



# NATIONAL REPORT

ON VIOLATIONS OF THE RIGHTS  
OF LGBT PEOPLE AND MSM  
IN TAJIKISTAN



2023







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# CONTENTS

 <b>METHODOLOGY FOR COLLECTING CASES OF RIGHTS VIOLATIONS</b> .....	2
 <b>NATIONAL LEGISLATION IN THE FIELD OF HEALTH</b> .....	3
 <b>DESCRIPTIVE REPORT ON CASES</b> .....	5
 <b>CONCLUSIONS AND RECOMMENDATIONS</b> .....	8




## ACRONYMS AND ABBREVIATIONS

<b>ARV therapy</b>	Antiretroviral therapy
<b>EECA</b>	Eastern Europe and Central Asia
<b>HIV</b>	Human immunodeficiency virus
<b>LGBT</b>	Lesbian, gay, bisexual, and trans people
<b>PLH</b>	People living with HIV
<b>MSM</b>	Men who have sex with men
<b>NGO</b>	Non-governmental organization
<b>SOGI</b>	Sexual orientation and gender identity
<b>CC RT</b>	Criminal Code of the Republic of Tajikistan

# METHODOLOGY FOR COLLECTING CASES OF RIGHTS VIOLATIONS

This 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 national report is based on systematized information about cases of violations of the right to health (cases documented during the year) in Tajikistan, collected using tools provided by ECOM and partner organizations, as well as a brief analysis of the legal environment.

***During the monitoring, various research methods were used, such as:***

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

The goal of collecting information was to identify cases of human rights violations, in particular the right to health among LGBT people and other MSM.

As a result of the analysis, the main causes of rights violations and discrimination were identified, and quantitative data was obtained. Based on this data, conclusions and recommendations were developed.

# NATIONAL LEGISLATION IN THE FIELD OF HEALTH

Despite the decriminalization of consensual homosexual relations in Tajikistan back in 1998, members of the LGBT community are still subject to discrimination and stigmatization based on sexual orientation and gender identity (SOGI).

## ANTI-DISCRIMINATION LEGISLATION

In 2022, the Law of the Republic of Tajikistan «on equality and the elimination of all forms of discrimination» was adopted. The law does not mention SOGI in the list of protected grounds. However, the list of protected characteristics includes the words «or other circumstances», which makes it possible to challenge discrimination on the basis of SOGI in court. To date, no cases of protection from discrimination based on SOGI have been documented.

## LEGISLATION TO COMBAT HIV

The Health Code of the Republic of Tajikistan (Articles 163-167)<sup>1</sup> includes the rights of people living with HIV, guarantees of social protection, and a prohibition on discrimination. However, there are currently mandatory rules that facilitate discrimination, such as mandatory HIV testing when submitting an application to the Civil Registry Office, a ban on hiring people living with HIV (PLH) to work in certain professions, and mandatory HIV testing when entering universities.

In 2020, the Government of Tajikistan approved the National Program to Combat the HIV/AIDS Epidemic in the Republic of Tajikistan for 2021-2025, as well as the overall budget and Action Plan, which includes references to the Sustainable Development Goals (SDGs) and other international documents on human rights and HIV. However, «men who have sex with men» are only mentioned twice in the above-mentioned Program, in the description of key populations in Chapter 6 («Main areas of the program»). In general, in view of the national programs adopted in Tajikistan, it should be noted that the LGBT community is excluded from support programs.

<sup>1</sup> Health Code of the Republic of Tajikistan. URL: [https://ncz.tj/system/files/Legislation/1413\\_ru\\_0.pdf](https://ncz.tj/system/files/Legislation/1413_ru_0.pdf)

## CRIMINALIZATION OF HIV TRANSMISSION

Article 125 of the Criminal Code of the Republic of Tajikistan (CC RT)<sup>2</sup> establishes criminal liability not only for HIV transmission, but also for “knowingly putting another person at risk of infection,” which is punishable by restriction of freedom for up to three years or imprisonment for up to two years. Unfortunately, despite the efforts of civil society and the recommendations of UNAIDS and the WHO<sup>3</sup>, the legislation of Tajikistan does not provide for exceptions in case informed consent was provided by the other sexual partner, regardless of whether there was a risk of HIV infection or whether the HIV-positive person took precautions to prevent infection, such as regularly taking antiretroviral therapy or using condoms. The informed consent of partners is not accepted by judicial bodies as an argument in favor of PLH.

## LEGAL RECOGNITION OF GENDER

Tajikistan partially has a legally established procedure governing the possibility of medical and/or legal transition for trans people. The only document regulating the possibility of transition is the Law «on state registration of civil status acts»<sup>4</sup> (глава 9, статья 74), (Chapter 9, Article 74), which provides that the relevant institution shall make corrections, changes or additions to civil status registration if «a document of the established form on gender change issued by a medical organization is presented». Since there is no clear mechanism for transgender transition, responsible authorities may require surgical operations. Trans people have succeeded in changing their documents in isolated cases. However, even if they wish to undergo medical interventions, trans people are forced to travel abroad<sup>5</sup> or take hormone therapy on their own without a doctor’s prescription due to the lack of appropriate medical specialists in the country<sup>6</sup>.

<sup>2</sup> Criminal Code of the RT. URL: <https://ncz.tj/system/files/Legislation/574%D1%80%D1%83.pdf>

<sup>3</sup> URL: [https://www.unaids.org/sites/default/files/media\\_asset/jc488-openup\\_ru\\_0.pdf](https://www.unaids.org/sites/default/files/media_asset/jc488-openup_ru_0.pdf)

<sup>4</sup> URL: [http://www.adlia.tj/show\\_doc.fwx?Rgn=7248](http://www.adlia.tj/show_doc.fwx?Rgn=7248)

<sup>5</sup> URL: <https://ilga-europe.org/report/annual-review-2019/>

<sup>6</sup> URL: <https://theopenasia.net/ru/post/ya-pyталas-sdelat-operatsiyu-sama-istoriya-tadzhikskogo-transgendera>

# DESCRIPTIVE REPORT ON CASES

## CASE 1

### 1.1. CASE DESCRIPTION

The victim is a man, and a medical worker at a local clinic. Law enforcement representatives went to his work place, forcibly took him to the police station, and took his statement. The police officers urged the man to accompany them to the magistrate's office and disclose the names of other members of the LGBT community. After he refused, they confiscated the victim's phone without his consent. For 12 days, his phone was kept by police, during which time all of his accounts remained online. The law enforcement representatives threatened him with outing and criminal prosecution under Article 241 of the CC RT, «Illegal production and distribution of pornographic materials or items».

### 1.2. CHARACTERISTIC BASED ON WHICH DISCRIMINATION OCCURRED

Sexual orientation of the victim.

### 1.3. RIGHTS VIOLATED/RESTRICTED

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

- Article 5 of the Law of the RT of 19 July 2022 N1890 «on equality and the elimination of all forms of discrimination»;
- Article 23 of the Constitution of the RT: right to privacy of correspondence, and telephone and other conversations, postal, telegraph and other messages;
- Article 358 of the CC RT, which prohibits unlawful imprisonment or detention;
- Article 316 of the CC RT, which prohibits abuse of official authority.

### 1.4. CONSEQUENCES FOR THE VICTIM

Moral, physical, and material harm.

### 1.5. MEASURES TAKEN AND THEIR CONSEQUENCES

The victim refused to make a statement due to fear that his SOGI would be disclosed at his work place.

## **2.1. CASE DESCRIPTION**

«At the beginning of October, I was with friends in a nightclub. Law enforcement officers approached us, showed us their IDs so quickly that we did not have time to see their names, and said that they needed to talk to us at the police station in order to clarify our identities. There were six of us at one table, we all knew each other. The law enforcement officers escorted us to the station. When we entered, they took our phones, which we wanted to leave at the security desk, but they completely refused to let us do this when we entered. When they had our phones in their hands, they unlocked them, called all of our contacts, viewed our personal photos, and called an employee of the HIV Center to administer mandatory HIV tests for us. They did not release us for about 5 hours. In the end, my friend and I were taken from the police station by our sisters. The other three were blackmailed; the officers threatened that they would tell their relatives that they were members of the LGBT community. Three of them paid money and were released. One of us tested positive for HIV, and she was left at the police station».

## **2.2. CHARACTERISTIC BASED ON WHICH DISCRIMINATION OCCURRED**

Sexual orientation, gender identity, HIV status.

## **2.3. RIGHTS VIOLATED/RESTRICTED**

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

- Law of the RT of 19 July 2022 N1890 «on equality and the elimination of all forms of discrimination»;
- Article 163.1 of the Health Code of the RT: «... maintaining confidential information about the state of one's health»;
- Article 145 of the CC RT, which prohibits the disclosure of medical confidentiality;
- Article 23 of the Constitution of the RT: right to privacy of correspondence, and telephone and other conversations, postal, telegraph and other messages;
- Article 358 of the CC RT, which prohibits unlawful imprisonment or detention;
- Article 316 of the CC RT, which prohibits abuse of official authority.

## **2.4. CONSEQUENCES FOR THE VICTIM**

Moral and material harm.

## **2.5. MEASURES TAKEN AND THEIR CONSEQUENCES**

The victim did not want to seek legal assistance.



### **3.1. CASE DESCRIPTION**

Two girls from the LGBT community lived in the same area. The local police officer was looking for various pretexts to initiate a criminal case against them. Initially, the officer tried to accuse them of running a brothel and other administrative violations, but found no basis for this. In the end, both girls were forced to take HIV tests, and one of them tested positive. This served as a basis to take her into custody, and charge her under Article 125 of the CC RT «Infection with the human immunodeficiency virus». Her partner tried to explain that she was aware of her status, that they were taking precautions, and that she did not want to make any legal claims against her friend. At first, the officers tried to blackmail both of the victims and said that they would reveal their status to their relatives and neighbors. The girls tried not to give in to threats. However, in order to imprison the girl with HIV, the police detained her friend, assaulted her, and forced her to write a statement saying that she allegedly did not know about the HIV status of her partner. The girl with HIV was convicted and is now in prison.

### **3.2. CHARACTERISTIC BASED ON WHICH DISCRIMINATION OCCURRED**

Sexual orientation, HIV status.

### **3.3. RIGHTS VIOLATED/RESTRICTED**

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

- Law of the RT of 19 July 2022 N1890 «on equality and the elimination of all forms of discrimination»;
- Article 163.1 of the Health Code of the RT: «... maintaining confidential information about the state of one's health»;
- Article 145 of the CC RT, which prohibits the disclosure of medical confidentiality;
- Article 5 of the Constitution of the RT, according to which man, his rights and liberties shall be the supreme value;
- Article 358 of the CC RT, which prohibits unlawful imprisonment or detention;
- Article 143.1. CC RT, which prohibits torture;
- Article 316 of the CC RT, which prohibits abuse of official authority.

### **3.4. CONSEQUENCES FOR THE VICTIM**

Moral and physical harm.

### **3.5. MEASURES TAKEN AND THEIR CONSEQUENCES**

The girl received the assistance of a lawyer.

## CONCLUSIONS AND RECOMMENDATIONS

In 2023, 25 cases of human rights violations were reported. In 15 cases, the offenders were law enforcement officers. By organizing fake dates, police forced people to undergo rapid HIV testing, threatened to out them, and in some cases, revealed people's HIV status to their colleagues and family members. This led to discrimination at work, and physical and psychological violence from family members. The greatest number of violations by law enforcement agencies occurs against MSM and trans people (14 MSM, 7 trans people).

In most cases, law enforcement officials threatened victims under two articles of the Criminal Code. The first is Article 125 of the CC RT «Infection with HIV infection. Knowingly putting another person at risk of contracting HIV infection is punishable by restriction of freedom for a term of up to three years or imprisonment for a term of up to two years». Unfortunately, despite the efforts of civil society and the recommendations of the WHO, Tajik legislation does not provide for exceptions in case informed consent was provided by the other sexual partner, regardless of whether there was a risk of HIV infection or whether the HIV-positive person took precautions to prevent infection, such as regularly taking antiretroviral therapy or using condoms. The informed consent of partners is not accepted by judicial bodies as an argument in favor of PLH.

The second is Article 241 of the CC RT «Illegal production and circulation of pornographic materials or objects». Despite the constitutional rights to privacy, and to secrecy of correspondence, telephone conversations, telegraph and other personal messages, people have been arbitrarily detained, and have had their phones confiscated and personal information accessed without court approval. On December 7, 2023, Radio Ozodi (Radio Liberty) published material about the detention of 27 people for distributing pornography<sup>7</sup>. The article mentioned that all the victims were allegedly detained for homosexual relations. «Since there are no penalties in the law for such relationships, they were charged under the article on promoting pornography», the article says.

### THE REPUBLIC OF TAJIKISTAN

Should continue to work towards the adoption of anti-discrimination legislation and take decisive steps to effectively eliminate all forms of discrimination and violence based on sexual orientation and gender identity, in particular:

- include HIV status, sexual orientation, and gender identity as protected characteristics in the Law «on equality and the elimination of all forms of discrimination»;

<sup>7</sup> URL: <https://rus.ozodi.org/a/32720816.html>

- decriminalize HIV transmission in accordance with international human rights standards and the recommendations of international bodies on the prevention of HIV/AIDS;
- conduct training events for law enforcement officers and medical workers on the provision of services to LGBT people and PLH;
- promptly and effectively investigate any reports of violence or intolerance motivated by sexual orientation and gender identity;
- create a clear and friendly mechanism for gender transition for trans people;
- develop an accessible procedure for registering NGOs, including NGOs providing services to PLH and LGBT people.

