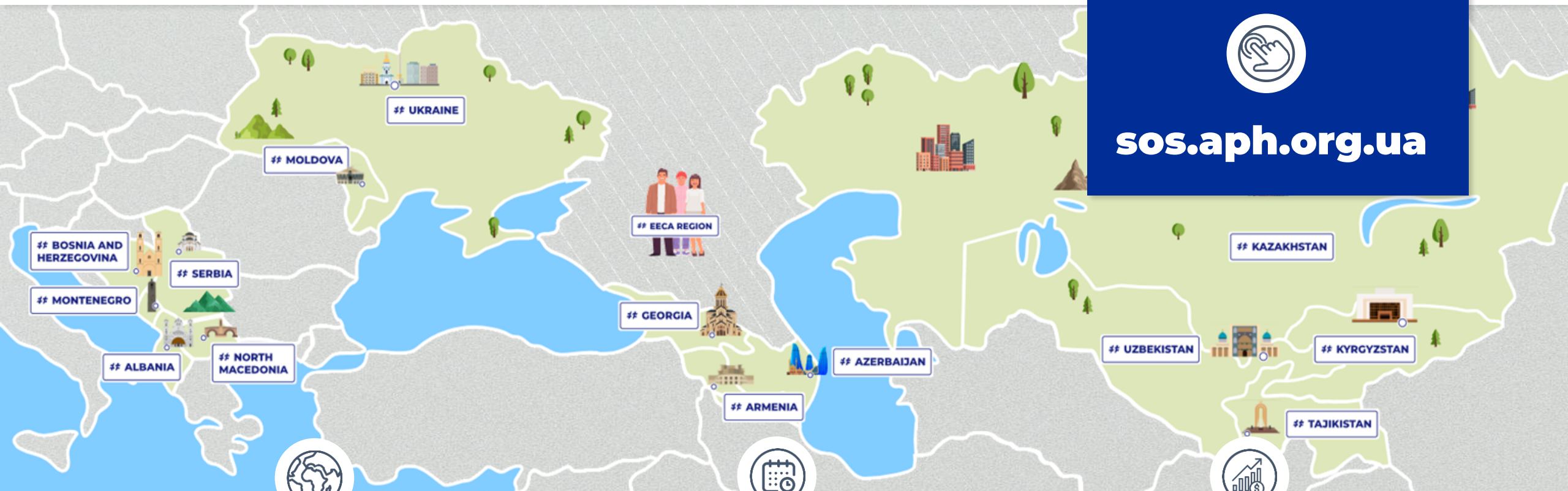




**The role of the judiciary in promoting change in
the context of HIV and human rights
Decriminalization of HIV and drug policy:
progress and influence**

Tetiana Deshko, Alliance for Public Health


Regional Global Fund #SoS_project2.0



sos.aph.org.ua



The largest in geography regional GF project.
14 countries and **23 cities** are involved



3 years: 2022-2024
Budget: \$14 million
Unique partnership all between EECA subregions



Absolute increase funding for HIV activities targeting the KPs in
14 countries – \$20 mln

Criminalization: Regional Overview



	PUNITIVE LAWS							
	Criminalization of transgender people	Criminalization of sex work	Criminalization of same-sex sexual acts in private	Criminalization of possession of small amounts of drugs	Laws criminalizing the transmission of, non-disclosure of or exposure to HIV	Laws or policies restricting the entry, stay and residence of people living with HIV ¹³	Parental consent for adolescents to access HIV testing	Mandatory HIV testing for marriage, work or residence permits, or for certain groups
Albania	1	1	1	1	1		1	1
Armenia	1	1	1	2	1		3	1
Azerbaijan	1	5	10	1	1		2	1
Belarus	1	1	1	1	1		2	1
Bosnia and Herzegovina		6	10		11			
Georgia	1	1	1	1	1		1	1
Kazakhstan	1	7	1	1	1		14	1
Kyrgyzstan	1	1	1	1	1		1	1
Montenegro	3	3	3	3	12		3	3
North Macedonia		8	10		11			
Republic of Moldova	1	1	1	1	1		1	1
Russian Federation	3	9	10		12		3	3
Tajikistan	2	1	1	1	1		1	1
Turkmenistan	4		10		12			
Ukraine	1	1	1	1	1		1	1
Uzbekistan	1	1	1	2	1		2	1

CRIMINALIZATION OF TRANSGENDER PEOPLE

- Yes
- No
- Data not available

CRIMINALIZATION OF SEX WORK

- Any criminalization or punitive regulation of sex work
- Sex work is not subject to punitive regulations or is not criminalized
- Data not available

CRIMINALIZATION OF SAME-SEX SEXUAL ACTS IN PRIVATE

- Death penalty
- Imprisonment (14 years–life, up to 14 years) or no penalty specified
- Laws penalizing same-sex sexual acts have been decriminalized or never existed, or no specific legislation
- Data not available

LAWS CRIMINALIZING THE TRANSMISSION OF, NON-DISCLOSURE OF OR EXPOSURE TO HIV

- Yes
- No, but prosecutions exist based on general criminal laws
- No
- Data not available

LAWS OR POLICIES RESTRICTING THE ENTRY, STAY AND RESIDENCE OF PEOPLE LIVING WITH HIV

- Deport, prohibit short and/or long stay and require HIV testing or disclosure for some permits
- Prohibit short and/or long stay and require HIV testing or disclosure for some permits
- Require HIV testing or disclosure for some permits
- No restrictions

Resource: UNAIDS



PROJECT HOLDERS AND MAIN DONOR:



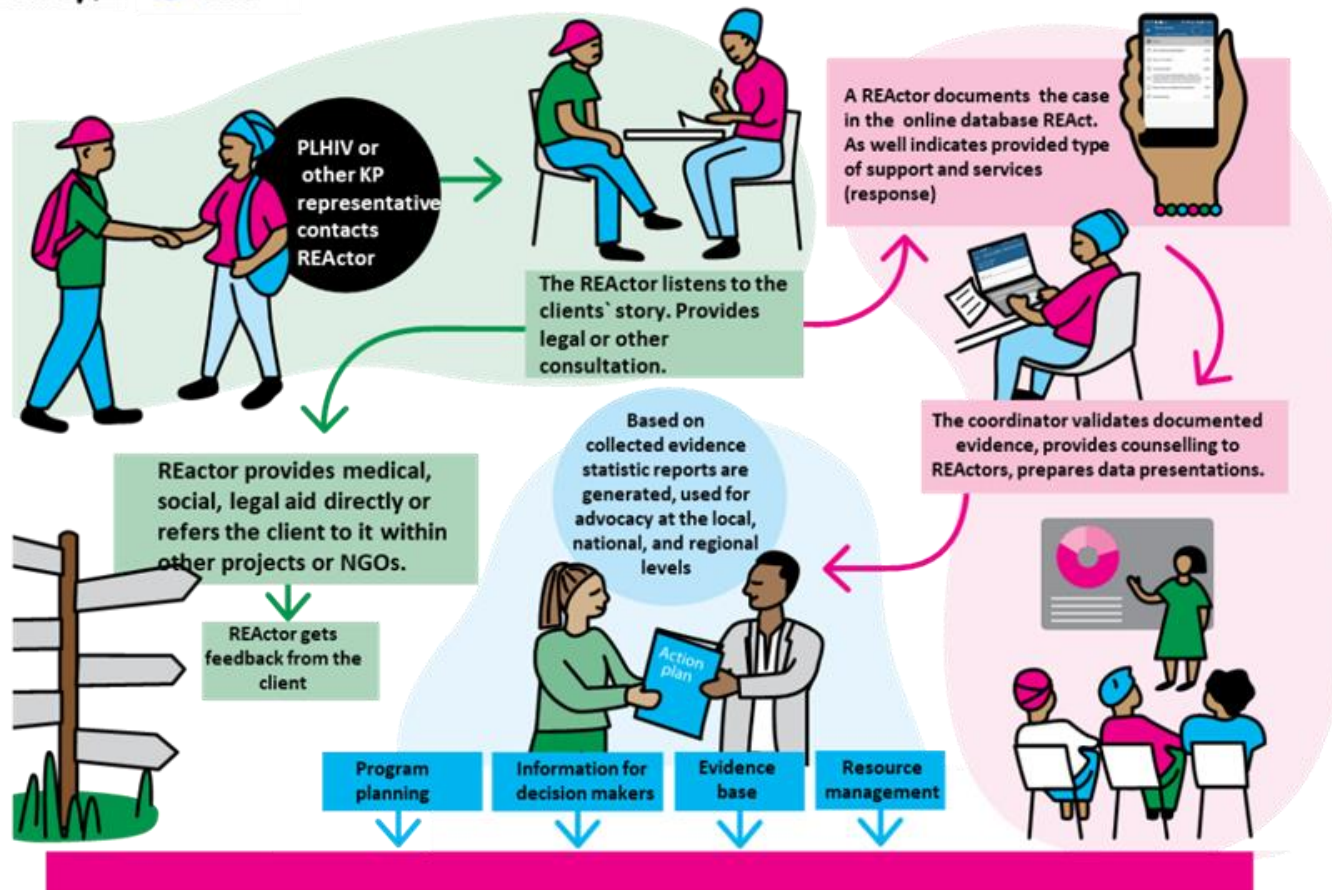
REGIONAL COMMUNITIES :



NATIONAL COORDINATORS:



200+ LOCAL CBOS, THAT COLLECT DATA





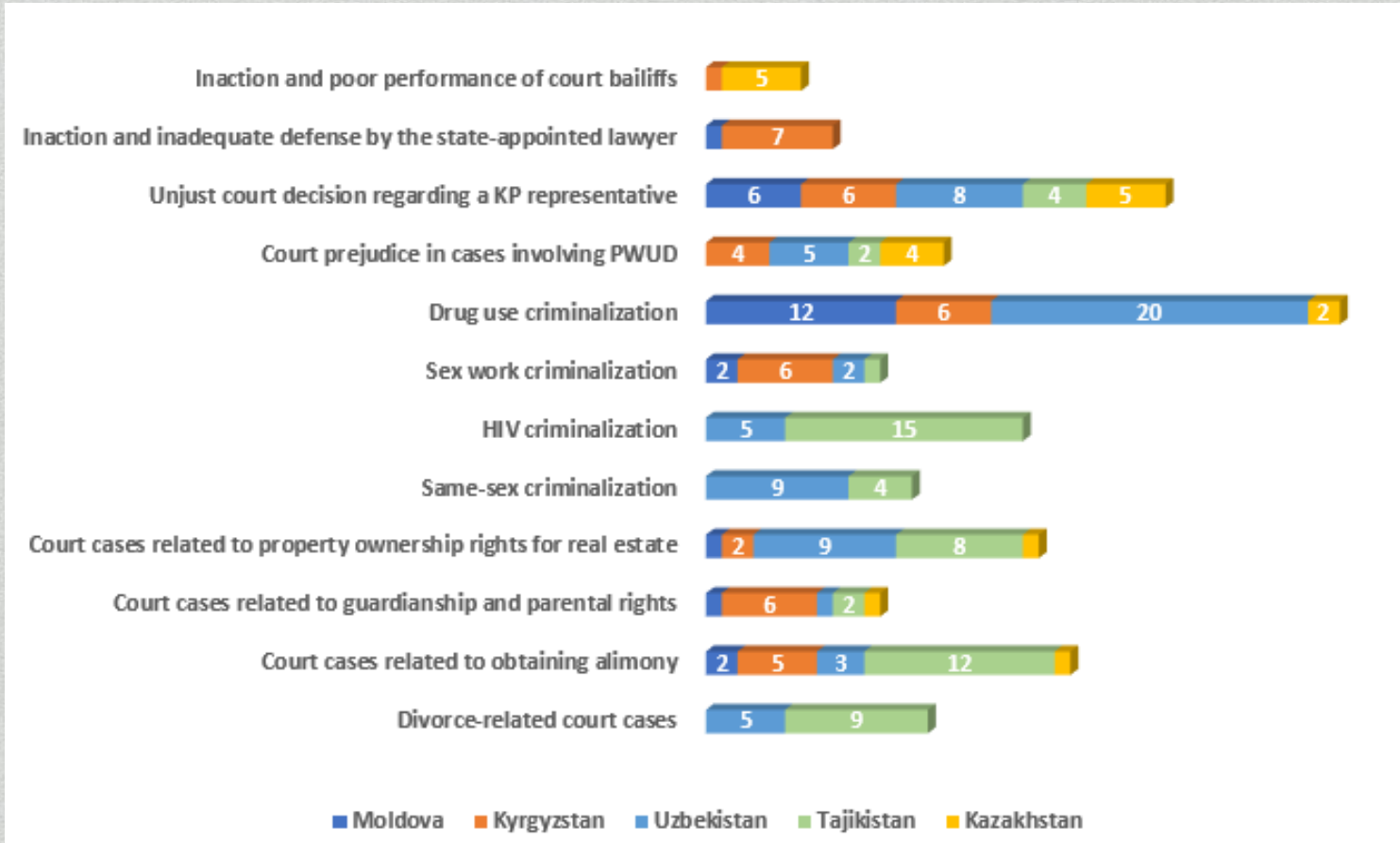
Appeals from KPs to REActors related to Judicial System, documented during 2022- June 2023

20k+ appeals related to human rights violations of KPs were documented during 2019-2023 in **14 countries of the region**.

On average, **40% of appeals are resolved through direct REActor's intervention**.

Only **0,5% (110)** of appeals are resolved through legal proceedings. **This is due to complicated access to justice**.

On average, **40% of clients refrain from taking any actions to defend their rights** (such as filing a police report, going to court, or lodging a complaint) **because they lack trust in the justice system or fear for their life and safety**.

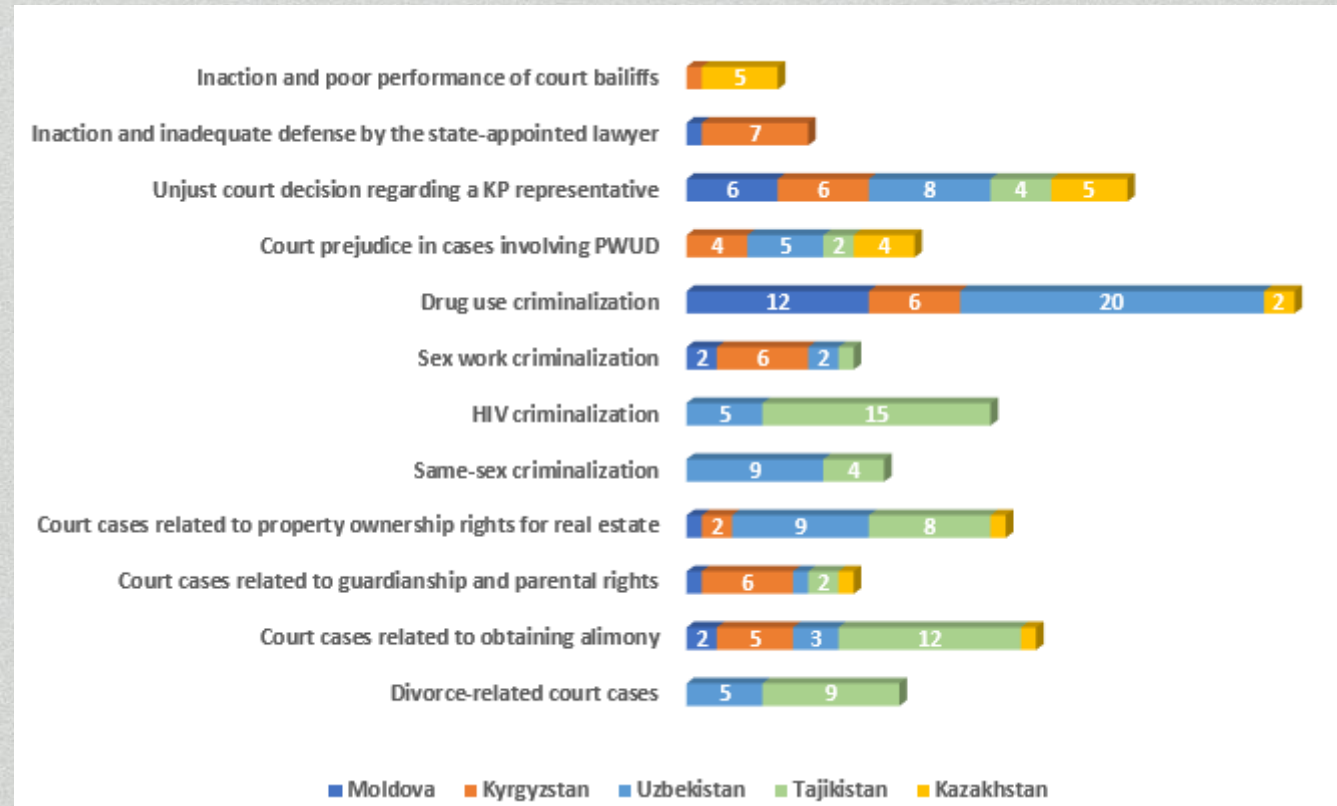


Barriers in accessing justice

Findings

- ! Victims often refrain from further action to protect their rights due to **bureaucratic complexities and financial difficulties**.
- ! The **state-guaranteed free legal assistance** system has several **drawbacks**: lack of interest, bribery, and the absence of a state-appointed lawyer during investigative actions.
- ! **Courts often side with the prosecution** in cases where the defendant belongs to vulnerable populations.
- ! In the judicial practice of Central Asian countries, **cases of violence based on hatred** or **cases of discrimination** on grounds of sex, gender, or HIV **are rarely considered**. This fact discourages victims from seeking justice.
- ! Court bailiffs (in Kyrgyzstan in particular) are not effectively performing their duties in collecting alimony. In all cases related to **alimony and guardianship**, 95% the victims are women, who in particular are in need of financial support, as they have remained the sole caregivers for minors.

Appeals from KPs to REActors related to Judicial System, documented during 2022- June 2023



HIV criminalization: situation

Findings

- ! The **disclosure of HIV status** (and in Uzbekistan, sexual orientation) **by the AIDS Center** serves **as grounds for initiating a criminal case** by law enforcement authorities.
- ! The presence of **intent to infect is not taken into account**, and the accused's **adherence to ART** is also **not considered**.
- ! Investigations in such cases often accompanied with **violations of the right to privacy**. **Statements** from "supposed victims" are often **made under pressure** from law enforcement officers.

Tajikistan, 2023

Nikora* is accused in endangering with HIV of four men with whom she had unprotected sex over the last four years, as she didn't disclose her registration at AIDS Center since 2015. The trial **did not consider the undetermined viral load**. Despite **negative HIV-testing of "victims"** and no claims against Nikora*, she was **sentenced to 1.5 years** in prison under p.1 of Art.125.

Response: Despite project attorney's efforts Nikora* was sentenced but the court deferred this punishment until her child reaches the age of eight.

Response

Tajikistan: In 2022-2023, **40 appeals were received from clients accused under Art.125**. In 15 cases defended in court, **only 3 had positive outcomes**, while others resulted in sentences of 6-18 months. Half of the appeals were from women.

Uzbekistan: In 2022-2023, in Tashkent region, **15 appeals were received from clients accused under Art 113**. One case went to trial, despite legal support client was sentenced to 2 years of imprisonment.

Uzbekistan, 2022

As soon as Albek* returned home from Russia, he registered in AIDS Center to continue receiving ART. **He revealed his sexual orientation** and disclosed his workplace **upon doctors' request**.

In a couple of days, Albek* **was arrested** directly from his workplace. He faced pressure and **intimidation at the police station** to confess that he was gay and HIV-positive. He did not admit and requested a lawyer from our project. The **main evidence for the charges** under Article 113 (intentional HIV infection) and Article 120 (sodomy) was that **Albek* had a positive HIV status and worked in a beauty salon**.

Response: After the intervention of the project lawyer, the case was closed due to lack of evidence.

HIV DEcriminalization: advocacy



2022: Alternative report to CEDAW on Uzbekistan in 2022 with **direct recommendation to repeal the law criminalizing HIV.**

100%LIFE

2023: Draft laws with the legal changes to reduce the criminalization of PLHIV are developed:

Kazakhstan:

- Repeal of Art. 118 p.1 of C.C. (Exclude criminal liability for deliberate endangerment of another person with the risk of HIV infection).
- Transfer p.2 and 3 of Art. 118 to the composition of general crimes and consider them within the framework of Art. 107 (Intentional infliction of moderate harm to health)

Georgia:

- Repeal of Art. 131 p.1 of C.C. (Deliberate endangerment of another person with the risk of HIV infection).
- Transfer p.2 of Art. 131 to the composition of general offenses and consider it within the framework of Art. 118 of the C.C. (Intentional infliction of less serious bodily harm) as a note.

Uzbekistan:

- Repeal of Art. 113 p.1 of C.C. (Exclude criminal liability for deliberate placing of another person in danger of contracting a venereal disease).
- Apply Art.109 of C.C. (Intentional infliction of light bodily harm) to intentional acts under p.2 and 3 of Art. 113 of C.C.

Kyrgyzstan:

- Repeal of Art. 143 p.2-3 of C.C. (Exclude penalty or criminal liability for endangering with the risk of HIV, if infection did not occur, or occurred due to negligence.).
- Amend of p.4 Art. 143 (Introduce the concept of intentional HIV infection, reduce criminal liability from 5-8 years to a fine or imprisonment for a term of 2-5 years.)

2024: Draft laws with the legal changes to reduce the criminalization of PLHIV and key populations **will be submitted for public consultation** (including high-level discussions and negotiations with members of parliaments, ministries, ombudsmen, etc.)

Drug use criminalization: situation

Findings

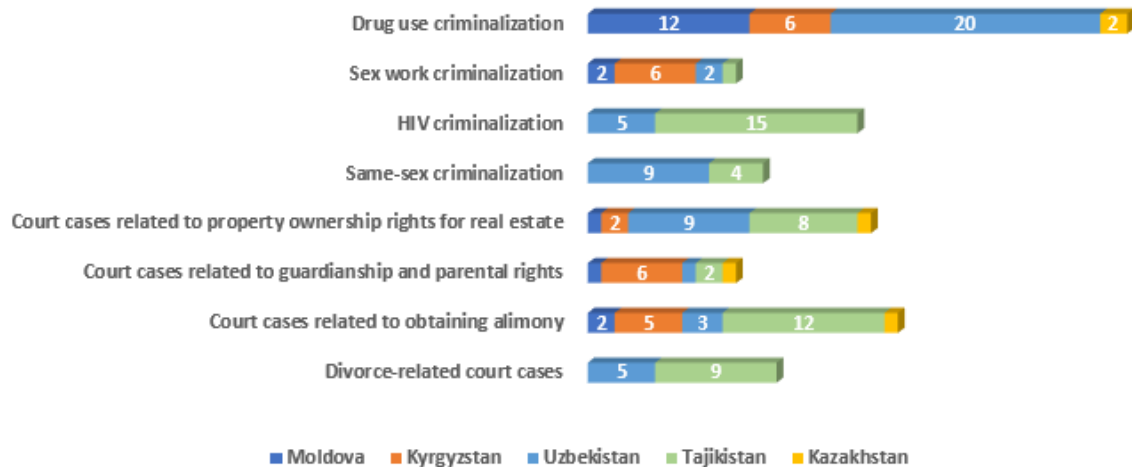
- To **pursue drug users** and increase the crime **detection index**, law enforcement officers **use articles not directly related to drugs**, such as "breach of public order" and "non-compliance with police orders."
- The **quantity of a narcotics** is often calculated, **including substances for dilution** or other non-narcotic components.
- The **repressive drug policy of Russia** is reflected in the territories under its influence: **in Transnistria**, there were registered **__ cases** of criminalization of **consumption without the intent to sell** have been recorded, as well as unjustified prosecution of drug users under other articles.

Uzbekistan, 2023

David* and friends purchased drugs online and were surrounded by police upon arrival at the specified location. The **police**, finding no illegal items in their pockets, **requested access to their phones**. Though nothing illegal was found, the **online store correspondence and location became the basis for detention**. David and friends spent two days at the police department awaiting trial **with 30 people detained in similar circumstances**, including drug couriers. Despite some being innocent and no drug evidence was found on some individuals, the judge sentenced everyone to 15 days of arrest. **Response:** David to declined to appeal the verdict in court, as he doesn't believe in successful resolution.

Kyrgyzstan, 2022

Ali*'s relatives contacted REActor on **/**/ 2022, stating that he was tried without a lawyer. On **/**/ 2021, Ali* was detained by police officers (Drug Control Service). During the search, marijuana was found on the client in tile adhesive. **No weighing was done, there was no video recording of the detention**, and two suspicious witnesses were present. The client was sentenced after 1 year and 4 months, **tried without a lawyer**, and sentenced to 7 years of strict regime under Art.283, Part 2 of C.C. During the trial, it was stated that the **weighing of the drug was done together with the tile adhesive because police could not separate the narcotic substance**. The client's illness, the fact that he is the sole caregiver for an underage son with no mother, and violations during the arrest, such as the absence of a lawyer, were not taken into account. **Response:** The case is still in progress. Attorney provided by Soros Foundation is involved to prepare appellation.



Drug use DEcriminalization: advocacy



2022:

- **The EECA Commission on Drug Policy** (ECECADC) started its work. **Guiding principles** towards effective and humane drug policies in EECA region.

2023:

→ Drug policy road-maps elaborated:

Kyrgyzstan:

- the Law “On Narcotic Drugs, Psychotropic Substances, and Precursors”: Repeal of Art. 40-42 (Compulsory treatment for drug addiction). Repeal of Art. 36. (Narcological registration)

Georgia:

- the Law “On Combating Drug-related crime”: Repeal of Art.3 (Automatic deprivation of Civil Rights for drug-related crimes)
- Introducing alternatives to punishment for drug offenders

Moldova:

- Amendment Art 217. of C.C. (Illegal Circulation of Narcotic or Psychotropic Substances or Analogs Thereof Not for the Purpose of Alienation)
- Repeal of Narcological registration

→ the ECECARD high-level country visits:

Lithuania: As a result of visit a week before voting, the Parliament's Legal Affairs Committee approved amendments to Adm. and C. Code, decriminalizing the possession of small amounts of cannabis without intent to sell. The bill is now headed for a vote in the Lithuanian Parliament.

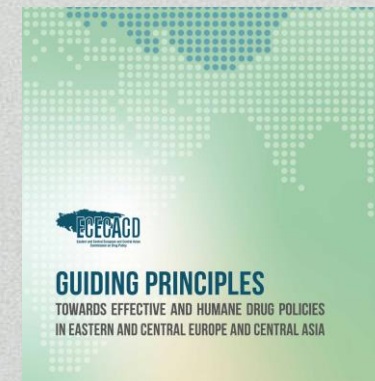
Kyrgyzstan: two missions helped to establish high-level relationship and get political commitment for policy changes. Commission will follow up on existing commitments and will provide technical, expert and political support to support those changes.

Moldova: recent visit and meeting with the Prime Minister brought decriminalization and the abolition of the drug registry closer.

- **Drug use challenges in EECA region were recognized** and highlighted in OHCHR report in 2023, thanks to consolidative shadow reports of country CBOs and the **ECECARD support**

2024:

Advocacy actions to **approve legislative changes** to reduce drug use criminalisation in **Georgia, Kyrgyzstan, Moldova.**



Women in focus

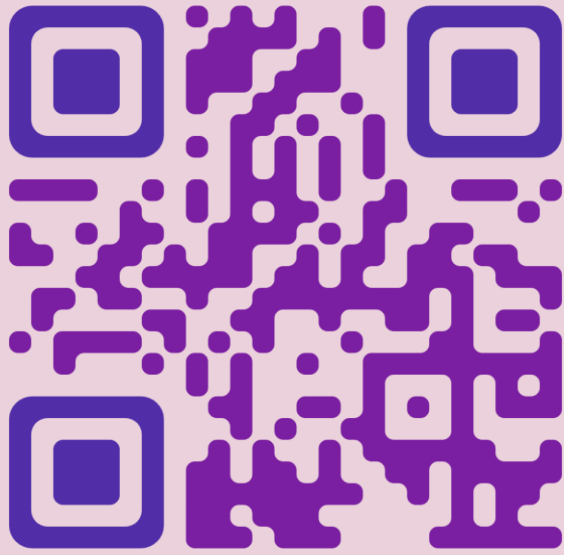
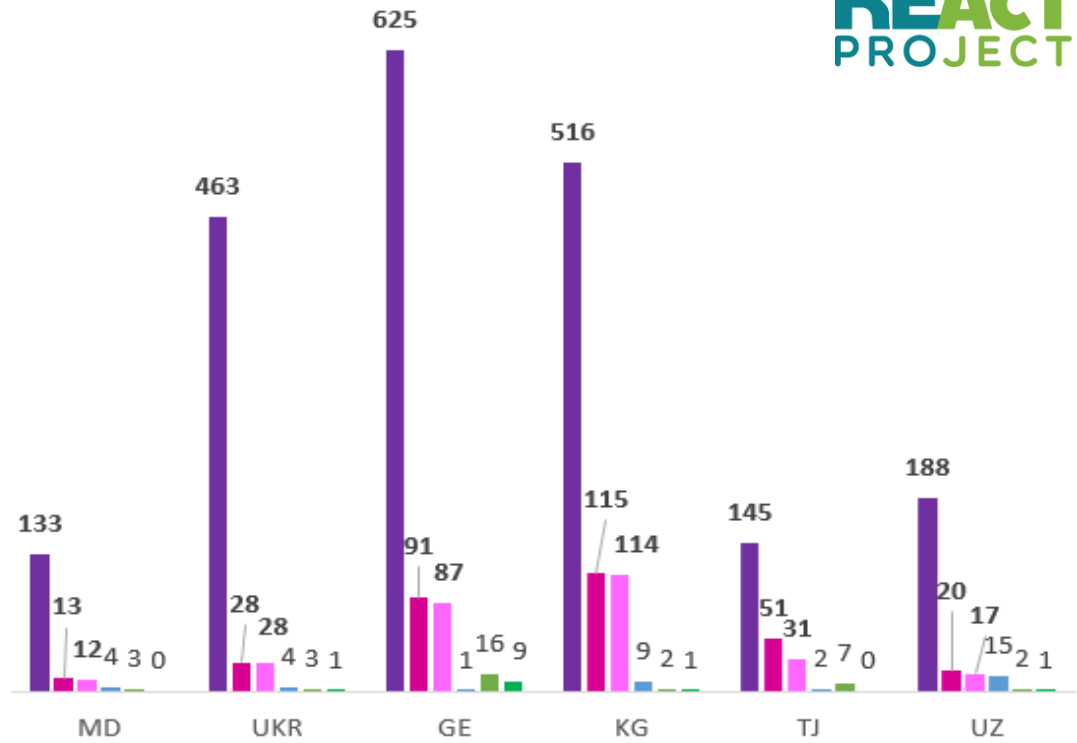


Findings



Crimes involving **sexual assault**, particularly when the victim is a sex worker and the perpetrator is a police officer, are exceptionally **challenging to bring to court due to the complexity of proving the allegations**, which still largely relies on the victim, and the absence of necessary infrastructure to mitigate the risk of retraumatization of the victim. **(None of the Central Asian countries has ratified the Istanbul Convention.)**

REAct appeals related to sexual assault, documented during 2022- 2023



Best practices

Disclosure of HIV status is a key prerequisite for further violations. It is critically important to develop legal practices for protecting PLHIV from the disclosure of sensitive information.



August 20, 2021

Breakthrough in human rights protection in Tajikistan: court fined 20,000 somoni from husband for disclosing wife's HIV+ status

Institutions expressly established to combat all forms of discrimination have proven their efficacy. In Moldova, several successful strategic cases have been adjudicated by the Council on Equality.



October 12, 2023

The case of a doctor in Moldova: the struggle for tolerance and professional ethics



Visit react-aph.org to find out more data and cases