibit discrimination based on SOGI.

#### THE RIGHT TO LIVE

- Include the SOGI component in the state programs for prevention of suicides among adolescents.

#### HATE CRIMES

- Amend Article 54 of the Criminal Code with provision classifying hatred to SOGI as circumstance aggravating criminal responsibility and punishment;
- Develop a system through which all individuals can safely report cases of discrimination and access avenues of redress.

#### LABOR DISCRIMINATION

- Include ban on discrimination on the basis of SOGI in Article 6 of the Labor Code.

#### THE CHILD RIGHTS

- Develop a national mechanism to protect and support LGBT children in families and educational institutions.