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HBQTQ-personers situation i Libanon

In Lebanon, LGBT persons are facing a schizophrenic situation: While homosexuality is still a taboo in large parts of conservative Lebanese society, LGBT persons face relatively less discrimination in Lebanon than in other Arab countries. In the last decade, with the advent of openly homosexual clubs and bars and the foundation of the first association for the protection and promotion of LGBT rights in the Middle East, Helem, in Beirut, an important LGBT community has emerged in Lebanon. Yet, at the same time, homosexual acts are still punished under various articles of the Lebanese penal code under Title IV "Infractions of morality and public morals", whereby homosexuality is effectively criminalized.

In this respect, an important distinction has to be made between:

- homosexual acts involving violence or abuse of minors on the one hand and
- consensual homosexual acts among adults on the other hand.

In view of your questions, I will focus on consensual homosexual acts among adults.

The key article in this respect is actually article 534, which states "any sexual intercourse contrary to the laws of nature is punished by imprisonment for up to one year." This article, albeit not explicitly mentioning homosexuality or including it in the definition has been routinely used as a basis for the punishment of homosexual acts in Lebanon. The main argument designating homosexual acts as "acts contrary to the laws of nature" is that they cannot lead to procreation and are thus contradicting the continuous reproduction of human civilization. The criminalization of homosexuality is thus a manner to preserve traditional family lineage.

Due to the imprecise wording of article 534 and the lack of a clear definition or list of "intercourse contrary to the laws of nature", the scope of its application is vast. The wording "intercourse" ("moujama'a in original Arabic text : "مجمعة") suggests that under this article, solely the homosexual act itself is punishable. In judicial practice, the definition of "intercourse contradictory to the laws of nature" has been mostly limited to acts of sodomy. Therefore, lesbians have been less frequently persecuted than gays, and bisexuals only when caught in a homosexual act with a male. In some instances, lesbians have been prosecuted under other articles, i.e. indecency (509). Sexual acts in public spaces, such as kissing among LGBT persons, have been punished under article 231 concerning the "violation of public morality".

The common definition of article 534 as concerning the sexual act as such seems to suggest that it does not punish sexual orientation as expressed by someone's identity, lifestyle or behavior. However, some cases such as the one of an adult man who was arrested and prosecuted under article 534 on the basis of a report by his mother alleging his "acting like a woman".

There is a long list of sentences against persons issued under this article on the basis of the mere suspicion of homosexuality. Article 534 has for example been applied to a person who followed another person of the same sex into parking lot and admitted his intention to undertake homosexual acts (2003) as well as to two ladies living together who openly declared their homosexuality, without any proof of their sexual relation (2002). In one instance, even the exchange of phone numbers on the internet in preparation of an actual meeting among suspected LGBT persons has been considered an offense under article 534 (2000).

In the absence of clear proof for a homosexual intercourse, the suspects arrested under article 534 are frequently subjected to abuse by police and security forces in order to enforce a confession of guilt.

The latest such instance occurred in August 2012, when 36 men were arrested at a movie cinema in the Bourj Hammoud neighborhood in Beirut that allegedly screened pornographic movies. At the police station where the men were detained, they were subjected to anal examinations intended to prove whether they had engaged in homosexual acts. On the grounds of the dubious results of these "tests of shame", three of the men came to face charges under article 534. By virtue of its lack of clarity, Article 534 is also often invoked for the arbitrary persecution of people. An example is the case of a Syrian immigrant who was initially charged with murder and not released even when proven innocent, and he was finally sentenced under article 534.

According to a study published by the LGBT rights association Helem, in which the lawyer Nizar Saghyeh analyzed over 40 cases tried by different Lebanese courts, found that most charges under Article 534 resulted in prison sentences.

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However, the majority of these did not exceed three months and often covered only the detention period, sometimes presumably to justify the latter. In general, persons considered to have been the initiator of the intercourse or having played a more active or dominant role in it faced more severe punishments than people considered to have been in a weak role or exploited.

The evidence used to invoke article 534 is often fabricated and based on people's preconceptions about other people's behavior. The interesting characteristic of Article 534, as compared to other articles in the Lebanese penal code, is that it punishes the perception of an act (as contradictory to the laws of nature) rather than a specific act as such. Therefore, it could be argued that with a change of societal norms, the criminalization of homosexual acts under this article might become obsolete since homosexuality might come to be seen as natural. This is precisely the argumentation of the verdict mentioned in your email and issued in 2009 by the court of Batroun which denied the applicability of article 543 on homosexuality with the following explanation:

... whereas on the other hand the law didn't define a specific concept of nature or a standard to measure how the act is in conformity with or against nature or its laws; whereas if it were up to the Judge's decision, we believe that man has not been able to understand all the aspects of the laws of nature and is still trying to explore nature and his own even; whereas based on the aforementioned, the concept of the 'unnatural' is related to society's mindset, customs and its acceptability of new natural patterns which he's not familiar with or that are not acceptable yet; whereas man is part of nature and one of its elements, and a cell within a cell in it, it cannot be said that any practice of his or any behavior of his is against nature even if it is a criminal act because it is the laws of nature."

This case constitutes a precedence sentence for further rulings on article 534 and might thus initiate an important change towards the decriminalization of homosexuality in Lebanese law. Since years, civil society organizations and NGOs such as Helem, supported by international organizations and encouraged by worldwide developments (such as the declassification of homosexuality as a mental illness by the WHO in 1990 or the draft UN declaration for the prevention of criminalization of homosexuality in 2008), enhanced their struggle for LGBT rights and advocated the removal of article 534 from the Lebanese penal code.