

Sex/Gender Identity Policies in Kazakhstan: Reviews and Recommendations

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ABSTRACT

Kazakhstan is the largest landlocked country in the world, nestled in the heart of Central Asia between Russia, China, and “the other –stans.” It has the largest economy in the region and arguably the strongest regional influence and international ties. It is also a country that has, at times, been the leader in establishing relatively progressive human rights policies for gender and sexual minorities. Unfortunately, the last decade has seen a sharp reversal in this progression as more draconian measures have increasingly replaced previous human rights-oriented policies. This paper will examine the history of sex/gender identity policies in Kazakhstan, taking special note of the transitional period after the breakup of the Soviet Union. It will then provide an analysis of current policies and conclude with policy recommendations to help further Kazakhstan’s role as a leader in adopting more minority-friendly laws and policies in the Central Asian region.

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GENDER IDENTITY RECOGNITION DURING THE SOVIET ERA

The history of gender identity policies in Kazakhstan finds its roots in the sex and gender identity laws of the USSR. Laws regarding sex and gender identity during the Soviet period were often intertwined with discussions of homosexuality, for which Soviet psychiatrists often “prescribed” sex/gender reassignment surgery.^{1,2} Sex/gender reassignment surgeries were performed as an extreme form of conversion therapy for gay people, after which people were given new documents.³ It is not clear whether psychiatrists could (or would) differentiate between the concepts of sexuality, sex, and gender, often confusing the three. This is apparent by the way sex/gender reassignment surgery was thought of as a “cure” for homosexuality.⁴

Prior to 1983, trans people were commonly diagnosed with schizophrenia, a diagnosis that prevented them from accessing medical transition and legal sex/gender recognition.⁵ Beginning in 1983, however, that diagnosis changed to one of “transsexualism” and was listed as a type of personality disorder and sexual perversion in the *International Statistical Classification of Diseases, Injuries and Causes of Death* issued by the USSR Ministry of Health. In 1991, the Ministry of Health issued a document entitled “Methodological Recommendations for Sex Change,” which was issued months before the USSR’s dissolution yet continued to serve as a basis for legal sex/gender recognition in post-Soviet countries. The Recommendations identified transsexualism as “the most severe form of sexual dysphoria.”⁶ There were various forms of transsexualism listed, where a “nuclear” form required a specific treatment strategy. Psychiatrists prescribed legal change of documents and/or sex/gender affirmation surgery, but only in cases where a person’s body tissues were not responsive to hormonal therapy.⁷ The Recommendations also make note that psychiatrists and surgeons were often hesitant to prescribe the official sex/gender affirmation process on the basis of possible health complications the surgery might cause, referring to it as castration, a term that carried a clear association with genital mutilation.⁸ Therefore, psychiatrists recommended people experiencing gender dysphoria to limit the sex/gender affirmation process to just changing legal documents.

The first stage of treatment for transsexualism was gender reconciliation, the attempts to make a person reconcile with their medically assigned sex at birth. If the sex/gender affirmation process was prescribed after examination and confirmation of the diagnosis of transsexualism, the patient had to undergo a one-year trial period as a person of the “opposite sex.”⁹ The trial period began with a legal change of documents and the person choosing a new name, and, in some cases, a new surname. A medical note of a diagnosis of transsexualism was sent to the police at the place of residence, in order to obtain a new passport, and to educational institutions, to obtain a duplicate diploma or certificate of graduation from an educational institution. The process of the one-year trial period was meant to determine whether a person needed a sex/gender affirmation surgery or if just changing legal documents would be sufficient for complete sex/gender affirmation.

Surgical intervention was not necessarily required to have an individual’s sex changed in official documents, presumably because many forms of official identification, most notably Soviet passports, did not include sex/gender markers. Thus, a sex/gender change was mainly reflected in a change of name rather than from a classification from/to male or female.¹⁰ That said, the desire to be recognized as a sex/gender other than that medically assigned at birth continued to be treated as a psychiatric disorder rather than a human right. Also, as trans people were considered mentally ill people who needed to be cured in order to have a legal sex/gender

recognition procedure carried out, sex/gender identity recognition remained firmly under the helm of medical experts in the Soviet Union.

With the collapse of the Soviet Union, the various former Soviet Republics have gone through significant and varied economic, social, and political changes. In many post-Soviet countries, the question of sex/gender identity began to shift from a more medical to a more political discourse. What united most post-Soviet states was the fact that new country-level passports now included a sex marker and that they all had a similarly vague legal sex/gender recognition procedure, which required “a document in established form about the change of sex issued by a medical organization.”¹¹ The necessity of medical intervention, and detail about what such an intervention might practically entail, was not clearly specified in most countries after the dissolution of the Soviet Union and had to be decided on a case-by-case basis by different registries and courts.¹²

SEX/GENDER IDENTITY RECOGNITION IN KAZAKHSTAN

Kazakhstan declared its independence from the Soviet Union in December of 1991, being the last former Soviet Republic to do so. Since 2003, citizens of Kazakhstan have been able to request a change to their legal sex/gender identity, though the laws and procedures for doing so have varied significantly since then. The initial law in 2003 allowed individuals to change their legal sex/gender without the necessity of surgical intervention, though it did include a number of other stipulations, including a mandatory 30-day psychiatric evaluation in a state institution where one’s mental, neurological, and somatic conditions were assessed. At the end of the confinement period, individuals had to receive a diagnosis of transsexualism as informed by a psychiatrist, a sex therapist, and an endocrinologist. They also had to appear before an appointed government commission established by the Republican Scientific and Practical Center for Psychiatry, Psychotherapy, and Narcology. This commission was empowered to then issue a statement on the health of the individual and a recommendation regarding the ability to change the individual’s legal documents or undergo surgical interventions.

In 2009, sex/gender identity laws in Kazakhstan were updated under the Code of the Republic of Kazakhstan, in “On people’s health and the health care system.” The new update allowed for sex/gender reassignment surgeries for “persons with sexual identity disorders,” although they were prohibited for anyone with somatic or neurological diseases and for individuals under the age of 21. The law maintained that, to be eligible for a legal change of sex/gender identity, an individual still had to undergo the 30-day examination, appear before a special commission, and receive a diagnosis of transsexualism. It also added the option of hormonal therapy as a means of achieving legal recognition for one’s preferred sex/gender identity. Another important change is that legal sex/gender changes would now first be recognized through a change in the birth certificate rather than with an identity card.¹³

In 2010, the Ministry of Health proposed to allow for the process of legal sex/gender affirmation without requiring surgical intervention to obtain a legal change of documents, but the proposal was refused by the Ministry of Justice. In December 2011, the Ministry of Justice dealt a further blow to the rights of individuals to be recognized by their preferred sex/gender on legal documents by mandating “transsexual surgery” as a prerequisite to be able to change one’s legal sex/gender identity on official documents. The new law also mandated hormonal therapy and

forced sterilization before any requests for legal identity change could be approved. These requirements were officially codified into law in paragraph 13 of Article 257—“grounds for state registration of name, patronymic, surname change”—of the Code on Marriage, Matrimony and Family of the Republic of Kazakhstan.¹⁴ As surgical interventions became compulsory, many trans people in Kazakhstan refused undergoing surgery. The right to be able to change one’s legal identity to match their preferred/lived identity now depended not only on official approval from a state-appointed commission but also on documentation of a sex/gender-affirmation (termed a “sex-reassignment”) surgery.

On March 31, 2015, the Minister of Health and Social Development issued an order again affirming the mandatory 30-day examination in a state institution, as well as the required mandatory sex reassignment surgery and hormonal therapy. The Minister specified the measures for medical examination and called for a “commission for medical examination of persons with gender identity disorders” that would be empowered to make conclusions on the possibility of medical measures for hormonal therapy to be followed by “corrective” surgical intervention.

In 2019, a new proposal was put forth that focused on reducing the age at which a person can carry out sex/gender reassignment from 21 years old to 18 years old.¹⁵ The proposal explicitly excluded “persons with mental disorders,” although what mental disorders might disqualify someone from undergoing a change in their legal sex/gender recognition were not specified. This move was widely hailed as a progressive step in the right direction towards more humane treatment of trans persons. However, on July 7, 2020, amendment No. 539 was made to the Code of the Republic of Kazakhstan, "On people's health and the health care system," in Article 156, "Change of gender," to limit the age at which individuals can receive medical and social assistance (medical examinations, possibility of legal sex/gender change) to at least 21 years of age. This amendment was initiated by the deputy of the Mazhilis from the Nur Otan party, Zauresh Amanzholova, who argued that people at age 18 are too young and psychologically unstable to make such a decision.¹⁶ This latest amendment, and in particular the justification for it, is a step back in the course of trans depathologization in Kazakhstan.

On November 25, 2020, the Minister of Healthcare, Aleksey Tsoy, approved a new legal sex/gender recognition procedure, which instantly made headlines claiming, “Sex change will be allowed in Kazakhstan starting 2021.”¹⁷ The new legal code, however, seems to provide no real change to the existing law, other than that a neuropathologist is no longer listed as a mandatory specialist for medical examinations and there is now a time limit of six months on decisions issued by commissions assessing applicants’ request for access to change of documentation. A more detailed examination of the law, and its potential impact, will need to be assessed, but it seems simply an affirmation of the government’s commitment to existing policies.

At present, anyone wishing to change their legal sex/gender recognition in Kazakhstan must still submit to a stay in a psychiatric institution for up to 30 days. There they are examined by a Commission for the Medical Certification of Persons with Sexual Identification Disorders, which is composed of at least three psychiatrists and other medical professionals. They are also subjected to an array of physical and psychological examinations that can include genetic and hormonal testing and x-rays to look for supposed mental disorders. The best outcome for a patient is that they will be recommended for hormone therapy and surgical genital interventions

that include total sterilization. It is only after this excruciating process that one can finally apply for an official change of sex/gender in their legal documents.

In addition to the above physical and psychological costs, there are also stringent economic ones. The process can cost up to 1.5 million tenge (roughly \$3,600) for male-to-female recognition and up to 3 million tenge (roughly \$7,200) for female-to-male recognition. (Leadholm 2020) Those costs are even more astounding when one considers that the minimum wage in Kazakhstan is just under \$100 per month (42,500 tenge) and even the average wage (210,000 tenge) doesn't cusp \$500 per month.

It should be noted that even after enduring the long, physically invasive, emotionally taxing process of obtaining legal documentation that matches one's current sex/gender identity, trans people in Kazakhstan still continue to face significant social and economic hurdles and inequalities.¹⁸ People who have changed their legal sex/gender are legally barred from working in law enforcement, serving in the military, and adopting children. The delays in updating all of the necessary documents can cause significant hardships in finding work, securing housing, traveling abroad, and opening bank accounts. They are also likely to face significant persecution from religious communities, especially since Kazakhstan's state Islamic board issued a fatwa against sex/gender affirmation surgery in 2016, calling it a "great sin" that must be "punished."¹⁹ The lack of antidiscrimination laws to protect members of the LGBTIQ community amplifies these hardships.

POLICY RECOMMENDATIONS

The ability to be legally recognized as one's preferred/lived sex/gender is important for a number of social, economic, political, psychological, and personal reasons. As J. Michael Ryan has noted, "[C]hanging one's official sex/gender marker can have profound effects on one's ability to access any number of legal rights, including other legal identification markers, rights to marry the partner of one's choice, the ability to adopt and/or retain guardianship of biological or adopted offspring, access to healthcare, and a long list of other social goods and services."²⁰ Knight has further argued that legal sex/gender recognition "allows individuals and communities to realize a number of other rights and dramatically increases their social mobility."²¹

It is clear that Kazakhstan has been a leader in the Central Asian region in terms of extending the fundamental human right of identity determination to trans individuals, albeit often falling short of globally recognized best practices. This historical leadership, however, has receded over the last decade with a series of harsh changes to the more liberal policies. As Kazakhstan continues its efforts to integrate as a major political player on the global stage, we submit the following policy recommendations as means of improving the human rights and civil liberties in one of Central Asia's leading countries:

- **Depathologize gender diversity and remove the requirement for psychiatric evaluations.** The movement to depathologize gender diversity has increasingly gained prominence in the broader field of human rights.²² This can be seen through various crusades to remove trans-related pathologies, including gender identity disorder, from the Diagnostic and Statistical Manual (DSM) and the International Classification of Diseases

(ICD) that have seen some success, most notably the removal of trans-related diagnoses from the list of mental health issues in the most recent version of the ICD.²³ Kazakhstan should follow this trend in recognizing that trans individuals do not inherently have mental health issues that require either treatment or evaluation.

- **Lower the age of providing assistance from 21 to 18 and provide assistance for those under 18.** As discussed above, Amendment 539 to the Code of the Republic of Kazakhstan limits the age of receiving medical and social assistance for trans individuals to those at least 21 years of age. This amendment must be fully reversed as it prohibits any individual under the age of 21 from having their preferred/lived sex/gender legally recognized if it is not the one medically assigned to them at birth. Further, provisions should be made to assist those under age 18 with receiving medical and social assistance for sex/gender-related issues and services.
- **Remove sterilization requirement.** The requirement of sterilization for individuals seeking to bring their legal sex/gender identity in line with their self-identity must be immediately abolished. This is a clear violation of human rights and bodily integrity. This requirement has been condemned by multiple international organizations, including the United Nations. Principle 3 of the Yogyakarta Principles, widely regarded as the standard setting document for the human rights of gender and sexual minorities, clearly states that “no one shall be forced to undergo medical procedures, including sex-reassignment surgery, sterilisation or hormonal therapy, as a requirement for legal recognition of their gender identity.”²⁴
- **Allow identity to be self-determined.** Ryan has argued that “the gold standard in gender identity laws has become those which rely purely on self-determination and remove the necessity of medical intervention or approval by a medical professional or judge.”²⁵ This argument has been echoed by the UN High Commissioner for Human Rights, who has recommended that States “facilitate legal recognition of the preferred gender of transgender persons and establish arrangements to permit relevant identity documents to be reissued reflecting preferred gender and name, without infringements of other human rights.”²⁶
- **Provide sex/gender confirmation surgery, hormones, and other medical services under the publicly funded healthcare plan.** Allowing sex/gender recognition is an important step, but it will remain inaccessible to large segments of the population unless economic barriers to such recognition are also removed. To this end, it is recommended that government public health services fully fund trans-related medical care regardless of psychiatric diagnosis, official certifications, or other bureaucratic barriers to access.
- **Remove barriers to full and equal participation in civil organizations.** At present, Kazakhstan bars trans individuals from serving in the military or law enforcement. This presents an unjustified barrier to trans individuals and reinforces discriminatory hiring practices. All individuals of sound mind and body and with adequate professional training should be allowed to serve in any and all civil service.
- **Pass anti-discrimination legislation to protect LGBTIQ citizens.** Even after obtaining legal recognition, gender and sexual minorities face significant discrimination in terms of housing, employment, education, medical treatment, and other areas of social life. The government should adopt and enforce a comprehensive anti-discrimination policy to protect these populations and ensure their ability to live safely.

We understand that the above recommendations represent ambitious changes to the existing understandings and legal treatment of gender diverse people in Kazakhstan. We also recognize the significant barriers to enacting such recommendations in the social, political, and religious context of the country. That said, Kazakhstan has already proven its willingness to adopt unpopular legislation in the name of social justice and broader human rights. On a global stage where the rights of trans individuals are receiving increasing attention and positive action, we call upon Kazakhstan to once again resume its leadership as a beacon of progressive rights for gender minorities.^{27,28}

¹ We use the term *sex/gender* to prefix *assignment* or *reassignment* in reference to surgery throughout in order to recognize that not all those who seek such medical interventions are necessarily seeking to change/correct their sex and/or gender. For example, some seek such medical intervention to change/correct only their legal sex in order to be able to access certain legal and social benefits while their gender identity remains the same both before and after such intervention(s). Others, however, seek such intervention to change/correct their gender recognition for personal, social, and/or psychological reasons.

² Masha Gessen, “The Rights of Lesbians and Gay Men in the Russian Federation: An International Gay and Lesbian Human Rights Commission Report,” The International Gay and Lesbian Human Rights Commission, 1994, <https://lgbtrightsinrussia.files.wordpress.com/2017/05/gessen-1994-prava-gomoseksualov-i-lesbivanok.pdf>.

³ Alexander Kondakov, “The Queer Epistemologies: Challenges to the Modes of Knowing about Sexuality in Russia,” in *The SAGE Handbook of Global Sexualities*, eds. Zowie Davy et al. (London, England: SAGE, 2020), 82–98.

⁴ Robert M. Kaplan, “Treatment of homosexuality during apartheid,” *BMJ* 2004;329(7480):1415–1416. doi:10.1136/bmj.329.7480.1415.

⁵ Yana Kirey-Sitnikova and Anna Kirey, “Sexual Politics in Post-Soviet Societies: A Preliminary Cartography,” in *SexPolitics: Trends and Tensions in the 21st Century – Contextual Undercurrents*, eds. Sonia Corrêa and Richard Parker (Rio de Janeiro: Sexuality Policy Watch, 2019).

⁶ Aron Belkin and Alexander Karpov, “Transsexualism. Guidelines for sex reassignment,” Ministry of Healthcare of the USSR No. 10–11/72. Moscow: MNIIP MZ RF RSFSR, 1991, <http://mtfclub.ru/forum/viewtopic.php?f=21&t=6524>.

⁷ Belkin and Karpov, “Transsexualism.”

⁸ Belkin and Karpov, “Transsexualism.”

⁹ We wish to recognize here the problematic nature of the term *opposite sex*, which implies both a dichotomy of two and only two sexes and also that those two sexes are opposites. We challenge such thinking but use the term *opposite sex* here to comply with the bureaucratic nomenclature of the prescription.

¹⁰ Belkin and Karpov, “Transsexualism.”

¹¹ Kirey-Sitnikova and Kirey, “Sexual Politics.”

¹² Kirey-Sitnikova and Kirey, “Sexual Politics.”

¹³ “On people's health and the health care system: Article 193-IV,” The Code of the Republic of Kazakhstan, http://online.zakon.kz/Document/?doc_id=30479065 (in Russian).

¹⁴ “On Marriage and Family: Article 257 ‘Grounds for state registration of change of name, patronymic, surname,’” Code of the Republic of Kazakhstan, 2011, https://online.zakon.kz/document/?doc_id=31102748.

¹⁵ “On People's Health and The Health Care System: No 174 ‘Gender reassignment,’” Draft Code of the Republic of Kazakhstan, 30 September 2019, retrieved from <http://rcrz.kz/files/Кодекс%20О%20здоровье%20народа%20проект%20на%2003.06.19.pdf>.

¹⁶ “Abortion and gender reassignment for adolescents: The Ministry of Health explained the innovations of the Health Code,” Sputnik, 17 October 2019, <https://ru.sputnik.kz/health/20191017/11793200/abort-smena-pola-podrostki-minzdrav.html>.

¹⁷ Aliya Rakhimova, “Tsoy approved the rules for gender reassignment in Kazakhstan,” *New Times Kazakhstan*, 12 February 2020, <https://newtimes.kz/obshchestvo/121108-tsoi-utverdil-pravila-po-smene-pola-v-kazakhstane>.

¹⁸ Kyle Knight, “‘That’s When I Realized I Was Nobody’: A climate of fear for LGBT people in Kazakhstan,” report for Human Rights Watch, 23 July 2015, <https://www.hrw.org/report/2015/07/23/thats-when-i-realized-i-was-nobody/climate-fear-lgbt-people-kazakhstan>.

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- ¹⁹ Kira Leadholm, “Fighting for Identity: Kazakh laws make life difficult for transgender community,” RadioFreeEurope, 9 August 2020, <https://www.rferl.org/a/fighting-for-identity-kazakh-laws-make-life-difficult-for-transgender-community/30774062.html>.
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- ²² Jodie M. Dewey, “Medicalized Transgender Bodies: Depriving autonomy, conferring humanness, and bestowing cisgenderism,” in *Trans Lives in a Globalizing World: Rights, identities, and policies*, J. Michael Ryan (ed.) (London: Routledge, 2020), 93–109; Amets Suess Schwend, “Trans health care from a depathologization and human rights perspective.” *Public Health Reviews* 41, 3 (2020), <https://doi.org/10.1186/s40985-020-0118-y>.
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- ²⁴ The Yogyakarta Principles, 10 November 2017, <http://www.yogyakartaprinciples.org/>.
- ²⁵ J. Michael Ryan, “Gender Identity Laws: The legal status of global sex/gender identity recognition,” *LGBTQ Policy Journal*, Vol VIII (2018): 10.
- ²⁶ “Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity,” A/HRC/19/41, Office of the High Commissioner for Human Rights, 17 November 2011, https://www.ohchr.org/documents/issues/discrimination/a.hrc.19.41_english.pdf.
- ²⁷ J. Michael Ryan, “Trans Lives in a Global(-izing) World: Rights, identities, and politics,” in *Trans Lives in a Globalizing World: Rights, identities, and politics*, ed. J. Michael Ryan (London: Routledge, 2020), 1–14.
- ²⁸ For those grappling with gender identity issues in Kazakhstan, we recommend the group AlmaTQ (<https://www.alma-tq.org/>), which provides information on trans health care, rights, and support groups.