



Regional report

on violations of the right to health of
gay men, other MSM and trans people
in the CEECA region in 2017



Yoursky Y., Koblikov, I., Kosenko. V. Regional Report on Violations of the Right to Health of gay men, other MSM and trans people in the CEECA region in 2017. Eurasian Coalition on Male Health (ECOM). – Tallinn, 2018. – 24 pages.

The information presented in this document may be useful for non-governmental organizations, community activists, and government representatives in planning advocacy processes and in promoting the rights of gay men, other MSM and trans people, as well as in overcoming barriers that limit their access to services.

The authors would like to express their sincere gratitude to Alexandr Poluyan and Vitaly Djuma for their substantial assistance in the preparation of the report.



This publication was prepared and published under both the regional program "Right to Health", implemented by the Eurasian Coalition on Male Health with support from the Global Fund to Fight AIDS, Tuberculosis and Malaria, and the project "Together for Our Rights", implemented by the Eurasian Coalition on Male Health (ECOM) with support from the MPact Global Action for Gay Men's Health and Rights.

The views described herein are the views of the authors, and do not represent the views or opinions of The Global Fund to Fight AIDS, Tuberculosis & Malaria, or the views or opinions of MPact.



Free distribution

When using these materials, a citation to the Eurasian Coalition on Male Health (ECOM), the Global Fund to Fight AIDS, Tuberculosis and Malaria, and to the MPact Global Action for Gay Men's Health and Rights is mandatory.

EURASIAN COALITION ON MALE HEALTH

Regional Report

on Violations of the Right to Health of
gay men, other MSM and trans people
in the CEECA Region in 2017

Yuri Yoursky | Igor Koblikov | Volodymyr Kosenko

Tallinn

List of Abbreviations

AIDS	Acquired immune deficiency syndrome
CEECA	Central and Eastern Europe and Central Asia
CESCR	Committee on Economic, Social and Cultural Rights
ECOM	Eurasian Coalition on Male Health
HIV	Human immunodeficiency virus
ICESCR	International Covenant on Economic, Social and Cultural Rights
LGBT	Lesbian, gay, bisexual, and transgender people
MSM	Men who have sex with men
NGO	Non-governmental organization
PLHIV	People living with HIV
Trans	Describes a person who identifies themselves as transgender, non-binary, or gender nonconforming, including, but not limited to, transsexual, gender-queer, gender-fluid, non-binary, agender, bigender.
UN	United Nations
WHO	World Health Organization

Introduction

This Regional Report on Violations of the Right to Health of gay men, other MSM and trans people in the CEECA Region, prepared by ECOM in 2017, illustrates the legal barriers that limit the opportunities of gay men, other MSM and trans people to fully realize their right to health in CEECA countries.

The right to the highest attainable level of physical and mental health is one of a number of fundamental human rights [1]. This right is complex and is fulfilled not only by the availability of opportunities to realize it, but also by the proper fulfillment by the state of its duties to respect, fulfill, and protect this right. The principles of equality and non-discrimination are important components of the right to health.

Reports published by ECOM's partners were used in the preparation of this report. These reports document human rights violations in 2017 in Armenia (Humanitarian NGO "New Generation"), Belarus (Republican Public Youth Organization "Vstrecha"), Georgia (NGO "Equality Movement"), Kyrgyzstan (LGBT Initiative Group "Yug-Antilopa", Public Organization "Kyrgyz Indigo"), Macedonia (Association for Support of People Living with HIV "Stronger Together", NGO "EGAL", the first association of sex workers in the Balkans "STAR-STAR"), Russia ("Positive Wave" Foundation), Tajikistan (Public Organization "Equal Opportunities") and in Ukraine (Public Organization "Alliance.Global", Zaporizhia Charitable Foundation "Gender Zed"). This work was carried out under both the regional program "Right to Health", implemented by the Eurasian Coalition on Male Health with support from the Global Fund to Fight AIDS, Tuberculosis and Malaria, and the project "Together for Our Rights", implemented by the Eurasian Coalition on Male Health, with support from the MPact Global Action for Gay Men's Health and Rights.

Summary and key recommendations

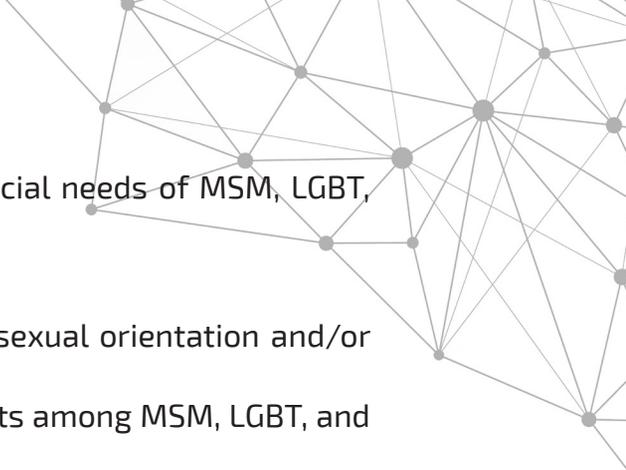
In the countries of Central and Eastern Europe and Central Asia (CEECA), gay men, other MSM and trans people are key populations affected by the HIV epidemic, and often do not have access to necessary medical services. Meanwhile HIV prevalence among these populations continues to rise. [2]

In 2017, monitoring of human rights violations, in particular violations of the right to health, was carried out by the LGBT community in 5 countries in the CEECA region as part of the regional program "Right to Health", implemented by the Eurasian Coalition on Male Health (ECOM). In 2017, 35 such cases were documented. The most common cases of violations of the right to health involve the adoption of discriminatory legislation, including both general laws (for example, "prohibitions on gay propaganda"), and ones aimed at the protection of public health (for example, preventing the spread of HIV through criminal legislation), through which the right to health of marginalized groups is indirectly limited. It is worth noting the complete or partial lack of health services, for example restricted access to or the inaccessibility of medical facilities and services for trans people (physical inaccessibility of healthcare facilities, the high cost of medicines, the lack of information about HIV in public health institutions). Cases involving the provision of substandard services and failures by the staff of health institutions to uphold the principles of confidentiality and medical ethics are widespread. Direct discrimination towards marginalized groups, who face discriminatory practices and other rights violations when obtaining health services, is also common, which leads to significant adverse consequences for their physical, mental and social well-being.

High levels of homophobia and transphobia, social stigma, discriminatory legislation, and non-fulfillment by states of their obligations all act as primary constraints to the realization of the right to health.

The following recommendations were developed for decision-makers on the basis of the collected information in order to improve the access of gay and bisexual men, other MSM and trans people to medical services:

- Ensure the availability, accessibility, acceptability, and quality of health institutions, goods, and services in accordance with the principles of equality and non-discrimination;
- Adopt effective legislative, budgetary, judicial, and other measures that promote the realization of the right to health of gay men, other MSM and trans people;
- Introduce anti-discrimination legislation, taking into account the availability and effectiveness of mechanisms aimed at protecting rights and bringing those violating rights to justice;
- Eliminate legal and administrative barriers to the creation and operation of HIV-service and LGBT organizations;
- Conduct campaigns aimed at raising awareness among staff of health-care systems in order to reduce stigma and discrimination towards MSM, LGBT, PLHIV;

- 
- Take appropriate measures to ensure that the special needs of MSM, LGBT, and PLHIV are met with respect to health services.

For community organizations:

- Demand protection from discrimination based on sexual orientation and/or gender identity;
- Raise awareness and knowledge about human rights among MSM, LGBT, and PLHIV;
- Identify and document cases of discrimination, stigma, and violence motivated by homophobia and/or transphobia.

1. Right to health

In the international context, the right to health was first established in the WHO Charter (Constitution) in 1946. Health implies a state of complete physical, mental, and social well-being, and not just the absence of disease and physical defects. According to the WHO Charter (Constitution), the enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being [3].

Later, in 1948, the right to health was indirectly mentioned in Article 25 of the Universal Declaration of Human Rights as a component of the right to an adequate standard of living [1].

However, the most comprehensive provisions on the right to health are found in the International Covenant on Economic, Social and Cultural Rights (ICESCR), in which Article 12 recognizes the right of every person to the highest attainable standard of physical and mental health [4].

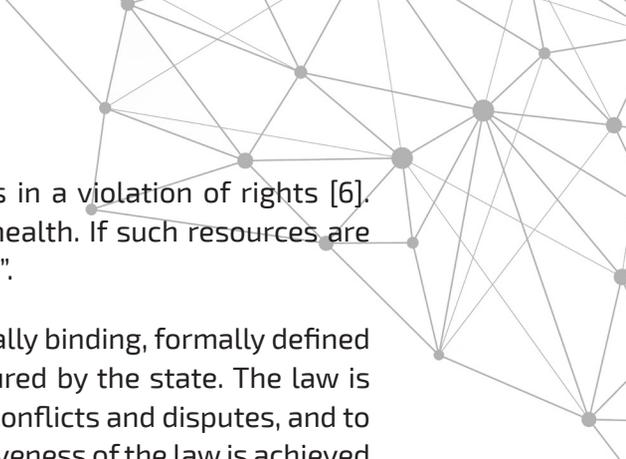
The realization of the right to the highest attainable standard of health directly depends on the state. The state must provide every person with a real opportunity to achieve the highest level of health. **The right to health** in all its forms and at all levels stipulates that all health institutions, goods, and services should be available, accessible, acceptable, and of high quality.

Elements of the right to health

1. The state must have a sufficient number of functioning institutions, goods, and services in the field of public health and medical care, as well as relevant programs.
2. Health institutions, goods, and services should be accessible (both physically and from an economic point of view), based on the principle of non-discrimination. Information about health issues should also be available.
3. Acceptability is based on compliance with the principles of medical ethics, maintaining confidentiality, and on improving health.
4. Quality implies compliance with appropriate scientific and medical standards, which is achieved, in part, with the assistance of qualified medical professionals [5].

The possibility of everyone to realize the right to health is achieved by an appropriate level of compliance by the **state with its obligations** to respect, protect, and fulfill rights. These obligations are aimed at ensuring the availability, accessibility, acceptability and quality of health institutions, goods, and services, and require the state to:

1. Refrain from interfering in the enjoyment of rights (respect);
2. Take appropriate legislative, administrative, budgetary, judicial, and other measures for the full realization of rights (fulfill);
3. Prevent violations of such rights by third parties (protect).



Failure to comply with any of these three obligations results in a violation of rights [6]. Sufficient state resources are needed to realize the right to health. If such resources are limited, positive rights can only guarantee “equality in poverty”.

From an objective point of view, the law is a system of universally binding, formally defined rules of conduct that are established or sanctioned, and secured by the state. The law is called upon to support a certain order, to prevent and resolve conflicts and disputes, and to regulate the activities of the state. At the same time, the effectiveness of the law is achieved not only by its consolidation in legislative norms, including in international law, but also by the creation of systems of law enforcement and judicial bodies, and by the development of certain rules for their activities.

Thus, practically speaking, the law is not possible without the participation of the state and the existence of real, established mechanisms aimed at the application of legal norms, the resolution of disputes, the enforcement of rights, and the punishment of offenders [7]. Legality and the unavailability of legal responsibility is above all ensured by the uninterrupted and responsible activity of the state apparatus [8]. Such an interrelation between law (from an objective standpoint) and the state demonstrates that legal barriers to the realization of each person's subjective right to health (as a freedom) arise not only in connection with the presence or absence of legislatively mandated opportunities or restrictions in this sphere, but also in connection with the state's activities aimed at fulfilling its obligations. At the same time, the ineffectiveness of the state's activities aimed at ensuring human rights can testify to the ineffectiveness of the system of law. Accordingly, in order to illustrate the link between violations of the rights of marginalized groups (such as gay men, other MSM, and trans people) and existing legal barriers, it is possible to proceed from the extent to which the state complies with its obligations to *respect, protect and fulfill*. **The state fulfills and protects the right to health based on respect for dignity.**

2. Non-fulfillment of obligations to respect dignity, and to fulfill and protect rights, and violations of the right to health

These three duties are interrelated, complex, and include a number of aspects:

1. The duty to respect the right to health

requires the state to refrain from taking measures that prohibit or restrict equal access for all, including representatives of minorities, to health services, while refraining from discriminatory practices as a state policy [5].

1.1. Some laws, aimed at protecting public health indirectly contribute to the stigmatization of marginalized groups and to the formation of marginalized behavior among such groups.

The criminal legislation of most countries establishes liability for exposing someone to HIV infection (Armenia, Belarus, Georgia, Kyrgyzstan, Russia, Tajikistan, Ukraine). In this case, the subject of the crime are people living with HIV who know their status. In some countries (Kyrgyzstan), a person is absolved of criminal liability if they provide a timely warning about their HIV status and if the other person provides voluntary consent to the actions that created the danger of infection. In other countries, for example in Ukraine, this crime is considered a formal one, and is considered to have been committed from the moment the actions that created a danger of infection are completed.

Direct infection with HIV, committed intentionally or through negligence, is also criminally punishable. For example, in Macedonia, there is criminal liability for the transmission of an incurable infectious disease, which would most likely include the transmission of HIV [9].

The legislation of Belarus, among others, establishes administrative liability for concealing the source of an infection and/or for concealing a list of people with whom an infected person had sexual contact, as well as in cases where a person with an STI or a person “who had sexual intercourse with one” evades medical examination. The same rules regarding concealment and avoidance of medical examinations apply in similar cases to HIV-positive people and their partners [10].

Although these legislative norms focus on preventing the spread of HIV, the widespread use of administrative measures and criminal prosecution cannot prevent the transmission of HIV. Such a legislative approach is more likely to undermine the right to health and other human rights by indirectly interfering with respect for such rights, and also contributes to the stigmatization of and discrimination towards people living with HIV.

Various international organizations have repeatedly called for the application of criminal legislation only in the case of intentional HIV transmission, in other words when a person knows that he is infected with HIV, acts with the intent to transmit HIV, and actually transmits HIV.

1.2. The adoption of general legislative acts that discriminate against representatives of marginalized groups and limitations on the right to health can demonstrate the inadequate fulfillment of the obligation to respect dignity.

In 2013, the Code of Administrative Offenses of the Russian Federation was supplemented with Article 6.21, which establishes liability for the "propaganda of non-traditional sexual relations among minors" (prohibition of gay propaganda). This offense includes: 1) the dissemination of information among minors aimed at the formation of non-traditional sexual attitudes, promoting the attractiveness of non-traditional sexual relations, or at providing distorted views on the social equivalence of traditional and non-traditional sexual relations; 2) providing information about non-traditional sexual relations that causes interest in such relations [11].

One consequence of adopting this discriminatory provision is that public organizations and medical institutions become more cautious when disseminating information about HIV among gay men and other MSM.

“ Yunus Gaynullin, a doctor and psychotherapist at the Tatarstan AIDS Center noted: "HIV-positive gay men are increasingly stigmatized. I think that this is connected to an exacerbation of homophobic sentiments". The doctor stressed that earlier it was possible to freely distribute informational brochures about how to avoid infection during homosexual sex. "Now, frankly speaking, we are acting with more caution, since we are afraid that this educational literature now falls under the law prohibiting gay propaganda. You can now go to jail for such literature. Try to prove that this is not propaganda, but prevention." [12].

(Invisible Group. Problems with upholding the rights of HIV+ MSM. Monitoring Report of the "Positive Wave" Foundation in 2017. Russia.)

In 2012, the State Duma of the Russian Federation adopted amendments to the law "On non-profit organizations". In accordance with these amendments, the Ministry of Justice of Russia included several organizations working on HIV prevention in the register of non-profit organizations performing the function of a foreign agent, which are subject to additional duties and restrictions. As a result of government pressure, a number of non-profit organizations working in the field of HIV were forced to cease their activities [12].

1.3. At the same time, measures taken by the state to protect public health may have a negative impact on the implementation of other rights as well.

Russia is considering a draft law on compulsory and forced treatment of HIV. A proposed amendment to the Federal Law “On the prevention of the spread of disease caused by the human immunodeficiency virus (HIV) in the Russian Federation” would oblige people living with HIV who are on dispensary records and in need of treatment to undergo a timely medical examination in a medical organization and, if necessary, receive treatment medication. In addition, it is envisaged that such individuals may be subject by court decision to forced hospitalization for compulsory examination and treatment in the event of repeated violations of the sanitary-epidemiological regime or in the case of willful evasion from examination and treatment. Although the government has expressed negative views on this bill, so far it has not been withdrawn from consideration in the State Duma.

The adoption of such a bill may have consequences related to the violation of the right to liberty and security of person, as enshrined in Article 9 of the International Covenant on Civil and Political Rights [13].

In 2017, the government of Russia approved the “Rules for the Management of the Federal Register of Persons Infected with the Human Immunodeficiency Virus”. The introduction of these rules caused much criticism and concern about the possibility of widespread dissemination of information about the HIV status of people. Some people are giving up their access to healthcare out of concern for confidentiality and respect for their right to private life

“ “I want to withdraw from the register. The issue of the HIV-positive register is really concerning. I plan to go underground and self-medicate”. [12]

(Invisible Group. Problems with upholding the rights of HIV+ MSM. Monitoring Report of the “Positive Wave” Foundation in 2017. Russia.)

2. The obligation to implement

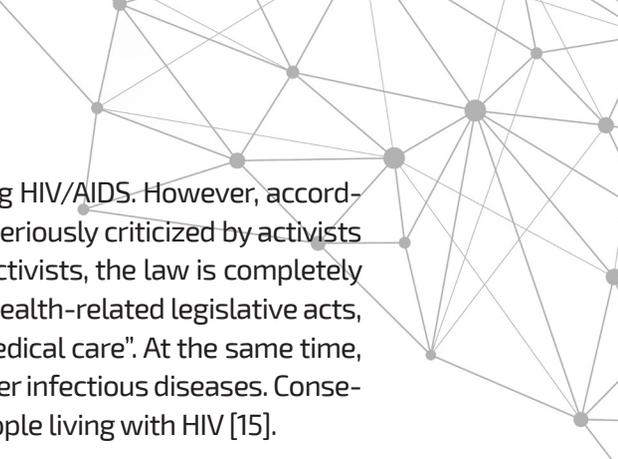
requires states to take measures to fully implement the right to health. Failing to take such measures or inaction on the part of the state is a violation [5].

2.1. In each of the CEECA countries, **the right to health is enshrined at the constitutional level.** At the same time, the Constitution of Georgia guarantees the right to use health insurance services as an affordable means of medical assistance, suggesting the possibility of receiving free medical care in cases prescribed by law [14].

In addition, these states have all joined the International Covenant on Economic, Social and Cultural Rights (ICESCR), in which Article 12 provides for the right of everyone to the highest attainable standard of physical and mental health [4].

Most of the countries of the region ensure the regulation of activities at the legislative level in the fields of prevention, treatment, care, and support, necessary to effectively counteract the spread of HIV, including appropriate measures for the legal and social protection of people living with HIV.

In 2009, the Parliament of Georgia also passed a law “On HIV/AIDS”. Its goal is to ensure the health of individuals and the security of the state and the public, as well as compliance with the require-



ments of Georgia's international treaties and agreements regarding HIV/AIDS. However, according to the NGO "Equality Movement", the adoption of this law was seriously criticized by activists and organizations working in the field of HIV. According to these activists, the law is completely useless, since all of its provisions are already established in other health-related legislative acts, such as the Laws of Georgia "On the rights of patients" and "On medical care". At the same time, there are no separate legislative acts or regulations concerning other infectious diseases. Consequently, the law may contribute to the further stigmatization of people living with HIV [15].

It is noteworthy that there is also no special law regulating issues related to combatting the spread of HIV in Macedonia. At the same time, the Law "On healthcare" is in force, which covers all legal aspects related to this area. In addition, the "National Program on the Protection of the Population from HIV/AIDS" has also been adopted [9]. Thus, people living with HIV do not stand out as a separate group of patients.

2.2. The obligation to fulfill also requires states **to ensure the provision of health services** (availability – as an element of the right to health) [5].

This primarily affects trans people who need competent medical care. This is especially true for those undergoing hormone therapy, which often begins and is carried out independently, which can have a negative impact on health.

“I am treating myself independently. I had no one to turn to and I prescribed drugs for myself. How? I spoke to endocrinologists who could not help me. They told me: “We do not work with this problem and do not know what to do about it. I cannot prescribe you a drug.” – And how did you decide a course of treatment for yourself? “Thanks to the internet and the experience of foreign doctors and trans people. Ordering these drugs is expensive, complicated, and everything is at your own risk”. – So they did not refuse you, they just did not know how to treat you? “One doctor refused, some advised something, while a third said: - We do not work on this, look. We do not know what to do.” [16]

(Report: "Stigma and discrimination towards gay and bisexual men, other MSM and trans people from healthcare workers", Public Organization "Alliance.Global", Ukraine).

In this context, the results of the study "Quality services without labels", conducted by the Zaporizhia Charitable Foundation "Gender Zed" (Zaporizhia, Ukraine), are indicative. The study comprises an assessment of the access of MSM to HIV counseling and testing services, and an assessment of the level of stigma and discrimination in healthcare institutions and HIV-service organizations in the Zaporizhia region in Ukraine. Only a third of the medical institutions visited during the study provide testing services. In 9 out of the 95 institutions, participants of the study were denied such services due to a lack of HIV testing services. However, patients were referred to private clinics or laboratories [17]. Such cases involve a failure to ensure an element of the right to health, such as the availability of services for MSM and the availability of a sufficient number of medical institutions.

2.3. When fulfilling the right to health, states should provide its relevant elements, such as **accessibility** (including physical, economic, and information accessibility) [5].

Physical accessibility implies that health institutions, goods, and services must be physically accessible to all groups of the population, especially marginalized groups [5].

The “Positive Wave” Foundation’s monitoring report, “Invisible Group. Problems with upholding the rights of HIV+ MSM” describes existing problems with receiving therapy and treatment for people living with HIV in Moscow who are not permanently registered in the city. From 2013-2014, such people were gradually denied enrollment in the city’s AIDS Center and were recommended to return to their regions for treatment. Many were registered with the Federal AIDS Center, which is also located in Moscow, but since the beginning of 2017, this center has stopped providing medication. As a result, more than 1,000 people from remote regions of Russia, the Far East, the Urals, and Siberia, have not received treatment. At the same time, officials state that no one is denying assistance to these people, but rather that they must simply receive services at their place of permanent registration, which means they must leave Moscow and lose their work opportunities.

“I had a temporary registration in the city. When the registration period ended, the doctor told me to bring a valid registration. I registered at the organization “Nochlezhka” as a person without a fixed residence. When I told this to the doctor, she suddenly changed her attitude towards me. At the next appointment, she told me that another doctor would be treating me. The attitude of this doctor towards patients like me was negative. I was told that the change of doctor is connected to another source of funding, whose funds are allocated to citizens of the relevant category”.

“The AIDS Center refused to treat me, since I do not have a permanent registration. The psychologist told me: - You cannot come here until you have a Moscow registration”.

“I am a Russian citizen. I am registered in the Novosibirsk region. I have a temporary Moscow registration for 1 year. I live in Moscow. I was denied registration with the Moscow City AIDS Prevention and Control Center of the Moscow City Health Department. I wrote to the Department of Health of Moscow and received a refusal. My situation is critical. My level of CD cells is very low and I have a high viral load. It is really time that I receive therapy”. [12]

(Invisible Group. Problems with upholding the rights of HIV+ MSM. Monitoring Report of the “Positive Wave” Foundation in 2017. Russia.)

Economic accessibility (affordability) means that access to health institutions, goods, and services should be affordable for all. [5]

“Transgender people face problems with the high cost and, consequently, the accessibility of hormonal drugs”. – Is this typical in Ukraine? “ Yes. Because few of them have official jobs, and there are other expenses to think about. As a result, hormonal drugs are always purchased according to a “residual principle”, because you need money for food, rent, utilities, and after this, there is practically nothing left for hormonal drugs. This doesn’t apply to everyone, but at least to the majority”. [16]

(Report: “Stigma and discrimination towards gay and bisexual men, other MSM and trans people from healthcare workers”, Public Organization “Alliance.Global”, Ukraine)

Information accessibility, includes the right to see, receive, and impart information concerning health issues [5].

Out of 32 health institutions, where HIV testing was conducted, 4 institutions did not provide information about HIV (12.5%). The results of the analysis conducted on the provision of counseling and testing services indicate that pre-test counseling is provided in only 53% of cases during HIV testing.

Participant of the study: *"The doctor did not respond to questions and did not want to listen to them. As an answer to the question: - How is testing conducted? - I received the answer: - By the finger, you were told this".* The patient was not shown the result of the test. It was communicated verbally in the corridor.

““ Participant of the study: "Counseling is extremely limited; the doctor was distracted by telephone conversations and discussions with a nurse". [17]

(Analysis of the results of the study "Quality services without labels" on the access of MSM to HIV counseling and testing services, and an assessment of the level of stigma and discrimination in health institutions and HIV-service organizations in the Zaporizhia region, Zaporizhia Charitable Foundation "Gender Zed", Ukraine).

2.4. States, fulfilling the right to health, must guarantee the provision of high-quality services in health institutions. This, among other things, requires the availability of qualified medical personnel, who must take into account the specific needs of marginalized groups (gay men, other MSM and trans people). [5]

““ "Doctors have the following problem with regard to trans people: they do not know according to which reference indicators to deem someone a man or woman. I recently went for an ultrasound of my thyroid gland, and the doctor was confused [...]. According to feminine normative indicators, mine went beyond the norm, while according to male indicators, I was on the borderline. The majority of those who are transitioning encounter similar situations. They are experiencing significant changes in their body". [16]

(Report: "Stigma and discrimination towards gay and bisexual men, other MSM and trans people from healthcare workers", Public Organization "Alliance.Global", Ukraine).

Gay men and other MSM encounter certain difficulties, in particular when receiving HIV services. For example, U. (MSM) from the Kyrgyz Republic, aware of the possibility of receiving post-exposure prophylaxis (PEP), went to the AIDS center in the capital. Expecting to receive high-quality, efficient services, he instead was faced with almost a complete misunderstanding on the part of the specialists of the medical institution due to their lack of awareness about the existence of such a possibility.

““ "The staff of the center did not know which specialist I should be sent to. At that moment, I felt like I was the first person to ask for PEP. The specialists of the medical institution were not sufficiently informed, and did not fully understand what actions to take in this particular case". [18]

(National report on violations of the right to health among gay and bisexual men, other MSM and trans people under ECOM's regional program "Right to Health" in 2017, Public Organization "Kyrgyz Indigo", Kyrgyzstan).

In the study mentioned earlier conducted by the organization “Gender Zed”, participants who conducted testing on clients of the prevention project, pointed to instances where the provision of HIV testing services was not of sufficient quality:

“The test was coded with the code 113 (individuals with symptoms or syndromes typical of HIV infection)”.

“The nurse could not find the correct examination code for MSM and used the code 105—individuals with risky sexual behavior”.

“Counseling is incomplete, the answers are incomplete or incorrect: “If you start treatment in time, the virus will completely disappear.””

“The proper procedure for drawing blood from the finger was breached. 2 punctures were made.”

“I took a rapid HIV test and an ELISA test. During the rapid testing, there were no pipettes available, so a drop of blood was placed on the test by touch”.

“The rules for rapid testing were not observed. A lot of blood was drawn, and 2 drops of buffer were used instead of 4.”

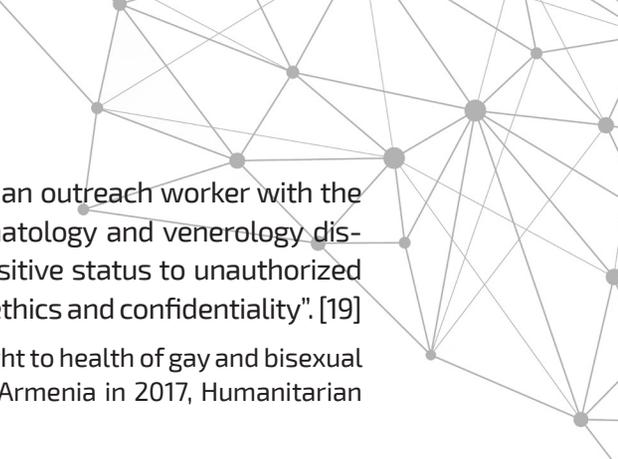
“There were problems using the pipette during rapid testing. The amount of blood drawn for the test was not enough. The exposition for the test was 5 minutes. The nurse could not interpret the test results. If three stripes are displayed on the test, the result is not correct. In the event of a positive result, it is necessary to provide blood for ART analysis”. [17]

(Analysis of the results of the study “Quality services without labels” on the access of MSM to HIV counseling and testing services, and an assessment of the level of stigma and discrimination in health institutions and HIV-service organizations in the Zaporizhia region, Zaporizhia Charitable Foundation “Gender-Zed”, Ukraine).

2.5. All health institutions, goods, and services must be **acceptable**, consistent with *the principles of medical ethics*, and also be aimed at maintaining *confidentiality* [5]. Indirectly, observance of these principles ensures the human right to respect for honor and dignity and the inviolability of private life.

“A transgender man was sent to the gynecologist at the polyclinic of the maternity hospital in the Minsk region. The head of the polyclinic received the patient. She carried out an examination and detected a disease that required further treatment. In order to resolve the issue of hospitalization, the doctor called the gynecological ward of the clinic and asked if it was possible to send the woman there: -Well, she is not quite normal. The conversation took place directly in front of the patient”. [10]

(National report of the Republic of Belarus on violations of the rights of gay men, other MSM and trans people, including the right to health, conducted under ECOM's regional program “Right to Health”, Public Organization “Vstrecha”, Belarus).



“The victim is a homosexual man, aged 20, who is an outreach worker with the Humanitarian NGO “New Generation.” At the dermatology and venerology dispensary, the doctor disclosed the patient’s HIV-positive status to unauthorized persons and other patients, thus violating medical ethics and confidentiality”. [19]

(National report on violations of the right to health of gay and bisexual men, other MSM and trans people in Armenia in 2017, Humanitarian NGO “New Generation”, Armenia).

“Participant of the study: *“The doctor received the patient with the doors open. 2 nurses were in the next room who listened to the conversation. The patient’s information was shared without respect for the requirements of confidentiality”.*

Participant of the study: *“The testing procedure took place with the doors open. There was another nurse and another patient in the office as well”.* [17]

(Analysis of the results of the study “Quality services without labels” on the access of MSM to HIV counseling and testing services, and an assessment of the level of stigma and discrimination in health institutions and HIV-service organizations in the Zaporizhia region, Zaporizhia Charitable Foundation “Gender Zed”, Ukraine).

“The client (HIV-positive, homosexual man) received a claim for debts from the Clinic of Infectious Diseases and Febrile Conditions, which included a report containing his personal data (diagnosis according to the ICD, HIV status, therapy). The letter was delivered to his home address in an open envelope and handed over to his mother as the client was not at home. As a result, the client’s HIV status was revealed. Moreover, the debt was erroneous, as it required payment for medical services which are already covered by a special program funded by the Global Fund. Shortly thereafter, it was discovered that around 15 other patients of the Clinic had received similar claims”. [9]

(National report on violations of the rights of gay men, other MSM and trans people, including the right to health, in the Republic of Macedonia, Association for Support of People Living with HIV, “Stronger Together”, Macedonia).

“The psychologist disclosed the patient’s sexual orientation to his tutor at his university”. (D., male, homosexual, aged 21, Osh, Kyrgyzstan). [20]

(Analytical report on the results of focus-group discussions and on the documentation of violations of the right to health of representatives of the target group LGBT Initiative Group “Yug-Antilopa”, Kyrgyzstan).

3. The obligation to protect

requires states to prevent third parties from interfering with the right to health and to ensure that private structures and persons under its jurisdiction do not deprive individuals of this right. This makes it possible to ensure the accessibility of the right to health, which includes the observance of the principle of *non-discrimination*. Health institutions, goods, and services should be de jure and de facto accessible to all without discrimination, especially to the

most marginalized segments of the population [21]. At the same time, states are responsible for rights violations resulting from a lack of adequate attention given to the regulation of the actions of such persons [6].

Article 2.2 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) imposes on states the obligation to guarantee the exercise of rights *without discrimination of any kind* as to race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or *other status*.

The Committee on Economic, Social and Cultural Rights (CESCR) has clarified that "other status" includes sexual orientation. Therefore, states-parties should ensure that the sexual orientation of a person is not an obstacle to securing the rights enshrined in the Covenant. Gender identity is also recognized as one of the prohibited grounds for discrimination [22].

Thus, the International Covenant on Economic, Social and Cultural Rights (ICESCR) prohibits discrimination, including on the grounds of sexual orientation, gender identity, and of one's health status (including HIV/AIDS).

Often, health services are not available to gay men and other MSM, including both HIV-related services, as well as services in other branches of medicine.

“I am gay and I needed the advice of a urologist. At the Institute of Proctology, I was told that HIV-positive people should not be treated there. They do not know how to work with us. This was the word-for-word telephone conversation”. [12]

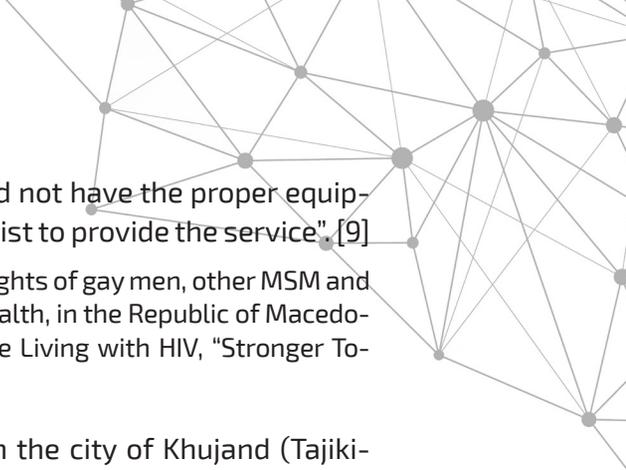
(Invisible Group. Problems with upholding the rights of HIV+ MSM. Monitoring report. "Positive Wave" Foundation, Russia).

“*The neurologist of the polyclinic called the police after he discovered the sexual orientation of the patient. He thought that being gay was a crime*”. [20]

(Analytical report on the results of focus-group discussions and on the documentation of violations of the right to health of representatives of the target group LGBT Initiative Group "Yug-Antilopa", Kyrgyzstan).

“After an operation, a client (MSM living with HIV) was told that he had been tested for HIV and that the results were positive. He was transferred to a special room isolated from other patients with a sign "Entry is Forbidden". The medical and technical personnel entered the room in specially protected uniforms, wearing masks and gloves. The room was never cleaned over the course of 4 days. The doctor-therapist dropped the needle used for infusion when preparing to put the patient on a drip. The client asked her to replace it, but the doctor refused saying that the client was already infected so he did not need clean needles. Another medical specialist continued to call the patient "the one with AIDS". Before long, the patient's HIV status was revealed to all the employees of the hospital, and even to his family".

"The client (MSM living with HIV) received medical treatment from a private dentist. At the time, he had not been diagnosed with HIV. In June 2017, he returned to the same dentist for another medical service. The patient revealed his HIV status to the dentist. The dentist deliberately refused to perform the



necessary medical service, explaining that he did not have the proper equipment and that the client should ask another dentist to provide the service". [9]

(National report on violations of the rights of gay men, other MSM and trans people, including the right to health, in the Republic of Macedonia, Association for Support of People Living with HIV, "Stronger Together", Macedonia).

“ “A male homosexual went to the AIDS center in the city of Khujand (Tajikistan) for an HIV test. He was denied services due to his sexual orientation. Moreover, the doctor made rude statements to him". [23]

(Short legal review of the situation of MSM and trans people in Tajikistan. Public Organization "Equal Opportunities", Tajikistan).

Conclusions

The right to the highest attainable standard of health is one of the fundamental human rights. At the same time, human rights are interdependent, indivisible, and interrelated, and a violation of the right to health may have the effect of limiting other rights and vice versa.

The ability to realize the right to the highest attainable standard of health directly depends on measures taken by the state to fulfill this right.

The right to health stipulates that all health institutions, goods, and services must be available, accessible, acceptable, and of high quality.

The right to health is fulfilled when all of its elements are satisfied: availability, accessibility, acceptability, and quality, which is ensured by the proper fulfillment by the state of its obligations to respect, fulfill, and protect.

In practice, there are almost no calls to protect the violated/limited rights and legitimate interests of LGBT people, since there are insurmountable legal barriers to their implementation. This is due to both the non-acceptance of LGBT people in society, as well as to the shortcomings of current legislation.

The disclosure by doctors of the HIV status and information about other diseases of patients is an accepted practice, since vulnerable groups of citizens have very low legal literacy levels and existing factors, such as homophobia, transphobia, and stigma, do not allow victims to effectively protect their rights.

It is important to highlight the high level of homophobia and transphobia among law enforcement agencies towards victims, which means that many victims do not turn to law enforcement bodies for assistance at all.

Thus, a vicious circle exists, in which doctors remain unpunished for violations, while representatives of marginalized groups do not receive proper medical care. As a result, the HIV prevalence among gay men, other MSM and trans people continues to grow.

Recommendations

For decision-makers:

- Ensure the fulfillment of obligations established in international human rights agreements, and guarantee the protection of the rights of all people without exception;
- Ensure the availability, accessibility, acceptability, and quality of health institutions, goods, and services in accordance with the principles of equality and non-discrimination;
- Adopt effective legislative, administrative, budgetary, judicial, and other measures that promote the right to health of gay men, other MSM and trans people;
- Introduce anti-discrimination legislation, taking into account the availability and effectiveness of mechanisms for protecting rights and bringing perpetrators to justice;
- Eliminate legal and administrative barriers to the creation and operation of HIV-service and LGBT organizations;
- Conduct campaigns aimed at increasing awareness of the staff of health care systems in order to reduce stigma and discrimination towards MSM, LGBT, PLHIV;
- Take appropriate measures to ensure that the special needs of MSM, LGBT, and PLHIV are met with respect to health services.

For community organizations:

- Demand protection from discrimination based on sexual orientation and/or gender identity;
- Raise awareness and knowledge about human rights among MSM, LGBT, and PLHIV;
- Identify and document cases of discrimination, stigma, and violence motivated by homophobia and/or transphobia.

List of Sources

1. Universal Declaration of Human Rights. 1948.
2. HIV among MSM in EECA. ECOM. - <http://ecom.ngo/hiv-msm-eeca/>
3. Constitution of the World Health Organization (WHO). 1946.
4. International Covenant on Economic, Social, and Cultural Rights. 1966.
5. General Commentary No. 14. The Right to Highest Attainable Standard of Health (article 12). OHCHR. 2000.
6. Maastricht Guiding Principles on Extraterritorial Obligations of States in the Area of Economic, Social, and Cultural Rights. 1997.
7. Issues of Theory of State and Law. N. M. Marchenko – M.: 2005.
8. Legal Liability and Legality (Theory Outline). S.R. Bratus - M., 1976.
9. National report on the rights violation, right to health in particular, of gay men other MSM and trans people in the Republic of Macedonia. Stronger Together, Association for Support of People Living with HIV. Macedonia.
10. Republic of Belarus National Report on the rights violation, right to health in particular, of gay men other MSM and trans people, as part of the ECOM regional "Right to Health" program, RYPO "Vstrecha," Belarus
11. The Administrative Code of the Russian Federation. 2001.
12. The Invisible Group. The Issue of Respecting the Rights of the HIV+ MSM. Monitoring Report. The "Positive Wave" Fund, Russia.
13. International Covenant on Civil and Political Rights. 1966.
14. The Constitution of Georgia. 1995.
15. National Report 2017 on the Violation of Human Rights of gay men, other MSM and trans people, in particular the Right to Health. Equality Movement NGO, Georgia.
16. The Report "Stigma and Discrimination of Gays, Bisexuals, other MSM, and Trans People by the Medical Staff," PO "Alliance.Global," Ukraine.
17. Analysis of the "Qualitative Services Without Labels" Research Results about the access to consultation and HIV testing services by MSM representatives, the evaluation of the stigma and discrimination levels at healthcare institutions and HIV-service organisations in Zaporizhya, ZRCF "Gender Z."
18. National Report on the violation of human rights, right to health in particular, of gay men, other MSM and trans people, as part of the ECOM regional "Right to Health" programme, PO "Kyrgyz Indigo," Kyrgyzstan.

- 
19. National Report on the Violation of the Right to Health of Gay men, Bisexual men, other MSM and Trans People in Armenia in 2017, Humanitarian NGO "New Generation," Armenia.
 20. Analytical Report Based on Focus Group Discussions and Documenting of Right to Health Violations Related to the Target Group Representatives. LGBT Initiative Group "Yug-Antilopa," Kyrgyzstan.
 21. Fact Sheet No. 31 on the Right to health. WHO. OHCHR. 2008.
 22. General Commentary No. 20: Non-Discrimination in Economic, Social, and Cultural Rights (art. 2, para. 2, of the International Covenant on Economic, Social, and Cultural Rights). OHCHR. 2009.
 23. Short Legal Overview of the MSM and Transgender Situation in Tajikistan. PO "Equal Opportunities" Tajikistan.



Regional Report

**on Violations of the Right to Health
of gay men, other MSM and trans people
in the CEECA region in 2017.**

Eurasian Coalition on Male Health (ECOM)

www.ecom.ngo

[www.fb.com/ecom.ngo](https://www.facebook.com/ecom.ngo)

www.twitter.com/ECOMngo

contact@ecom.ngo

