



## **Contribution to the call for input of the Special Rapporteur on the independence of judges and lawyers in Uzbekistan**

**Purpose:** To inform the Special Rapporteur's forthcoming report on safeguarding the independence of judicial systems in the face of contemporary challenges to democracy, to be presented at the 56th session of the Human Rights Council in June 2024.

**Name of submitting entity, organization, or individual:** Eurasian Coalition on Health, Rights, Gender and Sexual Diversity (ECOM)

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## **The following organization provides information in this report:**

Eurasian Coalition on Health, Rights, Gender, and Sexual Diversity (ECOM - <https://ecom.ngo/>) is an international non-governmental organization based in Tallinn, Estonia. We are a membership organization open to non-profit organizations and activists working in the areas of HIV prevention, treatment, care, and support for men who have sex with men and transgender people in Eastern Europe and Central Asia (EECA) region. The network has 76 members from 19 countries, stretching from Estonia to Tajikistan.

## **Introduction**

In Uzbekistan, consensual same-sex relationships between adult men are criminalized by Article 120 of the Criminal Code. Despite many recommendations by treaty bodies and other UN member states to eliminate criminalization, Article 120 is actively used by Uzbekistan.

During the 44th session of UPR, Uzbekistan's officials said that only in 2023 did they open 23 criminal cases under "sodomy," to which 27 men were subjected.

ECOM has documented several cases where gay, bisexual men, and trans people face a lack of right of defense themselves when the 120 Article is implemented.

## **Prosecutors**

There are several cases<sup>1</sup> documented by ECOM, where sexual orientation and gender identity (SOGI) information were reported by medical workers to police, when LGBT people tested their HIV status. After that those people were subjected to Article 120, based on information that was provided by HIV center workers, despite violations of doctor-patient confidentiality.

Moreover those people were subjected by Article 113<sup>2</sup> only because they were gays and had HIV status.

In order to prove the homosexuality of suspects, the torture practice of "anal examinations" is used. Global Medical Body condemns<sup>3</sup> forced anal exams. It said that the exams, relied upon as "evidence" in prosecutions for consensual same-sex conduct in some countries, have no scientific basis, violate medical ethics, and constitute cruel, degrading, and inhuman treatment that can rise to the level of torture.

The prosecution in Uzbekistan uses this torture practice<sup>4</sup>. In addition, there are cases when people charged under Article 120 are forcibly tested for HIV and in case of its presence, they are added to Article 113.

## **Lawyers**

Lawyers in Uzbekistan refuse to defend people who are charged under Article 120. This leads to a lack of right of defense. Even lawyers who work in human rights organizations prefer not to take such cases as they are afraid to be associated with the LGBT community.

In Uzbekistan, due to criminalization, there is no LGBT organization that could possibly provide legal support to LGBT people.

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<sup>1</sup> Uzbekistan 2022 – Homophobia and Persecution Encouraged in Society. Link: <https://ecom.ngo/library/uzbekistan-2022-report>

<sup>2</sup> Spread of a sexually transmitted disease or HIV/AIDS infection

<sup>3</sup> Link: <https://www.hrw.org/news/2017/10/17/global-medical-body-condemns-forced-anal-exams>

<sup>4</sup> Link: <https://www.hrw.org/news/2021/08/05/uzbekistan-forced-anal-testing-homosexuality-prosecutions>



The lawyers provided by the state often do not defend gays in such trials but agree with the prosecutor.

### **Judges**

Judges convict under Article 120 of the Criminal Code, citing the results of forced "anal examinations," despite the fact that this is contrary to international law.

### **Conclusion**

As long as Article 120 of the Criminal Code exists in Uzbekistan, judges, prosecutors, and lawyers cannot be independent towards LGBT people. The current system limits LGBT people's right to defense, to live in dignity, and to freedom from torture, and the Uzbek judicial system is actively involved in violating these rights of LGBT people.

### **Recommendations**

- 1) To decriminalize consensual same-sex relationships between adult men and unintentional HIV transmission or declare a moratorium on the use of criminal charges;
- 2) To rehabilitate individuals convicted under Articles 113 and 120 of the Criminal Code of the Republic of Uzbekistan;
- 3) To prohibit forced "anal examinations" as a means of proving homosexuality;
- 4) To prohibit compulsory HIV testing.