ECOM

NATIONAL REPORT

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

2022

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ACRONYMS AND ABBREVIATIONS

CC	Criminal Code KR
EECA	Eastern Europe and Central Asia
HC	Hate crimes
HIV	Human immunodeficiency virus
KR	Kyrgyz Republic
LC	Labor Code KR
LGBT	Lesbian, gay, bisexual and trans* people
MSM	Men who have sex with men
NGO	Non-governmental organization
NLA	Normative and legal act
PLH	People living with HIV
SCNS	State Committee for National Security KR
SOGI	Sexual orientation and gender identity
STI	Sexually transmitted infections

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 Kyrgyzstan, 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

In Kyrgyzstan, the trend of amending legislation to impose greater restrictions on human rights continues. The amendments have affected the primary law, the Constitution. The form of government has changed, and the system of checks and balances of the principle of the separation of powers has been violated. Amendments were made to the Law of KR *«On non-profit organizations»*[1], according to which NGOs/non-profit organizations are required to provide an additional summary table of expenses and sources of income. Reports on the financial transactions of NGOs were always submitted to various competent state bodies in the past. Amendments to this law are currently ongoing, which may adversely affect the activities of NGOs in the field of health and human rights.



ANTI-DISCRIMINATION LEGISLATION

The Constitution of the Kyrgyz Republic guarantees equality for all citizens, and leaves the list of protected grounds open[2]. SOGI is not mentioned in any NLA. On November 15, 2022, the Parliament submitted a draft law «On ensuring the right to equality and protection from discrimination» The law contains forms of discrimination, definitions, and a protection mechanism, but does not include SOGI as protected characteristics. There is no definition of a hate crime in the legislation of the KR, however, in some articles of the CC KR, the commission of a crime motivated by social, national, racial, or religious hatred or enmity is an aggravating circumstance[4].



LEGISLATION IN THE FIELD OF HIV PREVENTION

The right to health is regulated by the Law of KR *«On protection of the health of citizens»*. Legislation in the field of HIV prevention is considered one of the most progressive in Central Asia. The rights of PLH are guaranteed by a separate Law *«On HIV/AIDS in the Kyrgyz Republic»*. This law guarantees the equality of PLH and prohibits discrimination.

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[1] Law of KR «On amendments to certain legislative acts of the Kyrgyz Republic (in the laws of the Kyrgyz Republic «On non-profit organizations» «On state registration of legal entities, branches (representative offices)»)». – URL: http://cbd.minjust.gov.kg/act/view/ru-ru/112273

[2] Constitution of KR, Article 24. – URL: http://cbd.minjust.gov.kg/act/view/ru-ru/112213?cl=ru-ru

[3] Draft of the Law. – URL: http://kenesh.kg/ru/article/show/9701/na-obshtestvennoe-obsuzhdenie-s-15-noyabrya-2022-goda-vinositsya-proekt-zakona-ob-obespechenii-prava-na-ravenstvo-i-zashtite-ot-diskriminatsii

[4] Example: Article 138 «Torture». – URL: http://cbd.minjust.gov.kg/act/view/ru-ru/112309

Although there are friendly staff who have been trained to work with LGBT people and PLH in the country's large AIDS centers, in other regions and among other types of specialists, stigma and discrimination against PLH and LGBT people continue to exist. The country is updating its HIV program, and has involved people from key communities in this work.



CRIMINALIZATION OF HIV TRANSMISSION

Article 143 CC KR[5] not only criminalizes the transmission of HIV, but also «*putting another person at risk of contracting HIV*». It is not clear whether this article applies to cases where preventative measures in the form of ARV treatment and condoms were used. Thus, all persons living with HIV who have sex can be held criminally liable, which violates their right to sexual health. However, a person is not liable if they warned their partner that they are infected with HIV.



LEGAL GENDER RECOGNITION

For many years, KR has been one of the most progressive countries in EECA in terms of changing one's gender marker. Currently, Article 34 of the Law of KR «*On acts of civil status*»[6] does not provide for the legal possibility of making changes to civil status records in registry offices. Due to the lack of a quick and transparent procedure for changing one's gender marker, trans* people must go through pre-judicial and judicial procedures in order to obtain birth certificates, and subsequently identity documents, with the desired gender marker in order to ensure the full enjoyment of their lives.

There was a case where a trans* person applied to a court to establish that the information contained in their birth certificate was incorrect. The court granted the application, and the person was able to change their gender marker. However, there was also a similar case where a trans* person's application was not granted by the court, and they were not able to change their documents[7].

[5] URL: http://cbd.minjust.gov.kg/act/view/ru-ru/112309

[6] Law of KR «On acts of civil status». – URL: http://cbd.minjust.gov.kg/act/view/ru-ru/112094

[7] Both cases were filed by PO «Kyrgyz Indigo».

ОПИСАТЕЛЬНЫЙ ОТЧЕТ ПО КЕЙСАМ

CASE 1

1.1. CASE DESCRIPTION

The victim met a man on a social network. They agreed to meet and drove out of town together in the offender's car. During the drive, the offender said that he needed to give a ride to one person on the way to the mountains. When the second man got into the car, he asked improper questions about the victim's SOGI and his relatives. In the mountains, they began to threaten the victim and forced him to perform oral sex. The victim suspects that they work for the SCNS. A few hours later, he was left on the Osh-Bishkek highway.

1.2. GROUND ON WHICH DISCRIMINATION OCCURRED

Sexual orientation.

1.3. VIOLATED/RESTRICTED RIGHTS

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

- The right to privacy, which is regulated by Art. 29 of the Constitution of KR.
- The right to sexual integrity, regulated by Art. 155 CC KR.

1.4. CONSEQUENCES FOR VICTIM

The victim suffered physical harm as a result of violent acts of a sexualized nature, as well as moral damage.

1.5. MEASURES TAKEN

The victim was provided with an initial consultation on human rights and the opportunity to contact law enforcement agencies.

CASE 2

2.1. CASE DESCRIPTION

The victim worked as a pharmacist in a private pharmacy. In June, he came out to his colleague. The director then informed the victim that he was being fired because of his sexual orientation, and used the insulting term «*f**got*». The director refused to pay the victim's wages, and added that the victim should be glad that he did not tell anyone about his SOGI. The victim went to the district police officer, and reported all the details of the incident. The district police officer physically attacked (slapped) the victim, and kicked him out, saying that he would arrest him.

2.2. GROUND ON WHICH DISCRIMINATION OCCURRED

Sexual orientation.

2.3. VIOLATED/RESTRICTED RIGHTS

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

- Arts. 2 and 83 of LC KR were violated (termination of an employment contract at the initiative of the employer). In addition, according to Art. 86, the victim was entitled to severance pay;
- The actions of the district police officer are a gross violation of Art. 3 and Art. 8 of the Law of KR «*On the internal affairs bodies of the Kyrgyz Republic*». His actions are classified as abuse of power under Art. 338 CC KR.

2.4. CONSEQUENCES FOR VICTIM

The victim suffered moral, material and physical harm.

CASE 3

3.1 CASE DESCRIPTION

The victim went to a hospital for a bloodletting procedure (hijama). At the hospital, he revealed his HIV status. The doctor rudely refused to carry out the procedure, arguing that the client could «*infect*» other patients. He also insulted the victim, saying: «*you look like a woman*», «*you can't have a partner*».

3.2 GROUND ON WHICH DISCRIMINATION OCCURRED

Sexual orientation, HIV status.

3.3 VIOLATED/RESTRICTED RIGHTS

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

- The right to respectful and humane treatment, and freedom from the humiliation of human dignity in connection with HIV status under Art. 6 of the Law of the Kyrgyz Republic «*On HIV/AIDS in the Kyrgyz Republic*»;
- Статья 13. Закона КР «*О ВИЧ/СПИДе в Кыргузской Республике*» закрепляет запрет на ограничение прав и стигматизацию ЛЖВ в образовательных и медицинских учреждениях.

3.4 CONSEQUENCES FOR VICTIM

The victim suffered moral harm.

3.5 MEASURES TAKEN

The victim was provided with psychological support and legal advice, but he refused to file a statement about the illegal actions of the medical specialist. He was referred to a friendly specialist for the desired procedure.

CASE 4

4.1 CASE DESCRIPTION

On July 2, M. was riding an intercity bus. On the way, a woman began asking M. improper questions: «*Are you a boy?*», «*Are you Kyrgyz?*», to which he replied in the affirmative. The questions continued in a more accusatory tone: «*When did the Kyrgyz start growing their hair out?*», «*When did the Kyrgyz start dressing like a girl?*», «*When did the Kyrgyz start wearing makeup?*», «*Why are your shorts torn?*». Another woman responded: «*Nowadays, all young people are going in the wrong direction, they have learned to live like Europeans, in Europe, there are a lot of f*gs*[8], *and he is also a f*g*». After this, the man standing behind M. punched him in the face and his nose began to bleed. The bus driver stopped, and asked M. to get off and take another vehicle.

4.2 GROUND ON WHICH DISCRIMINATION OCCURRED

Sexual orientation, gender expression.

4.3 VIOLATED/RESTRICTED RIGHTS

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

- The right to equality, which is regulated by Art. 189 CC KR;
- Inflection of less serious bodily harm, Art. 131 CC KR.

4.4 CONSEQUENCES FOR VICTIM

The victim suffered moral and physical harm.

4.5 MEASURES TAKEN

When contacted, M. was asked to file a statement, but he refused as he feared being outed.

[8] Improper term for gay men.

CASE 5

5.1 CASE DESCRIPTION

A is a trans* male sex worker. He met a man through a social network and agreed to meet at his apartment. The man showed up, already in a state of intoxication, and had an additional alcoholic drink with him. They drank together, and A. provided the services they had agreed to. Half an hour later, the client asked A. to provide additional sex services, A. agreed. While he was providing the sex services, A. felt uncomfortable and refused to proceed further. He asked the client to pay and leave. The client refused, arguing that the additional services had not been provided. A. tried to politely persuade the client, but he was already strongly intoxicated. A. tried to scare the client by saying that he would call the police, in response to which the client pulled out his SCNS employee ID card from his pocket. The offender then raped A.

5.2 GROUND ON WHICH DISCRIMINATION OCCURRED

Gender identity, involvement in sex work.

5.3 VIOLATED/RESTRICTED RIGHTS

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

- Right to sexual integrity regulated by Art. 155 CC KR.

5.4 CONSEQUENCES FOR VICTIM

The victim suffered physical and moral harm.

5.5 MEASURES TAKEN

The victim refused to write a statement, as he fears being outed and the reaction of relatives. He also does not trust law enforcement agencies. In addition, he fears possible pressure from the SCNS. Therefore, the victim only sought psychological support.

CASE 6

6.1 CASE DESCRIPTION

According to M., he went to a hospital to be tested for COVID-19. The doctor on duty at the hospital refused to see him and provide assistance, calling him *«sick, gay, AIDS-infected»*. One of the employees of the public organization came to the hospital where M. was. According to the employee, M. was in serious condition. He then met with the doctor on duty. The doctor reacted with aggression and tried to kick the employee out of the office. The employee said that he would file a complaint with various authorities. The doctor responded to this threat and explained the reason for the refusal: *«Look at him, why is he so thin, maybe he has AIDS; Look at his appearance – he looks gay, why do we Kyrgyz need these gays, you never know if he has AIDS, I can still be infected»*.

6.2 GROUND ON WHICH DISCRIMINATION OCCURRED

Sexual orientation, 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:

- Right to the protection of health under Art. 43 of the Constitution of KR and Art. 61 of the Law of KR «On the protection of the health of citizens of the Kyrgyz Republic»;
- The right to respectful and humane treatment, and freedom from the humiliation of human dignity in connection with HIV status provided for by Art. 6 of the Law of the Kyrgyz Republic *«On HIV/AIDS in the Kyrgyz Republic»*;
- Art. 13 of the Law of KR *«On HIV/AIDS in the Kyrgyz Republic»* prohibits the restriction of the rights of and stigma in relation to PLH in educational and medical institutions.

6.4 CONSEQUENCES FOR VICTIM

The victim suffered physical and moral harm.

6.5 MEASURES TAKEN

The employee managed to find a friendly specialist who examined the victim and prescribed him treatment. However, he refused to file a complaint against the doctor on duty, as he is afraid of being outed to his relatives.

CASE 7

7.1 CASE DESCRIPTION

The victim lived in Moscow with his sister and her husband. He invited his friend over while his relatives were not in the apartment. The sister, who had forgotten her purse, returned to find the two of them. The woman reacted aggressively, and physically attacked them. She told all her relatives about what she saw. On the phone, their father threatened to kill the victim as soon as he returned back to Kyrgyzstan. His sister forced him to stay locked up at home. A week later, he was forcibly sent back to Kyrgyzstan. His parents met him at the airport. At home, the father beat the victim until he lost consciousness, and threatened to marry him off. The young man contacted the organization and said that his safety and life were threatened, and that his family was preparing to marry him off.

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:

- Right to the inviolability of one's private life and the protection of honor and dignity according to Art. 29 of the Constitution of KR;
- Right to freedom of movement, and choice of place of residence according to Art. 31 of the Constitution of KR;
- The actions of the client's relatives are considered within the framework of the CC KR, Art. 177 «*Domestic violence*», Art. 174 «*Coercion of a person to enter into marriage*», Art. 169 «*Unlawful deprivation of liberty*», which regulates actions to restrict liberty, as well as Art. 138 «*Torture*».

7.4 CONSEQUENCES FOR VICTIM

The victim suffered physical and moral harm.

7.5 MEASURES TAKEN

The victim refused to pursue the legal resolution of the case.

CASE 8

8.1 CASE DESCRIPTION

The victim met a man who invited him to his home. When the victim entered the bedroom, two men in police uniforms came out of another room, and began to insult, humiliate and blackmail the victim by threatening to out him if he did not pay them 100,000 soms[9]. At the same time, they took the victim's phone and filmed everything that was happening. The victim, accompanied by the policemen, went to the nearest ATM, withdrew the money, and gave it to them. The policemen then returned his phone and other personal belongings.

8.2 GROUND ON WHICH DISCRIMINATION OCCURRED

Sexual orientation.

8.3 VIOLATED/RESTRICTED RIGHTS

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

- Abuse of power under Art. 338 CC KR;
- Extortion under Art. 208 CC KR;
- Unlawful detention under Art. 191 CC KR.

8.4 CONSEQUENCES FOR VICTIM

The victim suffered moral and material harm.

8.5 MEASURES TAKEN

The victim turned to a public organization the day after the incident with a request for financial assistance. He was given legal advice and was asked to file a statement, but he was too scared. The victim was forced to move to another city and interrupt his education in Osh.

[9] Approximately 1200 USD according to the current exchange rate in KR.

CASE 9

9.1 CASE DESCRIPTION

The victim wanted to get a job as a waiter at a local cafe. At the first meeting with the victim, the administrator, after looking at his documents, made inappropriate remarks about his appearance, saying that cafe employees should not wear jewelry. In addition, the victim was asked for a certificate stating that he was free of HIV and STIs. The victim turned to a public organization because he did not know where to get such a certificate.

9.2 GROUND ON WHICH DISCRIMINATION OCCURRED

Sexual orientation.

9.3 VIOLATED/RESTRICTED RIGHTS

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

- Right to freedom of labor, and the use of one's abilities for work under Art. 42 of the Constitution of KR;
- According to Art. 8 of the Law of KR *«On HIV / AIDS in the Kyrgyz Republic»*, employers do not have the right to require employees to submit an official medical report on HIV testing.

9.4 CONSEQUENCES FOR VICTIM

The victim suffered moral and material harm.

9.5 MEASURES TAKEN

It was explained to the victim that employers do not have the right to request such certificates. In addition, according to the victim, the administrator insulted him in front of the cafe staff. In order to resolve this issue, the victim was referred to a friendly lawyer, but he did not contact him in the end.

CASE 10

10.1 CASE DESCRIPTION

The victim was called by an epidemiologist who said that he had been diagnosed with HIV, as well as with hepatitis B and C. After a long discussion, the client revealed to the doctor that he had had sexual contact with men, and currently had a regular partner. The epidemiologist said that the young man needed to come to for an appointment, and get medicine when he is called. Two days later, another doctor called him and asked him to come in for an appointment. At the reception, she was rude, and insulted and humiliated him. The woman forced the victim to disclose the personal data of his partners, and also threatened to inform his parents about his status and sexual orientation if he did not bring his regular partner to the appointment.

10.2 GROUND ON WHICH DISCRIMINATION OCCURRED

Sexual orientation, HIV status.

10.3 VIOLATED/RESTRICTED RIGHTS

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

- The right to respectful and humane treatment, and freedom from the humiliation of human dignity in connection with HIV status provided for by Art. 6 of the Law of the Kyrgyz Republic *«On HIV/AIDS in the Kyrgyz Republic»*;
- Art. 13 of the Law of KR *«On HIV/AIDS in the Kyrgyz Republic»* prohibits the restriction of the rights of and stigma in relation to PLH in educational and medical institutions;
- The actions of the doctor are considered as the improper performance of the professional duties of a medical worker under Art. 146 CC KR.

10.4 CONSEQUENCES FOR VICTIM

The victim suffered moral harm.

10.5 MEASURES TAKEN

The victim asked for a consultation, but refused to file a complaint in connection with the doctor's actions. At the moment he is registered with another medical institution and is receiving ARV drugs.

CASE 11

11.1 CASE DESCRIPTION

The victim is a queer Muslim. Under pressure from relatives, he agreed to a 40-day daawat[10]. He left his phone and went to perform the namaz[11]. His phone was found by a fellow Muslim, who went through his social networks and read his private messages. After the namaz, the man accused the victim of being homosexual and informed the moldo[12]. The two of them beat the victim and threatened to inform the whole village about his orientation after the end of the daawat. The victim managed to escape and seek help.

11.2 GROUND ON WHICH DISCRIMINATION OCCURRED

Sexual orientation, HIV status.

11.3 VIOLATED/RESTRICTED RIGHTS

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

- Right to the inviolability of one's private life and the protection of honor and dignity according to Art. 29, para. 1 of the Constitution of KR;
- Right to secrecy of correspondence, telephone and other conversations, postal, telegraphic, electronic and other communications – Art. 29, para. 3 Constitution of KR;
- Inflection of less serious bodily harm, Art. 131 CC KR.

11.4 CONSEQUENCES FOR VICTIM

The victim suffered moral and physical harm.

11.5 MEASURES TAKEN

The victim did not want to contact law enforcement agencies. He asked for assistance with accommodation in a shelter, as he was planning to move to Russia. It is located in another city in relative safety.

[10] Islamic sermon.

[11] Five daily prayers of Islam.

[12] Islamic cleric.

CASE 12

12.1 CASE DESCRIPTION

The victim met a visitor from Russia on a social network. The Russian man invited him to his hotel room. The next morning, someone knocked on the door of the room and said that they were delivering Meow (drugs). One of them opened the door, and two men entered the room, who showed police IDs and said that the two young people were being detained for using illegal drugs. The victim began to deny his involvement in this, and said that his new friend was the one having the drugs delivered. The policemen did not listen to him and hit him in the stomach several times. The Russian managed to negotiate with them so that they would be released, and gave them 3,800 rubles[13]. The policemen let them go after photographing their passports. However, as they were leaving, the law enforcement officers again began to threaten to open a case against the victim for dealing drugs.

12.2 GROUND ON WHICH DISCRIMINATION OCCURRED

Sexual orientation, drug use.

12.3 VIOLATED/RESTRICTED RIGHTS

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

- The right to liberty and security of person under Art. 59. para. 1 of the Constitution of KR. According to paragraph 3, no one can be detained, taken into custody, or deprived of liberty, except by a court decision and only on the grounds and in the manner established by law;
- Abuse of power under Art. 338 CC KR;
- Extortion under Art. 208 CC KR.

12.4 CONSEQUENCES FOR VICTIM

The victim suffered physical and moral harm.

[13] Approximately 50 USD.

CONCLUSIONS AND RECOMMENDATIONS

In total, ECOM monitors recorded 31 cases of violations of the rights of LGBT people in Kyrgyzstan in 2022. Of these, 12 cases relate to discrimination by medical personnel; the majority of the victims are PLH. In all cases, medical staff who found out about a victim's SOGI or HIV status used derogatory language, and, in some cases, refused to provide necessary medical services.

7 cases relate to "fake dates" organized by law enforcement agencies and a hate group. Law enforcement officers met the victims through social networks, invited them on a date, and in almost all of the cases, subjected the victims to extortion, blackmail, threats of outing, and insults. In one of the cases, an employee of the SCNS committed violent acts of a sexual nature against the victim.

In 4 cases, violations were committed by employers; in 3 cases, the victims were fired or forced to quit because of their SOGI or HIV status, in 1 case, the potential employer required a certificate of HIV status. In all 3 cases, dismissals were accompanied by insults and derogatory remarks from management or colleagues.

Another 6 cases relate to different types of violations under different circumstances; in 2 of them, queer people were victims of domestic violence due to their SOGI.

In general, the victims are PLH, who are often also LGBT people. The second category of victims are homosexual men of different ages who are looking for partners on social networks.

Generally, offenders are employees of medical institutions, as well as representatives of law enforcement agencies.

Of all the cases analyzed, in only one instance did the victim turn to law enforcement agencies before contacting a public organization. However, even in this case, the law enforcement officer responded with physical violence. In all cases, the victims either feared being outed or did not trust law enforcement agencies, and, therefore, refused to filed statements.

THE KYRGYZ REPUBLIC

- Include health status (HIV status), sexual orientation and gender identity as protected grounds in the draft law «On ensuring the right to equality and protection from discrimination»;
- Conduct training activities for law enforcement officers and medical workers providing services for LGBT people and PLH.
- Promptly and effectively investigate any allegations of violence or intolerance motivated by sexual orientation, gender identity, or HIV status;
- Establish an effective and friendly mechanism for gender transition for trans* people;
- Conduct monitoring of violations of the right to labor in relation to PLH.

CIVIL SOCIETY ORGANIZATIONS

- Document cases of violations of the human rights of LGBT people and PLH;
- Publish such data in open sources;
- Carry out advocacy to restore the right of trans* people to legal gender recognition;
- Support communities in conducting strategic litigation to restore rights and freedoms.


ECOM