



NATIONAL REPORT

**ON VIOLATIONS OF THE RIGHTS
OF GAY MEN, OTHER MSM
AND TRANS* PEOPLE
IN KAZAKHSTAN**

2022

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ACRONYS AND ABBREVIATIONS

CC Criminal Code

ECOM Eurasian Coalition on Health, Rights, Gender and Sexual Diversity

EECA Eastern Europe and Central Asia

HC Hate crimes

HIV Human immunodeficiency virus

LGBT Lesbian, gay, bisexual and trans* people

MSM Men who have sex with men

NGO Non-governmental organization

PLH People living with HIV

RK Republic of Kazakhstan

SOGI Sexual orientation and gender identity

METHODOLOGY FOR COLLECTING CASES OF RIGHTS VIOLATIONS

The report was compiled based on the protocol of the National report on violations of the rights of gay men, other MSM and trans* people, in particular the right to health. The basis for the national report is systematized information on cases of violations of the right to health (cases documented during the year) in Kazakhstan, collected using tools provided by ECOM and partner initiatives, as well as a brief analysis of the legal environment.

Several research methods were used as part of monitoring:

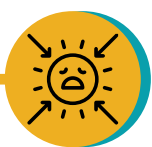
- Analysis of documented cases from the REAct database;
- Prepared appeals to paralegals;
- Analysis of thematic materials from open sources.

Goal of information collection: to identify cases of violations of the human rights, in particular the right to health, of gay, bisexual and other MSM, and trans* people..

As a result of the analysis, the main reasons for violations and discrimination were identified, and quantitative data was obtained. Conclusions and recommendations were developed based on this data.

NATIONAL LEGISLATION IN THE FIELD OF HEALTH

The Constitution of the Republic of Kazakhstan, which declares the principle of equality, separately establishes the principle of non-discrimination with an open-ended list of protected grounds¹. The fact that this list is open-ended is a positive feature, since it allows for SOGI to be considered as protected characteristics, despite the fact that they are not explicitly mentioned. It is also noteworthy that the CC of Kazakhstan contains a separate provision that regulates the issues of equality before the law of persons who have committed criminal offenses: «Persons who have committed criminal offenses are equal before the law»².



ANTI-DISCRIMINATION LEGISLATION

The Constitution of the country enshrines the principle of equality and non-discrimination, including on the basis of gender and any other circumstances³. Despite the fact that voluntary homosexual relations were decriminalized in the Republic of Kazakhstan in 1998, LGBT people may put themselves at risk if they speak openly about their sexual orientation or gender identity. The criminal legislation of Kazakhstan does not contain the concept of a hate crime based on SOGI. However, Article 54 of the CC of Kazakhstan recognizes that «the commission of a criminal offense motivated by national, racial and religious hatred or enmity»⁴, is an aggravating circumstance, and Article 145 establishes criminal liability for the «violation of the equality of man and citizen»⁵.



LEGISLATION IN THE FIELD OF HIV PREVENTION

Kazakhstan does not have a separate law regulating the rights of PLH. However, some issues related to the provision of medical care are regulated by paragraph 2 of the Code of the Republic of Kazakhstan «On the health of the people and the healthcare system», which contains three articles: «Provision of medical care to persons infected with HIV»⁶, «Social and legal protection of persons infected with HIV»⁷ and «Testing for HIV infection»⁸.

¹ Constitution of the Republic of Kazakhstan, Article 14.

² Criminal Code of the Republic of Kazakhstan, Article 15.

³ URL: https://www.akorda.kz/ru/official_documents/constitution

⁴ Criminal Code of the Republic of Kazakhstan, Article 54.

⁵ Id., Article 145.

⁶ Code of the Republic of Kazakhstan «On the health of the people and the healthcare system», Article 160.

⁷ Id., Article 161.

⁸ Id., Article 162.

Separately, it was noted that services for the prevention and diagnosis of HIV are included in the guaranteed package of free medical care, which is provided by the state using budgetary funds, which is an important point in relation to access to medical care, since compulsory social health insurance was introduced in the Republic of Kazakhstan in 2020⁹.

According to Article 273 of the Code of RK «*On the health of the people and the healthcare system*», personal medical data, and information related to the receipt of medical care, the state of a person's health, the diagnosis of any disease, and any other information obtained during examination and/or treatment, constitute information that must be kept confidential by the relevant medical worker. The disclosure of such information is not allowed. However, there are also legal grounds for the disclosure of such information without the patient's consent. Information may be disclosed if there is a threat of the spread of a disease that is dangerous to others. HIV is included in the list of such diseases that may be dangerous to others¹⁰. This provides medical workers the opportunity to abuse their official position¹¹.



CRIMINALIZATION OF HIV TRANSMISSION

The transmission of HIV is criminalized by Article 118 CC RK¹², which imposes liability for «*deliberately placing another person at risk of contracting HIV*» or for the «*infection of another person with HIV by a person who knew that he had this disease*». At the same time, a person is absolved of liability if the other person was warned that the first person had HIV.



LEGAL GENDER RECOGNITION

Kazakhstan has a highly complex, legally approved procedure for medical and/or legal transition that violates human rights. Despite its existence, this humiliating, lengthy process involving sterilization¹³ makes amending one's documents nearly impossible. The failure of the state to guarantee the right of trans* people to legal recognition of their gender leads to multiple forms of rights violations and violence, leaves trans* people vulnerable, and creates opportunities for discrimination, for example, in the field of employment¹⁴.

Currently, the mandatory requirements to obtain permission to change the sex indicated in one's passport are: examination in a psychiatric hospital for 30 calendar days and surgical intervention to form so-called male or female genitalia.

⁹ Id., Article 196.

¹⁰ Available at: <https://adilet.zan.kz/rus/docs/V1500011512#z2>

¹¹ [Non-disclosure of HIV status as a right to privacy](#)

¹² URL: https://online.zakon.kz/document/?doc_id=31575252&pos=1874;-25#pos=1874;-25

¹³ URL: <https://www.hrw.org/ru/world-report/2018/country-chapters/312988#cd7daa>

¹⁴ URL: https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/KAZ/INT_CCPR_CSS_KAZ_24305_E.pdf

DESCRIPTIVE REPORT OF CASES

CASE 1

1.1. CASE DESCRIPTION

A. got a job in a clinic. After passing the scheduled health examination to determine his fitness for the job (health book), the young man found out that he had HIV. HIV status is not indicated in the health book, and the doctors of the AIDS center assured him that his position as a laboratory assistant does not fall under professions that are prohibited for HIV-positive people. He shared this news with some colleagues at work, and they immediately informed the manager. The manager told him to write a letter of resignation. He did not defend his rights, and handed in his resignation despite his employment contract.

1.2. GROUND ON WHICH DISCRIMINATION OCCURRED

HIV status.

1.3. VIOLATED/RESTRICTED RIGHTS

As a result of the circumstances described above, the following rights provided for by law were restricted/ violated:

- Constitution of the Republic of Kazakhstan, Art. 14 part 2¹⁵: «*No person can be subjected to any kind of discrimination*».
- Art. 161 Code of RK «On the health of the people and the healthcare system».

1.4. CONSEQUENCES FOR VICTIM

Moral and material harm.

1.5. MEASURES TAKEN AND THEIR CONSEQUENCES

The victim does not want to pursue the case, because he does not believe that there will be a positive solution to the issue.

¹⁵ Constitution RK. – URL: https://www.akorda.kz/ru/official_documents/constitution

CASE 2

2.1. CASE DESCRIPTION

In October, a con man disguised as a police officer entered the apartment of some sex workers, one of whom was a trans* woman. He introduced himself as a detective, and threatened that they would be detained due to their involvement in sex work. The girls immediately called the police. Upon arrival at the station, the three police officers who detained the sex workers and the offender, handed them over to their colleagues, and briefly described the situation to them in Kazakh. The victims did not understand. The police officers began to object to the filing of the statement, arguing that there is indeed liability for sex work, although the applicant knew for sure that there was no specific article, and listed the activities for which there is criminal liability. While the applicant was sitting in the station, the law enforcement officers began to ask personal questions about sex work, and improper questions like «*whether she gets f*cked in the ass*», «*where she had an operation*» and «*whether they can f*ck her sexy girlfriend*»; several different police officers looked through her phone and looked at her personal data. Moreover, when asked to identify themselves, none of the employees fully identified themselves, and did not show their police ID. After a long interrogation, during which she was asked questions about trans* transition, family, and work, she was finally released.

2.2. GROUND ON WHICH DISCRIMINATION OCCURRED

Gender identity, sex work.

2.3. VIOLATED/RESTRICTED RIGHTS

As a result of the circumstances described above, the following rights provided for by law were restricted/ violated:

- Constitution of the Republic of Kazakhstan, part 2 Art. 14 «*No person can be subjected to any kind of discrimination*» and Art.17 «*Prohibition of torture, violence, other cruel and degrading treatment*»;
- Criminal Code of RK, Art. 145 «*Violation of the equality of man and citizen*»;
- Criminal Code of RK, Art. 362 «*Abuse of power or authority*»¹⁶.

2.4. CONSEQUENCES FOR VICTIM

Moral damage.

2.5 MEASURES TAKEN AND THEIR CONSEQUENCES

Four days later, the victim filed a statement with the prosecutor's office. However, the state body decided to end any further consideration of the matter.

¹⁶ URL: https://online.zakon.kz/document/?doc_id=31575252&sub_id=3620000&pos=5368;-37#pos=5368;-37

CASE 3

3.1 CASE DESCRIPTION

In December, A., who hides her transgender identity, witnessed a family quarrel. Her father beat her younger brother, and, standing up for him, she was beaten by her father. The father suspects A. of being queer, homosexual, and transgender. A. tried to leave home, but due to the war in Ukraine and mobilization in Russia, prices for apartments in Almaty have gone up, and therefore moving out became impossible. The father burst into A.'s room, insulted her, saying that she was not normal, and that she needed to go to the hospital. In the end, at the request of her father, people in gowns, a doctor and a nurse arrived. A. called the police, but the policeman who arrived took the side of her parents, and said «*if she calls again and says that you are beating or going to kill her, we won't come, she can't even count on us*».

A psychologist arrived the next day, and the father threatened his daughter that if she did not leave the room and talk to the specialist, he would «*shove an electronic cigarette up her ass*». He began to threaten and humiliate her in front of the psychologist. The psychologist listened approvingly to her father's speech and nodded. The psychologist offered to take her to an institution and put A. in the hospital at her father's insistence. The psychologist herself was convinced that A. was «*sick*» and needed help, and that people like her should be treated in their institution, which is a mental health center in Almaty. It is known for using old punitive psychiatric methods, so people try to avoid this place. A. did not agree to go anywhere.

3.2 GROUND ON WHICH DISCRIMINATION OCCURRED

Gender identity/gender expression.

3.3 VIOLATED/RESTRICTED RIGHTS

As a result of the circumstances described above, the following rights provided for by law were restricted/violated:

- Constitution of RK, part 2, Art. 14: «*No person can be subjected to any kind of discrimination*»;
- Law of RK «*On Prevention of Domestic Violence*»¹⁷;
- Code of the Republic of Kazakhstan «*On administrative offenses*»¹⁸, Art. 73-2 «*Battery*».

3.4 CONSEQUENCES FOR VICTIM

Moral and physical harm.

3.5 MEASURES TAKEN AND THEIR CONSEQUENCES

A. filed a statement against her father, but later withdrew the statement, because she believes it would have aggravated the situation.

¹⁷ URL: https://online.zakon.kz/Document/?doc_id=30525680

¹⁸ URL: https://online.zakon.kz/document/?doc_id=31577399&pos=1761;-53#pos=1761;-53

CASE 4

4.1 CASE DESCRIPTION

Since 2020, two men have organized a criminal gang that arranges fake dates. One of them meets gay people on social networks. The victim then goes to their apartment, where a romantic conversation begins, after which, the accomplices, who recorded everything on video, emerge from hiding. The criminals then begin blackmailing and threatening the victim, most often using firearms or «cold» weapons. The amount demanded as blackmail begins at 1 million tenge (\$2,200). Sometimes victims were forced to take out a loan using the Kaspi.kz application, which is issued within three minutes and can then be withdrawn from the nearest ATM; the gang detains the victim until the money is received.

In 2020, one of the victims, after being shot at with a pistol, said that he would go to relatives for money, and together they went to the nearest pawnshop, where the victim began to scream, and the gang with him began to beat him. At that moment, the whole the gang was arrested. The detainees wanted to pay off the police by offering them a bribe, and the police tried to dissuade the victim from pursuing charges, to which he did not agree. Then they began to put pressure on relatives, in particular on the mother, saying that there would be a trial and publicity, that this is a sin, and that everyone will know that their son is gay. However, the victim did not want to withdraw his statement, so the relatives of the detainees offered money to the victim, who then withdrew his statement.

After they were released, the gang continued to arrange fake dates and blackmail victims; NGOs received reports that they had blackmailed more than 15 people who paid money, however, none of them planned to file a report with law enforcement agencies. The last incident happened in November 2022: the victim paid the money, after which he reported the case to the police and brought the case to court.

4.2 GROUND ON WHICH DISCRIMINATION OCCURRED

Sexual orientation and gender identity.

4.3 VIOLATED/RESTRICTED RIGHTS

As a result of the circumstances described above, the following rights provided for by law were restricted/ violated:

- Constitution of RK, part 2 Art. 14: «No person can be subjected to any kind of discrimination»;
- Criminal Code of RK, Art. 126: «Unlawful detention»¹⁹;
- Criminal Code of RK, Art. 194: «Extortion»²⁰.

¹⁹ URL: https://online.zakon.kz/document/?doc_id=31575252&sub_id=1260000&pos=2077;-55#pos=2077;-55

²⁰ URL: https://online.zakon.kz/document/?doc_id=31575252&sub_id=1940000&pos=2953;-37#pos=2953;-37

4.4 CONSEQUENCES FOR VICTIM

Moral, material and physical harm.

4.5 MEASURES TAKEN AND THEIR CONSEQUENCES

Court decision: 4 years in prison, the minimum term that does not take into account factors such as: the use of firearms and «cold» weapons, the crime was committed by a group of people repeatedly.

CASE 5

5.1 CASE DESCRIPTION

PO «Gay and Lesbian Alliance» (GALA) rented an office space in a business center. The administration of the center knew about the activities of the Alliance. However, when people from the LGBT community began to come to the organization, and it also became known that HIV testing was being carried out in the office, other tenants began to complain to the owner of the building, even though no violations took place. Nevertheless, although the Alliance had a valid contract until the end of the year, the landlord asked the organization to vacate the premises in March without any justification for his refusal to continue renting them the office.

5.2 GROUND ON WHICH DISCRIMINATION OCCURRED

Activities related to LGBT and HIV activism.

5.3 VIOLATED/RESTRICTED RIGHTS

As a result of the circumstances described above, the following rights provided for by law were restricted/ violated:

- Constitution of the Republic of Kazakhstan, Article 14 part 2: «*No person can be subjected to any kind of discrimination*».

5.4 CONSEQUENCES FOR VICTIM

Moral and material harm.

5.5 MEASURES TAKEN AND THEIR CONSEQUENCES

Representatives of the Alliance refused to pursue the case, as they do not believe there will be a positive outcome.

CASE 6

6.1 CASE DESCRIPTION

Employees of a polyclinic called D. and S.'s (partners, one of whom is a PLH) former neighbors and asked if they knew S.. They said that he urgently needed to come to the AIDS center, otherwise the police would begin searching for him. The neighbors knocked on the apartment where the victims had previously lived, but there were new tenants; they, in turn, called the parents of S. The parents rushed to the clinic, and found the person who called them; the polyclinic doctor said that the AIDS center had given them this information, and that S. should take an HIV test, since he has been in contact with D. S.'s parents knew that they lived together, but did not know that D. was HIV-positive. S. was forced to take an HIV test, and send the negative result to everyone.

The AIDS center explained this by saying that there were no test results for S. in the database. However, it later turned out that they had all the results in paper form, and they were simply not entered into the electronic database. Because of this negligence, the doctor of the polyclinic disclosed the health status of the victim.

6.2 GROUND ON WHICH DISCRIMINATION OCCURRED

HIV status.

6.3 VIOLATED/RESTRICTED RIGHTS

As a result of the circumstances described above, the following rights provided for by law were restricted/ violated:

- Constitution of the Republic of Kazakhstan, Article 14 part 2: «*No person can be subjected to any kind of discrimination*»;
- Code of RK «On the health of the people and the healthcare system», Article 160: «*Provision of medical care to persons infected with HIV*».

6.4 CONSEQUENCES FOR VICTIM

Moral damage.

6.5 MEASURES TAKEN AND THEIR CONSEQUENCES

The victim does not wish to pursue the case as they are moving to another country.

CASE 7

7.1 CASE DESCRIPTION

R. was in the center of Almaty when three young men called out to him and asked: «*What are you, a f**got?*» R. replied that it was none of their business, and then was punched in the face. Then they started beating him; the last thing he heard before passing out was: «*You deserve it, festering f**got*». After some time, R. woke up and saw that the police had arrived. They said that someone called them from the store across the street. After R. told them what happened, the police dissuaded him from writing a statement, saying that they would go and look around the area, but that it would be difficult to find the attackers. They also stated that it was most likely his own fault, and that he had provoked the attack. Despite the fact that R. suffered from dizziness, and most likely a concussion and multiple hematomas, he did not go to the hospital, but instead rested at home.

7.2 GROUND ON WHICH DISCRIMINATION OCCURRED

Sexual orientation.

7.3 VIOLATED/RESTRICTED RIGHTS

As a result of the circumstances described above, the following rights provided for by law were restricted/ violated:

- Constitution of the Republic of Kazakhstan, Article 14, part 2: «*No person can be subjected to any kind of discrimination*»;
- Criminal Code of RK, Article 145: «*Violation of the equality of man and citizen*»;
- Criminal Procedure Code of RK, Article 24²¹ «*Comprehensive, complete and objective examination of the circumstances of the case*».

7.4 CONSEQUENCES FOR VICTIM

Moral and physical harm.

7.5 MEASURES TAKEN AND THEIR CONSEQUENCES

The client does not wish to pursue the case, fearing re-victimization by the police.

²¹ URL: https://online.zakon.kz/document/?doc_id=31575852&pos=1007;-26#pos=1007;-26

CASE 8

8.1 CASE DESCRIPTION

In November 2021, in Aktobe, L., a trans* female sex worker, arranged to meet a client. Two men who had followed the client broke into the apartment. The criminals were physically violent and stole L.'s personal belongings with a value of half a million tenge (1,100 USD). L. went to the police.

8.2 GROUND ON WHICH DISCRIMINATION OCCURRED

Gender identity, involvement in sex work.

8.3 VIOLATED/RESTRICTED RIGHTS

As a result of the circumstances described above, the following rights provided for by law were restricted/ violated:

- Constitution of the Republic of Kazakhstan, Article 14 part 2: «*No person can be subjected to any kind of discrimination*»;
- Criminal Code RK, Article 191. «Theft».

8.4 CONSEQUENCES FOR VICTIM

Moral and material harm.

8.5 MEASURES TAKEN AND THEIR CONSEQUENCES

The court sentenced each of the attackers to five years in prison.

CASE 9

9.1 CASE DESCRIPTION

A. is a famous trans* blogger. In June, a video appeared on social networks where A., surrounded by a group of men, asks for forgiveness from the Kazakh people for putting on a national costume and participating in the national rite, betashar²².

9.2 GROUND ON WHICH DISCRIMINATION OCCURRED

Gender identity.

9.3 VIOLATED/RESTRICTED RIGHTS

As a result of the circumstances described above, the following rights provided for by law were restricted/ violated:

- Constitution of the Republic of Kazakhstan, Article 14 part 2: «*No person can be subjected to any kind of discrimination*»;
- Criminal Code RK, Article 145. «*Violation of the equality of man and citizen*».

9.4 CONSEQUENCES FOR VICTIM

Moral damage.

9.5 MEASURES TAKEN AND THEIR CONSEQUENCES

It is not known whether A. sought assistance. The case was taken from open sources.

²² URL: <https://exk.kz/news/133316/transghierendier-amilai-poprosil-proshchieniia-u-kazakhstantsiev>

CONCLUSIONS AND RECOMMENDATIONS

In total, ECOM documented 26 cases of violations of the rights of LGBTQ and trans* people in the Republic of Kazakhstan in 2022. In the majority of cases, the victims were gay, bisexual and other MSM, while trans* women were the victims in seven cases. The violations of rights documented in reports were based, in most cases, on the grounds of sexual orientation and gender identity. However, in some cases, the analysis reveals cases of multiple forms of discrimination, where the basis for discrimination was the sexual orientation or gender identity of the victim and their involvement in sex work, while in others cases the basis for discrimination was the sexual orientation of the victim and their HIV status.

In more than half of the cases, the offenders were private individuals, which indicates the high level of stigma and discrimination in relation to gay men, other MSM and trans* people in Kazakhstan. In a quarter of the cases, law enforcement officials were the offenders, illustrating the high levels of transphobia and homophobia among police officers. This also serves as an explanation for why LGBT people do not trust law enforcement agencies, as their cases are not investigated objectively due to the biased attitude of these agencies.

"Fake dates", which are used to blackmail and extort victims, are common in Kazakhstan. This is due to the inaction and indifference of police officers, as criminals know that LGBT people are not provided sufficient protection.

In another quarter of the cases, the offenders were medical workers: some of the cases relate to the disclosure of personal data by doctors to the relatives of patients. This undoubtedly affects the protection of the right to health of LGBT people, as they are afraid to go to medical institutions for any kind of medical care.

Many of the cases mentioned in this analysis should have been treated as hate crimes based on SOGI, however, the criminal legislation of Kazakhstan does not contain such a provision. The country has a law on domestic violence, but it does not include SOGI. Therefore, LGBT people who experience domestic violence rarely file claims under it.

In 2022, there were several cases of violations of the right to work involving HIV-positive LGBT people. In 2022, ECOM registered more cases of extreme violence against queer people in Kazakhstan than in the previous years, including a case of conversion therapy and the use of "cold" weapons.



REPUBLIC OF KAZAKHSTAN

Should take decisive steps to eliminate all forms of discrimination and violence based on sexual orientation and gender identity, in particular:

- Adopt an antidiscrimination law that would explicitly prohibit all forms of discrimination, including based on SOGI, and create an effective mechanism for investigating cases of discrimination and prosecuting offenders;
- Amend Article 54 CC RK, and supplement the list of aggravating circumstances with a new paragraph: *«commission of a hate crime in connection with the HIV status of the victim or his sexual orientation and gender identity»*.
- Amend Article 145 CC RK by expanding the list of protected characteristics to include health condition (HIV status) and sexual orientation and gender identity;
- Harmonize the norms of Article 79 of the Code of the Republic of Kazakhstan *«On the health of the people and the healthcare system»* and the List of diseases that disqualify a person from adopting a child, or taking him under guardianship or trusteeship, thereby allowing adoption by PLH;
- Bring the procedure for legal transgender transition in line with international standards, including by abolishing the requirements for mandatory 30-calendar day examination in a psychiatric hospital and mandatory surgical intervention;
- Train police, prosecutors and judges to effectively investigate and deal with allegations of hate crimes based on homophobia and transphobia.



CIVIL SOCIETY ORGANIZATIONS

- Continue systematic efforts to identify and document cases of human rights violations and expand the geographic coverage of data collection to small towns and other settlements;
- Pay sufficient attention to raising awareness and legal literacy among members of the community, help draft complaints, and encourage victims to speak up about violations;
- Initiate the harmonization of the norms of Article 79 of the Code of the Republic of Kazakhstan *«On the health of the people and the healthcare system»* and the List of diseases that disqualify a person from adopting a child, or taking him under guardianship or trusteeship;
- Develop proposals for an accessible procedure for legal transgender transition, which do not require mandatory, long-term examination in a psychiatric hospital and surgical intervention.



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