



**Convention on the Elimination
of All Forms of Discrimination
against Women**

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**Committee on the Elimination of Discrimination
against Women**

**Information received from Kazakhstan on follow-up to the
concluding observations on its fifth periodic report***

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* The present document is being issued without formal editing.



Interim report on measures taken by the Republic of Kazakhstan to implement recommendations 26 (b), (c), (i) and 38 (d) of the Committee on the Elimination of Discrimination against Women following the consideration of the fifth periodic report of the Republic of Kazakhstan on the implementation of the Convention on the Elimination of All Forms of Discrimination against Women

1. Recommendation 26 (b)

1. *Revise article 109 of the Criminal Code to base the definition of rape on the absence of consent and align it with the Convention and the Committee's jurisprudence under the Optional Protocol.*

2. Article 109 of the Criminal Code of the Republic of Kazakhstan, referred to in recommendation 26 (b), does not address the issue of "rape".

3. The definition of rape is contained in article 120 of the Criminal Code and is already based on the lack of consent (involuntary sexual intercourse, i.e., without consent).

4. Article 120 of the Criminal Code has been amended in the past few years. In particular, in 2016, the criminal legislation introduced a ban on probation, on parole, on release from criminal liability due to reconciliation or a show of remorse, on amnesty and on pardons for persons who have committed sexual offences against minors.

5. In addition, on 30 December 2020 the Act amending certain legislative acts of the Republic of Kazakhstan was adopted related to the implementation of certain provisions in the President's address to the people of Kazakhstan of 1 September 2020 entitled "Kazakhstan in the new reality: time for action", through which the list of sexual offences against minors was expanded. A special penalty was provided for in the form of deprivation of liberty for persons who committed sexual offences when they were minors; the penalties applicable for sexual offences against minors have been increased.

2. Recommendation 26 (c)

6. *Review the bill on countering domestic violence with a view to ensuring its compliance with the Convention, in order to effectively prevent and combat all forms of gender-based violence against women and protect victims.*

7. In accordance with the instruction of the President of the Republic of Kazakhstan, given in September 2019 in his address to the people of Kazakhstan entitled "Constructive public dialogue – the basis for the stability and prosperity of Kazakhstan", liability for domestic violence was increased and, in particular, article 110 of the Criminal Code "Cruel treatment", was recategorized to make this offence subject to semi-public rather than private prosecution. Accordingly, the obligation to collect evidence of guilt has been placed on the police and not on the victims, as had previously been the case.

8. The lower threshold of imprisonment was increased, from 3 to 4 years, for the same offence against pregnant women in a helpless situation and minors.

9. For unlawful acts in the family and domestic sphere (article 73 of the Code of Administrative Offences), the period of arrest was also increased from three to five days.

10. The offences of intentionally inflicting minor injury to health (article 73–1 of the Code of Administrative Offences) and battery (article 73–2 of the Code of Administrative Offences), committed in the family and domestic sphere, have been established as separate offences, with the imposition of arrest (15 days and 10 days, respectively) and fines excluded as an ineffective form of punishment.

11. The powers of the court have been expanded in adopting decisions on reconciliation between the parties and in establishing special requirements for the offender's behaviour, and liability has been introduced for their violation.

12. Today deputies of the Majilis, the lower house of Parliament, have drafted bills amending certain legislative acts related to strengthening the institution of the family and amending the Code of Administrative Offences on issues related to strengthening the institution of the family (hereinafter "draft laws").

13. These draft laws plan to specify the competencies and responsibilities of the authorized State bodies and to introduce norms regulating the mechanism for their coordination and interaction.

14. In addition, there are plans to provide for a norm that would rule out reconciliation with offenders in cases of repeated perpetration of domestic violence. It is expected that such a norm will make it possible to initiate administrative proceedings following such an act, regardless of the will of the victim, in order to preserve the safety and lives of victims and family members and to ensure that the principle of the inevitability of punishment is applied.

Background information

15. It is proposed that release from administrative liability due to reconciliation of the parties be ruled out in cases where a person has already been subject to an administrative penalty and the period provided by article 61 of the Code of Administrative Offences has not expired (within one year), or within the same period, following release from administrative liability due to reconciliation of the parties, for an administrative offence committed earlier under the following articles of the Code of Administrative Offences:

- For committing unlawful acts in the family and domestic sphere (art. 73);
- For intentionally causing minor injury to health (art. 73–1);
- For battery (art. 73–2).

16. There are also plans to increase the powers of local police inspectors to independently issue protection orders in cases of domestic violence, without taking the victim's opinion into account. This norm will strengthen the prevention of offences, enable oversight to be established over the behaviour of the family abuser and reduce the recurrence of domestic violence offences.

17. Another important point is the amendment of article 20 of the Domestic Violence Prevention Act of 4 December 2009 to include, in the list of restrictions, the prohibition to acquire, keep, carry and use firearms and other types of weapons; or to use alcoholic beverages, narcotic drugs or psychotropic substances.

3. Recommendation 26 (i)

18. *Ensure that forced sterilization and abortion are criminalized and perpetrators prosecuted, abolish mandatory gender reassignment surgery, in law and in practice, identify and eliminate barriers preventing victims from gaining access to justice in rural and urban areas and ensure that all victims have access to effective reparation, including compensation.*

19. As established in article 29 of the Constitution, the highest values of the State are placed on the human person and the person's rights and freedoms, and citizens have the right to health care.
20. In accordance with article 19 of the Constitution, all persons are equal before the law and the courts. No one may be subjected to any discrimination on grounds of social, official or property status, origin, sex, race, ethnicity, language, attitude to religion, beliefs or place of residence, or on any other grounds.
21. Every person has the right to recognition as a person before the law and is free to defend his or her rights and freedoms by all lawful means, including the right of self-defence. All persons have the right to the legal protection of their rights and freedoms. Everyone has the right to qualified legal assistance. Legal assistance is provided free of charge in cases specified by law (article 13 of the Constitution).
22. In the view of the competent State authorities, there is no need to criminalize abortion, since domestic legislation already provides criminal liability "for the illegal performance of an artificial termination of pregnancy" (Criminal Code, article 319).
23. In turn, article 151 ("Surgical sterilization") of the Code on Public Health and the Health-Care System of 7 July 2020 provides that surgical sterilization, as a method of preventing unwanted pregnancy, may be performed on a patient who is at least 35 years old or who has at least two children, or on medical grounds with the consent of an adult, regardless of age or number of children.
24. Surgical sterilization is performed only with the informed consent of the patient by licensed health-care providers, with mandatory advance notification of the irreversibility of the operation.
25. The procedure and conditions of surgical sterilization are determined by the authorized body.
26. Furthermore, in accordance with the Constitution, every person has the right to recognition as a person before the law and is free to defend his or her rights and freedoms by all lawful means, including the right of self-defence. Everyone has the right to qualified legal assistance. Legal aid is provided free of charge in circumstances specified by law.
27. The Code of Civil Procedure of 31 October 2015 establishes the equal rights of citizens to apply to the courts in defence of violated or disputed constitutional rights and freedoms and legally protected interests. Men and women have the same rights and obligations when applying to the courts, and pay the same State fees.
28. Women are not disadvantaged in the realization of their procedural rights when applying to the courts in defence of violated civil, family, labour or other rights. Neither the Supreme Court nor the local courts have received any complaint from either a man or a woman about denial of access to justice for reasons of gender discrimination.
29. Discrimination on various grounds is punishable under criminal and administrative law.
30. The Act on State guarantees of equal rights and equal opportunities for men and women, of 8 December 2009, provides for a mechanism to monitor the Act's implementation.
31. Article 13 of the Act establishes State monitoring and oversight of compliance with the legislation on gender equality, to be carried out through checks by the competent State agencies.

32. Violation of the national legislation on State guarantees of equal rights and opportunities for men and women is punishable under the laws of the Republic of Kazakhstan. This, in particular, includes article 145 of the Criminal Code.

33. At the same time, legislative measures have been taken to establish an effective mechanism to receive and consider complaints of discrimination on the grounds of sex, sexual orientation or gender identity.

34. Members of the public may submit complaints to State agencies, central and local executive bodies, national human rights institutions, the National Commission on Women's Affairs and Family and Demographic Policy in the Office of the President, the procuratorial authorities and the courts.

35. All appeals to judicial authorities are submitted through the "judicial office" and no restrictions on the acceptance of appeals are allowed, including on the basis of gender.

4. Recommendation 38 (d)

36. *Repeal the list of prohibited occupations for women and facilitate access for women to such occupations, and ensure that any restrictions are applied individually and not across the board to all women.*

37. The Act amending certain legislative acts related to social protection for certain categories of citizens was adopted on 12 October 2021. Within that framework, amendments were made to labour legislation with regard to the abolition of the list of jobs where the employment of women is restricted.
