

Flygtningenævnets baggrundsmateriale

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STATE-SPONSORED HOMOPHOBIA

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LEBANON

Provisions in force

► Penal Code (1943).

Sexual intercourse against nature

Article 534

Any sexual intercourse against nature is punished with up to one year of imprisonment.

Public morals

Article 532.

The exposing of public morals by any of the ways mentioned in paragraphs 2 or 3 of Article 209 shall be punished with imprisonment from one month to one year and a fine from 20,000 Lira to 100,000 Lira.

Legal barrier to freedom of expression

Article 209.

The making or possession, importing or attempts to import for trade, distribution, for payment, copying, exhibition or display or attempts to display to the public, or for selling or attempts to sell, or distribution or engaged in the distribution of each publication, an editor or a drawing or a declaration or pictures or paintings or photographs, or the origin of the image or its template or produced anything in breach of modesty shall be punished with imprisonment from imprisonment from one month to one year and a fine from 20,000 Lira to 100,000 Lira.

Human rights situation

Though forced anal examinations are now rarely used as evidence in Article 534 proceedings, following a 2012 advocacy campaign known as “Tests of Shame”,¹ the police continue to perform them, as well as conduct HIV and drug tests on arrested persons without their consent.² According to activists, the number of arrests under Article 534 has increased between 2012 and 2016.³

In 2013, a film due to be screened at the Beirut International Film Festival that included

homoerotic scenes, was banned by the Interior Ministry’s censorship committee.⁴

In 2014, the Morals Protection bureau of the Lebanese police raided a bathhouse on the basis that there were “suspected homosexuals”.⁵ Numerous customers and employees were arrested and charged under Article 534 as well as prostitution and public morals offences.

In December 2016, a Syrian refugee reported being detained and tortured by Lebanese Military

¹ Arab Foundation for Freedoms and Equality and Outright Action International, *Activism and Resilience: LGBTQ Progress in the Middle East and North Africa* (2018), p 26

² ALEF et al, *Civil society report on the implementation of the International Covenant on Civil and Political Rights in Lebanon* (2018), p 4; Human Rights Watch, *Dignity Debated: Forced Anal Examinations in Homosexuality Prosecutions* (2016)

³ Helem - Lebanese Protection for LGBTQ Individuals, *Human Rights Violations against Lesbian, Gay, Bisexual, Transgender, and Queer (LGBTQ) individuals in Lebanon* (2017), p 3.

⁴ “Beirut bans films in setback for tolerant image”, *Gulf News*, 8 October 2013.

⁵ Sarah Wansa, “Torture at Every Stage: The Unofficial Narrative of the Hammam al-Agha Raid”, *The Legal Agenda*, 12 November 2014.

Intelligence officers as well as other security agencies on suspicion of his being gay.⁶

In 2017, Beirut Pride was held (the first in the Middle East region, other than Israel) despite pressures from Islamist organisations and the government.⁷ However, in May 2018, the organiser of Beirut Pride was detained during an event and made to sign a pledge that he would cancel all remaining activities.⁸

The Lebanese Medical Association for Sexual Health (LebMASH), a sexual health NGO, launched a week of programmes on discrimination in the medical sector against LGBT people in March 2017.⁹ In 2018, LebMASH hosted a conference where doctors criticised “conversion therapy” for causing suicidal thoughts and depression.¹⁰

During the 2018 elections, nearly 100 candidates called for the repeal of Article 534 as part of their electoral platforms,¹¹ including politicians from the right-wing Christian Democrat party.¹²

In July 2018, a three-judge bench of the Mount Lebanon Criminal Court of Appeal upheld Judge Maalouf’s decision and found that consensual same-sex relations could not be viewed as “unnatural” unless it was performed publicly or involved a minor.¹³

In September 2018, LGBT activists were reportedly preparing a proposed law to decriminalise same-sex sexual intimacy and other laws that discriminated against LGBT people.¹⁴

In January 2019, the Ministry of Telecom reportedly ordered a ban on a gay dating app.¹⁵

Statements by public officials

In January 2017, Judge Rabih Maalouf of the el-Metn court opined that, “Homosexuals have a right to human and intimate relationships with whoever they want, without any interference or discrimination in terms of their sexual inclinations, as is the case with other people.”¹⁶

Existing legal challenges

Consensual same-sex sexual acts (interpretation and repeal of Article 534)

In 2010, an LGBTQ group, Helem, published a booklet analysing Article 534 and calling for its repeal.¹⁷ According to reports, numerous court decisions have interpreted Article 534 to not apply to consensual same-sex sexual intimacy on the basis that such intimacy is not in fact “against nature”.¹⁸ For instance, in January 2017, a Metn court judge declared that “homosexuality is a personal choice, and not a punishable offense”.¹⁹

Most recently in July 2018, the Mount Lebanon Criminal Court of Appeal upheld a lower court’s decision that held that consensual sex between people of the same sex was not unlawful.²⁰ However, activists report that despite these judicial pronouncements, Article 534 remain on the books and people perceived to identify as sexually diverse continue to be arrested arbitrarily.²¹

National Human Rights Institution

Lebanon does not have a National Human Rights Institution in accordance with the Paris Principles.

⁶ “Lebanon: Syrian Refugee’s Account of Torture”, *Human Rights Watch*, 21 December 2016.

⁷ Heba Kalso, “RPT-Lebanon launches Arab world’s first gay pride week”, *Reuters*, 17 May 2017.

⁸ “Beirut Pride cancelled after organiser detained”, *BBC News*, 16 May 2018.

⁹ Charlotte Steenackers, “Pour en finir avec la marginalisation de la communauté LGBT”, *L’Orient le Jour*, 13 March 2017.

¹⁰ Heba Kalso, “‘I had suicidal thoughts’: Gay Lebanese speak out against conversion therapy”, *Openly News*, 8 November 2018.

¹¹ Tamara Qiblawi, “Gay rights come to the fore as Lebanon prepares to vote”, *CNN*, 4 May 2018.

¹² Meka Beresford, “Lebanese politicians call for decriminalisation of gay sex”, *Pink News*, 14 March 2018.

¹³ *Lebanon: Same-Sex Relations Not Illegal*, *Human Rights Watch*, 19 July 2018.

¹⁴ Tim Teeman, “‘Love Always Wins’: Inside the Fight for LGBT Equality in Lebanon”, *The Daily Beast*, 8 September 2018.

¹⁵ Samuel Leighton-Dore, “Grindr has reportedly been banned in Lebanon”, *SBS News*, 23 January 2019.

¹⁶ Graeme Reid, “Lebanon Edges Closer to Decriminalizing Same-sex Conduct”, *Human Rights Watch*, 2 February 2017.

¹⁷ “New Publication Provides Analysis on Article 534”, *Bekhsos* (website), 13 April 2010.

¹⁸ “Lebanese Judge Rules Against the Use of Article 534 To Prosecute Homosexual”, *Bekhsos* (website), 28 December 2009;

“Lebanon Court: LGBT is not a Crime nor Against Nature”, *Human Rights Campaign*, 6 March 2014; Lama Karame, “Lebanese Article 534 Struck Down: Homosexuality No Longer ‘Contrary to Nature’”, *The Legal Agenda*, 11 July 2016.

¹⁹ Lama Hajj, “Huge Step For Lebanon: Court Rules Homosexuality Not A Crime”, *Beirut*, 27 January 2017.

²⁰ Daniel Siryoti, “Landmark ruling in Lebanon says homosexuality not ‘illegal’”, *Israel Hayom*, 31 January 2017; *Lebanon: Same-Sex Relations Not Illegal*, *Human Rights Watch*, 19 July 2018.

²¹ ALEF et al, *Civil society report on the implementation of the International Covenant on Civil and Political Rights in Lebanon* (2018), p 4; Jessica Azar, “Homosexuality is not a crime”, *The Legal Agenda*, 17 October 2016.

UN voting record

Lebanon was not a member of the Human Rights Council between 2011 and 2016, and therefore did not participate in the vote for any of the three HRC resolutions on SOGI. At the session of Third Committee of the UN General Assembly held in November 2016, Lebanon did not vote the LAC amendment to remove Operative Paragraph 2,²² and did not vote the African oral amendment to block the IE SOGI at the UNGA Plenary Session on 19 December 2016. Likewise, Lebanon did not vote the amendment which tried to block financial resources allocated to the IE SOGI.

International advocacy and supervision

Universal Periodic Review

In 2010, at Lebanon's 1st cycle UPR, Norway recommended they decriminalise and "ensure non-discrimination on the basis of sexual orientation and gender identity", the response to which was 'noted' (refused).

At the Interactive Dialogue session in Lebanon's 2nd cycle UPR in November 2015, the delegation, in response to the six strong recommendations that the State received said: "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 [referring to the above]."²³

Treaty Bodies

In May 2018, the **Human Rights Committee (CCPR)** called on the Lebanon to enact a comprehensive anti-discrimination legislation that includes a prohibition of discrimination on the basis of sexual orientation and gender identity.²⁴ It also expressed concern that LGBTI persons continue to

be arrested and prosecuted under article 534, and urged the state to decriminalise.²⁵

The Committee also expressed concern about reports of the prevalence of discrimination, hate speech and homophobic attitudes; harassment, violence and extortion directed at LGBTI individuals; violations of their freedom of expression and of peaceful assembly; and the lack of protection against such acts.²⁶ It recommended that the State ensure that LGBTI individuals are afforded adequate and effective protection against all forms of discrimination, hate speech or violence based on sexual orientation or gender identity, and that such acts are properly investigated, prosecuted and, if the perpetrators are convicted, punished with appropriate penalties.²⁷

In 2016, the **Committee on Economic, Social and Cultural Rights (CESCR)** addressed issues of discrimination based on SOGI, urging the State to adopt a legal framework for combating discrimination, enshrine the principle in the Constitution, conduct campaigns to combat prejudices and stigmatisation.²⁸

In 2017, the **Committee against Torture (CAT)** reiterated its concerns about allegations of harassment, arbitrary detention, torture and ill-treatment, including beatings, sexual abuse, anal examinations and forced HIV testing, of men "suspected of being homosexual" held in custody by Internal Security Forces officers.²⁹ It urged the State to prohibit forced anal searches and to ensure that body searches are conducted by the least intrusive means possible.³⁰

Special Procedures

In 2015, the **Special Rapporteur on freedom of religion or belief** expressed encouragement for ongoing discussions on the decriminalisation of consensual same-sex acts, including by challenging religious "justifications" for homophobic attitudes.³¹

²² Operative Paragraph 2 was an attempt by the Africa Group to defer consideration and action on HRC Resolution 32/2 under the pretext that further consultations were needed to determine the legal basis upon which the IE SOGI would operate on. For more information, see: Out Right, ISHR, ILGA and ARC International, *Defending the independent expert on protection against violence and discrimination based on sexual orientation and gender identity at the 71st Session of the United Nations General Assembly* (2017), 4.

²³ *Report of the Working Group on the Universal Periodic Review: Lebanon*, A/HRC/31/5, 22 December 2015.

²⁴ *Concluding observations on the third periodic report of Lebanon*, CCPR/C/LBN/CO/3, 9 May 2018, para. 11.

²⁵ *Id.*, para. 14.

²⁶ *Id.*, para. 13.

²⁷ *Id.*, para. 14.

²⁸ *Concluding observations on the second periodic report of Lebanon*, E/C.12/LBN/CO/2, 24 October 2016.

²⁹ *Concluding observations on the initial report of Lebanon*, CAT/C/LBN/CO/1, 30 May 2017, para. 14.

³⁰ *Id.*, para. 15.

³¹ *Report of the Special Rapporteur on freedom of religion or belief on his mission to Lebanon*, A/HRC/31/18/Add.1, 30 November 2015, para. 62.