



NATIONAL REPORT

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



2023

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CONTENTS

	METHODOLOGY FOR COLLECTING CASES OF RIGHTS VIOLATIONS	3
	NATIONAL LEGISLATION IN THE FIELD OF HEALTH	4
	DESCRIPTIVE REPORT ON CASES	6
	CONCLUSIONS AND RECOMMENDATIONS	16

ACRONYMS AND ABBREVIATIONS

AIDS Acquired immunodeficiency syndrome

ART Antiretroviral therapy

CC Criminal Code

CoAO Code of the Republic of Kazakhstan «on administrative offenses»

CRA Civil registration authorities

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

FO Friendly office

HC Hate crimes

HIV Human immunodeficiency virus

KP Key population

LGBT Lesbian, gay, bisexual and trans people

MSM Men who have sex with men

NGO Non-governmental organization

PLH People living with HIV

RK Republic of Kazakhstan

SOGI Sexual orientation and gender identity

STI Sexually transmitted infection

SW Sex worker

TB Tuberculosis

METHODOLOGY FOR COLLECTING CASES OF RIGHTS VIOLATIONS

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

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

-  analysis of documented cases from the REAct database;
-  analysis of thematic materials from open sources.

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

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

NATIONAL LEGISLATION IN THE FIELD OF HEALTH

Kazakhstan's legislation does not provide guarantees of protection against discrimination based on sexual orientation or gender identity. However, the Constitution of the country enshrines the principle of equality and non-discrimination, including on the basis of gender and other circumstances¹.

ANTI-DISCRIMINATION LEGISLATION

The country does not have a separate anti-discrimination law. However, on December 8, 2023, the President of the RK signed the Decree “on the Action Plan in the field of human rights and the rule of law”, according to which a permanent working group on anti-discrimination legislation and on the implementation of the International Convention on the Elimination of All Forms of Racial Discrimination and/or a separate structural unit on the elimination of all forms of discrimination under the National Center for Human Rights is expected to be established in March 2024².

LEGISLATION TO COUNTER HIV

There is no separate law in Kazakhstan regulating the rights of people living with HIV. However, some issues related to the provision of medical care are regulated by paragraph 2 of the Code of the RK «on the health of the people and the healthcare system»³, which includes rules governing the provision of medical care to PLH, social and legal protection, and rules for HIV testing.

It is separately documented that HIV prevention and diagnosis services are included in the guaranteed package of free medical care, which is provided by the state using budgetary funds. This is an important point in relation to access to medical care, as compulsory social health insurance was introduced in the Republic of Kazakhstan in 2020⁴.

¹ Constitution of the Republic of Kazakhstan. – URL: https://www.akorda.kz/ru/official_documents/constitution

² Decree of the President of the Republic of Kazakhstan of 08.12.2023 «on the Action Plan in the field of human rights and the rule of law». – URL: <https://www.akorda.kz/ru/o-plane-deystviy-v-oblasti-prav-cheloveka-i-verhovenstva-zakona-811622>

³ Code of the Republic of Kazakhstan «On the health of the people and the healthcare system» (with [amendments and additions](#) as of 11.02.2024). – URL: https://online.zakon.kz/Document/?doc_id=34464437

⁴ Id., Article 196.

CRIMINALIZATION OF HIV TRANSMISSION

The transmission of HIV is criminalized by Article 118 of the CC RK⁵, which provides for liability for «knowingly putting another person at risk of contracting HIV» and «infection of another person with HIV by a person who knew that they had this disease». At the same time, a person is absolved of liability if the other person was warned about their HIV status.

LEGAL RECOGNITION OF GENDER

In Kazakhstan, according to the laws governing the gender recognition process, a prerequisite for legal gender recognition is «surgical gender reassignment». This requirement is specified in Article 257 of the Code of the RK «on marriage (matrimony) and family»⁶.

Applications for a change of documents are accepted by Civil Registry Offices on the basis of a conclusion of the commission for the medical examination of persons with gender identity disorder. The commission is convened at the Republican Scientific and Practical Center for Mental Health in Almaty. The procedure is not available to people under 21 years of age. In order to obtain a conclusion recommending a change in passport gender, it is also necessary to undergo hormonal feminization/masculinization and surgical procedures. These provisions are enshrined in Article 156 of the Code of the RK «On the health of the people and the healthcare system», as well as in the «Rules for medical examination and gender reassignment for persons with gender identity disorder»⁷. Such legislative rules are an obstacle, since hormone replacement therapy and surgery are quite expensive, and many trans people are unable to find sufficient funds for these procedures.

In June 2023, the Committee Against Torture, in its concluding observations, called on the government to «abolish the requirement for compulsory surgical gender reassignment»⁸, which is part of the invasive and humiliating procedure for legal gender reassignment in Kazakhstan.

⁵ Criminal Code of the Republic of Kazakhstan (with amendments and additions as of 12.09.2023). – URL: https://online.zakon.kz/Document/?doc_id=31575252

⁶ Code of the Republic of Kazakhstan «On marriage (matrimony) and family» (with amendments and additions as of 01.01.2024). – URL: https://online.zakon.kz/Document/?doc_id=31102748&pos=297;-50#pos=297;-50

⁷ Study «Мы живем, пока нас не видят» [We are alive until we are seen]. – URL: <https://www.alma-tq.org/research>

⁸ Concluding observations on the fourth periodic report of Kazakhstan. – URL: <https://documents-dds-ny.un.org/doc/UN-DOC/GEN/G23/104/23/PDF/G2310423.pdf?OpenElement>

DESCRIPTIVE REPORT ON CASES

CASE 1

1.1. CASE DESCRIPTION

A trans girl went to a private clinic for plastic surgery. During the preliminary examination, she informed the surgeon about her HIV-positive status. The surgeon refused to operate on her, citing a ban from the chief physician on performing the procedure on HIV-positive people.

1.2. CHARACTERISTIC BASED ON WHICH DISCRIMINATION OCCURRED

HIV status.

1.3. RIGHTS VIOLATED/RESTRICTED

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

- Article 14 of the Constitution of the RK prohibiting any form of discrimination.

1.4. CONSEQUENCES FOR THE VICTIM

Moral harm.

1.5. MEASURES TAKEN AND THEIR CONSEQUENCES

A pre-trial complaint was prepared and addressed to the chief physician of the clinic; it was ignored. The victim refused to pursue the case further.

CASE 2

2.1. CASE DESCRIPTION

A trans woman, together with other cisgender girls, was engaged in sex work in Almaty. The neighbors on her floor did not like the large influx of men coming through the entrance, so they called a local police officer. He demanded that each of the sex workers, including trans women, give him a monthly bribe of 15,000 tenge⁹, and in exchange, he promised to resolve the situation with the neighbors and warn them in advance of upcoming police raids. The girls gave the district police officer half of the requested amount. The next day, another law enforcement officer came to the apartment pretending to be a client. A whole group arrived after him, and all of the girls were taken to the police department «until their identities were clarified». The victim was forced to write an explanation about her involvement in sex work and include her passport details. She was ridiculed by the police officers due to her gender identity.

2.2. CHARACTERISTIC BASED ON WHICH DISCRIMINATION OCCURRED

Gender identity, sex work.

2.3. RIGHTS VIOLATED/RESTRICTED

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

- Article 14 of the Constitution of the RK prohibiting any form of discrimination;
- Article 16 of the Constitution of the RK, the right to personal freedom;
- Article 18 of the Constitution of the RK, the right to privacy;
- Article 362 of the CC RK, «Abuse of official power or authority».

2.4. CONSEQUENCES FOR THE VICTIM

Moral and material harm.

2.5. MEASURES TAKEN AND THEIR CONSEQUENCES

The victim did not want to file a police complaint, and moved to a different rented apartment.

⁹ Approximately 33 USD.

CASE 3

3.1. CASE DESCRIPTION

The victim is 14 years old, his parents suspect he is homosexual. The father repeatedly insulted and beat him, and promised to kill him if it was confirmed that he was gay. His sister knows about his sexual orientation, and constantly blackmails the young man by threatening to reveal this to his parents.

3.2. CHARACTERISTIC BASED ON WHICH DISCRIMINATION OCCURRED

Sexual orientation.

3.3. RIGHTS VIOLATED/RESTRICTED

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

- Article 18 of the Constitution of the RK, the right to privacy;
- Law of the RK «on the prevention of domestic violence»¹⁰;
- Article 73-2 CoAO of the RK, «Assault»¹¹.

3.4. CONSEQUENCES FOR THE VICTIM

Moral and physical harm.

3.5. MEASURES TAKEN AND THEIR CONSEQUENCES

The victim was offered psychological assistance services, but he refused, since people under the age of 16 years are required to obtain parental permission to receive psychotherapy in Kazakhstan. He said that his friends give him support.

¹⁰ Law of the Republic of Kazakhstan “on the prevention of domestic violence” (with amendments and additions as of 01.07.2023). – URL: https://online.zakon.kz/Document/?doc_id=30525680

¹¹ Code of the Republic of Kazakhstan of Administrative Offenses (with amendments and additions as of 11.02.2024). – URL: https://online.zakon.kz/Document/?doc_id=31577399&pos=4;-90#pos=4;-90

4.1. CASE DESCRIPTION

The victim met a guy on the social network VKontakte, and agreed to meet at his apartment. There were two guys waiting there who were supposedly in contact with the police, and being supported by an active duty officer. They said that they catch several gay men every day and punish them. They told him: «you have to pay for your f*ggot movements». They threatened to assault the victim and take his car, and extorted money from. Since the client only had 100 thousand tenge on his card, he was told to take out a loan. «Caspian Bank» approved the maximum amount of 150 thousand tenge, and the extortionists transferred a total of 250 thousand tenge¹² from the client's phone. They threatened that if the victim did not give them the money right away, he would be taken to the police station, where they would take a minimum of 1 million tenge.

4.2. CHARACTERISTIC BASED ON WHICH DISCRIMINATION OCCURRED

Sexual orientation.

4.3. RIGHTS VIOLATED/RESTRICTED

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

- Article 14 of the Constitution of the RK prohibiting any form of discrimination;
- Article 18 of the Constitution of the RK, the right to privacy;
- Article 194 of the CC RK, «Extortion».

4.4. CONSEQUENCES FOR THE VICTIM

Moral, material, and physical harm.

4.5. MEASURES TAKEN AND THEIR CONSEQUENCES

The victim was told that in the RK, there is no law prohibiting homosexual relations, but there is liability for extortion. He was recommended to file a complaint with the police through the «e-Otinish» portal or to go to the police station together with a human rights activist. The client refused, fearing the disclosure of his sexual orientation, and because his friends had had negative experiences with the police. He made posts in public thematic groups stating that the account that he was originally messaging with is fraudulent.

¹² 550 USD .

CASE 5

5.1. CASE DESCRIPTION

A trans girl met a guy on the social network VKontakte. They corresponded for a long time, then decided to meet in the evening near her house. The man arrived by car and suggested they go to a neighboring city together. She agreed. On the highway, the guy turned into a farm, and tried to forcefully kiss the girl. He hit her in the face, pulled out a knife, and began to threaten that if she did not obey or started screaming, he would stab her. He forced her to have oral sex with him. He told her that he had connections in the police. He also talked with someone on the phone and said that he would bury her now.

The offender took the trans woman's new iPhone 13, and told her to sign out of iCloud so that he could use it. He threw the SIM card out of the car window. He filmed the girl on his phone, and demanded that she tell the camera her and her parents' personal information, including their address and phone number. The offender said that the victim now had to meet him at the entrance of the «Moscow» shopping center every 10 days between 16:00 and 17:00 and give him 30 thousand tenge, otherwise he would find and punish her.

5.2. CHARACTERISTIC BASED ON WHICH DISCRIMINATION OCCURRED

Sexual orientation and gender identity.

5.3. RIGHTS VIOLATED/RESTRICTED

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

- Article 14 of the Constitution of the RK prohibiting any form of discrimination;
- Article 194 of the CC RK, «Extortion»;
- Part 2 of Article 120 «Rape combined with threat of murder» and Article 191 «Robbery» of the CC RK.

5.4. CONSEQUENCES FOR THE VICTIM

Physical, moral, and material harm.

5.5. MEASURES TAKEN AND THEIR CONSEQUENCES

The victim contacted a public foundation, which helped her obtain an EDS (electronic digital signature), and draft and remotely submit a statement to the police. The suspect was detained and fully admitted his guilt. There was a reconciliation between the parties before the trial. The offender's parents compensated the victim for material and moral damages incurred, as well as for the services of a lawyer.

CASE 6

6.1. CASE DESCRIPTION

A trans woman provided sex services at a location (in an apartment) together with cisgender sex workers. She informed an outreach worker at the AIDS Center that she was HIV-positive in order to receive advice on adherence to ART and condoms. The outreach worker often went to the apartments of sex workers, provided consultations, referred them to a friendly office, and generally seemed trustworthy.

During their next visit, when the victim was not in the apartment, the outreach worker told the other sex workers living in the apartment about the victim's HIV-positive status, and advised them not to communicate with her and to use different dishes, towels, etc. As a result, a conflict arose, she was beaten, thrown out into the street along with her things, and forbidden from showing up «at the location». The trans girl went to work and rented an apartment herself, but she is now worried about her life, as information spreads very quickly among other people.

6.2. CHARACTERISTIC BASED ON WHICH DISCRIMINATION OCCURRED

HIV status.

6.3. RIGHTS VIOLATED/RESTRICTED

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

- Article 14 of the Constitution of the RK prohibiting any form of discrimination;
- Article 18 of the Constitution of the RK, the right to privacy;
- Article 73-2 CoAO of the RK, «Assault»;
- Article 321 CC RK, «Disclosure of medical secrets by a medical worker».

6.4. CONSEQUENCES FOR THE VICTIM

Moral and physical harm.

6.5. MEASURES TAKEN AND THEIR CONSEQUENCES

A conversation was held about stigma and discrimination and safety measures during the provision of sex services. Help from a psychologist and lawyer was offered.

CASE 7

7.1. CASE DESCRIPTION

Two plainclothes police officers arrived to the apartment where the victim and his friend were providing sex services. They conducted a search, took photos and videos, took the victim's identity card and copied data from their phone, including bank information, correspondence with clients, phone numbers, and videos of a sexual nature. They took the victims to the Police Department of the Karaganda Region of the Ministry of Internal Affairs of the RK, and from there to the AIDS Center, where they were forced to undergo HIV testing.

The victim tested positive for HIV, and was forced to inform the police who were waiting for him at the entrance of this. The victim was taken back to the Police Department, where he heard police officers disclosing his HIV status to their colleagues while he was sitting in the corridor. A criminal case was initiated under Part 2 of Article 118 of the CC RK, «Infecting another person with HIV by a person who knew that he had this disease». Over the phone, a police officer threatened that he would reveal this information to the victim's parents if he did not appear for questioning in Karaganda.

7.2. CHARACTERISTIC BASED ON WHICH DISCRIMINATION OCCURRED

Sexual orientation, involvement in sex work, HIV status.

7.3. RIGHTS VIOLATED/RESTRICTED

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

- Article 14 of the Constitution of the RK prohibiting any form of discrimination;
- Article 18 of the Constitution of the RK, the right to privacy;
- Article 362 of the CC RK, «Abuse of official power or authority».

7.4. CONSEQUENCES FOR THE VICTIM

Moral harm.

7.5. MEASURES TAKEN AND THEIR CONSEQUENCES

Through the efforts of the community and friendly lawyers, the criminal case was dropped.

8.1. CASE DESCRIPTION

The victim met a guy on the Internet. After communicating for two months, they agreed to meet in a rented apartment. When the victim arrived, the offender hit him in the jaw, threatened him with a gun, and forced him to change the password on his phone and bank card. The offender locked the young man in the apartment, and left with his phone and bank card, which he immediately used to withdraw cash. Half an hour later, the attacker returned, opened the «2GIS» application on the victim's phone, saw where he had marked his place of work, and said that he would go there, show all the victim's colleagues his photo and tell them that he was gay. He also said he would distribute his photo on the Internet, and set his friends on him who would kill him. He forced the victim to transfer another 150,000 tenge¹³ to him in order to avoid all of this. The victim contacted the police, but they refused to help him. The police officers took pictures of him, sent the photos to a group chat, and wrote: «Look at this gay guy taking it in the *ss». The client also mentioned that the attacker had a gun, and took his headphones and bank card. However, the police just laughed at him and said: «Do you even know what a gun is, f*g?». After this, they took the victim's phone and forwarded his photos and videos to themselves. They threatened to reveal his sexual orientation to his relatives. The victim was in the police station from 17:00 to 05:00 the next morning. The client had a photograph of the offender with whom he had the fake date. He showed the police his photo, but was ignored. The offender then called the victim via Telegram and began to threaten him. The police heard everything, but did nothing.

8.2. CHARACTERISTIC BASED ON WHICH DISCRIMINATION OCCURRED

Sexual orientation.

8.3. RIGHTS VIOLATED/RESTRICTED

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

- Article 14 of the Constitution of the RK prohibiting any form of discrimination;
- Articles 115 «Threat», Article 191 «Robbery», and Article 194 «Extortion» of the CC RK.

8.4. CONSEQUENCES FOR THE VICTIM

Physical, moral, and material harm.

8.5. MEASURES TAKEN AND THEIR CONSEQUENCES

The client refused to continue pursuing the case because he fears for his life and does not believe that the law enforcement system will help.

¹³ 330 USD.

CASE 9

9.1. CASE DESCRIPTION

A trans girl went to the AIDS Center to receive ART. When examined by a doctor, it was discovered that she had a temperature of 39.5 C and wheezing in her lungs. A nurse called an ambulance, but the ambulance staff refused to take her to the hospital, because of her gender identity and HIV-positive status.

NGO staff who were at the AIDS Center, together with the nurse, escorted the victim to the filter room at the nearest clinic, but it turned out that she did not have an officially registered residence or registration at the clinic. In addition, she could not undergo photofluorography, because the working day was ending. Given that the patient had recently been living on the street, it was suspected that she may have tuberculosis, and the question was raised whether she could be accommodated in a hostel for the weekend.

9.2. CHARACTERISTIC BASED ON WHICH DISCRIMINATION OCCURRED

Gender identity and HIV status.

9.3. RIGHTS VIOLATED/RESTRICTED

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

- Article 14 of the Constitution of the RK prohibiting any form of discrimination;
- Article 29 of the Constitution of the RK guaranteeing the right to healthcare.

9.4. CONSEQUENCES FOR THE VICTIM

Physical harm.

9.5. MEASURES TAKEN AND THEIR CONSEQUENCES

With the help of an NGO, the trans woman was placed in a separate room in a hostel and received food stamps to purchase groceries. She was accompanied to the tuberculosis clinic for x-rays and tests by an employee of the NGO. Her TB diagnosis was confirmed; she was hospitalized at the TB clinic. During treatment, employees of several NGOs helped her to restore her IDs, and register at the social adaptation center and at the clinic. Her situation was monitored. Unfortunately, the trans woman died in the tuberculosis clinic.

CASE 10

10.1. CASE DESCRIPTION

The victim sometimes skips taking ART, which is due to a language barrier between him and his doctor. The client is Kazakh and finds it difficult to communicate in Russian. Often, he cannot correctly express his thoughts, and cannot always quickly understand and answer questions that arise during their conversations. During appointments, he cannot explain to the doctor and nurse why he was unable to come to get the drugs on time, and what problems he faces when taking ART. The doctor gets angry and swears because of this. During these moments, the victim does not feel comfortable. Therefore, he does not adhere to treatment, and does not regularly undergo tests for viral load.

10.2. CHARACTERISTIC BASED ON WHICH DISCRIMINATION OCCURRED

Language barrier.

10.3. RIGHTS VIOLATED/RESTRICTED

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

- Article 14 of the Constitution of the RK prohibiting any form of discrimination.

10.4. CONSEQUENCES FOR THE VICTIM

Moral and physical harm.

10.5. MEASURES TAKEN AND THEIR CONSEQUENCES

The victim contacted an NGO for social support to receive ART medication together with an outreach worker. He was counseled on adherence to ART and offered psychological assistance and social support.

CONCLUSIONS AND RECOMMENDATIONS

In total, in 2023, ECOM documented 83 cases of violations of the rights of LGBT people in the Republic of Kazakhstan. In most cases, the victims were gay men and other MSM; in 16 cases, the victims were trans women. In most cases, the rights violations identified were based on SOGI. In some cases, there were multiple forms of discrimination where the basis for the rights violation was the victim's SOGI together with their involvement in sex work or their HIV status.

In more than half of the cases (54.2%), the offenders were private individuals, which indicates a high level of stigma and discrimination towards gay men, other MSM and trans people in Kazakhstan. In 20.5% of cases, the offenders were representatives of law enforcement agencies, which illustrates the high level of transphobia and homophobia among police officers. This also explains why LGBT people do not trust law enforcement agencies and rarely report violations to the police, as their cases are not investigated objectively due to biased attitudes.

In 14.5% of cases, medical workers were the ones responsible for rights violations. These included cases of disclosure of HIV-positive status to third parties, and violations in the work of FO. Most of the cases were related to improper and biased treatment by doctors in relation to KP. This significantly affects the protection of the right to health of LGBT people, as they are afraid to go to medical institutions for any type of medical care. Consequently, despite the enormous work carried out by the non-governmental sector in Kazakhstan to build trust among the LGBT community, this area needs to be improved.

As can be seen from the described cases, blackmail, extortion, threats, assaults, outing, and disclosure of HIV status are the most common violations of the rights of LGBT people in Kazakhstan. The most common are blackmail and extortion through «fake dates». This results from the inaction of the police, as offenders know that LGBT people are poorly protected and are highly unlikely to contact the police due to fear of disclosure of their SOGI and further discrimination.

Many of the cases mentioned in this analysis should be classified as hate crimes based on SOGI, however, the criminal legislation of Kazakhstan does not contain such a provision. Furthermore, LGBT people are not protected from domestic violence. The country has legislation on domestic violence, but it does not include violations based on SOGI. Not a single positive decision was recorded in cases where LGBT people were subjected to domestic violence based on their SOGI by parents or siblings.

Decisive steps must be taken to eliminate all forms of discrimination and violence based on sexual orientation and gender identity, in particular:

- Adopting an anti-discrimination law that would explicitly prohibit all forms of discrimination, including those based on SOGI, and creating an effective mechanism for investigating cases of discrimination and prosecuting offenders;
- Amending Article 54 of the CC RK by adding a new paragraph to the list of aggravating circumstances: «committing a hate crime in connection with the HIV status of the victim or their sexual orientation and gender identity»;

- Amending Article 145 of the CC RK by expanding the list of protected characteristics and adding health status (HIV status), as well as sexual orientation and gender identity;
- Bringing the procedure for legal transgender transition in line with international standards, including by eliminating the requirements for mandatory examination in a psychiatric hospital for 30 calendar days and mandatory surgical intervention;
- Training police, prosecutors and judges to effectively investigate and review allegations of hate crimes based on homophobia and transphobia.

