



NATIONAL REPORT

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

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ACRONYMS 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

RT Republic of Tajikistan

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 Tajikistan, 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 Republic of Tajikistan is distinguished by a certain inaction in terms of creating favorable conditions for LGBT people. This is demonstrated by the weakness of legislation related to trans* people, the way information is presented in the media, and by the low number of alternative reports from civil society. In 2022, the Parliament of Tajikistan adopted the «**Law on equality and the elimination of all forms of discrimination**»¹, which is a great achievement for the country in terms of human rights protection. However, this was the only positive legislative change that took place in Tajikistan in 2022.



ANTI-DISCRIMINATION LEGISLATION

In 2022, the Parliament of Tajikistan adopted the «*Law on equality and the elimination of all forms of discrimination*»². The bill introduced new concepts such as: «direct» and «indirect» discrimination, «sexual harassment», «segregation», and «victimization».

The Commissioner for Human Rights was established as the authorized state body for ensuring equality and preventing all forms of discrimination. The Commissioner provides expertise in relation to non-discrimination when reviewing draft normative and legal acts.

Despite the fact that a wide range of civil society representatives, activists, human rights defenders, and representatives of international organizations and diplomatic missions were involved in the process of developing and adopting this law, it does not mention SOGI in the list of protected grounds. However, LGBT people and activists face persecution: law enforcement agencies seize devices and copy correspondence, contacts, and photos for purposes of blackmail and extortion.

Article 14 of the Law of RT «*On public associations*» bestablishes restrictions on the establishment and activities of NGOs: «*It is prohibited to establish and operate a public association that infringes on the rights and legitimate interests of citizens, and on people's health and **public morality***»³. Given the use of the concepts of «**public morality, traditional values**» against LGBT people in EECA, it is likely that this article can be used to restrict the registration of LGBT initiatives. The few organizations working to protect the rights of LGBT people complain about the community's fear of turning to human rights defenders⁴ for help, as many prefer to remain silent, and lead a double life or leave the country in search of freedom and livelihood.

¹ URL: http://ncz.tj/system/files/Legislation/1890_ru.pdf

² URL: https://online.zakon.kz/Document/?doc_id=34667551&pos=4;-90#pos=4;-90

³ URL: <https://cutt.ly/a0tz0FI>

⁴ URL: <https://en.hromadske.ua/posts/fear-humiliation-and-torture-how-lgbt-people-live-in-tajikistan>



LEGISLATION IN THE FIELD OF HIV PREVENTION

Article 163 of the Healthcare Code of RT provides that people living with HIV have a number of rights, including the right to be treated humanely by society, free from the humiliation of human dignity; the right to demand that their HIV status and other information be kept confidential; the right to free HIV treatment and care; and protection against discrimination during treatment. Healthcare institutions and healthcare workers are prohibited from refusing care to PLH⁵. Based on this, gay, bisexual and trans* people have the right to an adequate, healthy standard of living in Tajikistan, which must be ensured by the government without discrimination. However, the high level of social stigma and discriminatory practices of medical institutions and law enforcement agencies in relation to LGBT people hinder their right to health and, in turn, violate the right to an equal standard of living⁶.

The number of people covered by HIV testing in the country is increasing every year. Data on testing is available in open sources⁷. Coverage rates of key populations by prevention programs indicate a low percentage of coverage among MSM⁸ and sex workers as a percentage of their estimated numbers. A possible barrier to services is the high level of stigma and discrimination in relation to key populations. According to experts, this may be due to a decrease in the number of outreach workers in projects.

Despite the fact that testing coverage rates are increasing every year, the quality of the work of institutions leaves much to be desired. Human rights organizations document cases of violations of confidentiality, and manifestations of stigma and discrimination against members of the LGBT community and PLH.



CRIMINALIZATION OF HIV TRANSMISSION

Article 125 CC RT establishes criminal liability not only for the transmission of HIV, but also for **«knowingly placing another person at risk of infection»**. It is not clear whether this article applies when the informed consent of the other sex partner is obtained, or when precautionary measures in the form of ARV treatment and condoms are used. Thus, all persons living with HIV who have sex can be held criminally liable, which violates their right to sexual health. When a criminal case is initiated under this article, the HIV status of both the suspect and the victim is simultaneously revealed.

The existence of criminal liability, even in the absence of any data on the actual application of this provision, opens the door to blackmail, stigmatization, and intimidation of PLH and communities vulnerable to HIV, including gay and other MSM and trans* people.

⁵ The Healthcare Code. – URL: https://online.zakon.kz/Document/?doc_id=38514256#pos=1604;-36

⁶ URL: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/SessionDetails1.aspx?SessionID=1395&Lang=en

⁷ URL: <http://nac.tj/ru/statistika/>

⁸ URL: <https://harmreductioneurasia.org/wp-content/uploads/2022/06/TMT-Assessment-Report-Tajikistan-EH-RA-2021-RUS.pdf>

Furthermore, there are no effective mechanisms for registering and investigating complaints related to the actions of both medical professionals and law enforcement officials. Without any changes, such cases will remain in the shadows and will only be recorded as part of monitoring of the human rights situation. In addition to the fear of criminal liability, many gay men, other MSM, and trans* people in Tajikistan live in fear of disclosing their status to relatives and friends, which also results in their reluctance to seek medical care and/or undergo HIV testing.



LEGAL GENDER RECOGNITION

Certain regulatory documents enshrine the concept of «*discrimination*» and prohibit discrimination in labor relations⁹. Current legislation¹⁰ also contains terms such as «*gender*», «*gender policy*», «*equal opportunities*» and «*gender equality*», the use of which, even exclusively in the text of laws, is a rarity among EECA countries.

However, such terms only apply to cisgender men and women, and do not apply to trans* people. In Tajikistan, trans* people face significant barriers, ranging from the inability to receive quality medical care to the inability to change their gender marker in documents, to constant harassment, blackmail and extortion by law enforcement agencies.

Tajikistan has a partial, legislatively approved procedure regulating 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*»¹¹ (Chapter 9, Article 74), which provides that the relevant institution can make corrections, amendments, or additions to civil status records if «*a document of the established form on the change of sex issued by a medical organization is presented*». Due to the lack of a clear mechanism for transgender transition, the responsible authorities may require a person to undergo gender affirming surgical operations. There are isolated cases where trans* people manage to change their documents. However, even if they wish to undergo a medical intervention, trans* people are forced to go abroad¹² or take hormone therapy on their own without a doctor's prescription, due to the lack of medical specialists in the country¹³. Only a few people have managed to undergo gender affirming operations in the Republic of Tajikistan¹⁴.

⁹ Labor Code of the Republic of Tajikistan, Articles 4, 5, 6.

¹⁰ URL: http://ncz.tj/system/files/Legislation/89_ru.pdf

¹¹ URL: http://www.adlia.tj/show_doc.fwx?Rgn=7248

¹² URL: <https://ilga-europe.org/report/annual-review-2019/>

¹³ URL: <https://theopenasia.net/ru/post/ya-pyталas-sdelat-operatsiyu-sama-istoriya-tadzhikskogo-transgendera>

¹⁴ URL: <https://iphronline.org/wp-content/uploads/2017/06/LGBT-ru-for-web.pdf>

DESCRIPTIVE REPORT OF CASES

CASE 1

1.1. CASE DESCRIPTION

X. received a call from the Khujand police, who ordered him to go to the station without explaining the reasons. The victim refused, and in response, was threatened and insulted by the callers. A few days later, unknown men forcibly took X. to the police station. Several officers interrogated X. in order to find out about his sexual partners, about gay people he knows in the city, and whether there were any wealthy people among them. They seized the victim's phone, copied his contacts, and checked his social networks. They also subjected the victim to torture and physical violence for 10 hours, and extorted money from him.

1.2. GROUNDS ON WHICH DISCRIMINATION OCCURRED

Sexual orientation of the victim.

1.3. VIOLATED/RESTRICTED RIGHTS

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

- Law of RT of 19 June 2022 N1890 «*On equality and the elimination of all forms of discrimination*»¹⁵;
- Art. 23 of the Constitution of RT, which ensures the secrecy of correspondence, telephone conversations, telegraphic and other personal communications, except as provided by law¹⁶;
- Art. 358 CC RT, which prohibits unlawful arrest or detention¹⁷;
- Art. 143.1 CC RT, which prohibits torture¹⁸;
- Art. 316 CC RT, which prohibits abuse of official position¹⁹.

¹⁵ URL: https://online.zakon.kz/Document/?doc_id=35098909&pos=15;-56#pos=15;-56

¹⁶ Id., Article 23.

¹⁷ URL: https://eurasiangroup.org/files/Legislation_RUS/Tadjikiston/supervision/4/UGOLOVNYJ_KODEKS_RESPUBLI-KI_TADZHIKISTAN.pdf

¹⁸ Id., Article 143.

¹⁹ Id., Article 316.

1.4. CONSEQUENCES FOR VICTIM

Moral and physical harm.

1.5. MEASURES TAKEN AND THEIR CONSEQUENCES

The victim did not want to seek legal assistance due to fear of disclosing his SOGI.

CASE 2

2.1. CASE DESCRIPTION

X. went to the district AIDS center for an HIV test on referral from an organization that deals with prevention among MSM. Accordingly, when a person comes with a referral from the organization, the coding of clients is most often indicated. In this case, MSM are registered in AIDS centers with the code 103. Several years ago, the Ministry of Health of the Republic of Tajikistan prohibited the acceptance of anonymous HIV tests, and now, when a person undergoes testing, all data from their passport is recorded. X. was diagnosed with HIV. When X. returned home, his brother jumped on him and beat him, calling him a «*nasty f**got*». It turned out that someone from the AIDS center told his brother that X. was diagnosed with HIV, and explained which people are recorded under code 103. As a result, X. had to leave his home, and is now looking for housing in Dushanbe, since he cannot stay in his city after this incident, and fears for his life.

2.2. GROUNDS ON WHICH DISCRIMINATION OCCURRED

HIV status, 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:

- Law of RT of 19 June 2022 N1890 «*On equality and the elimination of all forms of discrimination*»;
- Art. 163.1 Healthcare Code of RT: «*...confidentiality of information about one's health condition*»;
- Art. 145 CC RT, which prohibits the disclosure of confidential medical information.

2.4. CONSEQUENCES FOR VICTIM

Moral damage.

2.5. MEASURES TAKEN AND THEIR CONSEQUENCES

The victim was provided with psychological and legal assistance. The case is under investigation.

CASE 3

3.1 CASE DESCRIPTION

Representatives of law enforcement agencies came to the apartment of victim X. and extorted 5,000 so-
monis²⁰ from him. Police officers blackmailed the victim and three other MSM who were in the apartment
by accusing them of being involved in sex work. That same night, the police officers took them to the po-
lice station, where they were subjected to physical violence and torture. Then, at 3 am, X. was taken to his
mother, who was told that her «son was dressing up as a woman and engaging in prostitution». In shock,
X. injured himself with a blade.

3.2 GROUNDS ON WHICH DISCRIMINATION OCCURRED

Sexual orientation of the victim, sex work.

3.3 VIOLATED/RESTRICTED RIGHTS

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

- Law of RT of 19 June 2022 N1890 «*On equality and the elimination of all forms of discrimination*»;
- Art. 5 Constitution of RT, which provides that man, his rights, and freedoms are the highest value;
- Art. 358 CC RT, which prohibits unlawful arrest or detention;
- Art. 143.1 CC RT, which prohibits torture;
- Art. 316 CC RT, which prohibits abuse of official position.

3.4 CONSEQUENCES FOR VICTIM

Moral and physical harm.

3.5 MEASURES TAKEN AND THEIR CONSEQUENCES

The victim did not want to seek legal assistance.

²⁰ Approximately 500 USD.

CONCLUSIONS AND RECOMMENDATIONS

In total, in 2022, ECOM documented 22 cases of violations of the rights of LGBT people in the Republic of Tajikistan, of which most relate to the right to equality and freedom from discrimination. The most common victims are gay men, other MSM and trans* women. The documented violations of rights are based on the grounds of sexual orientation and gender identity. Furthermore, an analysis of certain cases demonstrates instances of multiple forms of discrimination, where the basis for discrimination is the sexual orientation/gender identity of the victim and their involvement in sex work, or, in some cases, the sexual orientation of the victim and their HIV status or involvement in activism. As a result, non-heterosexual people are afraid to go to health institutions for any type of medical care, or to law enforcement agencies for protection, as they fear further abuse and victimization.

In 2022, other organizations documented a total of 70 cases of violations of the rights of LGBT people in RT. In most cases, the offenders were private individuals, which confirms the existence of stigma and discrimination in relation to gay men, other MSM and trans* people in Tajikistan. The second largest number of rights violations are committed by representatives of law enforcement agencies, followed by staff of medical institutions.

LGBT people hide their sexual orientation or gender identity in everyday life to avoid further discrimination. Fear of stigmatization and the loss of relationships with relatives in case they find out about a person's SOGI, HIV status, or involvement in sex work, are mainly linked to the high level of homophobia and transphobia in society. Government officials, in particular law enforcement agencies, violate the rights of LGBT people, which leads to the fact that many victims prefer to «keep silent» and are afraid to seek help.



THE REPUBLIC OF TAJIKISTAN

Should continue to work on 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*»;
- Conduct training activities for law enforcement officers and medical workers providing services for LGBT people;
- Promptly and effectively investigate any allegations of violence or intolerance motivated by sexual orientation and gender identity;
- Establish a clear and friendly mechanism for gender transition for trans* people;
- Establish an accessible registration procedure for NGOs, including NGOs providing services to PLH and LGBT people, and guarantee their access to competitions for funding from national and local budgets on an equal basis with other NGOs.



CIVIL SOCIETY ORGANIZATIONS

- Join the working group on the development of an anti-discrimination law, and provide the necessary arguments for including protected grounds, such as HIV status, sexual orientation and gender identity, in the law;
- Analyze the situation in the country relating to the ban on adoption and medical education for PLH, prepare proposals for the government of the Republic of Tajikistan to repeal these bans;
- Initiate the development of a procedure for legal transgender transition, by preparing initial draft proposals and taking into account the transparency and accessibility of this procedure;
- Collect disaggregated data on the number of complaints of discrimination, including HCs based on various grounds, including SOGI, and publish such data, along with information on what measures the government has taken to punish and prevent such human rights violations.

