
**Study on Homophobia, Transphobia and Discrimination on
Grounds of Sexual Orientation and Gender Identity**

Legal Report: Azerbaijan

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A. Executive summary

1. A general principle of equality is embodied in the Constitution and is further spelled out in specific legislation. Sexual orientation and gender identity do not form part of the anti-discrimination grounds spelled out in law.
2. International legal instruments signed and ratified by Azerbaijan automatically become part of national legislation and thus influence national law and practice.
3. No specific equality body is set up, but the Azerbaijani ombudsman office is mandated to conduct human rights awareness-raising and receive complaints at a general level.
4. Freedom of assembly and association is guaranteed by the Constitution, but the freedoms do not apply specifically to LGBT issues. No specific cases are known of, but there are reports indicating that organisations or individuals working directly or indirectly with LGBT issues feel harassed.
5. Freedom of expression is also guaranteed by the Constitution and all forms of expressions are covered under this provision. No cases are known of, but there are unofficial reports of harassment of individuals discussing LGBT issues in the public domain.
6. There are no other provisions in the Criminal Code relevant to hate crimes against LGBT individuals.
7. Same-sex couples are not allowed to marry and no alternative registration schemes exist. LGBT couples are also not allowed to adopt children. In principle singles may adopt and receive fertility treatment, but there is no practice documenting how this right is implemented in practice.
8. There are no provisions specifically protecting refugees in Azerbaijan on the grounds of sexual orientation or gender identity.
9. Social security, social care and insurance are provided all without distinctions. There is no legal regime specifically protecting LGBT individuals against discrimination in this regard.
10. The school curriculum does not include sexual education and there is no mention of LGBT issues.
11. The general equality principle applies to employment issues and there is no specific address of specific LGBT concerns in law and practice.
12. Everyone has the right to health and medical care and the state is obliged to take all necessary measures to develop appropriate health services. Everybody can donate blood, there are no groups who by law are not allowed to donate apart from HIV/AIDS infected persons.
13. If considered part of the tenant's family under the Housing Code a same-sex partner would, as a matter of principle, be able to take over a public tenancy contract from his or her partner.
14. Same-sex partners are not recognised as an heir-at-law under the Civil Code and therefore do not automatically inherit from each other.

15. There is no specific protection of transgender individuals and also no legislation enabling this group to change gender marker in official documents. However, change of name is possible.
16. There is no Case-Law in Azerbaijan which specifically addresses LGBT issues, but many unofficially reported incidents in relation to the different areas addressed in the sections below.

B. Findings

B.1. Overall legal framework

17. A general principle of equality is set forth in Article 25 of the Azerbaijan Constitution. The provision guarantees equality to every one of their rights and freedoms without any distinction based on their “country, race, nationality, religion, language, sex, origin, property and official status, conviction, affiliation with political parties, trade unions and other social organisations”.
18. Azerbaijan passed a Law on Enforcement of Gender Equality in October 2006. The law defines gender-based discrimination as any distinction, exclusion or restriction exercised on the basis of gender, including sexual harassment. However, the law does not contain a definition of discrimination in line with Article 1 of the Convention on Elimination of all Forms of Discrimination Against Women and thus does not encompass both direct and indirect discrimination¹.
19. The general principle of equality is equally laid down in other Azerbaijani legislation, including civil, criminal, criminal procedure, labour and family law. For example, Article 154 of the Criminal Code sanctions violations of the principle of equality of citizens when their rights and legal interests are harmed, including acts of discrimination on the basis of gender.
20. There is no specific implementation of the equality principle in relation to sexual orientation or gender identity.
21. There is no provision in the Criminal Code on hate crime, and thus no legal focus on homophobia or transphobia as an aggravating factor.
22. The age of consent is equal for both heterosexual and homosexual sex, at 16 years of age.
23. A law forbidding same-sex sexual relations (between men) was abolished in 2000. Although homosexuality is now decriminalised, personal reports state that police violence persists, mainly in relation to gay men and transgender women engaged in sex work.
24. Human rights and freedoms are embodied in the Constitution of Azerbaijan. International agreements, to which Azerbaijan is a party, constitute an integral part of the national legislative system according to Article 148 of the Constitution. Azerbaijan is a signatory and a state party to the European Convention on Human Rights (ECHR). Hence the Convention itself and the Articles 8 and 14, which are relevant to LGBT issues, are directly applicable in Azerbaijani jurisprudence. Azerbaijan has acceded to more than 50 international human rights instruments, including the major United Nations Conventions.

¹ www2.ohchr.org/english/bodies/cedaw/docs/ngos/HRCA_Azerbaijan44.pdf

25. There are no national policies on LGBT rights and also no specific institutions focusing on combating discrimination on grounds of sexual orientation and gender identity.
26. No specific equality body is set up, but the Azerbaijani ombudsman office is mandated to conduct human rights awareness-raising and receive complaints at a general level.
27. **Freedom of assembly and association**
28. Article 49 of the Constitution sets forth the right for everyone to freely assemble although with prior notice. The provision on assembly is supplemented by the Law on Freedom of Assembly that stipulates in Article 7 that freedom may only be restricted for the protection of legitimate aims, when prescribed by law and when necessary in a democratic society. The restriction grounds comprise the 'protection of morals' and 'prevention of violations of public order'. There are no cases showing that LGBT assemblies would be considered against public morals. However, local organisations working with LGBT issues are reported to prefer not to disclose these activities in public as they fear harassment²
29. The Constitution guarantees the right for everyone to freely associate (Article 58). The right may only be restricted if activities are intended to overthrow "...the legal state power.." or when an activity "violates the Constitution".
30. The provision on association is supplemented by the Law on Non-Governmental Organisations Article 2.3 which sets forth the same criteria for restricting rights and Article 11 of the Law on State Registration and State Register of Legal Entities which contains an exhaustive list of reasons justifying the refusal of registration of an organisation. None of the laws and provisions contains elements which would directly hinder registration of LGBT associations. However, in practice the Ministry of Justice is generally reported to create obstacles to registration of associations since many of these are perceived by the government to be politically oriented towards the opposition³. In 2007 a "Council of State support for non-governmental organisations under the President of the Republic of Azerbaijan" was established with the purpose of establishing close ties with NGOs in order to assist with funding. However, NGOs complain that the Council harasses them though e.g. inspections, and in particular NGOs working indirectly with LGBT issues complain that they have been subjected to blackmailing following the authorities' telephone tapping of their conversations⁴.
31. The European Court of Human Rights has examined cases related to requests for registration of Azerbaijani associations stating that delays or administrative hindrances constituted hindrances of Article 11 of the ECHR⁵. This was stressed by the Council of Europe Commissioner for Human Rights, Thomas Hammarberg, who raised the issue when visiting Azerbaijan in March 2010. The Minister of Justice acknowledged that administrative hindrances should not be an obstacle to the enjoyment of freedom of association⁶.

2 *Forced Out: LGBT People in Azerbaijan*, Report on ILGA-Europe/COC fact-finding mission, 2007, page 35.

3 *Ibid*, page 34.

4 Report by Hammarberg T., Commissioner for Human Rights of the Council of Europe, following his visit to Azerbaijan from 1 to 5 March 2010 Strasbourg, 29 June 2010, CommDH(2010)21, para 44. See <https://wcd.coe.int/ViewDoc.jsp?id=1642017>

5 *Ramazanov and others v. Azerbaijan*, Appl. No. 44363/02, judgment of 01 February 2007; *Nasibova v. Azerbaijan*, Appl. No. 4307/04, judgment of 18 October 2007; *Aliyev and others v. Azerbaijan*, Appl. No. 28736/05, judgment of 18 December 2008; *Ismayilov v. Azerbaijan*, Appl. No. 4439/04, judgment of 17 January 2008.

6 Report by Hammarberg T., Commissioner for Human Rights of the Council of Europe, following his visit to Azerbaijan from 1 to 5 March 2010 Strasbourg, 29 June 2010, CommDH(2010)21, para 46.

32. There are no registered associations or organisations working directly with LGBT issues in the country. Organisations wishing to focus on this issue rather tend to approach it from an HIV/AIDS angle. Also, no Gay Pride March has been organised⁷.

B.2. Freedom of expression

33. Freedom of expression is guaranteed under Article 47 of the Constitution that reads that everyone shall have the right to freedom of opinion and expression. Censorship is prohibited and the right to free expression may only be restricted in order to prevent propaganda provoking racial, national, religious and social discord and animosity. No mention is made of public moral and therefore limitations may not be applied for this purpose.
34. Despite the legal protection of freedom of expression there are widespread reports about threats, harassment and violence against journalists and human rights activists and there has been an increase in the number of politically motivated arrests. However, most of these cases have not been investigated. They are often addressed by international organisations and bodies including Amnesty International, Human Rights Watch, US State Department, the Council of Europe Commissioner for Human Rights and the United Nations Office of the High Commissioner for Human Rights.
35. Azerbaijani legislation does not contain provisions or laws that could be used to hamper the freedom of expression of LGBT individuals. However, the novelist Alekper Aliyev, who published the novel "Artush and Zaur", the story of a gay love affair between an Azeri and an Armenian during the war between their countrymen in the wake of the collapse of the Soviet Union, caught the eye of the Azerbaijani police. The police ordered the removal of the book from the shelves of one of the capital's major bookstores. Moreover, a public discussion of the book between the author and readers was cancelled with threats and intimidation⁸.

B.3. Hate crime - Criminal law

36. Article 109 of the Criminal Code sets forth penal sanctions for the persecution of groups or organisations on political, racial, national, ethnic, cultural, religious, or sex or others prohibited by international legal norms. Persecution is understood as "crime against humanity" in terms of for example torture and deprivation of liberty against international norms. Hate crime in itself does not qualify as persecution under this provision.
37. There are no other provisions in the Criminal Code relevant to hate crimes against LGBT individuals.

B.4. Family issues

38. According to Article 34 of the Azerbaijani Constitution everyone has the right to marry when reaching the age specified by law. This is 17 years for women and 18 years for men according to Article 10 of the Family Code. The constitutional article speaks about the "rights of wife and husband are equal" and thus in itself does not recognise unions of same-sex couples.

⁷ *Forced Out: LGBT People in Azerbaijan*, Report on ILGA-Europe/COC fact-finding mission, 2007, page 35.

⁸ www.globalgayz.com/country/Azerbaijan/view/AZ/gay-azerbaijan-news-and-reports-2

39. There is no specific law recognising same-sex unions , and there is no mention in legal documents about the recognition of same-sex marriages entered into abroad.
40. Joint adoption is only allowed for married couples as specified by Article 120 of the Family Code. Thus same-sex couples cannot adopt. In principle there is no legal hindrance to adoption by a single parent, including a lesbian or gay individual, but in practice all categories of individuals applying are usually denied the right to adopt⁹.
41. The Law on the Protection of Population Health provides that every women aged 18 has a right to fertility treatment. In principle this right applies to single as well as married women and would therefore also apply to a lesbian woman. There is no information about practice in this regard.

B.5. Asylum and refugee issues

42. The Law on the Status of Refugees and Internally Displaced Persons and a Presidential Decree on the Order of Consideration of Application for Refugee Status regulate asylum and refugee issues in Azerbaijan. Azerbaijan, since its accession in 1993 to the United Nations Geneva Convention, is legally bound to adhere to the standards set forth therein.
43. According to Article 1 of the Law on the Status of Refugees and Internally Displaced Persons the belonging to “a certain social group” may be a legitimate reason for granting refugee status if this belonging is a reason for well-founded fear of persecution in the country of which the applicant is a national. The notion “social group” is not defined in Azerbaijani law or practice and thus there is no indication of whether it could be used in relation to LGBT groups in legal practice.

B.6. Social security, social care and insurance

44. According to Article 38 of the Constitution, all citizens of the Republic of Azerbaijan have the right to social welfare. Social welfare (health insurance, occupational accidents, disability, unemployment and pension) issues are described in the following laws: Law on Employment (July 2001), Law on Social Insurance (February 1997), Law on Medical Insurance (October 1999), Law on Pension Guarantees for Citizens (September 1992), Law on Prevention of Disability, Rehabilitation and Social Protection of Disabled People (August 1995), Law on Healthcare of the People (June 1997). They are furthermore laid down in the following Presidential decrees: Decree on Additional Measures on Social Aid (1992), Decree on Realisation of the Complex Programme on the Issues of Disabled People (the Cabinet of Ministers Decree, 1994), Decree on Financing the Measures of Social Security, Pensions and Allocations for Disabled, Unemployed People (2002), Decree on the Measures Towards Improving the State Pension System (2003), Decree on Increasing Pensions (2003), Decree on the Wage Augmentation for 50% of Artists (2003)¹⁰.
45. Wherever provisions apply to married couples this does not cover same-sex partners and thus this group does not enjoy the same rights in terms of automatic coverage as spouses do in relation benefits from insurances and pensions.
46. There is no known Case-Law in this field related to LGBT issues.

⁹ *Forced Out: LGBT People in Azerbaijan*, Report on ILGA-Europe/COC fact-finding mission, 2007, page 28.
¹⁰ <http://www.culturalpolicies.net/web/azerbaijan.php?aid=514>

B.7. Education

47. Legislation related to education does not make sexual education or life skills obligatory in public school curriculums, and thus LGBT issues are not represented in the educational material.

B.8. Employment

48. The general anti-discrimination principle laid down in the Constitution as well as the Law on Gender Equality, the Labour Law and several other laws apply to all aspects of employment. Sexual orientation and gender identity are not part of the anti-discrimination grounds and thus there is no specific protection of LGBT individuals.
49. Neither of the laws has been invoked in an LGBT case and it is therefore not known whether the anti-discrimination principle embodied in Azerbaijani law would be interpreted dynamically in order to also cover LGBT issues.

B.9. Housing

50. Articles 53 and 123 of the Housing Code provide that people living and keeping a house together with the tenant or the owner of the house may be considered as members of the family. It is questionable whether the law extends to same-sex couples. If considered part of the tenant's family a same-sex partner would, as a matter of principle, be able to take over a public tenancy contract from his or her partner.
51. With regards to inheritance the Azerbaijani legislation discriminates between opposite-sex and same-sex couples since the latter would not be recognised as an heir-at-law under the Civil Code (Article 1159). However, anyone may leave his or her property by will to any person, including a same-sex partner (Article 1166).

B.10. Health care

52. Article 41 of the Constitution provides protection of the people's health and medical care and obliges the state to take all necessary measures to develop appropriate health services. Additionally, the right to health is regulated by the Law on Protection of Population Health according to which care in medical institutions is free of charge (Article 10) and confidentiality of information received during medical examination and treatment is guaranteed.
53. However, hospitals are reported to have refused treatment of transgender people that are not trans-related¹¹.
54. Everybody can donate blood, there are no groups who by law are not allowed to donate apart from HIV/AIDS infected persons.

¹¹ www2.ohchr.org/english/bodies/hrc/docs/ngos/LGBT_Azerbaijan96.pdf, page 5; *Forced Out: LGBT People in Azerbaijan*, Report on ILGA-Europe/COC fact-finding mission, 2007, page 37.

B.11. Access to goods and services

55. There is no legislation or Case-Law specifically relevant to LGBT individuals within this field.

B.12. Media

56. In 2003 the Azerbaijan Press Council was established. It handles complaints according to the Press Code of Conduct. It has received close to 1000 public complaints. It has not been possible to access information about whether the Council has assessed complaints of harassment made by state-controlled media using homosexuality as a tool to harass and discredit critics of the government that is reported to take place¹².

B.13. Transgender issues

57. There is no specific protection of transgender people in any legal field in Azerbaijan. Article 4 of the Law on Identification Card of the Citizen of the Republic of Azerbaijan allows for change of name, address, marital status, correction of incorrect information and the like. Notwithstanding this the law does not allow for change of a person's gender marker. No practice about gender reassignment is known of in official documents, and the same goes for specific requests for change of gender marker. However, in real life it is reported that persons having undergone reassignment surgery abroad, have been permitted to enter the country although their official documents showed the opposite sex.¹³

¹² http://en.wikipedia.org/wiki/LGBT_rights_in_Azerbaijan

¹³ *Forced Out: LGBT People in Azerbaijan*, Report on ILGA-Europe/COC fact-finding mission, 2007, page 22.