



May 2019

**Turkmenistan and Uzbekistan:
Criminal Prosecution for Consensual Same-Sex Relationships Between Men**

Summary

This report uses field data and other sources to analyze the current situation with the criminal prosecution of men who have sex with men (MSM) in Uzbekistan and Turkmenistan and other instances of discrimination against LGBT people in these countries. Besides, history of legislation repressive towards MSM in the countries of the region is considered, from early Soviet times till present.

Society in Eurasian countries has long displayed a high level of homophobia, stigmatization, and discrimination against LGBT people, which is historically driven by the repressive laws and practices of past decades. An analysis of amendments made to the norms of criminal law since the creation of the Soviet Union until the present time shows that the laws of a number of former Soviet countries contain, to varying degrees, repressive norms or vestiges of repressive laws concerning the criminal prosecution of MSM which use odious and disagreeable terminology.

In this sense, the situation of MSM in Uzbekistan and Turkmenistan is of particular concern. Both these countries still have laws stipulating criminal liability for “*muzhelozhstvo*,” [sodomy, lit. lying with men], which is how consensual sex between men is described in their criminal codes, and the punishment is harsh (over 10 years imprisonment in Turkmenistan).

Clearly, amending the law will not eradicate homophobia in one fell swoop, but it is necessary to achieve equality in society, including regardless of sexual orientation and gender identity (SOGI). When the authorities continue to treat members of the LBGT community in a discriminatory manner and permit blackmail and torture, when LGBT problems are thought to be made up and the government rejects their existence just as it rejects the community’s existence, it becomes necessary not just to decriminalize same-sex relationships without delay, repeal norms that worsen the situation of LBGT people, and root out homophobic practices, but also to adopt measures that protect against any form of discrimination. These measures include comprehensive anti-discriminatory laws and effective mechanisms for their implementation that make it possible for members of the LBGT community to actually enjoy the rights prescribed by international and nation framework laws.

Turkmenistan and Uzbekistan: Criminal Prosecution for Consensual Same-Sex Relationships Between Men

Consensual sex between adult men is still considered a crime “in the sphere of sexual relations” in **Turkmenistan** and a “sexual offense” in **Uzbekistan**.

The norms of both countries’ criminal codes contravene not just the fundamental principles of international law and the core conventions, but also even these countries’ constitutions, which place people above other values of society and the state and propound guarantees of social protection for each person, equal human and civil rights, freedom, and personal inviolability. In addition, these codes also use disagreeable terminology.

Article 120 of the Criminal Code of the Republic of Uzbekistan is titled “*Besakalbazlyk*” (“*muzhelozhstvo*,” rude term for male sex, sodomy, lit. lying with men)¹ and punishes “sexual contact between men without violence” with one- to three-year terms. The article does not contain qualifying elements, but there is a separate offense for “satisfaction of sexual needs in a perverse form” stipulated in Article 119. In recent years there have been virtually no cases of prosecution for “*muzhelozhstvo*,” but the very presence of a criminal offense for consensual sex between men creates conditions for blackmailing MSMs and transgender people.²

Article 135 of Turkmenistan’s Criminal Code “*Muzhelozhstvo*,”³ which is defined as “sexual contact between men,” stipulates “up to two years’ imprisonment and the possible obligation to live in a certain area for a period of two to five years.”⁴

However, qualifying elements can increase the maximum punishment by a factor of 10. For example, using threats or physical violence or taking advantage of the victim’s helpless state is punishable by a three- to six-year prison term (Part 2 of Article 135). The perpetration of these acts repeatedly or “by two or more people” / “a group in collusion”, “against a minor, or resulting in “infection with a venereal disease” is punishable by a five- to ten-year term (Part 3 of Article 135). People who commit the actions described above (parts 2 and 3 of Article 135) against a person under the age of 14 or resulting in death, “grievous bodily harm,” or “HIV-infection” (Part 4 of Article 135) face the longest terms (from 10 to 20 years).

The obligation to live in a certain area effectively means exile from the city to sparsely populated areas where other persons previously convicted of especially dangerous crimes live. It also involves the obligation to report to local law enforcement three times a week and bans travel to the place where the convict previously resided. According to some data, it is extremely rare that this measure of exile is used for crimes under Article 135 if the act at hand is a consensual act between men over the age of 17 or 18.⁵

1 Criminal Code of the Republic of Uzbekistan, http://fmc.uz/legisl.php?id=k_ug_21 [in Russian]

2 ADC Memorial interviews, February and March 2019.

3 Criminal Code of the Republic of Turkmenistan, http://minjust.gov.tm/ru/mmerkezi/doc_view.php?doc_id=8091 [in Russian]

4 According to the State Department’s 2014 Country Report on Human Rights Practices for Turkmenistan, this refers to a term in a labor camp. <https://www.state.gov/documents/organization/236866.pdf>

5 Field data, ADC Memorial, March 2019.

Punishments for men who have sex with men may be stiffened, since many gay men are charged with multiple counts, frequently under the following articles: “Satisfaction of Sexual Needs in Perverse Forms” (Article 136) and “Implicating a Minor in the Perpetration of a Crime” (Article 155).

The practice of charging under Article 136 along with Article 135 is pervasive regardless of the consensual nature of the sex or even if actions covered by Article 136 took place (use of physical force, threats of physical force, taking advantage of the victim’s helpless state, terms of two to six years). Pressure from law enforcement officers compels the accused to sign any kind of confession. Other parts of Article 136 stipulate qualifying elements that increase the term of punishment to eight years (perpetration of a crime repeatedly or “by two or more people” / “a group in collusion,” or resulting in serious consequences) and to up to ten years (for perpetrating the acts described in Article 136 against a minor). Charges under Article 155, which stipulates punishment for “implication of a minor in the perpetration of a crime by a person over the age of 18,” may be added to charges under articles 135 and 136. In this way, the punishment may be increased to three or even eight years (in the case of threats or violence) or ten years (for implicating a minor in an organized criminal group).

In 2013, there was a case when over 20 people were charged en masse under articles 135, 136, and 155 (in some cases, all three articles were used). According to an ADC Memorial informant, the case was heard in court in one hour and testimony compelled by torture formed the basis for the charges. The defendants received the longest sentences under all the articles together, with some sentenced to a 15-year term.

According to ADC Memorial respondents, from 2013 to 2015, at least 100 people per year were sentenced to terms under Article 135, while 40 to 45 people charged under this article were in prison in 2013 to 2014; some who had served their time were prosecuted again and received a new sentence.⁶

Charges under all these articles entail not just an increase in the term of imprisonment, but also the additional stigmatization of the accused both in prison and after release.

Considering that the practices of using torture and psychological pressure against accused persons and combining cases to cover up to several dozen people are accepted in Turkmenistan, it becomes clear where these long terms (up to nine and even 15 years) for consensual sexual contact between men come from. The accused provided evidence of torture:

“They interrogated people in different ways: they beat us, even broke one person’s arm, shocked us, beat us on the legs with batons, put on gas masks, strangled us, tied a five-liter bottle to our genitals, hit us on the bottom of our feet with clubs, undressed us in winter, poured water on the tile floor, made us wash it with our bodies. They held 16 people in a 2 x 2 meter cell for 14 days. We slept two to three hours a night and they interrogated and beat us the rest of the time. Who could withstand these

6 Ibid.

interrogations? They'll throw you in jail anyway, and no lawyer in Turkmenistan will help you." (Interview about the 2013 events, ADC Memorial, March 2019).

Prosecution for “*muzhelozhstvo*” is frequently linked with psychological, physical, and even sexual violence. As the evidentiary basis for the charges is being collected, men are subjected to the degrading procedure of an anal exam when they are being examined by forensic medical experts.

“They tried to ‘correct’ us, they told us we had an illness. We stood in the hallway [of the pretrial detention center], undressed, in winter. They brought in what appeared to be sex workers and said, ‘Do something with them, we’ll cure you here.’ Right there in the hallway, in front of everyone, they forced us to have sexual contact with these women. One person was crying. Then they led the women out and beat us. They could have made us touch each other. Apparently they also have some disorders. Then they dragged us to the doctors, who did an anal exam to prove that we are gay.” (On the situation in Turkmenistan in 2013, interview, ADC Memorial, March 2019).⁷

The detention conditions of people accused and convicted under Article 135 are, without a doubt, torturous. MSMs are subjected to special humiliations from both penitentiary workers and convicts.

“At the detention facility, they formed a living hallway out of police officers. You run down it naked and they beat you with their batons. Then we had to squat for an hour to an hour-and-a-half. They shaved us completely until we started bleeding. One razor for everyone, even though someone could have had an illness. In prison [when you arrive at a new detention facility] you spend 15 days in quarantine and they beat you every morning. Everyone got up at 6 am, but as the lowest caste, we had to get up earlier to clean. I was lucky I [cleaned] offices, but others had to wash the toilets. The facility is a basement and there’s no glass on the windows. We slept on bare iron planks. It was hot in the summer and cold in the winter. There was no drinking water. They gave us only two liters per person: we bathed in it, drank it, and flushed the toilet with it. They took away what our relatives brought us [food, items]. The physical sufferings were nothing compared to what we suffered morally.” (On the situation in Turkmenistan in 2013, interview, ADC Memorial, March 2019)

After serving terms for committing a crime under Article 135, MSMs are basically deprived of any opportunities for development or a full life. Prosecution for “*muzhelozhstvo*” amounts to being outed and causes irreparable harm to a person’s future life because they cannot continue studying or working or find a job and, of course, they are stigmatized by their friends, relatives, and society as a whole.

7 See also the Human Rights Watch report “World Report 2017, Turkmenistan,” <https://www.hrw.org/world-report/2017/country-chapters/turkmenistan#e81181>; and the media reports: “‘Kick Him in the Dick!’ How Ashgabat Police Interrogate a Transgender Person,” Alternative News of Turkmenistan, May 2017 [in Russian], <https://habartm.org/archives/7077>; “Banned Homosexuality. New ANT Film Premieres in Oslo,” Alternative News of Turkmenistan, September 2015 [in Russian], <https://habartm.org/archives/3591>; “Interrogation with Bias: Police Deride Transgender Person, Radio Azattyk, May 2017 [in Russian], <https://rus.azattyq.org/a/turkmenistan-izdevatelstva-nad-transgenderom/28495056.html>.

For many GBT men, the only way out is to leave Turkmenistan. However, this is becoming increasingly hard to do because the wait time for a foreign passport was recently increased to three to three-and-a-half months⁸ and exit restrictions based on age (for example, men under 30) are being introduced.⁹ In late April 2019 alone, several hundred people were removed from international flights¹⁰ and it became possible to buy plane tickets only two to three months before the trip.¹¹ On top of these difficulties, people wishing to leave the country may simply not receive permission from the migration service.

On the other hand, people who leave face different complications: they cannot return home or see their relatives, and they rarely have the documents required for permanent residence or work outside of Turkmenistan or the ability to plan for the future. Many people live in constant fear for their relatives remaining in Turkmenistan and also worry that Turkmenistan's special services will find them and force them to return home.

“It’s not possible to return—they could pick you up at the airport. They’re trying to use my mother to get me to come home. My brother’s wedding, my mother’s illness, my nephew’s birth – it doesn’t matter, I can’t go home. So I’ve stayed here [abroad]. [I can’t live life to fullest] here or there.” (Interview with an immigrant for Turkmenistan, ADC Memorial, March 2019).

The practice of illegally detaining LGBT people after they provide their personal information to law enforcement officers is typical of both **Turkmenistan** and **Uzbekistan**. This information is often forcibly extracted when people who have previously been detained under suspicion of membership in the GBT community face blackmail or threats;¹² this is how random people end up at “interrogations.” And it is not just gay men who are subjected to persecution, but also transgender men and women. ADC Memorial informants who have suffered from the illegal actions of law enforcement agencies confirm that both countries widely and systematically employ the practices of tracking and setting up fake meetings with LGBT people, blackmail, soliciting bribes, threats (including demeaning examinations in the presence of family members and gang rape in cells), humiliation, fake meetings that lead to arrest, the initiation of court proceedings, and, in the end, prison sentences.¹³

8 “Wait for Foreign Passports Triples in Turkmenistan,” Ferghana, April 2019 [in Russian], <https://fergana.agency/news/106457/>

9 “Turkmenistan: Men Under 30 will not be Permitted to Travel Abroad,” Radio Azatlyk, April 2018 [in Russian], <https://rus.azathabar.com/a/29170638.html>

10 “Dozens of Passengers Removed from Flights at Ashgabat Airport Over the Weekend,” Radio Azatlyk, April 2019 [in Russian], <https://rus.azathabar.com/a/29910002.html>

11 “Ashgabat Continues to have a Deficit of Plane Tickets,” Radio Azatlyk, March 2019 [in Russian], <https://rus.azathabar.com/a/29797728.html>

12 “Here Society is More Tolerant: A Transgender Person from Uzbekistan Seeks Asylum in Belarus,” Nastoishchee vremia, January 2018 [in Russian], <https://www.currenttime.tv/a/28956669.html>

13 “Uzbekistan: Transgender Man Breaks Stereotypes by Openly Speaking About Himself,” KLOOP, March 2016 [in Russian], <https://kloop.kg/blog/2016/03/19/uzbekistan-muzhchina-transgender-lomaet-stereotipy-otkryto-zayavlyaya-o-sebe/>

Human rights defenders believe that five years ago almost 500 men were in prison under Article 120. However, this article was applied as a repressive measure against some political prisoners, members of the opposition and NGO workers regardless of their sexual orientation.¹⁴

For LGBT people, interaction with the law enforcement systems of both countries is primarily connected with humiliation, torture, and inhuman treatment.

“Sometimes law enforcement bodies just beat [detained GBT people] and record this on video. There are times where officers release people [GBT] for providing intimate services.” (On the situation in Uzbekistan, interview, ADC Memorial, March 2019).

Like other members of society, staff members of law enforcement agencies brutally persecute transgender women and men, as well as crossdressers. A year and a half ago, a video appeared online showing the interrogation in Turkmenistan of a man dressed in women’s clothing who the police threatened with violence being forced to take off his clothes and underpants so that the police could see his genitalia and “determine” his biological gender.¹⁵ In the winter of 2016, a video was posted online of Uzbek law enforcement agencies raiding the apartment of a transvestite as officers threatened and beat this person.¹⁶ Thus, we have a terrifying situation where law enforcement agencies employ inhuman treatment and torture, while society not only approves of and supports their actions, but even believes that criminal prosecution is not strict enough and issues calls to deprive LGBT people of their lives. Informants told ADC Memorial about egregious cases when law enforcement officers used force against transgender people and crossdressers that were never publicized or properly responded to by human rights defenders:

“Transgender people must not be beaten. They arrested a transgender woman. She had not yet fully transitioned. They gave her a very bad beating and then they didn’t know which cell to put her in.” (Concerning an event in Turkmenistan in 2013, ADC Memorial interview, March 2019)

“My Uzbek friend [a crossdresser] was a sex worker in Russia. She was caught by the cops and deported to Uzbekistan. Before she was deported, her family found out what she was doing for a living and saw her photo online. When she arrived home, cops picked her up from her home. They beat her and she died. Then her brother called us here in Russia and told us that she had been killed. He wanted to know if it was true that she was a sex worker. He didn’t believe it.” (Concerning an event in Uzbekistan in 2017, ADC Memorial interview, February 2019).

In May 2019, law enforcement officers in Uzbekistan started to stand watch over the building entrance of a transgender woman whom they had previously arrested and beaten repeatedly, humiliating her as they demanded information about other members of the LGBT community. This meant that she could not go to work and was even scared to go

14 Report to UPR by the NGO Cagsan, September 2017 https://www.upr-info.org/sites/default/files/document/ouzbekistan/session_30_-_mai_2018/cagsan_upr30_uzb_e_main.pdf

15 “Kick Him in the Dick! How Ashgabat Police Interrogate a Transgender Person,” Alternative News of Turkmenistan, May 2017 [in Russian], <https://habartm.org/archives/7077>.

16 “In Uzbekistan, the Police Beat, Offend, and Humiliate a Transvestite,” Radio Ozodlik, January 2016 [in Russian], <https://rus.ozodlik.org/a/27473059.html>

out for groceries because she feared new humiliations and interrogations. Activists believe that by acting in this way, the authorities are trying to make transgender people invisible or simply get rid of them entirely so that they can proclaim that there are no such people in Uzbekistan. (Interview, ADC Memorial, May 2019)

In 2017, a transgender woman was forced to flee Uzbekistan and seek asylum because of repeated threats to her life and health: over three years, she was arrested four times by the police, beaten, and tortured so she would provide the contact information of other transgender people. The last time she was arrested in January 2017, police officers raped her.¹⁷ In spite of threats of further violence, the Russian authorities did not believe that her membership in the LGBT community was a sufficient ground for asylum. Following Russia's lead, Belarus also denied her asylum in July 2018 citing lack of evidence of the violence she endured.¹⁸

With no medical means to change their gender, transgender people are faced with the choice of constantly hiding their identity or risking their own safety and life.

LGBT people in both countries live in constant fear as they try to exist in extremely homophobic societies. They cannot have same-sex contact and they cannot even speak openly about themselves because of the danger of persecution and condemnation, including from their families, which may end in violence and eviction from the home, as well as criminal prosecution. The majority are forced to enter into marriages to conceal their sexual orientation or deny their own desires to meet the norms of a traditional, homophobic society.

In spite of their international obligations and recommendations made by the HRC, Turkmenistan and Uzbekistan both lack laws protecting people from discrimination on the basis of SOGI. LGBT people are subjected to persecution instead of being provided with means of legal defense and expert medical assistance.

Threats of criminal prosecution or other repressive measures mean that SOGI topics are absent from public discourse. Additional measures introduced by Uzbekistan in 2014 for monitoring internet cafés (installation of security cameras, tracking and storage of website visits)¹⁹ have led LGBT oriented websites to shut down, stopped cooperation between activists and the media, and reduced access to information through the country's resources.²⁰ The high level of homophobia in society and at the state level forces members of the LGBT community to monitor their behavior

17 "Transgender Karina Recounts why She Fled Uzbekistan," Tengrinews, May 2018 [in Russian], https://tengrinews.kz/strange_news/transgender-karina-rasskazala-pochemu-sbejala-iz-uzbekistana-343517/

18 "Belarus Refuses Asylum for Uzbek Transgender Woman," Radio Free Europe/Radio Liberty, July 2018 [in Russian], <https://www.rferl.org/a/belarus-refuses-asylum-for-transgender-woman-from-uzbekistan/29361605.html>

19 Resolution of the State Committee on Communications, Information Technology, and Telecommunications of the Republic of Uzbekistan (registered by the Ministry of Justice under No. 1393-3 of March 28, 2014) [in Russian], https://www.norma.uz/goto/?to=http%3A%2F%2Fstatic.norma.uz%2Fdocuments%2F2014%2FN_13%2Frus%2F1393-3.rtf

20 Report to UPR by the NGO Cagsan, September 2017, https://www.upr-info.org/sites/default/files/document/ouzbekistan/session_30_-_mai_2018/cagsan_upr30_uzb_e_main.pdf

by hiding their sexual orientation and gender identity²¹ and to lead a dangerous double life, often under the threat of violence from relatives. The situation is even worse in small towns and rural areas, where the high level of homophobia is coupled with difficulties concealing information in a tight community.

Uzbekistan authorities report that they have not received any complaints about discrimination or sexual harassment in relation to LGBT people. Representatives of the country assert on international platforms that according to the information provided by the law enforcement authorities and the courts, no single complaint of discrimination or sexual harassment has been lodged with them. Citizens with different sexual orientation have the same rights and duties and their legal status is not limited by their sexual orientation.²² However, it is obvious that the lack of complaints can be explained by the fact the LGBT people in both countries fear contacting human rights defenders because of the risk of persecution and disclosure of information about their orientation.

The calls of international bodies to decriminalize consensual same-sex relationships in Turkmenistan²³ and Uzbekistan²⁴ are not met with understanding by the governments of either republic. Representatives of **Turkmenistan** use the country's mentality, culture and traditions to justify the infeasibility of implementing the recommendations.²⁵ Meanwhile, the government of Uzbekistan believes that consensual same-sex relationships contradict the "traditions of the country's peoples" and that "homosexual relations...are one of the causes of the spread of HIV/AIDS."²⁶

In Turkmenistan, the topic of SOGI is basically never mentioned in public discourse or the media, while LGBT people in Uzbekistan are publicly condemned by religious and political figures. Along with his repeated refusals to eliminate the Criminal Code article "*Muzhelozhstvo*" and provide equal rights regardless of SOGI, I. Karimov, Uzbekistan's former president, has publicly called members of the LBGT community "mentally disturbed."²⁷ In addition, R.

21 "I have to make believe, to watch my mannerisms and gestures so I don't accidentally give myself away." "Moscow is Tolerant Europe for me now.' On the Life of Gays in CIS Countries," Snob, May 2018 [in Russian], <https://snob.ru/entry/160934>

22 Comments by the National Centre for Human Rights of Uzbekistan on the concluding observations and recommendations of the United Nations Human Rights Committee (document CCPR/C/UZB/CO/4) following the consideration of the fourth periodic report of Uzbekistan , January – February 2016.

23 Recommendations of the HRC to Turkmenistan, April 2017\$ Recommendations following consideration of Turkmenistan's UPR dismissed by the country's government, September 2016: 114.1 Decriminalize sexual relations between consenting adults of the same sex, as recommended by the Human Rights Committee (Slovenia); https://www.upr-info.org/sites/default/files/document/turkmenistan/session_16_-_april_2013/recommendations_and_pledges_turkmenistan_2013.pdf

24 HRC recommendations to Uzbekistan, August 2015:

25 "Interrogation with Bias: Police Deride Transgender Person, Radio Azattyk, May 2017, <https://rus.azattyq.org/a/turkmenistan-izdevatelstva-nad-transgenderom/28495056.html>.

26 Comments by the National Centre for Human Rights of Uzbekistan on the concluding observations and recommendations of the United Nations Human Rights Committee (document CCPR/C/UZB/CO/4) following the consideration of the fourth periodic report of Uzbekistan, January – February 2016.

27 "Islam Karimov Calls Gays 'Mentally Disturbed,'" Radio Ozodlik, February 2016 [in Russian], <https://rus.ozodlik.org/a/27536052.html>

Sayfuddinov, a Tashkent imam, has warned Uzbeks against watching Turkish TV series to avoid “the conception of gays and lesbians.”²⁸

Recommendations:

Consensual same-sex relationships between adult men must be decriminalized in **Turkmenistan** and **Uzbekistan**.

These countries must put an end to discrimination and persecution on the basis of SOGI, including by law enforcement agencies, specifically blackmail, violence, and extortion. The torture of LGBT people must be declared unacceptable, just as evidence obtained as a result of torture and humiliation must be inadmissible.

Crimes against LGBT people must be properly investigated.

Representatives of state bodies should not make discriminatory statements about LGBT people.

People must have the right to ready access to information, including information about SOGI.

28 “Tashkent Imam Warns of the Harmful Influence of Turkish TV Series on the Nation’s Gene Pool,” Radio Ozodlik, December 2018 [in Russian], <https://rus.ozodlik.org/a/29084520.html>

History of Amendments to Criminal Laws of Former Soviet Countries that Ban Same Sex Relationships Between Men

Criminal liability for same-sex relationships between men existed for over half-a-century in the republics that made up the Soviet Union. The laws contained various wordings, which were later reduced to the sole and completely unacceptable term “*muzhelozhstvo*” (sodomy, lit. lying with men).

Prior to 1933, not all the criminal codes of various Soviet republics stipulated liability for a consensual same-sex act. For example, it was not in two RSFSR criminal codes (the 1922 and 1926 versions), even though it was present in the laws of other republics in those same years. For example, in June 1923 articles appeared in the Criminal Code of the Azerbaijan SSR stipulating punishment for consensual and forced “*pederasty*.” In April 1924, punishment for “*perverse satisfaction of sexual desire in the form of pederasty*” (Article 171¹) was added to the Criminal Code of the Georgian SSR. In 1925, the SSR of Abkhazia introduced liability of up to one year of imprisonment for “*satisfaction of sexual desire in the form of pederasty*” (at least three years’ imprisonment with use of violence and at least five years’ imprisonment with a minor).

Criminal punishment for “*muzhelozhstvo*” and the very term itself is first mentioned in laws of Soviet republics in 1933, when the Criminal Code of the RSFSR introduced into Article 154-a the crime of “*sexual contact of a man with a man (muzhelozhstvo)*,” and specified liability in the form of a three- to five-year prison term (a five- to eight-year term with the use of violence or taking advantage of the victim’s dependent position).²⁹

Resolution of the USSR Central Executive Committee “On Criminal Liability for *Muzhelozhstvo*” of March 7, 1934³⁰ resulted in the gradual criminalization of any sexual acts between men. This document proposed “*expanding criminal liability for muzhelozhstvo, i.e. sexual contact between a man and a man, in the case of consensual relations, regardless of whether or not one of the participants has reached sexual maturity.*” The Central Executive Committee also recommended that union republics include the following article in their criminal codes: “*Muzhelozhstvo, i.e. sexual contact between a man and a man, entails imprisonment for a term of up to five years. Muzhelozhstvo committed by taking advantage of the victim’s dependent position, or with the use of violence, for payment, by profession, or in public entails imprisonment for a term of up to eight years.*”

The result was the ubiquitous criminalization of sex acts between men in republics forming the Soviet Union. In autonomous and union republics that did not have their own criminal codes, the legal documents of other Soviet republics were in effect. For example, the Criminal Code of the RSFSR of 1926 was in effect on the territories of the Kazakh Soviet Socialist Republic (SSR), the Kirghiz SSR, the Lithuanian SSR, the Latvian SSR, and the Estonian SSR. The Moldovan SSR used the Criminal Code of the Ukrainian SSR of 1927. The Criminal Code of the Uzbek SSR was in effect in the Tajik SSR, which was part of the Uzbek SSR until 1929, and, from 1929 until the Tajik SSR adopted it’s own code in 1935, the Criminal Code of the RSFSR was in effect. The Criminal Code of the Uzbek SSR (1926) stipulated liability for “*besakalbazstvo*” (the sexual act of men) and “*bachebazstvo*” (the keeping and

29 Criminal Code of the RSFSR. Official Text with Amendments as of July 1, 1950, including Materials Organized by Article. Moscow: 1950, pg. 102. [in Russian]

30 Resolution of the USSR Central Executive Committee “On Criminal Liability for *Muzhelozhstvo*” of March 7, 1934, http://www.libussr.ru/doc_ussr/ussr_3947.htm [in Russian]

training of “*bacha*,” i.e. boys and men involved in prostitution), while the Criminal Code of the Tajik SSR used “*bachebazstvo*” to mean a sexual act between men.³¹

Beginning in 1933, raids were periodically held in the Soviet Union to uncover homosexuals. For example, a September 1933 memorandum to Stalin reported on the OGPU’s discovery of an “association of pederasts” in Moscow and Leningrad with the subsequent arrest of 130 people.³² Homosexuals were tracked by law enforcement officers (raids were held in places where gays gathered). They were forced to denounce each other and were “exposed” by witnesses or “victims.”³³ Accusations of “*muzhelozhstvo*” were often politically motivated, and the main evidence of guilt was generally confessions obtained under pressure and witness testimony. Court proceedings were closed, which meant that, among other things, there were no official statistics on people convicted under this article. Thus, this article transformed into a tool of repression fairly rapidly.

The criminal reforms of the 1960s replaced previous versions of criminal codes and introduced new codes in republics that had not previously had them. These laws and regulations, which were in effect until the late 1990s, contained homophobic articles of the same tenor. Almost all the criminal codes of the 1960s used the term “*muzhelozhstvo*,” only Armenia and Uzbekistan used the terms “*homosexuality*” and “*besakalbazlyk*,” respectively. Punishment for “*sexual contact between men*” varied by republic from one year to five years’ imprisonment (up to one year: Ukrainian SSR; from one to three years: Uzbek SSR; up to two years: Kyrgyz, Moldovan, Tajik, Estonian SSR; up to three years: Azerbaijan, Armenian, Kazakh, Lithuanian SSR; from three to five years: Georgian SSR; up to five years: Belarusian, Lithuanian, Turkmen SSR, and RSFSR). It was only in Ukrainian SSR that imprisonment could be replaced with exile of up to three years given the absence of qualifying elements.

Aggravating circumstances that increased the term under the “*muzhelozhstvo*” article varied slightly throughout the Soviet Union. Beginning with the use of physical violence and perpetration of a crime against a minor (Ukrainian SSR), taking advantage of a victim’s dependent position (Azerbaijan, Moldovan, Uzbek SSR, RSFSR), threat of violence (Armenian, Belarusian, Georgian, Kyrgyz, Tajik, Turkmen SSR) and a victim’s helpless state (Latvian, Lithuanian, Estonian SSR) were added to this article. The unique qualifying element “*use of psychological force*” was listed in the Criminal Code of the Moldovan SSR, and “*other aggravating circumstances*” was found in the Criminal Code of the Kazakh SSR. With a lowest terms of two to three years in most republics, the maximum terms varied from up to five years (Moldovan, Ukrainian SSR) and up to six years (Kyrgyz, Tajik, Estonian SSR) to up to eight years (in the remaining republics). Only the laws of the Estonian SSR stipulated that imprisonment could be combined with exile of up to three years.

31 Raufov, F.Kh. *A History of the Development of Laws of the Republic of Tajikistan on Liability for Violent Actions of a Sexual Nature*. <https://cyberleninka.ru/article/v/istoriya-razvitiya-zakonodatelstva-respubliki-tadjikistan-ob-otvetstvennosti-za-nasilstvennye-deystviya-seksualnogo-haraktera>. These terms come from the names for male child prostitution in the Uzbek and Tajik languages. [in Russian]

32 Khili, D. *Homosexual Leanings in Revolutionary Russia. The Regulation of Gender and Sexual Dissidence*. Moscow, 2008, p. 223. [in Russian]

33 Ibid, pp. 253-254.

Soviet Republic	Term and definition	Article	Punishment	Aggravating elements	Punishment with aggravating elements
Azerbaijani Criminal Code adopted on December 8, 1960, entered into force March 1, 1961, became inoperative December 30, 1999	“Muzhelozhstvo” Sexual contact between men	113	up to three years’ imprisonment	using violence or taking advantage of a victim’s dependent condition, or against a minor	three to eight years’ imprisonment
Armenian Criminal Code adopted on March 7, 1961, entered into force July 1, 1961, became inoperative August 1, 2003	Homosexuality A sexual act between men	116	up to five years’ imprisonment	physical violence, threats or threats against a minor, or taking advantage of a victim’s dependent condition	three to seven years’ imprisonment
Belarusian Criminal Code adopted December 29, 1960, entered into force April 1, 1961	“Muzhelozhstvo” Sexual contact between men	119	up to five years’ imprisonment	with the use of physical violence, threats, or against a minor, or taking advantage of the victim’s dependent position	up to eight years’ imprisonment
Estonian Criminal Code adopted January 6, 1961, entered into force April 1, 1961	“Muzhelozhstvo”	118	up to two years’ imprisonment	with the use of violence or threats of violence, or taking advantage of a victim’s hopeless position, or perpetrated against persons known to be under the age of 18	two to six years’ imprisonment with possible exile of up to three years
Georgian Criminal Code adopted December 30, 1960, entered into force March 1, 1961	“Muzhelozhstvo” Sexual contact between men	171	from three to five years’ imprisonment	<i>Muzhelozhstvo</i> committed with the use of physical violence, threats, or against a minor, or taking advantage of the victim’s dependent position	up to eight years’ imprisonment

Kazakh Criminal Code adopted July 22, 1959, entered into force January 1, 1960, became inoperative July 16, 1997	“Muzhelozhstvo”	104	up to three years’ imprisonment	with the use of violence or against a minor, or under other aggravating circumstances	three to eight years’ imprisonment
Kyrgyz Criminal Code adopted December 29, 1960, entered into force May 1, 1961, became inoperative October 1, 1997	“Muzhelozhstvo”	112	up to two years’ imprisonment	with the use of force or against a minor, or taking advantage of the victim’s dependent position	two to six years’ imprisonment
Latvian Criminal Code adopted January 6, 1961, entered into force April 1, 1961	“Muzhelozhstvo”	124	up to five years’ imprisonment	with the use of force or threats of force, taking advantage of a victim’s helplessness or dependent position, or against a minor	three to eight years’ imprisonment
Lithuanian Criminal Code adopted June 26, 1961, entered into force September 1, 1961	“Muzhelozhstvo”	122	up the three years’ imprisonment	with the use of physical violence or threats, or taking advantage of the victim’s dependent or helpless state, or against a minor	three to eight years’ imprisonment
Moldovan Criminal Code adopted March 24, 1961, entered into force July 1, 1961	“Muzhelozhstvo,” i.e. sexual contact between men	106	up to three years’ imprisonment	against a minor, or by using physical or psychological violence, or by taking advantage of a victim’s helpless state	two to five years’ imprisonment
RSFSR Criminal Code adopted October 27, 1960, entered into force January 1, 1961,	Sexual contact between men	121	up to five years’ deprivation of freedom	Muzhelozhstvo committed with the use of physical violence, threats, or against a minor, or taking advantage of the victim’s dependent position	up to eight years’ imprisonment

Tajik Criminal Code adopted August 17, 1961, entered into force December 1, 1961	Sexual contact between men (“ <i>muzhelozhstvo</i> ”)	125	up to two years’ imprisonment	<i>Muzhelozhstvo</i> committed with the use of physical violence, threats, or against a minor, or taking advantage of the victim’s dependent position	up to six years’ imprisonment
Turkmenian Criminal Code adopted December 22, 1961, entered into force May 1, 1962	Sexual contact between men (“ <i>muzhelozhstvo</i> ”)	126	up to five years’ imprisonment	<i>Muzhelozhstvo</i> committed with the use of physical violence, threats, or against a minor, or taking advantage of the victim’s dependent position	two to eight years’ imprisonment
Ukrainian Criminal Code adopted December 28, 1960, entered into force April 1, 1961	“ <i>Muzhelozhstvo</i> ,” i.e. sexual contact between men without violence	122	up to one year imprisonment or up to three years’ exile	with the use of violence or against a minor	up to five years’ imprisonment
Uzbek Criminal Code adopted May 21, 1959, entry into force January 1, 1960	“ <i>Besakalbazlyk</i> ” (“ <i>muzhelozhstvo</i> ”), i.e. sexual contact between men without violence	100	one to three years’ imprisonment	with the use of force or by taking advantage of the dependent position of a victim, or against a minor	two to eight years’ imprisonment

After the dissolution of the Soviet Union, almost half of the former republics decriminalized same-sex relationships between 1991 and 1995 (Belarus, Latvia, Lithuania, Moldova, Russia, Ukraine, Estonia). In 1997 and 1998, several Central Asia countries (Kyrgyzstan, Kazakhstan, and Tajikistan) cancelled criminal liability for “*muzhelozhstvo*.” Republics in the Caucasus retained criminal liability into their independence: until 2000 (Azerbaijan and Georgia) and until 2003 (Armenia).

For example, since 1991, 65 people have been prosecuted under the article “Homosexuality” since 1991.³⁴ One person convicted in 1997 was given a two-year term and faced sexual violence and repressions in prison because of the nature of the article. He was forced to hide his conviction over many years, including from family members.³⁵

Now same-sex contacts are not criminally prosecuted in the vast majority of former Soviet countries if the act is consensual and there is no violence or coercion. The exceptions are Uzbekistan and Turkmenistan, where sexual contacts are still criminalized.

34 V. Ishkhanyan. “Criminal Punishment for Homosexuality in an Independent Armenia” [in Armenian], March 13, 2017, <https://hetq.am/hy/article/77137>

35 “I Spent Two Years in Prison for Love,” Women in Prison website, 2018 [in Russian], <https://women-in-prison.ru/page3379049.html>

Only three countries (Lithuania, Ukraine, and Estonia) have completely rejected the use of homophobic terminology in descriptions of the elements of a crime. In the remaining countries, this unacceptable terminology continues to be used in criminal codes even today: in the criminal codes of Turkmenistan and Uzbekistan, the terms “muzhelozhstvo”/“besakalbazlyk” are only used in articles that criminalize consensual MSM sexual relations; in the remaining 10 former Soviet countries, the unacceptable terms “muzhelozhstvo,” “homosexuality,” “pederasty,” and “lesbianism” are included in the description of the article “Violent Actions of a Sexual Nature,” which relates to crimes against sexual integrity and sexual freedom. The criminal codes of the majority of these countries use the term “muzhelozhstvo.” The criminal codes of Armenia and Moldova use the analogous “homosexuality,” while Latvia’s criminal code uses “pederasty.”

The violent nature of the crimes punishable under the criminal codes of various countries is described as : “‘muzhelozhstvo,’ *perpetration with use of violence or a threat of violence against the victim, (or against others or against relatives), “or taking advantage of the helpless state of the victim/victims/persons,” “against the will of the victim,” “with the use of physical or psychological force or taking advantage of a person’s inability to defend themselves or express their will”* (the last is the unique wording used in Moldova’s criminal code).

At the same time, in three countries forcible “muzhelozhstvo” relates to “*other sexual contacts in a perverse form*” (Georgia), “*satisfaction of sexual desire in unnatural/perverse forms*” (Latvia, Moldova). In seven countries, forcible “muzhelozhstvo” relates to “*other [violent] acts of a sexual nature*” (Azerbaijan, Armenia, Belarus, Kazakhstan, Kyrgyzstan, Russia, Tajikistan). In seven countries (Belarus, Georgia, Kazakhstan, Kyrgyzstan, Latvia, Russia, and Tajikistan), “*lesbianism*” is classified as a perverse form of sexual contact along with “muzhelozhstvo.”

Of the following qualifying elements named as specific aggravating circumstances in the criminal codes of various countries (they are varied and hierarchically arranged in different orders), the most frequently encountered are: perpetration by a group or collusion by a group / two or more people; infection with a venereal disease; infection with HIV/AIDS; perpetration against a minor, a preteen, a pregnant person with peculiar severity or repeatedly; or perpetration of an earlier crime against sexual inviolability.

Less frequently encountered are: perpetration against a close relative (Tajikistan) / family member (Moldova); perpetration by parents, teachers, or other persons who have a duty to raise children (Kazakhstan) / against people under the guardianship, protection or treatment of the accused (Moldova); taking advantage of an official position (Georgia); resulting in death or grievous bodily injury; accompanied by the threat of murder or violence that poses a danger to life and health (Kazakhstan); perpetration during an emergency situation (Kazakhstan) or during mass unrest / taking advantage of the conditions of mass unrest (Tajikistan).

Punishment for the perpetration of crimes with qualifying elements reaches up to 20 years’ and even life imprisonment, with restrictions on the right to hold certain positions for a period of up to 20 years.

Thus, even though consensual same-sex relationships between men have been decriminalized in the majority of former Soviet countries, the criminal codes of many of these countries still use odious, stigmatizing, and completely unacceptable terminology that should be immediately removed from laws.