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Fråga-svar

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Fråga

- Utför myndigheterna i Libanon fortfarande fysiska ”undersökningar” gällande personers sexualitet?
- Har situationen för HBT-personer förbättrats i Libanon? Är homosexualitet straffbart och tillämpas fortfarande artikel 534? Har det skett en förändring i strafflagstiftningen i landet?
- Hur ser situationen ut för transpersoner i Libanon? Riskerar en transperson bestraffning på grund av sin identitet?

Svar

Utför myndigheterna i Libanon fortfarande fysiska ”undersökningar” gällande personers sexualitet?

Den huvudsakliga rapporteringen det senaste året om den typen av undersökningar tycks komma från Human Rights Watch (HRW) och organisationens rapport *Dignity Debased: Forced Anal Examinations in Homosexuality Prosecutions* (2016-07-12):

Anal exams or the threat of anal exams continued to be used in Lebanon throughout 2014 and 2015, although human rights activists in Beirut reported that the incidence of exams seemed to have diminished, probably due to some doctors, and prosecutors, respecting the circulars that were issued in 2012. /.../ But some members of the Internal Security Forces (ISF), Lebanon’s main police force, seemed to be unaware of the circulars altogether.

Dr. Sami Kawas, a forensic medicine specialist in Beirut, told Human Rights Watch that police still call upon him to conduct the tests and that he conducted such exams as recently as 2015. Kawas said he conducted the exams with the patients' consent, which he believed was consistent with the Order of Physicians circular. However, the circular does not, in fact, make exceptions for situations in which detainees give "consent." It is questionable whether any detainees, in police custody and in all likelihood fearing that refusal to undergo the tests could be used as evidence against them, could be seen as having offered meaningful consent to undergo these tests.

Even a decline in the use of anal exams does not mean that gay men and transgender women in Lebanon are safe from torture. (s. 37-38)

Exempelvis Amnesty International rapporterade senast om företeelsen i årsrapporten för 2014/15 (2015-02-25):

In January, five men arrested on suspicion of consensual same-sex sexual activity were reported to have been subjected to anal examinations by a doctor, despite the Lebanese Order of Physicians declaring in 2012 that it was impermissible for doctors to carry out such examinations, which violate the international prohibition of torture and other ill-treatment, and a circular from the Minister of Justice in the same year, that called on public prosecutors to cease this practice.

Andra källor som rapporterat om analundersökningar det senaste året använder sig av HRW som ursprungskälla. Med betänkligheten att källan är singulär, så tycks slutsatsen vara att trots att undersökningarna fördömts av både läkarförbundet och justitieministern så kan de fortfarande förekomma. I andra fall kan de bytas ut mot andra former av fysiska övergrepp. Metro Weekly (2016-06-01):

Of those nations, Lebanon has come closest to stopping the practice. Lebanese grassroots activists, led by the group Legal Agenda, began an effective campaign that labeled anal exams as "tests of shame" and called their practice a form of rape. In 2012, due to their efforts, the country's National Medical Council banned the use of anal examinations as evidence of homosexuality, which remains criminalized. The country's Minister of Justice subsequently made a statement calling the practice a violation of human rights and calling on prosecutors to stop relying on them for convictions.

However, the decision of whether to order an anal exam is often left up to the discretion of individual prosecutors. And, [Neela Ghoshal, a senior LGBT rights researcher for Human Rights Watch] notes, there have been cases where police have instead traded anal exams for another form of torture: beating people severely until they confess to being homosexuals.

I en ett par år gammal artikel uttalar sig HRW även om att hot om undersökningar används för att få misstänkta att bekänna sig som homosexuella. Inter Press Service (2014-08-24):

While anal probes have been banned by former minister of Justice Antoine Kortbawi, they are still used by the police, or as a threat to force detainees to admit their homosexuality, explains Saleh. According to HRW, two people have been subjected to anal probes since the directive was enacted last year.

United States Department of State (US DOS) uppger endast att HBTQ-personer är extra utsatta för illa behandling av ISF utan att närmare specificera på vilket sätt. US DOS (2016-04-13):

Reports the ISF threatened, mistreated, and tortured drug users, persons involved in prostitution, and LGBTI persons in their custody were common.

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Allegations that the ISF specifically targeted the LGBTI community for abuse were common.

Har situationen för HBT-personer förbättrats i Libanon? Är homosexualitet straffbart och tillämpas fortfarande artikel 534? Har det skett en förändring i strafflagstiftningen i landet?

Attityder

Attityden i samhället gentemot hbt-personer kartlades i en undersökning utförd på uppdrag av Arab Foundation for Freedoms and Equality, [*“As long as they stay away” Exploring Lebanese Attitudes Towards Sexualities and Gender Identities*](#) (2015).

Lagstiftning

Källor anger att artikel 534 fortfarande gäller men att den sällan tillämpas. Freedom House (2016-01-27):

LGBT (lesbian, gay, bisexual, and transgender) people face both official and societal discrimination and harassment. The penal code prescribes up to one year in prison for “sexual intercourse against nature,” though this is rarely enforced. NGOs work to uphold the human rights of LGBT people, and social acceptance is more common in urban and cosmopolitan areas, particularly in Beirut.

US DOS (2016-04-13):

Official and societal discrimination against lesbian, gay, bisexual, and transgender (LGBTI) persons persisted. There is no all-encompassing antidiscrimination law to protect LGBTI persons. The law prohibits “unnatural sexual intercourse,” an offense punishable

by up to one year in prison but rarely applied; however, it often resulted in a fine. The Ministry of Justice did not keep records on these infractions. There were no reports authorities imprisoned anyone for violation of this law during the year.

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NGOs claimed LGBTI persons underreported incidents of violence and abuse due to negative social stereotypes. Observers received reports from LGBTI refugees of physical abuse by local gangs, which the victims did not report to the ISF; observers referred victims to UNHCR-sponsored protective services.

Även International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA) anger i en rapport daterad maj 2016 att lagstiftningen fortfarande gäller (ILGA, 2016-05-01).

Rättslig utveckling

Human Rights Council rapporterar att domstolar vid två tillfällen bedömt artikel 534 som ej applicerbar i rättegångar mot homosexuella. Human Rights Council (2015-11-15):

As for sexual orientation, although article 534 of the Penal Code stated that sexual intercourse contrary to nature was punishable, two court decisions had indicated that article 534 did not apply to homosexuals. The judiciary had played an important role in preventing and opposing acts of violence or discrimination against lesbian, gay, bisexual and transgender persons. (s. 8)

Den libanesiska NGO:n The Legal Agenda, som bevakar den rättsliga utvecklingen i Libanon, har publicerat mer detaljer kring de fall Human Rights Council åsyftar och uppger samtidigt att detta skett vid tre tillfällen.

The Legal Agenda (2016-10-17):

Since 2009, three court decisions have refused to apply Article 534 of the Criminal Code to sanction same-sex intercourse. Judges considered it is their right and duty to define the notion of “nature”; they ruled that same-sex relations are an exercise of personal freedom and are not “against the order of nature”.

The Legal Agenda (2014-03-10):

On January 28, 2014, Naji al-Dahdah, a magistrate in Jdeideh el-Metn, Lebanon, issued a ruling acquitting a transexual individual accused of engaging in sexual relations with men. The ruling carries great significance, not just for the legal status of transexuals, but also because of its implications for interpreting Article 534 of the Lebanese Penal Code.

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The ruling, of course, has important repercussions for Article 534 of the Penal Code. By not invoking gender as a factor in applying the

article, and instead, relying upon “external appearances”, social behaviors, and psychological sensibilities, the verdict offers a reassessment of the criminalization of same-sex relations. Absent the use of a person’s gender identity in applying the article, defining “sexual intercourse contrary to nature” as including sexual relations between individuals belonging to the same gender is impossible.

Även Amnesty International har rapporterat om utgången av rättegången 2014, samtidigt som organisationen även redogör för hur artikel 534 användes som grund för ett domslut senare samma år Amnesty International (2015-02-25):

Article 534 of the Penal Code, which prohibited sexual intercourse "contrary to the order of nature" was used to prosecute various consensual sexual activities, including sex between men. In January a judge ruled that Article 534 was not applicable in the case of a transgender woman having sexual relations with men. In August, the authorities arrested 27 men at a Beirut bath house and charged them with offences under Article 534 and provisions relating to "public decency" and prostitution.

The Legal Agenda har även publicerat en kritik mot hur artikel 534:s användningsområde till synes vidgats under 2016. The Legal Agenda (2016-10-25):

On June 7, 2016, the aforementioned court issued a decision convicting five young men of the misdemeanor stipulated in Article 534 of the Criminal Code /.../ [The court] completely disregarded developments in psychiatry, in Lebanese society, and in the official stance of the Lebanese state, declaring that “homosexual relations must be considered relations contrary to nature according to the standards accepted in Lebanese society, for natural sexual relations in our society are those between a woman and a man and not between members of the one sex”. By not using any scientific, medical, or social criterion to define “nature” and “natural relations”, or what contravenes them, and instead merely formulating grounds in this manner in the absence of any proven act (as though the act is self-evident), the court’s decision constitutes a ruling on mere sexual identity.

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In other words, the court saw no need whatsoever for the “intercourse” element stipulated in Article 534 of the Penal Code to be present in order to apply the article. The mere confession of homosexuality is enough; there is no need thereafter to ascertain that intercourse occurred in a specific time and place, nor is there any need to ascertain the involvement of a second person in said intercourse (even though intercourse presupposes the presence of at least two persons). The court thereby deviated from its procedures for proving other crimes; it convicted people for just stating that they are homosexual or had homosexual relations, whereas a person’s statement that they are a murderer or a thief means nothing

unless the actual murder or theft is proven, and the time and place is determined.

Detta bekräftas i en artikel publicerad i Middle East Eye (2016-10-16):

Article 534 of the Lebanese constitution prohibits having sexual relations that “contradict the laws of nature”. As explained by Hasna Abd el-Rida, a lawyer with the Lebanese Center for Human Rights, no one should be arrested unless caught in the act, but this rule is not respected. “A confession is enough to charge a person under Article 534, and this is often extorted by policemen who ask aggressive personal questions they have no right to ask,” says Rida.

Omständigheter som kan påverka

Ett flertal artiklar uppger att olika faktorer kan påverka en individs utsatthet. Se ett urval nedan.

Middle East Eye (2016-10-16):

Alongside Proud Lebanon, she works on raising the awareness of their rights among the LGBT community. “Those who know the right thing to say are released [from detention] within hours, others are kept there for days or weeks in arbitrary detention,” says Rida. Their release is also dependent on their ability to pay a fine – ranging from 200 to 400 Lebanese pounds (approximately \$125 - \$250) – which is particularly difficult for Syrian refugees.

Sexuality Policy Watch (2016-03-11):

When I think about LGBT rights in Lebanon, a swinging pendulum comes to mind. Slow progress met with backlash and arbitrary detention. Article 534 of the penal code, a remnant from French colonization, criminalizes same-sex relationship; similar laws of indecency also criminalize transgender populations. Communities of lower socio-economic status and vulnerable groups, such as refugees, are most exposed to police harassment under these laws.

Al-Monitor (2015-06-15):

[Sarah Wansa, a researcher with nongovernmental organization Legal Agenda,] told Al-Monitor that Legal Agenda has found most of the rights violations experienced by LGBT people in Lebanon to have been “carried out by the state,” which, she claimed, has displayed a tendency toward “mistreating members of all marginalized communities, including the lower classes, migrant workers and refugees.”

Al-Akhbar (2014-09-30):

Azzi said he also thought “things had changed with regards to the LGBT community” at the Hbeich police station in Beirut, which is known for tackling so-called indecency cases.

Several weeks after Al-Akhbar English’s interview with Azzi, Hbeich police raided a gay-friendly hammam and arrested 27 men.

The continued occurrence of police raids in Lebanon are proof for Makarem that things have changed for only some parts of the LGBT community.

“You hear a lot of people say that there are more freedoms, which is something I completely disagree with,” he said. “What’s happening is that you have a process where LGBT people are being confined in certain areas where you have excess freedom, and at the same time you see a gradual breakdown of all types of gay spaces.”

“So the police does not even question Bardo or the nightclub,” he added, referring to a well-known gay bar in Beirut, “but they would go around and attack people and arrest them in the cinemas.”

Inter Press Service (2014-08-24):

However, Makarem adds, “despite recent positives, being gay can still mean being the subject of discrimination, from a legal standpoint, especially for those without the right connections or wealth.”

Hur ser situationen ut för transpersoner i Libanon? Riskerar en transperson bestraffning på grund av sin identitet?

Attityder

En undersökning av Arab Foundation for Freedoms and Equality, [*“As long as they stay away” Exploring Lebanese Attitudes Towards Sexualities and Gender Identities*](#) (2015) s. 22-23, ger en indikation till den allmänna attityden gentemot transpersoner i Libanon.

Lagstiftning

Om en prejudicerande dom gällande rätten att ändra juridiskt kön (1123/2015) kommenterar den libanesiska NGO:n The Legal Agenda (2016-02-11):

The Court of Appeal considered a request to change the petitioner’s recorded gender from “female” to “male”, when the petitioner challenged the ruling [on the same subject] issued by a magistrate in Beirut on December 12, 2014. The magistrate’s response was that it was not possible to comply with the change request ...

/.../

In its ruling on the subject, however, the Court of Appeal took the opposite stance: a stance adopted by the majority of magistrates who oversee personal status cases in their rulings on this particular matter.[1] The basis of this position is, firstly, the view that a discrepancy between a reality arising from medical necessity and personal status records can be considered a correctable error, and secondly, an individual's right to respect for their private life.

The Legal Agenda konstaterar även att det var en i raden domslut som syftar till att skydda bland annat HBT-personer, en grupp som ofta utsatts för myndighetsövergrepp (2016-02-23):

On September 3, 2015, [the Beirut Civil Appeals Court issued a ruling](#) permitting transgender individuals to change their records in the population registry.[1] This decision was the latest addition to a collection of rulings issued by various courts, to protect the rights of certain groups that routinely face [detention and persecution; particularly, gay, lesbian, and transgender individuals](#). [2] Despite of these rulings, these individuals are often subject to arrest, detention, various forms of indignities, and physical and psychological torture.

Artikeln fortsätter med en [redogörelse för hur en enskild transperson behandlats av libanesisk polis](#).

Al-Jazeera rapporterar om samma domslut och skriver vidare (2016-02-06):

The decision marked the first time a Lebanese appeals court has ruled specifically in support of transgender rights to treatment.

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But changing one's gender was already legal in Lebanon, as in Iran, Egypt and many other countries.

Where the ruling was ground-breaking, however, was in acknowledging the psychological considerations of the appellant, who remains anonymous.

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Until now, granting papers that would officially change one's gender depended on a set of stringent rules: the man or woman must not be married, have any children, and should be able to prove that gender realignment surgery is complete and irreversible.

"Because this recent case happened in an appeals court, it now means that those judged in a lower court can now go back to this ruling as a precedent," Tarek Zeidan, spokesman for the LGBT advocacy group Helem, told Al Jazeera.

Al-Jazeera beskriver även i artikeln de svårigheter som möter de transpersoner vars könsuttryck inte matcher det juridiska könet i deras identitetshandlingar. Problem att skaffa jobb och bostad gör att många hamnar i prostitution, och social stigma är utbredd, även inom sjukvård och

polisen. Många överges av sina familjer och sammanlagt skapar detta känslor av isolering och ångest. Tarek Zeidan från Helem konstaterar också:

"The whole system in Lebanon is set up based on a binary gender system, including prison and police stations. If [for example] a trans woman is arrested, she will frequently be placed in a holding cell for men."

Könskorrigering

Domslutet som beskrivs ovan till trots, så framgår av andra källor att könskorrigering i många fall krävs innan en person får ändra sitt juridiska kön.

Middle East Eye (2016-10-16):

Sex reassignment surgery is available in Lebanon for those who can afford to pay its price – usually in the range of \$20,000. Like many others, Ivy does not have the money to pay for the surgery and lacks the support network she would need to get through the difficult recovery period.

Those who are able to complete the painstaking operation can undertake legal proceedings to change their gender on their documentation. In mid-January this year, judge Janet Hanna of the Court of Appeals in Beirut granted a man the right to change gender and then proceed with the sex reassignment surgery.

Other court rulings have been more stringent, asking for proof that sexual realignment is complete and irreversible. However, obtaining a favourable ruling in Lebanon is often a matter of luck and money, rather than law.

"In Lebanon, court rulings do not set a precedent," says Bertho Makso, executive director of the LGBT rights organisation Proud Lebanon. "It all depends on your luck with the judge or how much money you can spend to file an appeal."

Human Rights Campaign (2016-01-28):

Judge Janet Hanna of the Beirut, Lebanon Court of Appeals ruled in favor of a transgender man seeking to change his gender marker on public records and in the national civil registry. The decision marks the first time in Lebanon that a person has legally been able to change their gender marker. Many activists in the region are highlighting this as an important step toward equality.

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Despite the ruling, transgender people are still required to undergo gender reassignment surgery to secure gender marker changes. The law also requires transgender people to be unmarried and childless.

Andra hinder inkluderar att både läkares och domares godkännande behövs innan könskorrigering operation kan utföras. The Maingate Magazine (2015):

In Lebanon, changing genders requires government approval. "Before you can get a sex-change, you need official papers from a psychiatrist and other doctors," says El Kak. A transgender person can't just go to the doctor and ask for reassignment surgery. Rather, that person needs a professional medical opinion compelling enough to persuade a judge to draft a legal opinion authorizing reassignment surgery. (s. 20)

På ett blogginlägg på sidan Beirut.com hänvisas till uttalande av Georges Azzi, grundare av och ordförande i Helem, Libanons största HBTQ-förening, som uppger att tranpersoner är mindre benägna att anmäla brott (2015-06-06):

Even worse, transgender individuals are often at greater risk of being victims of violent crime and rape. But shouldn't the law protect them? Guess again. "Transgender people do not report [this] violence to the police since they will be, in the best scenario, arrested, if not abused by policemen," Azzi told Beirut.com.

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"The main difference between Lebanon and the West is the legal protection offered to LGBT individuals as well as free medical and social services, also many western countries would change the legal papers in a faster procedure without forcing the individual to undergo a complete sex change surgery."

Denna sammanställning av information/länkar är baserad på informationssökningar gjorda under en begränsad tid. Den är sammanställd utifrån noggrant utvalda och allmänt tillgängliga informationskällor. Alla använda källor refereras. All information som presenteras, med undantag av obestridda/uppenbara fakta, har dubbelkontrollerats om inget annat anges. Sammanställningen gör inte anspråk på att vara uttömmande och bör inte tillmätas exklusivt bevisvärde i samband med avgörandet av ett enskilt ärende. Informationen i sammanställningen återspeglar inte nödvändigtvis Migrationsverkets officiella ståndpunkt i en viss fråga och det finns ingen avsikt att genom sammanställningen göra politiska ställningstaganden. Refererade dokument bör läsas i sitt sammanhang.

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(alla länkar hämtades 2016-11-25)

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