DISCRIMINATION AGAINST PEOPLE LIVING WITH HIV

IN HEALTHCARE SETTINGS

A comparative 11-country report
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Written for the European HIV Legal Forum
by Jakub Tomšej and Martin Cerny

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LIST OF ABBREVIATIONS

AAE	AIDS Action Europe
AIDS	Acquired Immune Deficiency Syndrome
ART	Antiretroviral therapy
CJEU	The Court of Justice of the European Union
ECHR	The Convention for the Protection of Human Rights and Fundamental Freedoms
EHLF	The European HIV Legal Forum
EU	European Union
EU Charter	The Charter of Fundamental Rights of the European Union
HIV	Human immunodeficiency virus
MSM	Men who have sex with men
PLHIV	People living with HIV
PREP	Pre-exposure prophylaxis
PWID	People who inject drugs
TFEU	The Treaty on the Functioning of the European Union
UN	United Nations
UNAIDS	The Joint United Nations Programme on HIV/AIDS
U=U	Undetectable = Untransmittable
WHO	World Health Organization

EHLF PARTNERS

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Association “Partner Network” Kyrgyzstan

Stronger Together North Macedonia

GAT Grupo de Ativistas em Tratamentos Portugal

CALCSICOVA Spain

National AIDS Trust the United Kingdom

INTRODUCTION

The mission of AIDS Action Europe's European HIV Legal Forum (EHLF) is to develop effective means of improving access to HIV prevention, counselling and testing, treatment, care, and support for all those who have limited access to HIV services due to legal obstacles, through the united efforts of legal and policy experts with the aim of bringing into effect a rights-based approach to health as adopted by the European Commission.

In 2012, following growing interest within the AAE Steering Committee and the broader AAE network for mutual support and joint action on legal issues related to HIV, AAE developed the first steps towards the EHLF, which began with a pilot project initiated by five AAE member organisations (the "EHLF partners") in Hungary, Italy, Netherlands, Switzerland, and the United Kingdom.

The pilot focused on the legal situation affecting access to healthcare of migrants in an irregular situation (also known as "undocumented migrants") who are living with HIV since it was felt by all five EHLF partners that there was an urgent need to act on this issue. A survey was devised by the EHLF partners and rolled out in the partners' countries. The results provided valuable insights into differences in health systems in the five countries and its effects on access to treatment and services for irregular migrants. By documenting the legal situation, providing a comparative analysis of each country's laws and how they were applied, the survey report identified good practice and innovative solutions consistent with international human rights, acting as a catalyst for change where practice remains poor.

Following the pilot phase, the EHLF was enlarged and the 2017 report covered 16 European countries legal situation and level of access to HIV- and co-infection services for migrants in an irregular situation.

In the project phase 2018-2019, EHLF partners with coordination from the AIDS Action Europe office produced a 10-country report on HIV-criminalization in European Union countries and the latest 10-country report on access to HIV-, viral hepatitis-, and TB- services for people in prison and other closed settings.

BACKGROUND

The Steering Committee of AIDS Action Europe identified tackling stigma and discrimination as a core thematic area that the network should address and work on in the 2018-2021 strategic period.

As long as stigma and discrimination are present in the society, both the global and local initiatives will continue to fail to meet the objectives of reducing new infections, increasing voluntary counselling and testing, having better linkages to care, and increasing the number of PLHIV whose viral load is suppressed.

As such, tackling stigma and discrimination stands in the centre of all AAE's activities; a special attention is dedicated to it in healthcare settings, as discrimination in this area may undoubtedly have the most severe negative effects on the state of health of PLHIV and their overall quality of life. UNAIDS and the WHO indicates fear of stigma and discrimination as the main reason why people are reluctant to get tested, disclose their HIV status, and start ART.[1]

"HIV-related stigma" refers to the negative beliefs, feelings and attitudes towards PLHIV, groups associated with PLHIV and other key populations at higher risk of HIV infection (e.g. people who inject drugs, sex workers, men who have sex with men and transgender people). It is the prejudice that comes with labelling an individual as part of the HIV+ community.

"HIV-related discrimination" refers to the unfair and unjust treatment of an individual based on his/her real or perceiver HIV+ status. HIV-related discrimination is usually based on stigmatising attitudes and beliefs about populations. While stigma refers to internal beliefs and attitudes, discrimination presents itself externally in one's behaviour.

METHODOLOGY

This study will cover the following 11 countries of Europe and Central Asia: Czechia, Finland, France, Georgia, Germany, Italy, Kyrgyzstan, North Macedonia, Portugal, Spain, and the United Kingdom.

These countries were chosen because they are considered representative of the epidemiological, political, geographical, and economic diversity of Europe and Central Asia.

EHLF partners from each country were chosen based on their previous and current work on legal issues in the context of discrimination in healthcare settings from the AAE membership.

The information in the country profile section was provided by the AAE member organisations via a standardised questionnaire and is based on public information and information requested from different relevant institutions, reflecting the state of affairs during the data collection of April – December 2021. The questionnaire is included in Annex 1 and contained the following information sets:

Part 1: LEGAL AND POLICY BACKGROUND
- Protection against discrimination in healthcare settings - relevant to HIV status:
- Legislation that directly or indirectly discriminates against or provides basis for discrimination against people living with HIV/AIDS
- Reporting discrimination in healthcare settings, legal and other remedies
- Rights and obligations of PLHIV in healthcare settings
- Prohibition or limitations on working in specific healthcare professions for PLHIV
- Private insurance policies concerning PLHIV

PART 2: DISCRIMINATION AGAINST PLHIV IN HEALTHCARE SETTINGS
PART 3: CASE STUDIES
PART 4: GOOD PRACTICE/ NATIONAL CONTEXT
PART 5: BAD PRACTICE/ NATIONAL CONTEXT
PART 6: COVID-19 PUBLIC HEALTH MEASURES IMPACT ON PLHIV

In addition, desk research was undertaken in order to produce an overview of relevant international and EU laws, policies, and case law.

MAIN FINDINGS

The 11 countries covered in this report are different from each other regarding their approach to the anti-discrimination legal framework. Nevertheless, no matter if the countries have chosen to adopt one complex anti-discrimination act, or several sector-specific legal acts, they all show some common characteristics, which will be summarised in this section of the report.

For more detailed, country specific information, country profiles are found in the previous section, in which the situation for each of the eleven countries is described.

ANTI-DISCRIMINATION LEGAL FRAMEWORK

In 8 out of the 11 countries, there are specific constitutional provisions that ensure protection against discrimination of PLHIV. In 2 of those countries (Finland, Germany) these provisions protect PLHIV under the protected characteristics of "health" or "disability". In 6 of those countries (Czechia, Georgia, Italy, Kyrgyzstan, Portugal, Spain) these provisions protect PLHIV by including a demonstrative (i.e. open-ended) list of protected characteristics. In France, the constitution only includes 3 distinctive protected grounds; people with other characteristics (including HIV) must rely on protection through laws and decrees of lower legal value.

In North Macedonia, the constitutional list of protected characteristics is exhaustive and does not include any discriminatory ground applicable to HIV; nevertheless, the North Macedonian constitution provides that the international agreements ratified by the parliament are part of the internal legal regulations, i.e. that all the international United Nations conventions (such as the European Convention of Human Rights) are directly applicable in the North Macedonian legal system. In the UK, there is no formal written constitution; protection is provided by laws of lower legal value.

All the 11 countries provide protection against discrimination through regulatory acts at the primary legislation level. Primary legislation protection is HIV-specific in 3 of the countries (Italy, Kyrgyzstan, Spain). The other 8 countries provide PLHIV with protection against discrimination under the characteristics of either disability or health status.

Legislation that may provide basis for discrimination against PLHIV in healthcare settings was reported in 3 out of the 11 countries (Czechia, France, Georgia). In North Macedonia, concerns were expressed regarding the lack of direct protection at the constitutional level.

MEANS OF REPORTING DISCRIMINATION IN HEALTHCARE SETTINGS

All the 11 countries indicated some version of complaint procedures available to PLHIV who become victims of discrimination in healthcare settings.

In all the 11 countries, PLHIV who become victims of discrimination in healthcare settings have the option to file a civil lawsuit; commonly with the possibility to claim monetary compensation (the amount of compensation varies between the reviewed countries). In 5 out of the 11 countries (Finland, France, Georgia, Portugal, Spain), it was indicated that discrimination in healthcare settings may constitute a criminal offense.

OBLIGATION OF PLHIV TO DISCLOSE THEIR HIV+ STATUS IN HEALTHCARE SETTINGS

Existence of a legal obligation to disclose one's HIV+ status in healthcare settings was indicated in 4 out of the 11 countries. In Czechia, PLHIV are obligated to disclose their HIV+ status to every medical doctor ahead of provision of any medical examination or treatment and on admission to institutional care. In North Macedonia, Portugal and Spain, such obligation is not formulated as HIV-specific but rather as a general obligation to give true and sufficient information about one's health conditions.

CONFIDENTIALITY AND ACCESSIBILITY OF PERSONAL DATA RELATED TO HIV

In the 7 EU member states, the processing and protection of personal data are regulated by the EU General Data Protection Regulation which is directly applicable; a legal act that supplements the EU General Data Protection Regulation and adapts the national laws to its provisions has commonly been adopted.

In Georgia, the protection of personal data related to HIV is ensured by the Law on HIV Infection/AIDS which sets forth an obligation of confidentiality (HIV-specific). In Kyrgyzstan, personal data protection is introduced in several legal acts, such as the Act on Protection of Health of Citizens in the Kyrgyz Republic, Act on the Status of Medical Workers, and the Criminal Code of the Kyrgyz Republic. North Macedonia reported that the Law on Personal Data Protection is fully harmonised with the EU General Data Protection Regulation. Personal data protection in the UK is ensured through the Data Protection Act 2018. While the EU General Data Protection Regulation is no longer directly applicable after Brexit, the Data Protection Act 2018 enshrines similar requirements.

COMMON FORMS OF DISCRIMINATION IN HEALTHCARE SETTINGS

Although it was reported that instances of discrimination against PLHIV in healthcare settings are becoming less frequent in most of the 11 countries, it is still not uncommon for PLHIV to encounter several different forms of discriminatory conduct.

Overall, the most commonly reported form of discrimination remains the refusal-of-care which occurs, to some extent, in all the 11 countries; followed by the provision of treatment and the end of office hours. Other forms of reported stigmatising behaviour, that might not always constitute discrimination, include inappropriate questions, negative or judgmental attitude, avoidance of physical contact, and adopting excessive hygienic measures. The source of these problems generally lies in the lack of appropriate knowledge regarding HIV/AIDS among doctors, nurses, and other medical professionals.

Confidentiality breaches were also commonly reported among the bad practices. Regarding specific sites where discrimination takes place, dental care was marked as the most problematic. [especially in regard to the description of common forms of discrimination in healthcare settings, see the relevant section in the country profiles]

RECOMMENDATIONS

This report provides an overview of the situation regarding discrimination in healthcare settings in 11 countries of Europe and Central Asia. The information provided by the local NGOs suggests that HIV-related discrimination in the healthcare sector is not unusual in either of the countries.

The issue that was repeatedly pointed out by the EHLF Partners in their questionnaires is the lack of appropriate knowledge regarding HIV/AIDS among doctors, nurses, and other medical professionals (outside the infectious diseases departments or HIV clinics). This ultimately results in stigmatising and judgmental attitudes of some healthcare professionals towards patients living with HIV.

Another issue indicated in the country profiles are the difficulties of proving discrimination before court (insurmountable burden of proof) and the limitations of the anti-discrimination instruments set up by the law (gaps in legal enforcement of the anti-discrimination legislation; problems of inadequately lenient sanctions and low compensation awards).

Most EHLF Partners also reported issues with confidentiality of medical data. Although the majority of healthcare facilities have guidelines on sensitive personal data processing, HIV-related data is often mishandled (visible indication of HIV+ status on patients' records, disclosure of HIV+ status in crowded receptions, etc.).

Non-accessibility of private life and health-related insurance policies also presents itself as a current issue in most of the reviewed countries. Considering the scientific and medical achievements in ART and the increased quality of life (which is, in case of successful treatment, comparable to the quality of life of the general population) and life expectancy of PLHIV, there is no longer justification for not making insurance coverage available to this community.

The findings of this report show the importance of HIV/AIDS education for both healthcare professionals and PLHIV themselves. The findings also indicate the need for improvement in HIV-related data protection, in the enforcement of protection against discrimination and in the effective usage of anti-discrimination remedies.

In light of these results, this report proposes the following recommendation to the reviewed countries:

1. Ensure that the national anti-discrimination legal framework includes protection of PLHIV against discrimination explicitly, or by including protected characteristics that clearly include HIV.

2. Abolish the requirement to disclose one's HIV+ status in healthcare settings.

3. Maintain data protection and privacy in all sectors of the healthcare system. Ensure sufficient education and training of healthcare staff regarding confidentiality of sensitive personal data.

4. Ensure sufficient education and training of healthcare workers in order to increase knowledge and understanding of the HIV infection.

5. Ensure enforcement of anti-discrimination legislation.

6. Make PLHIV aware of their rights and provide empowerment in order to seek available remedies if their rights are violated.

INTERNATIONAL AND EUROPEAN REGULATIONS, POLICIES, AND CASE LAW

Across many international treaties and conventions, the rights to life and health are considered a nonnegligible part of fundamental human rights. In the context of international law, the right to health was first explicitly mentioned in the Constitution of the World Health Organization[2] (hereinafter "WHO") which states that *"the enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being without distinction of race, religion, political belief, economic or social condition."*

In the same spirit, some United Nations (hereinafter "UN") human rights documents also address the right to health. For instance, the Universal Declaration of Human rights states that everyone has the right to an adequate standard of living including access to medical care[3] and the International Covenant on Economic, Social and Cultural Rights recognizes the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.[4]

These documents are the first in a line of many that reflect the internationally accepted importance of the rights to health and healthcare; and the multitude of their signatories shows that states worldwide have committed to the protection and enforcement of these rights. Furthermore, many of these international documents stipulate that the required protection shall be granted to all individuals without distinction of virtually any attribute or condition.

INTERNATIONAL FRAMEWORK – HUMAN RIGHTS TREATIES AND CONVENTIONS THAT RECOGNIZE THE RIGHT TO HEALTH:

- The Universal Declaration of Human Rights, General Assembly of the United Nations, dated December 10th, 1948 – [Article 25];
- The International Convention on the Elimination of All forms of Racial Discrimination, dated December 21st, 1965 – [Article 5];
- The International Covenant on Economic, Social and Cultural Rights, General Assembly of the United Nations, dated December 16th, 1966 – [Article 12];
- The Convention on the Elimination of All Forms of Discrimination against Women, dated December 18th, 1979 – [Articles 11, 12, 14];
- The Convention on the Rights of the Child, dated November 20th, 1989 – [Article 24];
- The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, dated December 18th, 1990 – [Articles 28, 43, 45];
- The United Nations Convention on the Rights of Persons with Disabilities, dated December 13th, 2006 – [Article 25].

EUROPEAN FRAMEWORK:

- The European Convention on Human Rights;
- The European Social Charter (revised);
- The Charter of Fundamental Rights of the European Union;
- The Treaty on the Functioning of the European Union.

OTHER HIV-SPECIFIC INTERNATIONAL INSTRUMENTS – GENERAL COMMENTS / RECOMMENDATIONS:

- The Declaration of Commitment on HIV/AIDS[5], dated June 27th, 2001;
- The Political Declaration on HIV/AIDS[6], June 2nd, 2006;
- The European Action plan for HIV/AIDS[7], 2017.

THE EUROPEAN CONVENTION ON HUMAN RIGHTS[8]

The European Convention on Human Rights (hereinafter "ECHR"), formally referred to as the Convention for the Protection of Human Rights and Fundamental Freedoms, is an international convention adopted by the Council of Europe to protect the human rights and fundamental freedoms with the aim to unify the maintenance and realisation of such rights by all contracting states. The protection of human rights under the ECHR is provided to all individuals meaning that the contracting states must secure the protection not only to their own citizens but also to every person within their jurisdiction.

The obligation to secure the rights and freedoms defined in the ECHR lies primarily in the hands of each contracting state. However, to ensure that the contracting states do in practice exercise and protect these rights sufficiently, a system of supervision over their conduct was adopted in Section II of the ECHR under which the European Court of Human Rights (hereinafter "ECtHR") was established.

The ECtHR hears applications alleging that a contracting state violated one or more of the human rights formulated in the ECHR or in one of its 16 (optionally ratified) protocols. Apart from ruling on individual or state applications, the ECtHR may also issue advisory opinions.

To date, the ECtHR has examined hundreds of thousands of applications.[9] Being the final interpreter of the ECHR, its rulings are binding on the countries in question which constitutes a powerful instrument of protection of all individuals within the jurisdiction of the 47 contracting states.

a. Right to health and healthcare

Although not explicitly mentioned in the ECHR, the right to protection of one's health is linked to the rights stipulated under Article 2 (right to life), Article 3 (prohibition of torture and inhuman or degrading treatment) and Article 8 (right to respect of private and family life).

The wording of Articles 2, 3 and 8 of the ECHR suggests that these rights were originally formed as "negative" rights (i.e. a right that forms a negative obligation of the contracting states to refrain from acting against it). However, as in the case of several other human rights set forth in the ECHR, they are now being interpreted by the case-law of the ECtHR as to the extent that they impose a range of positive obligations on the contracting states in order to secure the effective exercise of the right to health. The scope of such positive obligations is to be determined on a case-to-case basis by the individual circumstances of each submitted case.

Similarly, the ECHR contains no explicit reference to the right to healthcare. In the past two decades, however, the ECtHR adopted a more extensive approach to the interpretation of the ECHR and gave indications that through Article 2 (the right to life) and Article 8 (the right to respect for private and family life) also the right to healthcare may be protected. On several occasions, the ECtHR defined a positive obligation of a contracting state to safeguard lives of those within their jurisdiction[10] or even to provide emergency medical treatment[11]. In relation to the evolving case-law of the ECtHR, it can be hesitantly stated that the court may be willing to protect the right to healthcare in general under Articles 2 and 8 of the ECHR.

b. Prohibition of discrimination

The ECHR prohibits discrimination in Article 14 where it provides an open-ended (i.e. non-exhaustive) list of discriminatory grounds: sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

This prohibition of discrimination under Article 14 is of an accessory nature and in order to activate it, a link towards one of the substantive rights in Articles 2-13 must be established. This accessory nature is the reason why the subsumption of the right to health and healthcare under Articles 2, 3 or 8 is necessary.

In contrast to Article 14, Article 1 of Protocol No. 12 to the ECHR contains a general prohibition of discrimination that provides protection against discrimination in relation to any right set forth by law (both international and national law). This protocol has been ratified by 6 of the 11 observed countries (namely: Czechia, Finland, Georgia, North Macedonia, Portugal, and Spain).[12]

THE EUROPEAN SOCIAL CHARTER[13]

As the second instrument for the protection of human rights within the Council of Europe, the European Social Charter was adopted 8 years after the ECHR came into force. The original wording of the European Social Charter (hereinafter “ESC”) was ratified by 10 of the 11 observed countries (namely: Czechia, Finland, France, Germany, Italy, North Macedonia, Portugal, Spain, and the United Kingdom).[14] The revised version of the European Social Charter[15] (hereinafter “ESC(r)”) from 1996 was ratified by 7 of the 11 observed countries (namely: Finland, France, Germany, Italy, North Macedonia, Portugal, and Spain) by 2021.[16]

The ESC represents a complementing document to the ECHR in the field of economic and social rights. To ascertain whether contracting states have honoured the undertakings set out in the ESC, the European Committee of Social Rights (ECSR) was founded. Its purpose is to evaluate the conformity of national laws and practices with the ESC.

Regarding the right to health and healthcare, Article 11 of the ESC(r) is the main provision. It emphasises the importance of ensuring the effective exercise of the right to protection of health and imposes the following obligations on the contracting states:

1. to remove as far as possible the causes of ill-health;
2. to provide advisory and educational facilities for the promotion of health and the encouragement of individual responsibility in matters of health;
3. to prevent as far as possible epidemic, endemic and other diseases, as well as accidents.[17]

Other provisions covering particular segments of the right to health include Article 3 (health and safety at work), Articles 7 and 17 (health and well-being of children and young persons), Articles 8 and 17 (health of pregnant women), and Article 23 (health of elderly persons).

In March 2009 the secretariat of the ESC prepared an information document on the matter of the right to health[18] which shall be used as a general guideline of what is expected of the contracting states under the ESC provisions. The information document states that Article 11 of the ESC(r) sets out rights to enable persons to enjoy the "highest possible standard of health attainable". These rights are then divided and reflected in I. measures to promote health (food safety, vaccination, anti-smoking, anti-alcoholism, and drug addiction measures etc.); and II. healthcare provision in case of sickness (accessible health care system to the entire population).

The Charter of Fundamental Rights of the European Union[19]

The Charter of Fundamental Rights of the European Union (hereinafter "EU Charter") is a leading document of the law of the EU, which according to Article 6 of the Treaty on European Union has the same legal value as the founding treaties; and as such belongs to the primary law of the EU. Applicable to both the institutions of the EU and its member states, the EU Charter sets out the general framework for the interpretation and application of the existing EU legislation as well as for the adoption of new EU legislation. Out of the 11 observed countries 7 are members of the EU (namely: Czechia, Finland, France, Germany, Italy, Portugal, and Spain).

Equally to many other international treaties and conventions, also the EU Charter considers the right to healthcare to be one of the fundamental rights of any individual. Under Article 35 of the EU Charter, *"Everyone has the right of access to preventive health care and the right to benefit from medical treatment under the conditions established by national laws and practices. A high level of human health protection shall be ensured in the definition and implementation of all the [European] Union's policies and activities."*

Furthermore, under Article 21, the EU Charter prohibits any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion, or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation.

The United Nations Convention on the Rights of Persons with Disabilities[20]

The Convention on the Rights of Persons with Disabilities (hereinafter “UNCRPD”) sets forth fundamental human rights of people living with disability. It requires contracting states to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities and to promote respect for their inherent dignity.

Apart from the main text of the UNCRPD, which contains the main human rights provisions, an Optional Protocol to the UNCRPD (Optional Protocol) was opened for signature. The Optional Protocol allows contracting parties to recognise the competence of the Committee on the Rights of Persons with Disabilities to consider complaints from individuals. All 11 observed countries ratified the UNCRPD[21] and 10 of them also ratified the optional protocol (with the exception of the Republic of Kyrgyzstan).[22]

The significance of the UNCRPD has been also recognised in the case-law of the ECtHR when in Glor v. Switzerland[23] the court recognised “disability” to be one of the discriminatory grounds under Article 14 of the ECHR and explicitly referred to the UNCRPD as the basis for the existence of a universal consensus on the need to protect persons with disabilities from discriminatory treatment. By doing so, the ECtHR paved the way for litigation which encourages a synthesis of the ECHR with the UNCRPD.

For the explanation of the relevance of recognising disability as one of the discriminatory grounds to HIV specific matters see below the section on the subsumption of HIV under disability/other status.

DECLARATION OF COMMITMENT ON HIV/AIDS[24]

The Declaration of Commitment on HIV/AIDS (hereinafter in this section “Declaration”) is an international document aiming to tackle the global HIV pandemic. Its purpose is to enhance coordination and intensification of domestic, regional, and global efforts to combat HIV/AIDS. It was unanimously adopted by all 189 UN member states (number of member states in 2001).

The Declaration recognises the impact of the HIV pandemic as one of the most formidable challenges to human life and dignity that constitutes a global emergency. It addresses the contributing factors to the spread of the pandemic such as stigma, discrimination, denial and emphasises the importance of prevention and availability of treatment.

Furthermore, the Declaration calls on the states to enact, strengthen or enforce legislation, regulations, and other measures to eliminate all forms discrimination against PLHIV and to ensure their full enjoyment of all fundamental human rights.

Although the Declaration was adopted by the General Assembly of the UN, the primary responsibility to realise its purpose rests with the member states. As a declaration it is non-binding on the signatories.

In order to renew its commitments set forth by the Declaration, in June 2006, the UN General Assembly adopted the Political declaration on HIV/AIDS.

RECOGNITION OF THE RIGHT TO HEALTH IN NATIONAL CONSTITUTIONS

In addition to the international framework, the right to health/healthcare is also recognized by at least 115 constitutions and 6 other constitutions set out obligations of the state regarding the provision of healthcare.[25]

Further information on the current legal framework on the protection against discrimination in the context of the right to health/healthcare in the 11 observed countries is provided in the section on “Relevant anti-discrimination legislation applicable in healthcare settings” of the country profiles.

HIV AS A DISCRIMINATORY GROUND – SUBSUMPTION UNDER "DISABILITY"/"OTHER STATUS"

Discrimination may be defined as a practice of unfair or unjustifiable distinctions between parsons in analogous (or relevantly similar) situations due to a characteristic that they possess. The lists of prohibited grounds of discrimination may vary, but regularly include the following: race, ethnic origin, nationality, gender, age, religion, sexual orientation, and disability.

HIV infection is often referred to as a "health status". Health statuses, however, are not commonly included in the lists of prohibited discriminatory grounds (see the lists of ECHR and EU Charter), thus a further examination of whether the anti-discrimination legislation is applicable to differential treatment of PLHIV is necessary.

On the European regional level, the inclusion of HIV among the prohibited discriminatory grounds can be sought in the case law of the ECtHR. In the case of Kiyutin v. Russia[26] the ECtHR dealt with this issue in connection with the interpretation of the ECHR. It found that a health status, including HIV, falls under the category of "other status" as provided in Article 14 of the ECHR. It stressed the particular vulnerability of PLHIV and accepted that HIV could amount to a form of "disability" as defined in other international treaties and conventions. This conclusion was later upheld by the ECtHR in the case of I.B. v. Greece.[27]

The above-mentioned judgments of the ECtHR show, that a health status, or even specifically the HIV infection, shall be, at least on the European level, considered a prohibited ground of discrimination under the ECHR. Given that, with the exception of Kyrgyzstan[28], the countries observed in this report are member states of the Council of Europe, we can assume that in future cases the national courts of these countries will rule in accordance with the interpretation of the ECtHR.

CZECHIA

STATISTICAL DATA

Population size of the country was estimated at 10.709.000[29] (year 2020).

Estimate number of PLHIV is 3.280.

The state of the 90-90-90 treatment target in 2020[30] was as follows:
- Percentage of PLHIV diagnosed (first 90 target): 83 %
- Percentage of PLHIV on treatment (second 90 target): 98,5%
- Percentage of PLHIV with undetectable viral load (third 90 target): 97,5 %

MAIN EPIDEMIOLOGICAL TRENDS

The Czech Republic remains a country with a relatively low HIV/AIDS prevalence both in terms of relative number of new cases (2,35 cases per 100.000 inhabitants in 2020) and in terms of cumulative number of HIV infections (3.841 cases since 1985). In 2020, 251 new cases of HIV infection were detected in the Czech Republic, which is roughly at the level of 2017 (a slight increase of new cases in comparison to data collected in 2018 and 2019). Among the cases of 2020 there are twice as many people (69), who already knew about their HIV positivity (in comparison with previous years). The highest prevalence rates within the country are reported in the capital city of Prague (38,2%).

RELEVANT ANTI-DISCRIMINATION LEGISLATION APPLICABLE IN HEALTHCARE SETTINGS

Although not HIV-specific, provisions that shall protect PLHIV against discrimination and unequal treatment can be found both at the constitutional level and the primary legislation level.

Constitutional level

The Charter of Fundamental Rights and Freedoms[31] (hereinafter “Charter”) anchors every individual’s right to equal treatment and generally prohibits discrimination in Articles 1 and 3. The list of discriminatory grounds provided in the Charter does not include HIV explicitly; however, this list is of a demonstrative character and protects also “other statuses”.

Similarly to the Charter, the Anti-discrimination Act[32] does not explicitly include HIV in its list of protected characteristics. Unlike the Charter, however, this list is exhaustive and cannot be extended by grounds which are not explicitly mentioned. It is therefore necessary to subsume HIV under one of the discriminatory grounds listed. The Czech courts have previously adjudicated that HIV may amount to disability as defined in the Anti-discrimination Act[33] and PLHIV shall be protected in all areas the Anti-discrimination Act may be applied to.

LEGISLATION THAT MAY PROVIDE BASIS FOR DISCRIMINATION AGAINST PLHIV IN HEALTHCARE SETTINGS

Primary legislation level

The explicit legal obligation to disclose one’s HIV+ status to all medical doctors (Section 53(1)(d),(e) of the Act on the Protection of Public Health [34]) may provide (and often does) basis for discrimination against PLHIV in healthcare settings. [see section on “Obligation of PLHIV to disclose their HIV+ status in healthcare settings”]

Act on Civil Service Employment of Members of the Security Forces[35] (hereinafter “CSEA”), which contains special provisions regarding discrimination in the field of civil service employment (e.g. police officers, firefighters, etc.). Contrary to the Anti-discrimination Act, the CSEA does not consider disability to be a prohibited discrimination ground.

Under the CSEA, a civil service employee must be dismissed if he/she (according to the medical report of the occupational healthcare provider) has lost medical fitness for the performance of service, in the long term, due to a medical condition (Section 42(1)(h) of the CSEA).

For the purpose of the assessment of the civil service employee’s medical fitness for the performance of service, the Ministry of Interior is authorized to issue a decree. Such decree has been issued under No. 226/2019 Coll. (previously No. 393/2006 Coll.), on Medical Fitness for Service in the Security Forces (hereinafter “Decree”).

Collectively, the laws and decrees specific to the field of civil service employment significantly modify the process of work capability assessment (in comparison to regular employees whose employment is regulated by the Labour Code). When assessing the civil service employee's medical fitness, the occupational doctor's conclusion must be based on the binding criteria provided in the Decree.

Under the Decree, HIV diagnoses are divided into two groups: 1) HIV with clinical complications; 2) HIV without clinical complications. The former falls under classification D (D = lost medical fitness for the performance of service in the long term) and the latter falls either under classification D or C (C = limited medical fitness).

The distinction between these two groups of HIV lies exclusively in the presence of clinical complications. In the only available case law, a police officer has been assessed by the occupational healthcare provider to be medically unfit when only one clinical symptom – the swelling of lymph nodes – was present. The police officer was automatically dismissed from service.

Considering that the occupational doctor must adhere to the binding provisions of the Decree regarding the assessment of medical fitness for service, which may result in an automatic dismissal from service, although the assessment does in no way leave discretion about the compatibility of HIV diagnoses with the required work, the provisions of the Decree could be said to provide discrimination of PLHIV in healthcare settings (but mainly in regard to employment).

MEANS OF REPORTING DISCRIMINATION IN HEALTHCARE SETTINGS (LEGAL AND OTHER REMEDIES)

When PLHIV come across discrimination in healthcare settings, they have several means of protection accessible under Czech law on multiple levels of the administrative/judicial system. These include:

- complaint to the healthcare provider;
- complain to the regional office;
- motion for commencing administrative proceedings;
- complaint to the Czech Medical Chamber / Czech Stomatology Chamber;
- complaint to the Public Defender of Rights;
- anti-discrimination (legal) action.

Complaint to the healthcare provider

If any discrimination occurs, it is considered to be a breach of patients' rights and therefore a reason for a complaint under Section 93(1) of Act on Healthcare Services[36]. Such complaint against the healthcare provider's conduct is submitted to the healthcare provider against whom it is directed. The healthcare provider is obliged to review the complaint within 30 days of receival and potentially take actions to remedy any occurring improper conduct

Complaint to the Regional Office

If a patient is not satisfied with how their complaint was handled by the healthcare provider, they may then submit a complaint to the administrative body that authorized the healthcare provider to provide healthcare services (i.e. issued a licence). Licences are typically issued by the Regional Office (or in specific cases by the Ministry of Justice, Ministry of Interior, or Ministry of Defence).

The Regional Office must review the complaint:

- within 30 days of receival (the deadline may be, in justified cases, extended by 30 days);
- within 90 days if an independent expert was appointed;
- within 120 days if an independent expert commission was established.

If it is confirmed that the hospital or the doctor committed improper conduct, the Regional Office may request a remedy. If that is not possible, the healthcare provider must modify its practice so that such improper conduct is not repeated. The Regional Office may not order the healthcare provider to pay the patient any monetary compensation. Monetary compensation of a patient may only be awarded in court.

Administrative liability (liability for a public offense)

The Regional Office may also initiate administrative proceedings for various breaches of the healthcare provider's obligations. For instance, under Section 117(3) of the Act on Healthcare Services a healthcare provider may be penalised with a fine of up to 1.000.000 CZK (approx. 39.000 €) for a breach of the obligation of secrecy (letter d)), or with a fine of up to 300.000 CZK (approx. 12.000 €) for refusing to admit a patient without a legitimate reason (letter a)).

Every individual is entitled to file a motion that such administrative proceedings against a healthcare provider shall be commenced. If the person who has submitted the motion so requests, the Regional Office is obliged to notify them of how the motion was dealt with (i.e. whether the proceedings were commenced or not) within 30 days after the date of its receival.

In practice, ČSAP was involved in one case where a fine of 10.000 CZK (approx. 400 €) was imposed on a healthcare provider (dentist) who refused to treat an HIV+ patient due to his HIV status.

Complaint to the Czech Medical Chamber (hereinafter as "CMC"[37]) /Czech Stomatology Chamber (hereinafter as "CSC")

Every doctor that is a member of the CMC is obliged to adhere to all legislative and professional rules as well as the Ethical Codex[38] of the CMC. If a doctor violates one of these rules or obligations, they may be subject to disciplinary proceedings of the CMC. Such proceedings may only be commenced within a year of the violation and may be initiated either by a complaint (filed by a patient) or by a decision of the CMC itself.

If a doctor is found to have committed disciplinary misconduct, the CMC may impose the following sanctions:

a) a fine of 3.000 – 30.000 CZK;
b) conditional expulsion from the CMC with a probationary period of 1 – 3 years;
c) expulsion from the CMC.

It shall be noted that such disciplinary proceedings may only be conducted against medical doctors (i.e. not against nurses or other personnel). Similar disciplinary proceedings may be conducted against dentists[39].

The Public Defender of Rights (hereinafter as "Public Defender")

Among other things, the Public Defender has competence in matters of the right to equal treatment and protection against discrimination, which was entrusted to him under Section 13 of the Anti-discrimination Act.

A person who has been discriminated against may turn to the Public Defender through a complaint (in written form/in person into a protocol at the Public Defender's office utilizing the assistance of an employee with legal education). The filing of a complaint is followed by an inquiry carried out by the Public Defender and concluded with a report.

The methodological assistance of the Public Defender consists in the provision of professional advice on issues related to discrimination (i.e. the Public Defender informs the complainant of the suitable legal steps that he/she may take). As part of his assistance, the Public Defender may neither draw up a lawsuit nor can he represent the complainant in court. However, the Public Defender may (and in many cases does) contact pro bono associations/alliances in order to mediate free legal aid.

Anti-discrimination (legal) action

The primary means of judicial protection in the Czech Republic is the filing of an action pursuant to Section 10 of the Anti-Discrimination Act (hereinafter as "Anti-discrimination Action"). A person who has been discriminated against has the right to make the following claims before the court:

- that the discrimination shall be refrained from;
- that consequences of the discriminatory act shall be remedied;
- that he/she shall be provided with appropriate compensation;
- that he/she shall be awarded monetary compensation for non-material damages.

Although the Czech law provides the possibility to file an Anti-discrimination Action, this possibility is not yet widely used in practice. Between 2015 and 2019, there were only 90 new filings that resulted in 104 first instance decisions. The overall success rate of these Anti-discrimination Actions is also very limited at around 15 %: The Antidiscrimination Action was granted in 4 cases, and partially granted in 12 cases (in total 16 out of 104). In 7 cases, the proceedings concluded with a court-approved amicable settlement.

Between 2014 and 2019 only 5 legal actions dealing with discrimination in healthcare were filed. 4 of those actions dealt with the refusal to admit a patient into care either due to disability (2 cases) or Roma ethnicity (2 cases). One of the actions alleging discrimination on the grounds of disability was rejected by the court. The other three cases were settled amicably. In one case, the applicant objected to the provision of worse healthcare services on the grounds of disability. The legal proceedings in this case have not yet been finalized.

According to the Public Defender, there are 3 main reasons why the number of Anti-discrimination Actions in healthcare are so low[40]:

- the urgency of securing healthcare services (the priority of discrimination victims in this field is to obtain the required healthcare service as soon as possible;
- court proceedings that may last months or even years are unable to achieve this priority);
- the nature of the personal data disclosed in litigation (discrimination victims value their privacy and do not want to share such information in public court proceedings);
- failure to carry the burden of proof (with the exception of discrimination on the grounds of race or ethnicity, the procedural position of the plaintiff is rather hard due to the lack of the shared burden of proof).

OBLIGATION OF PLHIV TO DISCLOSE THEIR HIV+ STATUS IN HEALTHCARE SETTINGS

Under Section 53(1)(d),(e) of the Act on Protection of Public Health, PLHIV are obligated to disclose their HIV+ status to every medical doctor ahead of the provision of any medical examination or treatment and on admission to institutional care. It is not necessary to inform the healthcare provider at the moment of making an appointment.

Such requirement is exclusive towards medical doctors, i.e. PLHIV are not required to disclose their HIV+ status to other workers (e.g. nurses) or administrative personnel of the healthcare provider (e.g. secretary).
Medical records are commonly tied only to one healthcare provider that administers its own medical record database. Healthcare providers do not share medical records with each other without the instruction (or consent) of the patient.

CONFIDENTIALITY AND ACCESSIBILITY OF PERSONAL DATA RELATED TO HIV

Any data concerning health (including the HIV status) is classified as sensitive personal data under the EU General Data Protection Regulation and is protected as such.

Section 65(2) of the Act on Healthcare Services provides an exhaustive list of individuals permitted to access the medical records of a patient without their consent: doctors and other professionals in connection to direct provision of healthcare services; health professionals competent to assess health for social security purposes; court-certified experts etc.

All individuals listed in Section 65(2) of the Act on Healthcare Services (and the healthcare provider as a whole) have the obligation of secrecy, which prohibits them to disclose any accessed data concerning health to a third party. If the obligation of secrecy is breached, the healthcare provider may be penalised with a fine of up to 1.000.000 CZK (approx. 39.000 €).

PROHIBITIONS AND LIMITATIONS ON WORKING IN SPECIFIC HEALTHCARE PROFESSIONS FOR PLHIV

No normative restrictions for the employment of PLHIV are applicable in the healthcare sector. The medical fitness of a particular employee or job applicant must always be assessed individually with regard to the circumstances of their health condition and the type of work performed. The conclusion that an HIV+ person cannot perform a certain job must always be reached in a medical report of an occupational physician that meets all the requirements under the Act on Specific Healthcare Services[41].

PRIVATE INSURANCE POLICIES CONCERNING PLHIV

There is no legislation that would directly prevent PLHIV from taking out private life or health-related insurance policies. Regardless, there are several provisions that result in a practice of the insurance companies to either 1) set unreasonably disproportionate premiums or 2) deny taking out health-related insurance altogether.

Under Section 59(2) of the Insurance Act[42], an insurer may take into consideration the health condition of the applicant as a determining factor for the purposes of the insurance risk assessment and for the purposes of the calculation of the insurance premiums.

When assessing the insurability of PLHIV, some insurance companies justify their refusal by classifying HIV as a condition with unpredictable or unknown insurance risk; PLHIV are therefore viewed to be uninsurable. Such an approach no longer has grounds in medicine.
In regard to discrimination, the problem of not providing insurance to PLHIV lies primarily in the automatic rejection of PLHIV, without evaluating their actual current health condition.

Only the evaluation of the current health condition by a doctor could justify an increase in the amount of the insurance premium or the decrease in the amount of the insurance benefits. The refusal to insure a person only based on the information that they are HIV+ shall be deemed as discriminatory.

PLHIV cannot withhold the information about their HIV+ status from the insurance companies if directly asked about it. Under Section 2788 of the Civil Code[43], when asked in written form, the applicant is obliged to provide truthful and complete information. In case the information provided by the applicant in the health questionnaire is found to be false (e.g. HIV+ applicant states that he/she is HIV-) such actions may have serious consequence ranging from the lowering of the amount of insurance benefits to full refusal of the insurance benefits or complete withdrawal from the contract by the insurance company.

Once an insurance contract is successfully entered into, the position of PLHIV becomes much stronger. Most of the existing life/private health-related insurance contracts with PLHIV were concluded prior to their HIV+ diagnosis. Once such a contract exists, a new diagnosis does not generally affect the insurance conditions and the insured is entitled to coverage.

COMMON FORMS OF DISCRIMINATION IN HEALTHCARE SETTINGS

According to the Public Defender, the problem that PLHIV encounter most frequently is the refusal of treatment or care. The reported instances of discrimination had mostly taken place in dental care settings.

This conclusion was also confirmed in a survey carried out by ČSAP (local NGO focused on helping PLHIV) in 2016. The survey assessed data from 127 respondents and shall be updated in 2022. The results of the survey were the following:

- 19 out of 127 respondents (15 %) were previously refused treatment by a GP due to their HIV+ status;
- 54 out of 127 respondents (42,5 %) were previously refused treatment by a dentist due to their HIV+ status;

- 12 out of 127 respondents (9,4 %) were previously refused treatment by a venereologist/dermatovenereologist due to their HIV+ status;
- 63 out of 127 respondents (49,6 %) were previously refused treatment or met with inappropriate behaviour of medical personnel specialised in a field different from the abovementioned due to their HIV+ status.

Cumulatively, 85 out 127 respondents (66,9 %) were previously either refused treatment or met with inappropriate behaviour of medical personnel due to their HIV+ status. Refusal of treatment occurs despite the clear legislation that sets out an exhaustive list of reasons for which a healthcare provider may refuse to treat a patient. Refusing to treat a patient only because they are HIV+ amounts to a public offense against Section 117(3) of the Act on Healthcare Services and a fine of up to 300.000 CZK (approx. 12.000 €) may be imposed.

Other examples of different forms of discrimination that PLHIV may come across in the Czech Republic are:

- provision of treatment at the end of office hours;
- inappropriate statements that may amount to harassment.

CASE STUDIES

As stated before, between 2014 and 2019, there were only 2 instances of Anti-discrimination Actions dealing with discrimination against people with disabilities in healthcare settings (specifically in dental care). In both cases, the “disability” (as understood under the definition of the Czech legislation) at hand was HIV.

One of the actions was rejected by the court because the plaintiff failed to carry the burden of proof.[44] [45] The other case was settled amicably after the dentist agreed to provide the required services and made a monetary donation to the HIV+ community.[46] Due to such outcomes, these cases did not have a significant impact on the treatment of PLHIV in healthcare settings.

Outside of healthcare settings, the most influential judicial decision was issued by the Municipal Court in Prague in 2017.[47] The plaintiff, who is HIV+, was dismissed from service of the Police of the Czech Republic on the grounds of a medical report issued by an occupational physician according to which the plaintiff was medically unfit (in the long-term) for the performance of his service position.

The significance of this case lies in the fact that the Municipal Court in Prague subsumed HIV under the definition of “disability” and stipulated that HIV should be protected as such under the Anti-discrimination Act.

The clarification of whether HIV is to be protected as a disability has had a major impact on the protection of PLHIV against discrimination.

GOOD PRACTICES IN THE NATIONAL CONTEXT

National Programme for Addressing HIV/AIDS for the period of 2018-2022 (hereinafter “Programme”)[48]

The Programme is a comprehensive document of the Ministry of Health and serves to support and coordinate activities and projects addressing various aspects of the HIV pandemic. It is based on the requirements of UNAIDS, and its main objective is to reduce the number of new cases of HIV/AIDS in the population of the Czech Republic by 25% in comparison to the data of 2016 by 2022.

This main objective is to be achieved through the following sub-objectives:

- increasing the percentage of diagnosed PLHIV (at least 90% of all infected people should be aware of their HIV positivity);
- increasing the percentage of PLHIV on ART treatment (at least 90% of those diagnosed should be treated);
- increasing the percentage of PLHIV with undetectable viral load (at least 90% of patients should reach undetectable viral load);
- increasing the support for prevention activities in schools (100% of children who have left compulsory school should be informed about the prevention of HIV and STI transmission).
- increasing condom use in the MSM population;
- reducing the rate of stigmatization of MSM and diagnosed HIV+ people and their relatives.

In 2020 and 2021 the funding provided to HIV orientated projects within the Programme was 10.000.000 CZK per year (approx. 390.000 € per year).

Online HIV/AIDS counselling for the public and the HIV+ community

ČSAP has been running an on-line counselling portal to which people can submit questions about various topics. Once a question is submitted, it is placed under one of the topic groups and assigned to an expert on the topic. More than 16.000 questions have been answered since February 2015.

ISSUES AND BAD PRACTICES IN THE NATIONAL CONTEXT

Confidentiality breaches

In the 2016 survey of ČSAP, several respondents pointed out a bad practice of healthcare providers regarding the handling of sensitive personal data. Respondents mainly complained about the following:

- stocking of medical files of patients (of the day) in places where every incoming person may read sensitive personal data;
- addressing patients in the waiting room by their full name when being called to the doctor's office.

In 2015, a series of criminal reports against PLHIV was filed to the Czech law enforcement authorities by the Regional Health Authority in Prague. 30 HIV+ men were reported for allegedly spreading HIV. The Regional Health Authority in Prague based these allegations on the fact that the HIV+ men in question contracted another STI (different from HIV) by presumably having unprotected sexual intercourse.

All the criminal proceedings were eventually stopped, because in none of the cases it could be proved that the men in question had endangered another person with the contraction of HIV. Presently, no such criminal reports are being filed.

COVID-19 IMPACT ON PLHIV

Interruption of HIV testing in some centres

In November 2020, some HIV-testing CheckPoints had to limit their office hours or even completely stop testing (due to the epidemiological situation). Since May 2021, all these CheckPoints returned to their usual office hours.

Between November 2020 and May 2021, some of the CheckPoints were transformed into COVID-19 testing centres.

Restrictions on cross-border movement within the EU

Among the cases registered in 2020, there were twice as many people (69) who already knew about their HIV positivity (in comparison with previous years). These are mostly residents who are likely to have sought out a Czech medical facilities due to restrictions on cross-border movement and therefore needed to obtain medication that they normally obtain outside of the Czech Republic.

Considering that every person with permanent residency in the Czech Republic and every worker employed by an employer with registered office in the Czech Republic is obligatorily part of the Czech public health insurance system, the accessibility of ART medication is ensured (and the cost of ART medication is covered).

Inclusion of PLHIV in the vaccination priority group “1B”

In the Czech Republic, all patients diagnosed with HIV were eligible for priority vaccination within the priority group “1B” regardless of their CD4 cell count or viral load. PLHIV were eligible for priority vaccination registration between April 12th, 2021, and June 14th, 2021. Starting June 15th, 2021, all people above 16 years old are allowed to register for vaccination without a priority code.

FINLAND

STATISTICAL DATA

Population size of the country was estimated at 5.541.000[49] (year 2020).

Estimate number of PLHIV is 3.265.

The latest reported state of the 90-90-90 treatment target[50] was as follows:
- Percentage of PLHIV diagnosed (first 90 target): 94 %
- Percentage of PLHIV on treatment (second 90 target): 95 %
- Percentage of PLHIV with undetectable viral load (third 90 target): 94 %

MAIN EPIDEMIOLOGICAL TRENDS

Although Finland is a low prevalence country, there are still certain subpopulations that are affected by HIV. Some AIDS cases are also currently present in the country, but these are strongly connected with late diagnosis. Only zero to two people die annually in Finland from AIDS. The number of new cases remains low.

In 2020, 136 new diagnoses of HIV were registered, equivalent to 2,5 new cases per 100.000 inhabitants. This approximately corresponds to the average number of cases during the past 10 years. Out of the new diagnoses, 73,5 % were registered among men[51]. A cumulative total of 4.349 cases of HIV infection were registered in the country.

Approximately half of the newly diagnosed cases occurred among people of foreign origin. An increase in awareness of one's HIV+ status has been observed among immigrants; who are often already on treatment when they enter Finland.

RELEVANT ANTI-DISCRIMINATION LEGISLATION APPLICABLE IN HEALTHCARE SETTINGS

Legislation that shall protect PLHIV against discrimination in healthcare settings can be found at multiple legislation levels (constitutional level, primary legislation, and also in some soft law instruments). The legislation is not formulated as HIV-specific; protection is provided through general anti-discrimination provisions.

Constitutional level

The Constitution of Finland[52] anchors the principle of equality in Chapter 2, Section 6 in which it provides that everyone is equal before the law; no one shall, without acceptable reason, be treated differently from other persons on the ground of sex, age, origin, language, religion, conviction, opinion, health, disability, or other reason that concerns his or her person.

Primary legislation level

At the primary legislation level, anti-discrimination provisions relevant to the healthcare sector are included in various legal sources.

The Non-discrimination Act[53], that is applicable to both private and public activities, provides a general clause that prohibits discrimination in its Section 8 “Prohibition of Discrimination”. Among the protected discriminatory grounds, “state of health”, “disability”, and “other personal characteristics” are included. Furthermore, the Non-discrimination Act explicitly proclaims that discrimination is prohibited regardless of whether it is based on a fact or assumption concerning the person him/herself or another (i.e. discrimination based on presumption and discrimination by association are expressly prohibited).

The Act on the Status and Rights of Patients[54] also provides that every person who is permanently resident in Finland is entitled to health and medical care without discrimination (Chapter 2, Section 3).

Discrimination may constitute a criminal offense under Chapter 11, Section 11 of the Criminal Code of Finland[55] titled “Discrimination”. Among the protected discriminatory grounds, “state of health”, “disability”, and “another comparable circumstance” are included. A person may commit this criminal offense in the context of his/her trade or profession, service of the general public, exercise of official authority or other public function or in the arrangement of a public amusement or meeting. A punishment of imprisonment for up to six months, or a fine may be imposed on the perpetrator.

LEGISLATION THAT MAY PROVIDE BASIS FOR DISCRIMINATION AGAINST PLHIV IN HEALTHCARE SETTINGS

No legislation that could directly or indirectly discriminate against or provide basis for discrimination against PLHIV/AIDS in healthcare settings was reported.

The prohibition of discrimination in the Non-Discrimination Act also applies to private companies. There is no law in Finland that gives an absolute right to refuse to treat people living with HIV. However, under the freedom of trade, private companies can, in principle, choose their customers, if this is done without discrimination. To ensure that treatment that excludes HIV positive people would not count as discriminatory, it should be an acceptable objective in terms of fundamental and human rights, and the means should be proportionate.

MEANS OF REPORTING DISCRIMINATION IN HEALTHCARE SETTINGS (LEGAL AND OTHER REMEDIES)

When PLHIV come across discrimination in healthcare settings, several means of protection are available to them under Finnish law. These include:

- complaint to the Patients' Ombudsman;
- submission of an objection to the director of the healthcare facility in question;
- complaint to the Non-Discrimination Ombudsman;
- complaint to the Parliamentary Ombudsman;
- request for initiating disciplinary proceedings;
- reporting a crime at the Police station;
- civil lawsuit.

Under Section 18 of the Non-Discrimination Act, compliance with its provisions is supervised by the Non-Discrimination Ombudsman, the National Non-Discrimination and Equality Tribunal, and the occupational safety and health authorities. The police investigate offences involving or related to discrimination.

Complaints made within the structure of the healthcare facility

If discrimination occurs in healthcare settings, the primary means of addressing such issue is to contact the Patients' Ombudsman. Under Chapter 3, Section 11 of the Act on Status and Rights of Patients, a Patients' Ombudsman shall be appointed for all healthcare facilities (with the possibility to appoint one for multiple facilities). The Patients' Ombudsman is then responsible for advising patients in matters connected to the Act on the Status and Rights of Patients, informing patients of their rights, and to promote and implement patients' rights.

Any patient shall also have the right to submit an objection to the director of the healthcare facility in question under Chapter 3, Section 10 of the Act on the Status and Rights of Patients. The director has a duty to give a decision on the objection in reasonable time. Submitting an objection does not restrict the right of a patient to appeal to the authorities supervising healthcare in Finland.

The Non-Discrimination Ombudsman

The Non-Discrimination Ombudsman may assist the victims of discrimination in the investigation of their complaints concerning discrimination. It is an autonomous and independent authority with the role in promoting equality and tackling discrimination.

The Non-Discrimination Ombudsman has the right to consider which measures it will take based on the contact. The aim is to ensure that equality is realised as extensively and for as many people as possible. When responding to these complaints, the Ombudsman directs the resources to cases with special significance in principle; their resolution may also be significant to others in a similar situation, or for preventing discrimination in advance.[56]

Under Chapter 4, Section 19 of the Non-Discrimination Act, the Non-Discrimination ombudsman has the competence to:

1) provide assistance to the victims of discrimination in pursuing their complaints concerning discrimination;
2) assist in the planning of the promotional measures;
3) give general recommendations to prevent discrimination and to promote equality;
4) take action to reconcile a matter pertaining to compliance with the Non-Discrimination Act.

Filing a complaint with the Non-Discrimination Ombudsman shall not replace other remedies or appeal procedures that may be available in the case. The role of the Non-Discrimination Ombudsman is therefore supportive.

Complaint to the Parliamentary Ombudsman

Unlike in the case of the Non-Discrimination Ombudsman, the Parliamentary Ombudsman's competence is limited to supervising the work and actions of the Finnish authorities and individuals who carry out public tasks. In the context of healthcare, the Parliamentary Ombudsman oversees the conduct of doctors at municipal healthcare centres. Private doctors and all other private social and health care service providers are outside of the Parliamentary Ombudsman's area of competence.[57]

Legal intervention

A person who has been discriminated against has the right to claim for compensation and for the discriminatory terms to be declared void under Chapter 6, Section 25 of the Non-Discrimination Act. Such claims are made before a district court.

Under certain circumstances, discrimination may constitute a criminal offense under Chapter 11, Section 11 of the Criminal Code of Finland. Anyone can report such criminal offense to the police. A punishment of imprisonment for up to six months, or a fine may be imposed on the perpetrator.

Obligation of PLHIV to disclose their HIV+ status in healthcare settings

In Finland, there is no legal obligation for PLHIV that requires them to communicate their HIV+ status in healthcare settings.

Confidentiality and accessibility of personal data related to HIV

Personal data protection, including the protection of data related to health, is regulated by the directly applicable EU General Data Protection Regulation and further specified and supplemented in the Data Protection Act.[58] Any data concerning health (including the HIV status) is classified as sensitive personal data under the EU General Data Protection Regulation and is protected as such.

The national supervisory authority for personal data protection in Finland is the Data Protection Ombudsman who works under the Ministry of Justice. The Data Protection Ombudsman is autonomous and independent in its activities.

If a person is diagnosed as HIV+ in a healthcare facility, the HIV+ status of such person will be recorded and accessible to healthcare professionals only within the healthcare facility in question. In Finland, treatment and care of PLHIV is conducted through special healthcare. Other healthcare facilities do not have access to medical records about HIV treatment of a patient and vice versa (special healthcare facilities do not have access to medical records of patients stored at city/local healthcare facilities).

Everyone can ask a hospital/healthcare facility for a report on who has opened their medical records or accessed any other processed information. No one is allowed to open any patient ‘s medical records without a permission or direct link to care and treatment.

In the national health- and social-care digital service “Kanta”, available at kanta.fi, a person can decide whether his/her HIV+ status and visits to HIV doctors can be seen by other healthcare professionals. PLHIV can choose, for example, that their HIV+ status is accessible by emergency care doctors, but unavailable to doctors of other specialties.

PROHIBITIONS AND LIMITATIONS ON WORKING IN SPECIFIC HEALTHCARE PROFESSIONS FOR PLHIV

Under Finnish law, there are no legal restrictions for the employment of PLHIV in the healthcare sector.

PRIVATE INSURANCE POLICIES CONCERNING PLHIV

In relation to private insurance policies in Finland, PLHIV are not provided with the possibility to take out most life or health-related insurances. This is not uncommon also for other diseases and health conditions. No exceptions are made for PLHIV with undetectable viral load.

The local associations that support the HIV community in Finland contact the local insurance providers every two to three years in order to monitor the situation. Since it is possible to apply for mortgages and receive other economic services without the need to have a life insurance, access of PLHIV to private insurance policies is currently not a priority advocacy topic in the country.

COMMON FORMS OF DISCRIMINATION IN HEALTHCARE SETTINGS

Reported instances of discrimination in healthcare settings were most common in dental care and took form of refusal-of-care.

Apart from refusal-of-care, patients have complained about demeaning comments of medical personnel in regard to the HIV+ status of such patients. It was also reported that some healthcare facilities in the private sector charge PLHIV with higher fees for certain procedures.

Outside of healthcare in the strict sense, instances of discrimination against PLHIV were reported among cosmetologists, physiotherapists, massagists and tattooists (i.e. in professions where sharp equipment, such as needles, is used).

CASE STUDIES

No cases dealing with discrimination against PLHIV in healthcare settings, that would have significant impact on legislation, policies, or practices in Finland, were reported in the questionnaire.

GOOD PRACTICES IN THE NATIONAL CONTEXT

The most recent advocacy and campaign topics regarding the living situation of PLHIV in Finland deal with improving the practices in dental care and spreading awareness about the doctrine of undetectable viral load “U=U” among tattoo artists.
Another achievement can be seen in the area of prevention. As of July 1st, 2021, pre-exposure prophylaxes (hereinafter “PrEP”) became free in Finland. With this change, those who have not been able to afford PrEP in the past can also benefit from this medication.

ISSUES AND BAD PRACTICES IN THE NATIONAL CONTEXT

Apart from the occurrence of certain discriminatory practices in healthcare, one bad practice regarding personal data protection of PLHIV has been reported. For many years, it has been difficult to remove information about a mother’s HIV+ status from her children’s medical records. If a child has received antiretroviral medication and has undergone an HIV test upon being born, this information is indefinitely recorded in his/her file, unless a request for removal is made. A similar challenge takes place in the field of social care. The process to remove this information is not easy in practice.

COVID-19 IMPACT ON PLHIV

Throughout the COVID-19 pandemic, no significant interruption of HIV testing took place. Moreover, PLHIV were able to receive ART medication without delay.
Regarding COVID-19 vaccination, on February 11th, 2021, PLHIV were included among the priority vaccination groups if their CD4 cell count was below 0,350x109 cells/l. PLHIV were encouraged to take the vaccine as soon as possible.

FRANCE

STATISTICAL DATA

Population size of the country was estimated at 65.274.000[59] (year 2020).

Estimate number of PLHIV is 170.000.

The state of the 90-90-90 treatment target in 2020[60] was as follows:

- Percentage of PLHIV diagnosed (first 90 target): 86 %
- Percentage of PLHIV on treatment (second 90 target): 76 %
- Percentage of PLHIV with undetectable viral load (third 90 target): 74 %

MAIN EPIDEMIOLOGICAL TRENDS

In France, the statistics show that although HIV affects people of all backgrounds, HIV prevalence is concentrated among key populations and differences can also be observed between regions. Demographically, according to data from 2018, 42 % of the new diagnoses were among men who have sex with men (MSM). The second most affected population group were people born abroad; people born in sub-Sahara Africa accounted to 39 % of new HIV diagnoses.

Geographically, not all French regions are equal. In 2018, 40 % of the new diagnoses were reported in the Île-de-France region, the vast area surrounding Paris. This region presents only 18 % of the French population. Another highly affected territory is French Guiana, with the high number (compared to the very small population) of 109 new cases per 100.000 inhabitants.

According to the latest available data, the number of new HIV+ people was estimated at 6.200 in France, in 2018 (translating into a 7% reduction, compared to 2017). Among France-born MSM, the number of new cases has shrunk over the years (-16 % in 2018 compared to 2013). However, this rate has been rising among France-based MSM who were born abroad (+38 % in 2018 compared to 2013). Regarding the specific group of France-based PLHIV who are heterosexuals and were born abroad, the numbers have lowered among men (-14 % in 2018 compared to 2013) but remained the same among women of this category (over that same period).

RELEVANT ANTI-DISCRIMINATION LEGISLATION APPLICABLE IN HEALTHCARE SETTINGS

Legislation that shall protect PLHIV against discrimination in healthcare settings can be found at all legislation levels (constitutional level, primary legislation, secondary legislation) and in soft law. The legislation is not formulated as HIV-specific; protection is provided through general anti-discrimination provisions.

Constitutional level

The list of prohibited discriminatory grounds in Article 1 of the French Constitution[61] only includes 3 distinctive criterions; namely origin, race, and religion. “Health status” or “disability” is therefore not directly protected by the French Constitution and people with these characteristics must rely on protection through laws and decrees of a lower legal value.

Nonetheless, a new instrument of protection included in the French Constitution was introduced during the constitutional modifications in 2008. The question of efficiency of protection against discriminatory practices was raised and resulted in the introduction of Article 71-1 of the French Constitution which established an official body, acting independently from the government, that oversees protection against discrimination – the Defender of Rights (Défenseur des droits).[62] The Defender of Rights shall ensure the due respect of rights and freedoms by state administrations, territorial communities, public legal entities, as well as by all bodies carrying out a public service mission or by those that the relevant institutional act decides fall within his remit.

Primary legislation level

At the primary legislation level, anti-discrimination clauses relevant to the healthcare sector are included in various legal sources.

The Act on Patients’ Rights of March 4th, 2002 (commonly known as the “Kouchner Law”)[63] provides that access to care is a constitutional right. Article 3 of the Kouchner Law states that health must be preserved, and that nobody can be exposed to discrimination in one’s quest to protect his/ her own health. This right is applied through prevention, access to the most suitable personal treatment, the continuation of such treatment and the best hygienic safety standards possible.

In addition, also the French Public Health Code[64] anchors the principle of the right to health and equal treatment in multiple articles. Under Article L.1110-3 of the French Public Health Code, no one shall be submitted to discrimination in access to prevention or care. Article L.1100-3 directly refers to the list of discriminatory grounds in Article 225-1 of the French Criminal Code. Other provisions of the French Public Health Code that shall ensure the effectivity of protection against discrimination include:

- Article L.4122-1 which establishes committees within the various National Boards of health professionals[65] that assess the compliance of its members with the principle of non-discrimination.
- Article R.4127-7 which provides that a doctor must hear out, examine, advise to, or treat all people regardless their origin, customs, family situation, ethnic origin, nationality, religious beliefs, disability, state of health, reputation, or his/her feelings towards the patient.[66]

Discrimination may constitute a criminal offense under Articles 225-1 and 225-2 of the French Criminal Code[67] and may be sanctioned by imprisonment of up to 3 years or a fine of up to 45.000 €. Unlike in the French Constitution, the health status of an individual is a recognised protected characteristic under the French Criminal Code.

Secondary legislation level

With the Decree No. 2016-1009[68], dated July 21st, 2016, the competence to evaluate the nature and extent of a refusal-of-care by healthcare professionals was given to the committees established within the National Board of Physicians, the National Board of Dentists, and the National Board of Midwives (Article D.4122-4-2 of the French Public Health Code).

The committees may use all means they deem appropriate; in particular, these include studies, situation testing, and patient surveys. They may release the results of their activities through publishing statistics and recommendations. Each commission hands out yearly report to the Ministry of Health. The committees, however, cannot rule on individual situations.

The composition of the committees is laid down in Article D.4122-4-3 of the Public Health Code Besides the members of the National Board of medical practitioners, the commission consists of representatives from authorised associations (acting in the healthcare sector), as well as agents from the social security system.

LEGISLATION THAT MAY PROVIDE BASIS FOR DISCRIMINATION AGAINST PLHIV IN HEALTHCARE SETTINGS

Although the French legal system provides an extensive anti-discrimination framework, it also includes some provisions that may provide basis for discrimination.

Primary legislation level

A refusal of care is not always illegal. A patient cannot forcibly demand a treatment from a health practitioner. In legal terms, access to care is not the only element that needs to be evaluated in a medical situation.

There are two types of situations in which a healthcare professional can legally deny a medical treatment. Unfortunately, the 2 reasons for refusal can be twisted and exploited against PLHIV.

Firstly, under Article R.4127-47 of the French Public Health Code, a doctor has the right to refuse care to a patient for “personal or professional reasons”. This right cannot be invoked only in cases of emergency or in those cases in which the doctor would fail to fulfil his/her duties of humanity. A similar provision exists in relation to dentists (Article R.4127-232 of the French Public Health Code). Consequently, the justification for the denial of care may be both professional and personal. Such situation allows for quite a wide margin of discretion and possibly exploitation.

Secondly, a doctor has the obligation to refuse to provide treatment when the required therapy exceeds his/her abilities, e.g. in the events of incompetence given the specificity of a disease.

Whatever the circumstances, the continuity of care for patients must be ensured – the doctor has the obligation to redirect the patient to a colleague or a competent healthcare provider.

Secondary legislation level

Without stating a pointed denial, and by indirect means, healthcare professionals can exert pressure on a patient, so that he/she will try to seek treatment elsewhere. This indirect pressure can be most easily spotted in the two following practices.

1) Increase of medical fees

For doctors exceeding the basic medical fee, the easiest way to achieve an indirect refusal-of-care is through their consultation price. Some PLHIV simply cannot afford a medical expense that goes above the statutory fee.

In France, the social security system reimburses medical expenditures, including the expenditures of private doctors. However, the payback is larger if the healthcare professional stays within the so-called Sector 1 and Sector 2. These private professionals are referred to as “doctors under contract”.

Sector 1 physicians can apply additional fees only exceptionally, if a patient requests a treatment out of the ordinary. Sector 2 physicians decide the amount of medical fees themselves. Sector 2 physicians sometimes generate extra expenditures, that are not always covered by social welfare, or even by the patient’s own insurance policy.
Beside these 2 sector levels, which the social security system covers fully or at least partially, there is a Sector 3 with limited payback, and then the “not under contract” doctors with extremely low reimbursement.

2) Administrative obstacles
The second easiest option for a de-facto refusal-of-care are excessive administrative requirements. The extra welfare paperwork, imposed on undocumented people or people with a low-income, is often a reason why a patient is not successful when seeking treatment.

Non-naturalized PLHIV with a precarious residency situation usually benefit from a basic social security system named AME (Aide Médicale d'Etat). This welfare protection is attributed to undocumented foreigners living in France. These persons can also benefit from the C2S, a free insurance system that completes the expenditures not covered by the basic social security scheme.

One must note that the cumbersome paperwork, needed to take full advantage of the AME and the C2S, can sometimes induce the patients themselves not to pursue a treatment

MEANS OF REPORTING DISCRIMINATION IN HEALTHCARE SETTINGS (LEGAL AND OTHER REMEDIES)

When PLHIV come across discrimination in healthcare settings, several means of protection are available to them under French law. These include:

- complaint to the Users' Committee;
- conciliation procedure for victims of discriminatory refusal-of-care;
- request for individual support of the Regional House for Disabled People (for PLHIV who suffer an HIV-related health impairment);
- formal notice to the Regional Health Authority;
- complaint to the Defender of Rights;
- legal interventions.

Complaint to the Users' Committee

If a problem arises with a healthcare institution (both public or private) regarding the handling or admission of a patient, one can reach out to the Users' Committee. This official body is present in every hospital or clinic, and aims at enforcing the rights of clients (i.e. patients), and assists them in various procedures (Article L.1112-3 of the French Public Health Code).

The Users' Committee is composed of one legal representative of the hospital, a mediation health practitioner, a non-doctor mediator and 2 other members that represent the clients. All members obey the obligation of medical secrecy. The Users' Committee meets at least once in 3 months to examine any submitted patients' complaints and, if necessary, to inform the potential victims about the mediation process, possible recourses, and remedies.

Any patient can also directly reach out to the medical mediator of the healthcare institution.

Conciliation procedure for victims of discriminatory refusal-of-care

In October 2020, a new act that mandates a conciliation procedure for victims of any discriminatory refusal by healthcare professionals was adopted (under Articles R.1110-11 and R.1110-12 of the French Public Health Code).

A victim of discriminatory refusal-of-care can lodge a complaint to the director of the local social security body, or the regional representative of the relevant National Board of medical practitioners. Reaching out to one of these institutions is equivalent to officially pressing charges.

This can be done either by the patient in person, or by a certified association active in the healthcare sector, if such association obtained a mandate from the patient. The patient may also provide a lawyer with a mandate in this matter.

A conciliation commission, composed of representatives of the social security body and officials from the relevant National Board of medical practitioners, must meet within 3 months of the receival of the complaint. During this meeting, both sides are heard by the conciliation commission. The right to be represented or supported by a chosen individual is guaranteed.

If the parties to the dispute succeed to reach an amicable resolution of the conflict, the complaint is removed. If no agreement between the two parties is reached, the president of the National Board of medical practitioners forwards the issue to its own disciplinary commission. Consequently, a duty to decide on the matter is transferred to that disciplinary commission.

Request for individual support of the Regional House for Disabled People

PLHIV suffering from a severe HIV-related disease can access special rights and are eligible for additional social services. This status most notably applies to “Physically Impaired Workers” (i.e. people with a limited range of work opportunities, due to their health condition). Another possibility of legal recognition is the status of a “Physically Impaired Adult”, which guarantees a minimum earning for victims of a severe health condition with low or no income.

In every province of France, a Regional House for Disabled People supports disabled individuals and their caregivers. This is a one-stop-shop for all paperwork leading to the recognition of one’s situation (official status, financial compensation, access to services).
People that suffer from HIV-related impairments can reach out to their Regional House for Disabled People and request the information and support provided by this local entity.

Formal notice to the Regional Health Authority

The Regional Health Authorities, Agences Régionales de Santé (hereinafter “ARS”), are regional bodies that enforce the national health regulations on a local basis. They act under the supervision of the Ministry of Health.

One can request the ARS to publish a statement regarding specific issues such as citizens' well-being, health, environment, security, or social issues (including issues concerning disabled citizens). These formal requests submitted to the ARS are aimed at finding an agreeable solution to a problematic situation without any financial compensation.

Complaint to the Defender of Rights

The Defender of Rights, Défenseur des droits, is an independent authority established to facilitate citizens' rights and to protect against potential abuse from public administrative bodies.

One can reach out to the Defender of Rights if he/she feels discriminated against by an administrative body, local authority, state-related company, or any other public entity. The Defender of Rights can request an explanation of a contentious situation from any natural person or legal entity, both of whom have an obligation to answer.

The Defender of Rights can make any recommendation to ensure the rights and freedoms of the discrimination victim. Such recommendation shall find a solution of the matter and prevent any relapse of the problem. The Defender of Rights aims to find an agreeable solution for both parties through a mediation process. This is achieved by helping the victims of discrimination to build their case and by providing guidance throughout the entire process.

Beyond the guidance provided in a specific case, the Defender of Rights may propose modifications of laws and rulings. Regarding any issue related to its expertise, the Defender of Rights may also be consulted by the prime minister, the president of the National Assembly or the president of the Senate.

Legal interventions

Refusal-of-care or segregated medical treatment of PLHIV due to their HIV+ status is a criminal offense under Article 225-2 of the French Criminal Code. Such crime is punishable by imprisonment of up to 3 years or a fine of up to 45.000 €.

Any victim of such refusal-of-care or similar unfair practice can file a complaint at a police station (potentially, a complaint can also be submitted in writing directly to the public prosecutor).

Civil lawsuit

In France, proceeding with the remedies offered by criminal law is a privileged option to address discrimination in general. The difficulty in civil law litigation relates to evidence. In criminal law, the implementation of public action relieves the victim of the burden of proof. The public prosecutor has the investigative powers that will allow for easier search for the truth. It is therefore suggested that victims of discrimination should initiate criminal proceedings prior to any civil action in order to benefit from the evidence obtained by the criminal judicial authorities. This evidence can later be used in support of the civil action even if the criminal action does not succeed.

In labour law, there is an adjustment in the context of evidence and burden of proof. A system of sharing of the burden of proof between the plaintiff (victim of discrimination) and the defendant (perpetrator) has been introduced. Victims of discrimination in the workplace are therefore encouraged to refer to the Labour Court.

In the case of state-of-health discrimination, there is no specific measure in civil law. In the case of discrimination by a healthcare professional, it would be possible to engage his professional responsibility. To do this, it is necessary to demonstrate fault, damage consequences, and the causal link between fault and damage. In such case, the judge may order damages to compensate for the harm caused.

Obligation of PLHIV to disclose their HIV+ status in healthcare settings

In France, PLHIV do not have any legal obligation to inform medical professionals about their HIV+ status. Standard recommended precautions are sufficient to prevent any transmission of the disease (both ways). Healthcare workers have a strict obligation to avoid any contamination by adhering to universal preventive measures. They must obey strict rules and follow medical protocols regarding hygiene, asepsis, and the handling of medical waste. Additional regulations exist regarding the exposure to blood.

Confidentiality and accessibility of personal data related to HIV

General obligation of secrecy regarding all medical information

Article 9 of the French Civil Code provides that "everyone has the right to respect for his/her private life." This provision, which protects all individuals against arbitrary actions, also includes the protection of privacy regarding one's medical information. Similarly, under Article L.1110-4 of the French Public Health Code, a doctor cannot share one's medical information with a third party without the consent of such patient.

All healthcare professionals that have access to patient data are under obligation of secrecy. This, of course, includes a patient's HIV status. That said, healthcare professionals may share medical information with each other if this is necessary for the patient's treatment.

The obligation of secrecy regarding medical information is absolute and cannot be broken. No exceptions are allowed, even in cases in which the information would be provided to entities that have their own privacy policy.

The breach of the obligation of secrecy in the medical field is a punishable criminal offence under Article 226-13 of the French Criminal Code. Sanctions of imprisonment of up to 1 year or a fine of up to 15.000 € may be imposed.

Specific legal provisions regarding infectious diseases

HIV is one of the 36 diseases that are subject to the duty to report under Article L.3113-1 of the French Public Health Code. Clinicians and biologists (both from the public and private sector) must inform specific health authorities about new diagnoses of HIV and AIDS. The duty to report exists for the purposes of compiling national statistics about the development of HIV prevalence, adjusting the prevention methods, and assessing the effectivity of the testing schemes. It also allows to evaluate the progress achieved through the public HIV policies.

Reports are made to the National Public Health Agency, Santé Publique France, which is responsible for the handling of the medical information and has the duty to protect the privacy of such data. All healthcare professionals and employees of the National Public Health Agency must also obey the obligation of secrecy.

The EU General Data Protection Regulation

As institutions dealing with personal data, all healthcare institutions must adhere to the EU General Data Protection Regulation which lays down rules relating to the processing of personal data (e.g. collection, recording, organisation, structuring, storage, etc.). Any data concerning health (including the HIV status) is classified as sensitive personal data under the EU General Data Protection Regulation and is protected as such.

Shared Medical File system

France has adopted a Shared Medical File system, Dossier Médical Partagé. This system is an electronic tool to inform other healthcare practitioners about specific aspects of one’s medical situation (i.e. treatments, medical exams, allergies, etc.). With the permission of the patient, only health professionals can access this electronic file: personal doctors, medical nurses, and pharmacists. This computerised system follows the regulations regarding general privacy protection and medical secrecy.
The Shared Medical File system is currently being retooled and will be relaunched in 2022 under a new name.

Prohibitions and limitations on working in specific healthcare professions for PLHIV
Under French law, there are no legal restrictions for the employment of PLHIV in the healthcare sector. Protection against the transmission of HIV, both from doctors to patients and vice versa, are ensured by strict adherence to medical protocols regarding hygiene, asepsis, handling of blood and handling of medical waste.

PRIVATE INSURANCE POLICIES CONCERNING PLHIV

The healthcare system in France is a component of the social security system with compulsory national insurance scheme providing universal coverage. The statutory health insurance covers access to healthcare and provides compensation for healthcare costs.

It can be supplemented by an optional insurance, called “complementary health” or “mutual health”, which covers what the statutory health insurance does not compensate for (e.g. certain costs which remain chargeable to the patient in the event of hospitalization). This complementary health insurance comes under the private insurance policy option and is at the patient's choice. It is not necessary to answer a health questionnaire to subscribe to it. There are therefore no specific issues for PLHIV.

Regarding private life and health-related insurance policies, the situation differs based on the time of HIV diagnoses (in relation to the time when the insurance policy was taken out). If a person living with HIV had taken out life insurance (e.g. with death coverage) before he/she was diagnosed with HIV, there are no consequences on the insurance conditions. If a person living with HIV applies for a new life insurance, and such insurance provides death or disability coverage, their HIV+ status will have consequences. Generally, the insurance provider presents the potential client with a medical questionnaire in which a question regarding one’s HIV status is included. The insurance provider can then adapt the insurance premiums or modify the conditions of the insurance policy.

COMMON FORMS OF DISCRIMINATION IN HEALTHCARE SETTINGS

In 2015, the French association AIDES carried out a nation-wide testing regarding the refusal-of-care and discriminatory treatment due to serophobia (aversion to or fear of PLHIV) in order to assess the extent of discrimination occurrence in the healthcare sector (hereinafter “AIDES Testing”). The motivation for conducting the AIDES Testing were the planned amendments to the healthcare regulations of the French legal system. These amendments were being adopted to fight situations in which patients were denied treatment.

The AIDES Testing involved a sample of 440 dentist clinics and 154 gynaecology clinics. The findings were quite concerning.

Refusal of care

Refusal-of-care remains to be the most common discriminatory practice in France. The most frequently indicated reason for refusal-of-care was the need to change schedule due to specific needs of patients living with HIV (i.e. different or longer treatment in comparison to other patients). Other indicated reasons for refusal-of-care were overbooking, veto on admission of new patients or extremely remote availability. These reasons were not brought up when appointments were being booked by patients who did not disclose their HIV status.

In the case of gynaecologist facilities, PLHIV were occasionally accepted if they provided their medical file and restated their HIV+ status during the appointment. Regardless, also in this specialised field of healthcare, the justification of "overbooking" was the most common reason provided for the refusal-of-care.
Various forms of denial of services were reported:

- Outright refusal-of-care: this unfair treatment was directly connected to the patient's HIV status (and explicitly stated as such or via an unclear excuse); such conduct did not affect patients who had chosen to conceal their HIV+ status;
- Disguised denial of health services, i.e. using dubious and unethical reasons for refusal-of-care by:
  - discouraging patients through inconvenient appointment hours, medical fees exceeding the statutory price, or requests for information regarding the patient's financial situation;
  - redirecting the patient to a colleague or a hospital due to a claimed lack of knowledge about HIV and the handling of the disease or due to the need for special medical materials that are fit for this pathology (i.e. justification in the sense that the patient will be better treated elsewhere).

Other discriminatory practices

Apart from the refusal-of-care, according to the AIDES Testing, PLHIV often encountered other forms of discriminatory behaviour of medical professionals and their staff. These behaviours can be divided into 3 groups:

- usage of excessive sanitary protocols when treating a patient with HIV (overly long duration of treatment, provision of treatment at the end of office hours, etc.) that goes beyond the standard recommended practices and shows the lack of understanding of transmissibility of HIV;
- disclosure of a patient's HIV+ status constituting a breach of the obligation of secrecy;
- bad patient-doctor relationship due to the medical professional's limited knowledge regarding HIV;

Out of the above-mentioned groups of discriminatory behaviour other than refusal-of-care, the most common undesirable practice is the provision of treatment at the end of office hours by dentists. Such practice is contrary to the ethical rules of the High Council of Public Health which provide that "no order of passage is necessary for patients with HIV, HCV or HBV, who request invasive medical surgery". Applying standard precautions and respecting medical protocols shall be deemed sufficient to prevent transmission of HIV.

Type of discriminatory practice	Dental care clinics % of occurrence	Gynaecology clinics % of occurrence
Disguised refusal-of-care	30%	4,3%
Outright refusal-of-care	3,6%	1,7%
Other discriminatory practices	16,8%	17,2%

Situation in dental care

The AIDES Testing clearly showed that dental care is the most problematic area regarding the refusal-of-care. The denial of access to care often came from medical secretaries. In the case of disguised refusal-of-care, such refusal came from medical secretaries in 78 % of the tested instances (e.g. only 22 % of disguised refusal-of-care statements came from the dentists themselves). Regarding unequal treatment between PLHIV and other clients, 82,4 % came from medical secretaries (e.g. only 18,6 % directly from the dentists).

In conclusion, the AIDES Testing provided the following statistical data in connection to discriminatory practices in dental care. The results are especially concerning if compared to treatment sought at the gynaecology clinics.

Case Studies

No cases dealing with discrimination against PLHIV in healthcare settings, that would have significant impact on legislation, policies, or practices in France, were reported in the questionnaire. Regardless of the lack of cases that would concern individuals, the French NGOs that provide assistance to PLHIV continuously advocate for this population group and promote the rights and interests of PLHIV through various public channels. These initiatives will be described in the following section on “Good practices in the national context”.

Good practices in the national context

Advocacy work towards amendment of healthcare regulations in France

The AIDES Testing of 2016 was used to build advocacy campaigns aimed at tackling discriminatory practices that occur in France. AIDES proposed amendments of various legal acts in order to achieve a clearer definition of “refusal of healthcare” which would allow for easier assessment of what does qualify as such refusal and what does not. Furthermore, the proposed amendments aimed to create functional remedies through which a victim of such refusal could successfully protect his / her rights.

AIDES’ amendments included the following 5 recommendations:

- expand the legal definition of the denial of health services to any discriminatory practice or dissuasive strategy, leading to an ultimate renouncement to seek treatments;
- establish a legal framework for situation testing, based on specific mission statements, and have patients’ associations participating in the process of establishing such framework;
- include more health-related services’ representatives in the observatory body dedicated to assessing the refusal of care (e.g. representatives of medical patient’s associations);

- introduce the shifted burden of proof: modify the current laws so that (in accordance with other non-discriminatory rules) it will be the duty of the healthcare provider to prove that there was no unequal treatment when a patient claims he or she was treated in a discriminatory way;
- allow for the victims of discrimination to be represented or supported by relevant associations during the legal or conciliation processes.

In reaction to the advocacy work, the National Board of Dentists took a stance and denounced any unfair treatment. It released a statement that *"No patient can be subjected to discriminatory practices in his/her access to prevention and care. Dentists who do not follow basic rights and deontological ethics may be exposed to prosecution, either disciplinary or legal."*

Following the media exposure of AIDES Testing, together with the AIDE' members mobilization, progress has been made. An amendment to the existing healthcare legislation and allowed for the creation of authoritative committees within all the various National Boards of health practitioners. These committees were given the competence to evaluate the discriminatory nature of any rules resulting in refusal of care. They may request audits and carry out studies on inequalities. The committees consist of members of the respective National Boards, representatives of the National Health Service, as well as representatives of certified associations that represent patients (including AIDES).

Although the creation of these committees has improved the situation of fighting discriminatory practices, it remains to be only a limited resolution of the problems. The committees were not given competence to resolve individual issues. Their activity mainly consists of conducting anonymous studies and releasing recommendations and guidelines.

Raising awareness among the labour unions and healthcare providers

In collaboration with AIDES, the French Union of Dentists, Chirurgiens-Dentistes de France[69] (hereinafter "CDF"), has devoted one issue of its internal magazine to providing dental care to PLHIV. This printed issue included a strong editorial on the topic of HIV, written by one of the union's directors, a Q&A section on how to treat PLHIV (clearly stating that the treatment does not differ from the standard procedures provided for all other clients), a testimony of a dental care assistant who is also an AIDES' volunteer and a testimony of one of the AIDES' executives. The publication increased the understanding of what treatment of PLHIV shall be achieved among dentists.

Raising awareness among patients regarding inequalities and the protective provisions under French law

AIDES regularly publishes its own magazine titled "Remaides" (released every trimester since 1990) in which it addresses the developments concerning HIV, AIDS and all types of hepatitis. The issues of this French publication report on the latest scientific and therapeutic data as well as on the ongoing actions and campaigns in this area. With 30.000 copies printed per edition, the magazine is free of charge and available in 48 countries.

Refusal-of-care remains a reappearing topic in Remaides, and the articles remind readers that discriminatory practices continue to appear in day-to-day life and provide guidance on how PLHIV can protect themselves against unfair treatment.

ISSUES AND BAD PRACTICES IN THE NATIONAL CONTEXT

Apart from the issues described in the sections “Common forms of discrimination” and the possible grounds for discrimination at the primary and secondary legislation level described in the section “Legislation that may provide basis for discrimination against PLHIV in healthcare settings”, no bad practices were reported in the questionnaire.

COVID-19 IMPACT ON PLHIV

Inclusion of PLHIV in priority vaccination groups[70]

In France, PLHIV are not among those considered particularly vulnerable to COVID-19 (as long as they are receiving effective HIV treatment) and are not given priority for vaccination. Societies and associations fighting against AIDS mobilized in January 2021 to ensure that PLHIV have access vaccination as soon as possible. All immunocompromised people are considered to be particularly vulnerable to COVID-19.

Access to HIV care and testing

The mobilization of infectious disease departments in the management and care of COVID-19 has made it difficult for them to continue monitoring other infections. Thus, a survey conducted by AIDES among 250 PLHIV showed that 30 % of them indicated that communication with the medical team in charge of their HIV follow-up deteriorated during confinement, and 15 % reported a relationship of degraded confidence. 76 % of the respondents report not having been contacted by the establishment that usually took charge of HIV to discuss their follow-up.[71]

The latest available national data also shows that the impact of the COVID-19 pandemic has been strong on HIV screenings. 4.856 HIV diagnoses were made in France in 2020, with a 14 % drop in HIV tests in 2020, and a 22 % drop in diagnoses.[72]

Access to ARV medication

To compensate for the reduced availability of health professionals and to avoid any interruption of treatment, the French public authorities have adopted measures aimed at extending the prescriptions of people suffering from chronic diseases. This allowed PLHIV to continue to obtain their ARV medication in pharmacies, even if their prescription had expired, without having to contact their doctor.

In France, pharmacies can only deliver four weeks of treatment per visit to the pharmacy. Exceptions exist for certain pathologies or treatments, but ARV medication does not belong to this group. Exemptions can be requested, for example, in the event of traveling abroad, but they are not applied in the same way everywhere in the territory and remain at the initiative of the individuals. AIDES brought together a group of actors involved in the fight against HIV in Guyana to set up a system of exemption at the local level, at the end of 2020, concerning the authorization of a quarterly dispensing of ARV medication. The evaluation of such a system is expected to provide new data on the benefits of the multi-monthly delivery of ARV medication, on which AIDES can rely in order to convince the French public authorities to put in place a new deployment system throughout the territory.

GEORGIA

STATISTICAL DATA

Population size of the country was estimated at 3.989.000[73] (year 2020).

Estimate number of PLHIV is 10.500.

The state of the 90-90-90 treatment target in 2020[74] was as follows:

- Percentage of PLHIV diagnosed (first 90 target): 64 %
- Percentage of PLHIV on treatment (second 90 target): 91 %
- Percentage of PLHIV with undetectable viral load (third 90 target): 97 %

MAIN EPIDEMIOLOGICAL TRENDS

Georgia belongs to HIV/AIDS low prevalence countries that are at a high risk for an expanding epidemic. A rapid spread of HIV/AIDS is expected in Georgia in the close future, unless urgent measures are undertaken immediately. The registered number of HIV/AIDS cases does not reflect the actual spread of the infection in Georgia.

The estimated number of people living with HIV/AIDS is around 10.500. National HIV prevalence is low (0.4%) but is up to 54 times higher among some key populations (e.g. MSM). In Georgia HIV/AIDS prevalence is related to many factors, such as drug use, high STI prevalence, lack of single-use medical instruments and the problem of sterilization and disinfection; lack condom usage.

Homophobia, biphobia, and transphobia are present in the country and PLHIV may often encounter HIV-related stigma. Knowledge about HIV/AIDS among the Georgian population is very limited. The first HIV/AIDS case in Georgia was detected in 1989. By June 2nd, 2021, a total of 8.853 HIV/AIDS cases have been registered in the Infectious Diseases, AIDS & Clinical Immunology Research Centre, including 6.612 men and 2.241 women. Most patients belong to the age group of 29-40. 4.441 patients developed AIDS. 1839 patients died.

RELEVANT ANTI-DISCRIMINATION LEGISLATION APPLICABLE IN HEALTHCARE SETTINGS

Georgian legislation guarantees the protection of PLHIV against discriminations in healthcare settings at multiple levels. Except for on act (Law of Georgia on HIV Infection/AIDS), the legislation is generally not formulated as HIV-specific; protection is provided through general anti-discrimination provisions.

Constitutional level

The Constitution of Georgia anchors the right to equal treatment and protection against discrimination in Article 11 which reads:

"1. All persons are equal before the law. Any discrimination on the grounds of race, colour, sex, origin, ethnicity, language, religion, political or other views, social affiliation, property or titular status, place of residence, or on any other grounds shall be prohibited."

Although this constitutional provision is not HIV-specific, nor does it include the discriminatory ground of "health status" or "disability", its demonstrative character expressed by the formulation "other grounds" shall ensure the rights of PLHIV are protected and any discrimination against PLHIV is prohibited.

Primary legislation level

Law of Georgia on Healthcare[75] regulates the relations between state authorities and natural and legal persons in healthcare. Article 6(1) reads:

"1. It shall be prohibited to discriminate against a patient due to his/her race, skin colour, language, sex, religion, political and other beliefs, national, ethnic and social affiliation, origin, property status and title, place of residence, disease, sexual orientation, or a personal negative attitude."

The provision is not HIV-specific but prohibits discrimination based on "disease". Therefore, protection against discrimination on the basis of HIV is guaranteed under this law.

Law of Georgia on Patient Rights[76] serves the purpose of protecting citizens' rights to receive healthcare and ensure the inviolability of their honour and dignity. Article 6(1) reads:

"Patients may not be discriminated against on the grounds of race, skin colour, language, sex, genetic heritage, belief and religion, political and other opinions, national, ethnic or social origin, property and social status, place of residence, illness, sexual orientation or negative personal attitude."

The provision is not HIV-specific but prohibits discrimination based on “illness”. Therefore, rotection against discrimination on the basis of HIV is guaranteed under this law.

Law of Georgia on the Elimination of All Forms of Discrimination[77] is intended to eliminate every form of discrimination and to ensure equal rights of every natural and legal person under the legislation of Georgia, irrespective of race, skin colour, language, sex, age, citizenship, origin, place of birth or residence, property or social status, religion or belief, national, ethnic or social origin, profession, marital status, health, disability, sexual orientation, gender identity and expression, political or other opinions, or other characteristics (Article 1 of the Law of Georgia on the Elimination of All Forms of Discrimination).

The provision is not HIV-specific but prohibits discrimination based on “health”. Therefore, protection against discrimination on the basis of HIV is guaranteed under this law.

The Criminal Code of Georgia[78] establishes grounds for criminal liability, defines which acts are prohibited, and determines an appropriate punishment or any other type of penal sanction. Article 142(1) prohibits discrimination when it states that:

“1. Violation of human equality on the grounds of language, sex, age, nationality, origin, birthplace, place of residence, material or rank status, religion or belief, social belonging, profession, marital status, health status, sexual orientation, gender identity and expression, political or other views or of any other signs that have substantially breached human rights, – shall be punished by a fine or corrective labour for up to one year and/or with imprisonment for up two years.”

The provision is not HIV-specific but prohibits discrimination based on "health status". Therefore, protection against discrimination on the basis of the HIV status is guaranteed under this law.

Law of Georgia on HIV Infection/AIDS[79] provides universal access, free will, and confidentiality of personal information. It vigorously secures every constitutional right for PLHIV (right to education, right to employment, etc.). Article 5 establishes the principles of state policy regarding HIV/AIDS, including the principles of protection of PLHIV against discrimination. Article 5(f) provides that:

“The principles of state policy in the field of HIV infection/AIDS shall be: […]
f) the protection of the rights, honour and dignity of physical persons and the prevention of discrimination against them with regard to HIV infection/AIDS.”

Furthermore, Article 10(1) states that it shall not be permitted to limit the civil, political, social, economic, and cultural rights and freedoms of persons infected with HIV and/or ill with AIDS only on the basis of their HIV+ status, except for the cases provided for by the legislation of Georgia.

LEGISLATION THAT MAY PROVIDE BASIS FOR DISCRIMINATION AGAINST PLHIV IN HEALTHCARE SETTINGS

Law of Georgia on Patient Rights can provide basis for discrimination against PLHIV due to the rule laid down in Article 6(2) which reads:

“2. The legislation of Georgia shall determine the conditions for limiting patient rights with respect to certain diseases.”

This provision creates a legal framework for limiting patient rights, including the rights of PLHIV.

Law of Georgia on HIV Infection/AIDS is the only law that regulates an individual sexually transmitted infection or virus. Instead of establishing adequate preventive guarantees of non-discrimination and mechanisms for fighting unequal treatment, the law copies provisions of the general law on patient rights and obligations. Being regulated with an unnecessary separate law, HIV is given special attention withing the Georgian legal system, which results in exacerbating the stigma around PLHIV and the LGBTQ+ community in general. Moreover, this law contains provisions of a discriminatory nature.

Under Article 11(2), the disclosure of ones HIV+ status to a sexual partner is mandatory; an obligation that is being eliminated from the legal systems of many countries. In Article 11(1), the law also provides legal basis for criminalization of HIV transmission without taking into account the doctrine of undetectable viral load. In June 2020, the association “Equality Movement” submitted a draft containing amendments to Article 131 of the Criminal Code (containing the criminal offense of transmitting AIDS) to the Parliament of Georgia. The draft law proposes amendments to the current article in order to eradicate discriminatory regulation. The process is ongoing.

In addition, Law of Georgia on HIV Infection/AIDS provides basis for discrimination against PLHIV in regard to occupational limitations in the area of healthcare (i.e. PLHIV cannot perform certain professions in healthcare). [see section on “Prohibitions and limitations on working in specific healthcare professions for PLHIV”]

Law of Georgia on the Legal Status of Aliens and Stateless Persons[80] lays down duties and restrictions of such persons. Article 18(1)(f) states that a residence permit in Georgia may be denied if the applicant has such infectious or other diseases, the nature, severity, or duration of which may pose a threat to the population of Georgia. The list of such diseases shall be established by the Ministry of internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs of Georgia. Such list was indeed published by the Minister of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs in the form of Order No. 300/N[81] . HIV/AIDS is included among the listed diseases.

MEANS OF REPORTING DISCRIMINATION IN HEALTHCARE SETTINGS (LEGAL AND OTHER REMEDIES)

When PLHIV come across discrimination in healthcare settings, several means of protection are available to them under Georgian law. These include:

- citizens' application to the State Regulation Agency of Medical Activities;
- complaint to the Public Defender of Rights;
- lodging a criminal report;
- legal action.

Citizens' application to the State Regulation Agency of Medical Activities

Since 2011, the State Regulation Agency of Medical Activities (hereinafter "Agency") is responsible for controlling the quality of medical care provided to patients by all legal entities and individuals. The Agency is authorized to receive and examine citizens' applications and issue relevant reports. The organisation, legal status and functioning of the Agency are regulated in the Order of the Minister of Labour, Health, and Social Affairs of Georgia No. 01-64/6.[82]

Complaint to the Public Defender of Rights

The Public Defender of Georgia (hereinafter "Public Defender") is a constitutional institution which supervises the protection of human rights and freedoms within its jurisdiction on the territory of Georgia. It identifies the violations of human rights and contributes to the restoration of the violated rights and freedoms.

The Public Defender examines applications and complaints submitted by natural and legal persons or groups of persons who consider themselves victims of discrimination. As primary means of conflict resolution, the Public Defender attempts to settle the submitted cases through an amicable agreement of the parties. If the parties fail to reach an agreement and if there is sufficient evidence of bias, the Public Defender then proceeds to submit recommendations to relevant institutions or persons in order to restore the rights of the victims of discrimination.

Furthermore, the Public Defender prepares and forwards general proposals to relevant institutions or persons in the matter of preventing and combating discrimination. Regarding individual cases, the Public Defender is authorized to apply to a court as an interested person, according to the Administrative Procedure Code of Georgia.

Filing a criminal report

Under certain circumstances, discrimination can constitute a criminal offense under Article 142(1) of the Criminal Code of Georgia. Regarding this criminal offense, any person may report a crime in order to incite an investigation.

Civil lawsuit

Any person who considers himself/herself to be a victim of discrimination may bring a civil legal action against the person/institution which he/she believes to have committed the discriminatory conduct and make a claim for moral and/or material damages under Article 10(1) of Law on the Elimination of All Forms of Discrimination. The procedure for bringing a civil legal action is governed by the Civil Procedure Code of Georgia. When filing a claim, the plaintiff shall present to the court those facts and evidence that provide grounds to assume that discriminatory action has been committed. After this, the burden of proof that he/she has not achieved the discriminative act shall be imposed on the defendant.[83]

OBLIGATION OF PLHIV TO DISCLOSE THEIR HIV+ STATUS IN HEALTHCARE SETTINGS

Under Georgian law, PLHIV do not have an obligation to disclose their HIV+ status to healthcare workers. However, not all patients are aware that they can avoid disclosing their HIV+ status; thus, they unknowingly expose themselves to unnecessary risk of discrimination.

CONFIDENTIALITY AND ACCESSIBILITY OF PERSONAL DATA RELATED TO HIV

Article 9 of the Law on HIV Infection/AIDS regulates the confidentiality of information regarding persons infected with HIV and/or ill with AIDS. Article 9(1) reads:

"1. Service provider institutions that implement the diagnostics, treatment, prophylaxis, support/assistance and/or care of persons infected with HIV and/or ill with AIDS, as well as any legal and natural person who has been informed about persons infected with HIV and/or ill with AIDS, are obliged to protect the confidentiality of such information."

This obligation to protect confidentiality of HIV-related information shall apply both during the life of the infected person and after his/her death. The conditions for disclosure of confidential HIV-related information are regulated in Article 9(3) which provides that such disclosure shall be permitted if:

- there is informed consent from persons infected with HIV and/or ill with AIDS;
- there exists the preliminary written consent of persons infected with HIV and/or ill with AIDS concerning the disclosure of information in the case of their death;
- in other cases provided for by the legislation of Georgia.

Regarding the obligation to disclose one's HIV+ status to their spouse or sexual partner (obligation imposed on all PLHIV under Article 11(2) of the Law on HIV Infection/AIDS), if an HIV+ patient fails to fulfil this obligation, the service provider institution which implements the diagnostics, treatment, prophylaxis, support/assistance and/or care of this person (hereinafter "Service Providers"), has the duty to notify the spouse or sexual partner itself.

The Service Provider is also authorised to disclose depersonalised data for educational and scientific purposes (Article 9(4) of the Law on HIV Infection/AIDS).

Prohibitions and limitations on working in specific healthcare professions for PLHIV

According to the Law on HIV Infection/AIDS access to certain working positions in healthcare may be restricted for PLHIV. On the one hand, Article 10(2) provides that in general it shall not be permitted to dismiss persons infected with HIV and/or ill with AIDS from work or to refuse to recruit such persons only on the basis of their HIV positive status. On the other hand, this prohibition of dismissal or non-recruitment does not apply to activities where there is a high risk of infecting persons who have contact with such persons. Such activities can be presumed to be present in the field of healthcare.

The Ministry of Labour, Health, and Social Affairs of Georgia was responsible for developing a list of mentioned activities (Article 10(2) second sentence) within six months after the Law on HIV Infection/Aids entered into force (2009). On March 9th, 2012, the Public Defender released a recommendation in which it urged the Ministry of Labour, Health, and Social Affairs of Georgia to develop and approve this list; until today, the list still does not exist.

Private insurance policies concerning PLHIV

In Georgia, private insurance policies are not often sought by PLHIV. That being said, no legal limitations were reported in this context. It should be possible for any person to take out a private insurance, including life and health insurance. Commonly, there is no request for information related to the HIV+ status of a potential client.

COMMON FORMS OF DISCRIMINATION IN HEALTHCARE SETTINGS

Collecting documentation of discrimination cases on the grounds of HIV is a great challenge for the community organizations in Georgia. Regarding the types of discriminatory practices against PLHIV indicated in the questionnaire, only specific instances of individuals being discriminated were described. The outlined discriminatory practices took the form of refusal of care; separation from other patients; and demeaning behaviour of medical workers. It was indicated that discriminatory conduct is most common at the clinics of GPs and in dental care. Another concerning practice reported in the questionnaire was the performance of surgeries for PLHIV on a "separate day" (reported in L. Managadze National Centre of Urology).

Regarding the refusal of care, the respondents to the questionnaire brought up that not all medical practitioners, including dentists, provide required services to PLHIV. This situation brought the necessity to create an "informal group" of doctors who offer services to PLHIV without discrimination. Community members are encouraged to seek services with the members of this informal group.

CASE STUDIES

No cases dealing with discrimination against PLHIV in healthcare settings, that would have significant impact on legislation, policies, or practices in Georgia, were reported in the questionnaire.

GOOD PRACTICES IN THE NATIONAL CONTEXT

Public Defender of Georgia

Withing its competence, the Public Defender of Georgia continues to publish recommendations in order to promote the rights of PLHIV. For instance, in 2016, the Public Defender of Georgia issued a general proposal to the Ministry of Education and Science of Georgia to prevent discrimination. The Public Defender of Georgia recommended the removal of phrases and arguments containing stigma and stereotypes about PLHIV from the Grade VIII textbook for Biology. The Public Defender of Georgia points out that the terms used in the textbook strengthen stereotypical attitudes and stigma towards PLHIV and encourage restricting their rights in various fields on discriminatory grounds.

ISSUES AND BAD PRACTICES IN THE NATIONAL CONTEXT

Insufficient data protection mechanisms

In 2020, the Innovations and Reforms Centre (IRC) conducted a study on the HIV/AIDS Management Program to evaluate the service provider institution's – Infectious Diseases, AIDS and Clinical Immunology Research Centre (hereinafter "Research Centre") – data protection mechanism. It was found that:

- the grounds for special data processing are problematic;
- the depersonalization method for data protection is not adopted, and therefore, it is impossible to discuss its effectiveness;
- the storage period for data is not defined.

The representatives of the local NGOs, that provide support in the context of HIV, also highlighted the problems related to the risks of revealing personal data associated with HIV by the Research Centre, both directly in the doctor's room and in the queues or laboratories.

COVID-19 IMPACT ON PLHIV

The COVID-19 pandemic has harmed access to healthcare but has not significantly impacted HIV and STI risk behaviours. The practice of prescribing a supply of HIV and TB medicines for a more extended period is well received and accepted by the community. Significant challenges were faced in the area of HIV and TB prevention, diagnostic and treatment services that required adaptation of service delivery models throughout the pandemic.[84]

Postal delivery of ART medication

Postal delivery based alternative ART medication distribution model was developed to ease the access to drugs for PLHIV. In order to tackle the prolonged delivery period of international shipments, Georgia was able to utilize a local procurement to refill the stock of HIV prevention supplies for HIV prevention programme and address the increased demand on commodities during the COVID-19 epidemic, such as syringes, needles, and condoms.

The representatives of national NGOs noted that medication was available to some patients, while others did not know about the services that were newly introduced in order to ensure easy. Medication supply was particularly problematic for HIV-positive people living outside the big cities.

Healthcare teleclinics

Primary healthcare online teleclinics (hereinafter “Teleclinics”) were established to serve as a countrywide primary health care gateway for KPs, PLHIV, and TB patients during the COVID-19 epidemic and beyond. Primary health care physicians of the Teleclinics underwent training on the unique needs of KPs, PLHIV, and TB patients. The Teleclinics started offering telephone consultations to patients, including online and telephone counselling for general health conditions, mental health support, and proper referrals to treatment facilities based on the symptoms’ assessment.

Mandatory HIV testing for public employees

During the COVID- 19 pandemic, the Ministry of Internal Affairs required its employees to be tested for the coronavirus every 14 days and also required a onetime testing for hepatitis C and HIV. The employees received an official letter from the head of the administration, Ketevan Tkeshelashvili. Two of the employees were the beneficiaries of the association “Brotseuli” and reached out for legal consultation. One of them refused to be tested, and the other left the job.

GERMANY

STATISTICAL DATA

Population size of the country was estimated at 83.784.000[85] (year 2020).

Estimate number of PLHIV is 91.400.

The state of the 90-90-90 treatment target at the end of 2020[86] was as follows:

- Percentage of PLHIV diagnosed (first 90 target): 90 %
- Percentage of PLHIV on treatment (second 90 target): 97 %
- Percentage of PLHIV with undetectable viral load (third 90 target): 96 %

MAIN EPIDEMIOLOGICAL TRENDS[87]

In 2020, 2.454 new cases were confirmed in Germany, equivalent to 3,0 new cases per 100.000 inhabitants. This corresponds to a decrease of 21 % between 2019 and 2020 (in 2019, 3.111 cases were reported). In 2018-2020, the highest incidence rates were reported in the region of North-Rhine Westphalia, followed by Bavaria.

Out of the reported cases, 77,2 % accounted to men. 45,6 % of the new diagnoses were attributed to men who have sex with men (MSM). New HIV diagnoses among MSM in Germany have continuously decreased since 2014 – from a peak value of almost 2.000 new cases to approx. 1.000.

Data related to the various foreign regions of origin shows a further decline in new HIV diagnoses among people from sub-Saharan Africa, significant increases among people from Western and Central Europe and Latin America, moderate increases among people from Eastern Europe and Asia / Oceania, and practically no change in people from North Africa and North America.

RELEVANT ANTI-DISCRIMINATION LEGISLATION APPLICABLE IN HEALTHCARE SETTINGS

Legislation that shall protect PLHIV against discrimination in healthcare settings can be found at multiple legislation levels (constitutional level, primary legislation, and also in some soft law instruments). The legislation is not formulated as HIV-specific; protection is provided through general anti-discrimination provisions.

Constitutional level

The Basic Law of the Federal Republic of Germany, Grundgesetz[88], anchors the principle of equality in its Article 3(1) which provides that all people are equal before the law. Furthermore, Article 3(3) states that:

“3. No person shall be favoured or disfavoured because of sex, parentage, race, language, homeland and origin, faith or religious or political opinions. No person shall be disfavoured because of disability.”

Although this provision is not HIV-specific, HIV – even if it is symptom-free – falls under the definition of “disability” (“behinderung”) under German law[89]. This shall ensure the rights of PLHIV are protected and any discrimination against PLHIV is prohibited.

Primary legislation level

The General Equal Treatment Act[90] has existed in Germany since 2006 and “aims to prevent and eliminate discrimination based on race or ethnic origin, gender, religion or belief, disability, age or sexual identity”. To achieve this goal, the persons protected by the law are granted the possibility to make legal claims against employers and private individuals if they violate the legal prohibitions of discrimination – claims for compensation or damages. Beyond the main area of its material scope – employment and occupation – the act is also applicable in situations governed by private or civil law (e.g. access to goods and services).

An HIV+ individual, even if he/she does not show any symptoms, is considered as disabled with the meaning of this act. Other chronic diseases can, due to the obstacles they create in day-to-day life, also be considered as a form of disability.

At the federal level, the State Anti-Discrimination Act[91] was adopted in the state of Berlin. Since 2020, this act enables people to take action against discrimination by public authorities in the State of Berlin. HIV is not explicitly mentioned as a discriminatory ground but is included under the characteristics of “disability” and “chronic illness”. The State Anti-Discrimination Act thus closes a gap in protection that the General Equal Treatment Act (which applies nationwide, but only for the area of employment and civil law transactions) left open.

LEGISLATION THAT MAY PROVIDE BASIS FOR DISCRIMINATION AGAINST PLHIV IN HEALTHCARE SETTINGS

No legislation that could directly or indirectly discriminate against or provide basis for discrimination against PLHIV/AIDS was reported. Several bad practices based on soft law guidelines were reported to be used in the police service regarding the handling of personal data related to HIV and in context of examination of work capacity. [see section on"Issues and bad practices in the national context"]

MEANS OF REPORTING DISCRIMINATION IN HEALTHCARE SETTINGS (LEGAL AND OTHER REMEDIES)

When PLHIV come across discrimination in healthcare settings, several means of protection are available to them under German law. These include:

- complain to the State Medical Association;
- complain to the Complaint Office of the hospital in question;
- complain to the Association of Statutory Health Insurance Physicians;
- complain to the statutory health insurance provider
- complain to the Patient Representatives functioning at the federal state level/ or the Federal Government Patient Commissioner;
- complain to the Federal Anti-Discrimination Agency;
- complain to the Data Protection Officer of the hospital in question/the Federal Data Protection Officer / the Data Protection Officer of the federal state;
- civil lawsuit.

Complaint to the State Medical Association

In the event of discrimination in a hospital or in a doctor's office, patients can contact the State Medical Association. It checks whether there is a violation of professional law and can impose sanctions (professional law is understood as all legal regulations applicable to the medical profession). This can be the case, for example, if emergency treatment has been refused. The issue is that such complaints take a very long time to process; the procedure is not transparent for the complainant and sanctions are rarely imposed.

Especially in the case of everyday discrimination, such as the allocation of last appointments or treatment with unnecessary hygiene measures, these are not considered a violation of professional law; in such cases the doctor is simply asked to proceed differently.

Complaint to the Association Statutory Health Insurance Physicians

A patient has the possibility to contact the Association Statutory Health Insurance Physicians (/Dentists) when he/she is denied treatment. Complaints are passed onto the accused who are obliged to respond in writing. The association then decides whether a contractual obligation has been breached and communicates the results to the complainant.

Complaint to the statutory health insurance provider

As the cost bearer of the medical treatment, a statutory health insurance provider can play a significant role in resolving issues of discriminatory conduct. The providers are obliged to advise their clients and support them in reporting treatment errors.

Complaint to the Patient Representatives functioning at the federal state level/or the Federal Government Patient Commissioner

In some federal states, Patient Representatives have been established. The establishment of such body is regulated by the state laws. They serve the purpose of advocating for the patients' rights and also accepting complaints.

Under Paragraph 140h of the Social Security Code, the Federal Government Patient Commissioner has the task of representing the interests of patients in all relevant political areas. Although the commissioner does not provide individual advice, it may provide guidance regarding possible remedies and contact points for patients.

Complaint to the Federal Anti-Discrimination Agency

In the event of discrimination under the General Equal Treatment Act, a complaint can be submitted to the Federal Anti-Discrimination Agency. The agency checks whether there is a violation of the General Equal Treatment Act, mediates between the two parties, and tries to reach an amicable agreement.

Complaint to the Data Protection Officer of the hospital in question/the Federal Data Protection Officer/the Data Protection Officer of the federal state

In accordance with Article 77(1) of the EU General Data Protection Regulation, all individuals have the right to lodge a complaint with a data protection supervisory authority which has the obligation to investigate the complaint and inform the complainant about the results and possible remedies. In Germany, complaints may be lodged with the Federal Data Protection Officer or the Data Protection Officer of the federal state.

Furthermore, also the healthcare facilities must appoint a data protection officer. In the event of violations of personal data protection, such as labelling the patient files externally with the label “HIV+” or with a red dot, a complaint can be submitted to the hospital's data protection officer.

Civil lawsuit

If there is discrimination under the General Equal Treatment Act, a lawsuit can be filed in accordance with Paragraph 21. A victim of discrimination may demand that the discriminatory conduct be stopped or sue for an injunction. Furthermore, the person responsible for the discrimination shall be obliged to compensate any damage.

However, it is still unclear whether the General Equal Treatment Act is applicable to the doctor-patient relationship. There are different legal opinions on this matter. Under Paragraph 19(1), the General Equal Treatment Act is only applicable, in the area of civil law, to mass transactions (i.e. “bulk business”). It is not clear whether the treatment contract between doctor and patient is a mass transaction.

The Federal Anti-Discrimination Agency has clearly positioned itself here and represents the legal opinion that the General Equal Treatment Act can also apply to discrimination in healthcare settings.

Obligation of PLHIV to disclose their HIV+ status in healthcare settings

In Germany, there is no legal obligation for PLHIV that requires them to communicate their HIV+ status in healthcare settings. Medical and nursing staff is generally required to treat all patients as if they were infectious – not only with regard to HIV. If the usual hygienic and occupational safety measures are adhered to (e.g. the wearing of protective equipment and proper disinfection) there is no risk of HIV transmission for either the medical professional or the person being treated.

Confidentiality and accessibility of personal data related to HIV

As institutions dealing with personal data, all healthcare institutions must adhere to the EU General Data Protection Regulation which lays down rules relating to the processing of personal data (e.g. collection, recording, organisation, structuring, storage, etc.). Any data concerning health (including the HIV status) is classified as sensitive personal data under the EU General Data Protection Regulation and is protected as such.

Other legal documents that deal with personal data protection in Germany are the Federal Data Protection Act[92] and the Social Security Code (Book X)[93].

Access to sensitive personal data must be limited within each healthcare facility. Only employees who are entrusted with treating the patient are allowed to access health-related data. Files with diagnoses must be kept in such a way that no third party can see them.

PROHIBITIONS AND LIMITATIONS ON WORKING IN SPECIFIC HEALTHCARE PROFESSIONS FOR PLHIV

Under German law, there is no prohibition for the employment of PLHIV in the healthcare sector.

However, there are certain special requirements for surgeons who perform particularly invasive and injury-prone operations provided in the recommendation of the German Association for Combating Viral Diseases and the Society for Virology[94]. These activities may only be carried out by surgeons with HIV viral load values ≤ 50 copies/ml (regular check of the viral load must be performed); the surgeon must adhere to special measures including the wearing of double gloves. Regular check of the viral load must be performed.

PRIVATE INSURANCE POLICIES CONCERNING PLHIV

In Germany there is a compulsory health insurance. That means everyone has to take out health insurance and the insurance companies have to offer the possibility to do so. Private health insurance providers usually exclude PLHIV. For some years now, however, they have been obliged to offer the so-called “basic tariff” for people who do not have access to statutory or regular private health insurance.

In regard to other health-related insurance policies, private insurance providers conduct a health examination before signing a contract. The HIV+ status cannot be concealed. A case-by-case assessment of a person’s state of health is performed; with the primary focus on the viral load, CD4 count, duration of therapy, etc. After the assessment, PLHIV often encounter increase of insurance premiums or a rejection.

PLHIV do not have access to private insurance policies for instances of incapacity for work. Supplementary insurance, such as personal accident insurance or insurance for dental treatment, should be available.

Anyone who had already taken out a private insurance and is later diagnosed with HIV is not obliged to notify their insurance provider. In addition, the insured does not have to fear that he will lose his insurance cover due to his status.

Although instances of discrimination against PLHIV are becoming less frequent in Germany, it is still not uncommon to encounter several different forms of discriminatory conduct in healthcare settings. PLHIV encountered discrimination most frequently in relation to dental practice or oral surgery. Among the common forms of discrimination indicated in the questionnaire, provision of treatment at the end of office hours was reported as most common, followed by refusal-of-care. Other forms of inappropriate conduct, that might not constitute discrimination, included inappropriate questions, avoidance of physical contact, and adopting special hygienic measures.

COMMON FORMS OF DISCRIMINATION IN HEALTHCARE SETTINGS

In the survey “Positive Stimmen 2.0” (2021)[95] (hereinafter “Survey”) the following results were obtained through interviews:[96]

- 8 % of the respondents were refused a health service in the previous 12 months;
- 16 % of the respondents were refused dental care in the previous 12 months.
- 24 % of the respondents were asked inappropriate questions in the previous 12 months;
- 26 % of the respondents were experienced avoidance of physical contact in the previous 12 months;
- 28 % of the respondents reported that a visible mark had been placed on their medical record in the previous 12 months.

From the online part of the Survey, 56 % of the respondents reported experiences of discrimination in healthcare settings; and 21 % reported that they had been given a specific appointment time, generally at the end of the office hours. Once again, these reported instances of discrimination took place over the previous 12 months.

CASE STUDIES

No court litigation cases dealing with discrimination against PLHIV in healthcare settings, that would have significant impact on legislation, policies, or practices in Germany, were reported in the questionnaire.

However, the problem of discrimination against PLHIV is considered to be particularly important by the Federal Ministry of Health. In the Strategy to Contain HIV, Hepatitis B and C and Other Sexually Transmitted Infections[97] the Federal Ministry of Health aims to reduce existing knowledge deficits and emphasises the topic of tackling discrimination in healthcare settings as important, as limited access to the treatment system can have serious health consequences. The strategy also calls for measures to reduce stigmatization and discrimination.

GOOD PRACTICES IN THE NATIONAL CONTEXT

Raising awareness about HIV and organisation of courses for medical professionals

The Deutsche Aidshilfe and the 117 local AIDS organizations support PLHIV in the process of filing complaints in relation to discrimination in healthcare settings. In addition, these organisations organise events that focus on the empowerment of PLHIV; PLHIV are also regularly being informed about how to defend themselves against discrimination.

The local AIDS organizations in particular offer training courses for hospitals and other healthcare facilities. Nursing schools are also regularly offered seminars about HIV.

In order to increase knowledge about HIV and reduce fear of transmission, the Deutsche Aidshilfe develops training materials for nurses and doctors. In 2016, for instance, an information brochure "Don't be afraid of HIV, HBV and HCV"[98] was developed together with the Federal Dental Association, as well as an information video "Don't be afraid of HIV in the dental office"[99]. In 2020, a brochure on HIV for medical practice "Information about HIV for medical practice"[100] was published in cooperation with the Federal Medical Association, as well as an information video "Treat HIV+ patients well and with confidence"[101] . A release of an e-learning programme for medical professionals is also planned.

ISSUES AND BAD PRACTICES IN THE NATIONAL CONTEXT

HIV testing for the purpose of employment in healthcare

Although HIV tests are not permitted in the vast majority of cases in a professional context, they are still often offered or asked for in healthcare settings. Not only surgeons, but also nurses or even cleaning staff are often requested to undergo an HIV test. Knowledge of the HIV infection usually has negative effects: people are not hired, they are only allowed to work in certain areas, or they have to undergo regular viral load checks. In Germany, there is no clear ban on HIV testing in a professional context.

Hiring practices within the police service

On the basis of a decision by the federal and state police doctors, the hiring of PLHIV in the police service is viewed critically. Such applicants were reported to be rejected even before the individual examination of their fitness for work, exclusively based on their HIV+ status. Since the hiring criteria of the police in Germany are a matter for the federal states, the handling of these situations is not uniform. Considering that the discretion of the occupational doctor may play a key role in this context, such conduct falls under bad practices in healthcare.

COVID-19 IMPACT ON PLHIV

Inclusion of PLHIV in the priority vaccination group

COVID-19 vaccination in Germany followed a vaccination scheme that consisted of 4 priority vaccination groups. PLHIV were eligible to receive vaccination within the 3rd priority group “Increased priority”.

Interruption of HIV testing and availability of ARV medication

When lockdown measures were introduced in Germany, community HIV testing in AIDS organisations and in public health testing became unavailable. No significant shortage of ARV medication was reported, people who have health insurance were generally able to continue their treatment without interruptions or delays.

ITALY

STATISTICAL DATA

Population size of the country was estimated at 60.462.000[102] (year 2020).

Estimate number of PLHIV is 137.000.

The state of the 90-90-90 treatment target in 2020[103] was as follows:

- Percentage of PLHIV diagnosed (first 90 target): 92 %
- Percentage of PLHIV on treatment (second 90 target): 94 %
- Percentage of PLHIV with undetectable viral load (third 90 target): 86 %

MAIN EPIDEMIOLOGICAL TRENDS[104]

In 2020, 1.303 new HIV diagnoses were reported in Italy, equivalent to 2,2 new cases per 100.000 inhabitants. Since 2012, a decrease in the number of new HIV diagnoses may be observed in the country. This trend became more evident in the period of 2018-2020.

The highest incidence rates were reported in the regions of Valle d'Aosta, Liguria, the Autonomous Province of Trento and Lazio. Out of the reported cases, 79,9 % accounted to men. Unprotected sexual intercourse was the main reported transmission mode, constituting 88,1 % of new cases. 45,7 % of the new HIV diagnoses were attributed to men who have sex with men (MSM); in comparison, 42,4 % of new cases were attributed to heterosexual intercourse.

A slight increase was observed in the number of newly diagnosed HIV cases in people with foreign nationality, rising from 27,5 % in 2019 to 32,6 % in 2020

RELEVANT ANTI-DISCRIMINATION LEGISLATION APPLICABLE IN HEALTHCARE SETTINGS

Legislation that shall protect PLHIV against discrimination in healthcare settings can be found at all legislation levels (constitutional level, primary legislation, secondary legislation and also in some soft law instruments). Apart from the constitutional level, the legislation is formulated as HIV-specific.

Constitutional level

The Constitution of the Italian Republic[105] anchors the principle of equality in its Article 3 which provides that all citizens are equal before the law without distinction of sex, race, language, religion, political opinion, personal and social conditions. Although the list of protected discriminatory grounds does not include the criterion of "health condition" or "disability", the inclusion of "personal and social conditions" shall guarantee the protection of PLHIV.

Furthermore, Article 32 provides that the right to health represents a fundamental right of each individual and a primary interest for the community.

Primary legislation level

The Law on the Establishment of the National Health Service[106] also states that the National Health Service, Servizio Sanitario Nationale (hereinafter "SSN"), shall ensure the right to health of every person in accordance with the principles of universality and equality – without any distinction of individual or social conditions (Chapter I, Article 1).

The Law on the Urgent Interventions Programme for the Prevention and Fight Against AIDS[107] represents the main HIV-specific legislative document in the Italian legal system. Article 5(5) states that HIV infection cannot constitute grounds for discrimination.

In relation to healthcare settings specifically, Article 5(1) provides that all healthcare professionals who learn about a patient's HIV+ status have the duty to provide the necessary assistance and take any measures or precautions needed for the protection of fundamental rights and freedoms of such patient. This means that no healthcare professional can refuse a patient because he/she is HIV+. In addition, Article 5(2) prohibits any HIV testing to be done without the patient's consent, except for reasons of clinical necessity in his/her interest.

LEGISLATION THAT MAY PROVIDE BASIS FOR DISCRIMINATION AGAINST PLHIV IN HEALTHCARE SETTINGS

No legislation that could directly or indirectly discriminate or provide basis for discrimination against PLHIV/AIDS in healthcare settings was reported.

MEANS OF REPORTING DISCRIMINATION IN HEALTHCARE SETTINGS (LEGAL AND OTHER REMEDIES)

When PLHIV come across discrimination in healthcare settings, several means of protection are available to them under Italian law. These include:

- complaint to the Public Relation Office, Ufficio Relazioni con il Pubblico, of the healthcare institution;
- complaint to the Court for People with Disabilities, Tribunale del Malato;
- complaint to the Guarantor for the Protection of Personal Data, Garante per la Protezione dei Dati Personali;
- complaint to the Order of Physicians and Dentists, Ordine dei Medici Chirurghi e degli Odontoiatri;
- civil action.

Complaint to the Public Relation Office Ufficio Relazioni con il Pubblico (hereinafter "URP")

If a patient becomes a victim of discrimination, he/she can file a complaint with the URP of the healthcare facility in question. The procedure is initiated by drawing up a request with the URP, followed by being presented with a written request in which the victim specifies the details of the case. These steps initiate the investigation that is to be carried out by the medical director, Direttore Sanitario. The law then requires that the URP must provide an answer to the complaint within 30 days (which can be extended by 15 days in cases of in-depth investigation).

Complaint to the Court for People with Disabilities Tribunale del Malato (hereinafter "TDM")

PLHIV who are exposed to discrimination may file a complaint with the TDM. The TDM consists of ordinary citizens as well as professionals who participate on a voluntary basis. Complaints can be submitted to the TDM in person, via post, e-mail, or telephone. After the TDM verifies the validity of the complaint, it proceeds to intervene. The TDM aims at both seeking compensation of the victim and redressing discriminatory practices.

Complaint to the Guarantor for the Protection of Personal Data, Garante per la Protezione dei Dati Personali (hereinafter "GPDP")

When an instance of discrimination involves the breach of the obligation of secrecy, one can also submit a complaint to the GPDP. The GPDP supervises the adherence with the EU General Data Protection Regulation as well as the Personal Data Protection Code (Decree-law No. 196/2003).

A victim of discrimination, however, cannot claim damages or any other monetary compensation before the GPDP. Any claims for monetary compensation may only be lodged with the competent judicial authority.

Complaint to the Order of Physicians and Dentists, Ordine dei Medici Chirurghi e degli Odontoiatri (hereinafter “OMCO”)

Under Article 3 of the Code of Medical Ethics[108] , all doctors have the duty to provide healthcare services without any discrimination. The Code of Medical Ethics also imposes the obligation of secrecy. Non-compliance with the Code of Medical Ethics, even if due to ignorance, constitutes a disciplinary offense.

A complaint filed by a patient with the OMCO serves as a request for the initiation of disciplinary proceedings. Possible sanctions include warning, censorship (i.e. statement of condemnation for the behaviour), suspension of 1 to 6 months, or removal from the register. The OMCO cannot impose financial penalties, or award compensation to the victim.

Civil lawsuit

In case PLHIV who became victims of discrimination suffer injury or damage, they can bring action before a civil court in order to make a claim for compensation for unlawful acts under Article 2043 et. seq. of the Italian Civil Code[109] which provides that any intentional or negligent act that causes unjust damage to others obliges the person who committed the act to compensate for the damage caused.

OBLIGATION OF PLHIV TO DISCLOSE THEIR HIV+ STATUS IN HEALTHCARE SETTINGS

In Italy, there is no legal obligation for PLHIV that requires them to communicate their HIV+ status to other people, including medical professionals. No medical procedure can involve risks of transmission if all the universal hygienic protocols and rules are followed. Medical professionals must follow these rules regardless of declared or ascertained serological status of a patient, as required by the guidelines of the Ministry of Health.

CONFIDENTIALITY AND ACCESSIBILITY OF PERSONAL DATA RELATED TO HIV

As institutions dealing with personal data, all healthcare institutions must adhere to the EU General Data Protection Regulation which lays down rules relating to the processing of personal data (e.g. collection, recording, organisation, structuring, storage, etc.). Any data concerning health (including the HIV status) is classified as sensitive personal data under the EU General Data Protection Regulation and is protected as such. Adaptation of national laws to the provisions of the EU General Data Protection Regulation is ensured through the Decree-Law No. 196/2003.[110]

Electronic Health Records

Under Italian law, it is compulsory to store health records in an electronic database at the level of regions and autonomous provinces. This obligation was introduced by Decree-Law No. 179/2012. Article 12 defines electronic health records (hereinafter "EHR") as "a set of health and socio-health digital data and documents related to present and past clinical events regarding a patient". The EHR include information on prescriptions, services, medical reports, discharge letters, emergencies, diseases, and chronic illnesses.

The EHR aims to provide authorized individuals with necessary clinical information about each patient. However, the Italian law gives the individual in question the right to "conceal" certain categories of data. Such data that is subject to greater protection of anonymity includes HIV, voluntary termination of pregnancy, drug addiction, etc.; these categories of data are only made visible if a patient gives explicit consent.

An issue of confidentiality was reported regarding the EHR which had apparently been used improperly in some Italian Regions. Personal and health related data which shall be accessible only to the GP, the infectious disease specialist, and other few eventually authorized specialists, became visible also to pharmacists and other healthcare professionals. This issue has been addressed as a breach of confidentiality and measures were taken to prevent it from happening again.

PROHIBITIONS AND LIMITATIONS ON WORKING IN SPECIFIC HEALTHCARE PROFESSIONS FOR PLHIV

Under Article 5(5) of the Law on the Urgent Interventions Programme for the Prevention and Fight Against AIDS, the ascertained HIV infection cannot be a reason for discrimination, in particular for enrolment in school, for performance of sporting activities, for the access or the maintenance of jobs.

A question of constitutionality of this provision had been raised before the Italian Constitutional Court which held that there shall be an exception to Article 5(5) in relation to activities that involve risks for the health of third parties. By this ruling, the Italian Constitutional Court allowed for the prohibition for PLHIV to perform certain activities in the healthcare sector.[111] Surgeons and other professionals working in the operating rooms and intensive care units cannot be dismissed, but they are relocated to other departments of the healthcare institution.

PRIVATE INSURANCE POLICIES CONCERNING PLHIV

After disclosing their HIV+ status, PLHIV in Italy are commonly denied the benefit of private health related insurance policies. In case that they do not disclose their HIV+ status prior to taking out an insurance, and it subsequently becomes evident that they hid the information, they are denied reimbursement of their medical expenses; the insurer refuses to provide insurance coverage due to a false statement given by the client at the time that the insurance policy was stipulated.

COMMON FORMS OF DISCRIMINATION IN HEALTHCARE SETTINGS

The number of instances of discrimination against PLHIV in healthcare settings has been decreasing over the past years. In big cities, discrimination of this nature only occurs rarely.

All the common forms of discrimination indicated in the questionnaire (refusal-of-care, separation from other patients, provision of treatment at the end of office hours) were reported to occur only as isolated incidents. Provision of treatment at the end of office hours was reported as the most frequent form. Another common practice is that of dedicating special days to patients with HIV (e.g. several days during each month for examinations dedicated exclusively to PLHIV; gynaecology, ophthalmology, dermatology).

Regarding specific sites where discrimination takes place, dental care was marked as the most problematic. Stigmatizing or judgmental attitude, often due to lack of updated information on the HIV infection (e.g. U=U), was reported to be present among general practitioners (hereinafter "GP"). Many PLHIV therefore limit their visits to the GP and mostly refer to their infectious disease specialist.

The two latest studies on this matter were carried out in 2013 and 2014. Although these studies are not recent and cannot therefore be taken as an up-to-date reflection of the current situation, their results are included for context:

- "Questionaids" – a survey carried out by Lila in 2014 among 657 respondents living with HIV found that 47 % of the respondents had been discriminated against or treated unfairly in healthcare settings;
- "Pratiche Positive" – a qualitative research conducted by Arcigay in 2013 provided that 40 % of the respondents had been discriminated against in healthcare settings, 12 % had been discriminated by their GPs, and 17 % had been subjected to refusal-of-care.

Dental care

Complaints related to discriminatory behaviours in dental care have steadily decreased, yet this area of healthcare remains the most problematic. Several Italian regions took action to tackle this issue and offer training on HIV to dentists; using funds provided in the context of the Law on the Urgent Interventions Programme for the Prevention and Fight Against AIDS. This resulted in the improvement of dentists' attitude towards PLHIV. Nevertheless, some cases of discrimination still take place.

Perhaps the case that best describes how the anti-discrimination mechanisms in Italy function was reported in 2018. A man in Rome contacted the national toll-free phoneline against homotransphobia after being denied a dental visit in a private specialist doctor's office. The doctor had presented the patient with a questionnaire in which he was asked to explicitly highlight whether he had had or suspected of having infectious diseases or being HIV positive. The doctor informed him that he was unable to proceed with the clinical examination because his HIV+ status "would not have allowed him to avert a possible contagion of staff and other patients".

After the public complaint by Gay Help Line, the Order of Physicians and Dentists intervened and took the appropriate measures. This was followed by a complaint to the Guarantor for Protection of Personal Data, who on June 10th, 2021, issued a specific order in which he highlights that the doctor's conduct did not comply with the specific rules on privacy. The Guarantor for Protection of Personal Data concluded that the request for information relating to the HIV status of each patient who goes to a doctor's office for the first time contravenes the principle of lawfulness and minimization of the requested data. Given the illegality of the doctor's conduct, an administrative fine of

CASE STUDIES

No court litigation cases dealing with discrimination against PLHIV in healthcare settings, that would have significant impact on legislation, policies, or practices in Italy, were reported in the questionnaire. It was emphasised in the questionnaire that bringing a case before court is difficult in Italy, because PLHIV need to publicly disclose their HIV+ status in order to proceed. This prevents many of them from filing a lawsuit.

GOOD PRACTICES IN THE NATIONAL CONTEXT

Regional trainings for healthcare staff

Based on the provisions of the Law on the Urgent Interventions Programme for the Prevention and Fight Against AIDS, funding was provided for training of healthcare staff over the course of many years; particularly in the area of dental care. These training courses have undoubtedly contributed to lowering discriminatory behaviour in this context. In the last years the Italian NGOs, that provide support to PLHIV, have been receiving fewer calls related to problems encountered at the dentists' office.

ISSUES AND BAD PRACTICES IN THE NATIONAL CONTEXT

Attitude and behaviour of healthcare workers

Bad practices which do not qualify as direct or indirect discrimination against PLHIV concern judgemental, homophobic attitudes and bad relationships with key populations. Such conduct may keep these population groups distant from prevention, treatment and care of HIV and other STIs. Hence, one of the priorities in the national context is that of educating and training healthcare staff in having non-judgmental attitude towards key populations (e.g. LGBT+, migrants, PLHIV, people who inject drugs, etc.) and building skills in addressing issues related to sexual and reproductive health and rights, drug use, mental health problems, etc.

COVID-19 IMPACT ON PLHIV

Limitation of HIV testing and hospital visits

Throughout the COVID-19 pandemic, HIV testing in hospitals was significantly reduced and PLHIV could not access their periodic visits and check-ups during lockdowns. Increasing use of "telemedics" was introduced as a measure to address the delays in treatment. Most contacts with the doctors took place via telephone or online.

That being said, PLHIV were not disproportionately impacted, since the same critical situation was experienced by all people in need of healthcare services. The difference with respect to other severe diseases and health conditions (e.g. cancer, diabetes, etc.) is that infectious disease departments, where HIV is treated, are the same departments that provide medical care to COVID-19 patients.

There were also problems regarding access to ARV medication, especially for PLHIV who are provided with treatment at hospitals outside their region (traveling between regions was prohibited for a significant time period). In such cases, community organizations helped with the delivery.

Community HIV testing was also unavailable during the 1st lockdown in March-May 2020. It was later restored but only available on appointment (to avoid overcrowding of testing sites).

Inclusion of PLHIV in the vaccination priority categories

In Italy, 5 priority categories for vaccination were introduced. People living with AIDS or PLHIV with a CD4 < 200 were included in Category 1 (highest priority). Category 4 included people below 60 years old who live with comorbidities; HIV was listed among these comorbidities, as well as hepatitis, liver diseases, and tuberculosis.

Paid leave of absence for healthcare staff living with HIV

A good practice has been introduced during the COVID-19 pandemic to protect healthcare staff living with HIV. This category of workers was included among those workers with "vulnerable conditions", and they were allowed to request the benefit of a period of paid leave of absence via the occupational doctor or GP in order not to come into contact with COVID-19 patients.

KYRGYZSTAN

STATISTICAL DATA

Population size of the country was estimated at 6.524.000[112] (year 2020).

Estimate number of PLHIV was 10.000.

The state of the 90-90-90 treatment target in January 2021[113] was as follows:

- Percentage of PLHIV diagnosed (first 90 target): 70,5%
- Percentage of PLHIV on treatment (second 90 target): 63 %
- Percentage of PLHIV with undetectable viral load (third 90 target): 86,6 %

MAIN EPIDEMIOLOGICAL TRENDS

In the last five years, the total number of officially registered HIV cases in the country has increased by nearly half (from 6.733 cases in 2016 to 9.773 cases in 2020). The estimate number of PLHIV in 2020 was 10.000. According to the Republican AIDS Centre, the total number of registered HIV cases in the Kyrgyz Republic as of December 31st, 2020, was 9.773, of which 2.237 died. On average, 500-700 new HIV cases are registered annually in the country. HIV cases are registered in all regions of the country. The highest HIV prevalence is in Chui and Osh regions, more specifically in the cities of Bishkek and Osh.

HIV prevalence in the Kyrgyz Republic was 101 per 100.000 inhabitants in 2019 and 88 per 100.000 inhabitants in 2020. Overall, HIV prevalence in the country remains at approximately the same level since 2015.

With a relatively stable HIV prevalence rate, a slight increase in the incidence rate can be observed. In 2015, the HIV incidence rate was 9,8 new cases per 100.000 inhabitants. In 2019, the HIV incidence rate peaked at 12,3 new cases per 100.000 inhabitants, and in 2020 decrease to 9,8 per 100.000 inhabitants. Each year around 200 PLHIV die in the country, of whom around 30 % die in the AIDS phase.

RELEVANT ANTI-DISCRIMINATION LEGISLATION APPLICABLE IN HEALTHCARE SETTINGS

Legislation that shall protect PLHIV against discrimination in healthcare settings can be found at the constitutional level as well as at the primary legislation level. Moreover, anti-discrimination legislation of the Kyrgyz Republic at the primary legislation level is HIV-specific.

Constitutional level

The Constitution of the Kyrgyz Republic[114] (hereinafter "Constitution") anchors the protection against discrimination and provides a list of discriminatory grounds in its Articles 24 and 29. This list has a demonstrative (i.e. open-ended) character and apart from the commonly included grounds also protects "other statuses" and "other circumstances".

Primary legislation level

According to Article 13 of the Act on HIV/AIDS in the Kyrgyz Republic[115] discrimination and stigmatization of PLHIV and people affected by HIV/AIDS is prohibited, as well as the infringement of their legitimate interests, rights, and freedoms on the basis of their HIV+ status. Under this article, it is explicitly forbidden to refuse to conclude or terminate an employment contract with an HIV+ employee (with the exception of certain types of professional activities established by a special list), or to refuse the admission of PLHIV to educational and health are organizations.

Further protection at the primary legislative level is provided by the Act on Protection of Health of Citizens in the Kyrgyz Republic[116]. Under Article 72, a patient has the right to respectful and humane treatment by medical and service personnel when seeking or receiving medical care. In addition, under Article 91, the HIV status is classified as a medical secret and protected at such.

The Criminal Code of the Kyrgyz Republic[117] also contains a provision dedicated to protection against discrimination. Article 185 provides that:

"The violation of human equality, namely the direct or indirect restriction of rights or the establishment of direct or indirect privileges based on gender, race, nationality, language, disability, ethnicity, religion, age, political or other beliefs, education, origin, property or other status, which, through negligence, has caused significant harm."

LEGISLATION THAT MAY PROVIDE BASIS FOR DISCRIMINATION AGAINST PLHIV IN HEALTHCARE SETTINGS

No legislation that could directly or indirectly discriminate against or provide basis for discrimination against PLHIV/AIDS in healthcare settings was reported.

MEANS OF REPORTING DISCRIMINATION IN HEALTHCARE SETTINGS (LEGAL AND OTHER REMEDIES)

According to Article 16 of the Act on HIV/AIDS in the Kyrgyz Republic violation of its provisions (including the violation of Article 13 on the prevention of discrimination and stigmatization of PLHIV, and the infringement of their legitimate interests, rights and freedoms on the basis of their HIV infection) entail disciplinary, administrative, criminal and civil legal liability.

When PLHIV come across discrimination in healthcare settings, several means of protection are available to them in the Kyrgyz Republic. These include:
- complaint to the healthcare provider;
- complaint to the coordinating commission of the local state administrations and local self-government bodies of Bishkek and Osh;
- complaint to the Ministry of Health;
- complaint to the Ombudsman;
- appeal to the prosecutor’s office;
- legal action.

Complaints – common procedural framework

Patient’s complaints are considered under the legal framework set forth by the Act on the Procedure for Considering Citizens’ Appeals.[118] According to Article 4, every citizen has the right to appeal personally or through a representative to public authorities, local self-government bodies and their officials, who are obliged to provide a reasoned response within the time frame established by law. Under Article 8, a written or electronic complaint received by a state body, local self-government body or an official in accordance with their competence must be considered within 14 working days from the date of the registration of the complaint.

Complaint to the healthcare provider

Under Article 72 of the Act on Protection of Health of Citizens of the Kyrgyz Republic, if a patient’s rights are violated (including those of PLHIV), he/she can file a complaint directly to the head or other official of the healthcare institution where he/she sought medical care. Liability for violation of patient’s rights under the said act is established in accordance with other legislation of the Kyrgyz Republic.

For instance, under Article 146 of the Labour Code of the Kyrgyz Republic[119], in the case of wrongful non-performance or improper performance of work duties by a healthcare worker (including the violation of laws), the head of the healthcare institution has the right to apply the following disciplinary sanctions: 1) admonition; 2) reprimand; 3) dismissal on appropriate grounds.

Complaint to the coordinating commission

Coordination commissions for management of the healthcare system were established in all regions of the Kyrgyz Republic and in the cities of Bishkek and Osh. Under Paragraph 6, Section 3 of the regulations establishing the coordination commissions[120], the commissions have the right to monitor the implementation of national, state, sectoral health care programmes, the programme of state guarantees for the provision of medical and sanitary care and the quality of medical services provided by health care institutions.

Based on the above, in case of violation of their rights, patients (including PLHIV) can file a complaint to the local coordination commission. The patients' complaints are handled in accordance with the Act on the Procedure for Considering Citizens' Appeals.

Complaint to the Ministry of Health

Apart from the previously stated bodies, a patient whose rights were violated in healthcare setting may seek remedy at the Ministry of Health. Similarly to the previous situations, a complaint must be filed and is handled in accordance with the Act on the Procedure for Considering Citizens' Appeals.

Complaint to the Ombudsman of the Kyrgyz Republic

Under Article 10 of the Act on the Ombudsman of the Kyrgyz Republic[121], the Ombudsman reviews applications and complaints from citizens of the Kyrgyz Republic, foreign nationals and stateless persons or their representatives and non-governmental organizations regarding decisions and actions of state and local government bodies, public and private organizations, institutions, enterprises, officials, civil servants that violate human and civil rights and freedoms, established by the legislation of the Kyrgyz Republic, international treaties and agreements to which the Kyrgyz Republic is a party.

In the case of discrimination of PLHIV in healthcare settings, PLHIV have the right to complain to the Ombudsman regarding violations of Article 13 of the Act on HIV/AIDS in the Kyrgyz Republic. The complaints are considered in accordance with the Act on the Procedure for Considering Citizens' Appeals.

Appeal to the Prosecutor's Office of the Kyrgyz Republic

Under Article 2 of the Act on the Prosecutor's Office of the Kyrgyz Republic[122], the prosecutor's office is a government agency called to ensure the rule of law, unity and strengthening of legality, as well as protection of legally protected interests of an individual, society and the state.

Pursuant to Article 7 of the said act, the prosecutor's office, in accordance with its powers, resolves appeals containing information about violations of laws and other normative legal acts. The decision taken by the prosecutor may be appealed to a higher prosecutor and does not prevent applicants from seeking protection of their rights in civil court. The answer to an appeal should be motivated. If the appeal is denied, the applicant shall be explained the procedure of appealing the decision as well as the right to appeal to a court.

Legal Action

Under Article 17 of the Act on HIV/AIDS in the Kyrgyz Republic, wrongful acts or omissions of officials that violate the rights of PLHIV can be appealed in court in accordance with the legislation of the Kyrgyz Republic. In accordance with Art. 5 of the Administrative Procedure Code of the Kyrgyz Republic[123] any interested person has the right, in the manner prescribed by law, to apply to the court for the protection of his/her violated or disputed rights, freedoms or interests protected by law.

However, under Article 111 of the Administrative Procedure Code of the Kyrgyz Republic, prior to bringing an action before court, PLHIV must lodge a complaint with a higher authority, e.g. the Ministry of Health, or with a coordination commission in order to commence the pre-trial order dispute resolution. The complainant has the right to appeal to the judicial authorities only if the higher authority does not resolve the issue.

OBLIGATION OF PLHIV TO DISCLOSE THEIR HIV+ STATUS IN HEALTHCARE SETTINGS

Under the law of the Kyrgyz Republic, PLHIV do not have the obligation to disclose their HIV+ status to healthcare workers.

CONFIDENTIALITY AND ACCESSIBILITY OF PERSONAL DATA RELATED TO HIV

HIV status of a patient is a medical secret under Article 91 of the Act on Protection of Health of Citizens in the Kyrgyz Republic. Information about the seeking of medical care, the health status of citizens, the diagnosis of their disease and other information obtained during examination and treatment constitute medical secrecy.

Information constituting medical secrecy shall not be disclosed by persons to whom it became known in the course of their training, performance of professional, official, or other duties, except in the cases specified in Article 91.

According to Article 18 of the Act on the Status of Medical Workers[124] medical workers are obliged to strictly observe the rights and legitimate interests of patients, keep confidentiality of personal information obtained during their professional activities (except in cases provided by law) and comply with professional and ethical standards.

Under Article 160 of the Criminal Code of the Kyrgyz Republic the disclosure of medical secrets by a person to whom it became known in connection with the performance of professional or official duties that caused grave harm through negligence is punishable by correctional labour/a fine/imprisonment with disqualification to hold certain positions or engage in certain activities for up to two years and a fine.

Data on the HIV+ status of patients, in accordance with the clinical guidelines, are documented in the medical card of a patient, as well as in the registers of ARV drugs dispensation, register of PLHIV and in the register of services rendered.

In medical institutions, these documents are stored in medical record storage cabinets which require access authorization. In addition, data regarding the HIV+ status of a patient is entered into a unified electronic tracking system.[125]

The following individuals have access to information on HIV status of patients:[126] [127]

1. doctors and nurses of the departments of the Republican AIDS Centre of the Ministry of Health of the Kyrgyz Republic and AIDS prevention and control centres;
2. family physician or infectious disease specialist at the Family Medicine Centre (FMC) and General Medical Practice Centre (GMPC);
3. in case of indications for consultation the following specialists can also get access to information on HIV status: infectious disease doctor, phthisiatrician, neurologist, psychiatrist, psychotherapist (psychologist), ophthalmologist, cardiologist

PROHIBITIONS AND LIMITATIONS ON WORKING IN SPECIFIC HEALTHCARE PROFESSIONS FOR PLHIV

On April 25th, 2006, the Government of the Kyrgyz Republic issued a Decree that approved a special list of professions and positions in which the employment of people living with HIV/AIDS is not allowed[128]. The list includes the following professions:

- operating surgeons of all specialties;
- operating nurses;
- obstetricians-gynaecologists;
- obstetricians and midwives in maternity hospitals;
- traumatologists;
- staff of haematology departments;
- staff of artificial kidney units;
- dentists;
- blood transfusion specialists;
- haemodialysis units that work directly with blood.

Furthermore, under the same governmental Decree, mandatory examination for detection of HIV was introduced for employees working in the abovementioned professions.[129] If an employee of one of these professions refuses to undergo mandatory medical examination to detect HIV without valid reasons, this employee is subject to disciplinary action in accordance with the established procedure (reprimand or dismissal). If the HIV infection is detected in such employees, they are transferred to another job with no risk of HIV transmission to third parties.

PRIVATE INSURANCE POLICIES CONCERNING PLHIV

There is no separate law or programme related to life or health-related insurance policies for PLHIV in the country. No data on availability of different types of private insurance policies for PLHIV was obtained.

COMMON FORMS OF DISCRIMINATION IN HEALTHCARE SETTINGS

In the Kyrgyz Republic a database of offenses was developed under the REAct Project by Frontline AIDS to monitor and respond to human rights violations at the community level. Individual offenses are registered in the database by staff members (REActors) who are specially trained to provide legal assistance in cases of violations against key population groups (including PLHIV).

In 2021, a report on “Violations of the rights of representatives of key groups in Kyrgyzstan” [130] [131], was published. During the previous year (2020) the database registered 503 offenses from all community representatives of which 121 submissions were registered in relation to PLHIV. In the healthcare sector, the most striking manifestations of stigma and discrimination against PLHIV are the emphasized humiliating practices of medical professionals, as well as refusal-of-care. The offenses can be dived into 3 subgroups: refusal-of-care (36), disclosure of HIV status (2), humiliating treatment by medical staff (2).

Pursuing the objectives of the action plan of the Government of the Kyrgyz Republic to overcome the HIV pandemic, another study was conducted in 2020[132] to assess one of the indicators of this action plan – stigma index of PLHIV and key populations in the Kyrgyz Republic. The study involved 665 PLHIV in 6 regions and in relation to the healthcare sector it provides the following statistical summary of the attitude of nursing staff towards PLHIV:

ATTITUDE OF NURSING STAFF – PROVISION OF HIV RELATED SERVICES (2020)

Description of the behaviour of nursing staff	% of PLHIV who experienced this behaviour
Denied health care services because of HIV status	3,1%
Advised not to have sex because of HIV status	6,0%
Spoke badly or gossiped because of HIV status	5,7%
Verbally abused (shouted, cursed, called names, or otherwise verbally abused) because of HIV status	4,3%
Physically abused (pushed, hit, hit or otherwise physically abused) because of HIV status	0,6%
Avoided physical contact/used extra precautions (wearing a second pair of gloves) because of HIV status	10,3%
Disclosed HIV status without consent	5,7%

ATTITUDE OF NURSING STAFF – PROVISION OF HIV NON-RELATED SERVICES (2020)

Description of the behaviour of nursing staff	% of PLHIV who experienced this behaviour
Verbally harassed (yelled, cursed, called names, or otherwise verbally abused) because of HIV status	10,4%
Talked badly or gossiped about because of HIV status	7,7%
Denied health care services because of HIV status	6,0%
Avoided physical contact/used extra precautions (wearing a second pair of gloves) because of your HIV status	6,0%
Were advised not to have sex because of your HIV status	4,9%
You were denied dental services because of your HIV status	2,2%
You were physically abused (pushed, hit, or otherwise physically abused) because of your HIV status	1,1%
Did not disclose your status when getting help	1,1%

CASE STUDIES

No cases resulting in court litigation were reported, therefore the following case studies only show the currently occurring discriminatory practices in healthcare settings.

Although these instances of discriminatory behaviour did not have direct impact on the legislation of the Kyrgyz Republic, through disclosing and analysing these cases the local NGOs and activists raise awareness about the problems that PLHIV face.

Cases of verbal abuse and inadequate remarks

Infectious disease doctor made demeaning remarks towards an HIV+ patient: “You ‘HIV+’ are already annoying, you’re too smart.” The patient filed a complaint with the management that resulted in an apology of the doctor.

Cases of refusal of treatment

An HIV+ patient, who also contracted tuberculosis and hepatitis C in the past and was a drug user, was denied surgery at the Chui Regional Hospital. The justification provided by the hospital was the “necessity” to dispose of all surgical instruments used during the surgery. The hospital claimed that such disposal would be too expensive. Alternatively, the hospital suggested that the patient shall pay 30.000 Kyrgyz Som (approx. 305 €). The patient did not have these resources. According to the obtained information, the patient has still not undergone the surgery.

A patient was refused at the surgery in-patient department of the United Territorial Hospital due to his HIV+ status. As a result of the refusal, the patient died the next day.

An HIV+ child was not admitted to the ENT department of the Nookat District Hospital with a case of maxillary sinusitis and was referred to the Osh Regional Hospital. The parents of the child did not have the finances to travel to the Osh Regional Hospital. As a result, the child was prescribed to be treated at home.

An HIV+ patient went to a dentist to have a tooth extracted. Prior to the procedure she disclosed her HIV+ status to the dentist who subsequently refused to provide the required extraction. The patient reported this event to REAct. One of the REActors visited the clinic and informed the dentist of the rights of PLHIV in the Kyrgyz Republic. Through negotiation, the REActor was able to secure the provision of the required medical services to the patient.

Cases of inadequate treatment

A nurse in an infectious diseases department (Centre for Family Medicine) administered ARV drugs contrary to the medical protocol (treatment scheme of the patient). As a result of the nurse's actions, the patient died. An investigation was conducted by the Regional Centre for Epidemiological Surveillance and the Republican AIDS Centre and revealed that the nurse did not have authorisation to dispense the ARV medication.

A patient was not provided with a medication for treatment of the side effects of the ART, because the medication had already been released upon signature put down in the register. The signature, however, did not belong to the patient. This objection of the patient was not accepted.

Cases of inadequate handling of personal data

Infectious disease doctor at the Republic RV Hospital was reported to conduct medical consultations openly in front of other patients and medical staff. The doctor disclosed the HIV+ status of 5 patients who consequently did not finish their treatment of tuberculosis (due to the stress connected with their stay in the hospital after the disclosure of their personal information). The doctor was reprimanded but continued disclosing the status of other patients.

GOOD PRACTICES IN THE NATIONAL CONTEXT

Joining international initiatives

In the past years, the Kyrgyz Republic (either as a whole, or specifically the cities of Bishkek and Osh) signed several international documents and joined international partnerships focused on tackling the HIV/AIDS pandemic. These include:

- Paris Declaration on Fast-Track Cities;[133]
- Global Partnership for Action to Eliminate All Forms of HIV-Related Stigma and Discrimination;[134]
- Dublin Declaration on the Partnership to Fight HIV / AIDS in Europe and Central Asia.[135]

Changes of national legislation related to PLHIV

In August 2020, the current Act on HIV/AIDS in the Kyrgyz Republic was amended in order to allow parents of children who contracted HIV in state or municipal healthcare facilities to receive monetary compensation from the state. This amendment covers the time period since August 23rd, 2005. There is also a minimum limit for amount of the compensation.

As a result of this amendment, the local "Partners' Network" association was approached by more than 80 children, who contracted HIV in a hospital, asking for help in recovering compensation from the state. In addition to this compensation, requests will be made to the state for the provision of free higher education for these children.

Furthermore, the lawyers of the “Partners’ Network” association, in cooperation with lawyers from the Soros Foundation, are examining each of the submitted cases in order to take legal action against the hospitals.

In January 2021, the Constitutional Chamber of the Supreme Court of the Kyrgyz Republic ruled on the possibility of adoption of children without parental care by PLHIV.[136] Previously, HIV was included in the list of diseases, in the presence of which a person cannot be an adoptive parent (guardian) or foster parent. The presence of HIV served as grounds for denying adoption. The Constitutional Chamber excluded HIV infection from the list of diseases that prohibit a person from being an adoptive parent or guardian.

The Programme of the Government of the Kyrgyz Republic on Overcoming HIV infection in the Kyrgyz Republic for 2017-2021[137]

The implementation of measures to combat HIV infection in the Kyrgyz Republic is carried out in accordance with the Programme of the Government on Overcoming HIV infection in the Kyrgyz Republic for 2017-2021 (hereinafter “Programme”). The activities of the Programme are primarily aimed at ensuring universal access to prevention, treatment, care and support for PLHIV and key groups (PWID, SW, MSM, transgender people, prisoners) in line with the 90-90-90 goals.

The Programme includes a Transition Plan for public funding of HIV programmes, which includes expanding public funding for HIV services, optimizing treatment regimens, improving access to ARV drugs and reducing their cost, improving legislation on the procurement of medicines. The country has approved a national plan to improve adherence to HIV treatment and is implementing a number of activities aimed at achieving these goals.

As a result of the activities, the number of PLHIV on ARV therapy is increasing. According to RCAIDS, in 2018, 3.718 PLHIV received ARV therapy, and in 2019, their number was 4.058 PLHIV, and in 2020, the number of PLHIV receiving ARV therapy was 4.438. That is an average annual increase of 300-400 people.

Currently, the process of developing a new programme for 2022-2026 has commenced.

ISSUES AND BAD PRACTICES IN THE NATIONAL CONTEXT

Automatic transfer of personal information related to HIV+ foreign nationals and migrants

After a report was made that a sex worker from Uzbekistan was taken to the 10th Division of the state Committee for National Security (hereinafter “SCNS”) in the city of Osh, extorted money from, and threatened with deportation, a local NGO and the AIDS Centre carried out an investigation. They found that a common practice of forwarding a list of identified HIV+ foreign nationals and migrants has developed in the city of Osh over the past 5-6 years.

The doctor involved in the case was reprimanded. The head of the regional AIDS centre made a promise that medical workers who directly provide services to PLHIV would receive training on confidentiality of sensitive personal data and its inadmissibility for distribution outside of the medical facility. Since then, several instances of mishandling the lists of PLHIV were reported which shows that the problem has not yet been eliminated.

COVID-19 IMPACT ON PLHIV

COVID-19 HIV-specific action plan

In November 2021, the Action Plan to implement the municipal program to overcome infectious diseases of HIV and tuberculosis in conditions of COVID-19, 2021-2022 in Osh city (hereinafter “Action Plan”) was approved by the Vice Mayor of the city of Osh.

This Action Plan consists of several activities at the local government level to reduce stigma, discrimination in healthcare facilities and law enforcement agencies. In relation to the healthcare sector, not less than 30 medical specialists per year shall be trained in the provision of services to key groups and PLHIV. Furthermore, no less than 50 members of the staff of the general educational institutions (e.g. nurses, school psychologists, etc.) shall be trained in topics related to HIV, ART, prevention of stigma and discrimination and observance of epidemiological safety.

Inclusion of PLHIV in priority vaccination groups

COVID-19 vaccination in the Kyrgyz republic follows a 3-stage vaccination scheme in which priority vaccination groups have been established.

In Stage 2, people with clinical risk factors or chronic diseases and people from socially vulnerable groups of the population were eligible for vaccination.
Until August 2021, 123 PLHIV contracted COVID-19, 116 PLHIV received inpatient and outpatient treatment for COVID-19, 60 PLHIV received COVID-19 vaccination, and 7 PLHIV died in consequence of COVID-19.[138]

NORTH MACEDONIA

STATISTICAL DATA

Population size of the country was estimated at 2.083.000[139] (year 2020).

Estimate number of PLHIV is 497.
The state of the 90-90-90 treatment target in 2020[140] was as follows:

- Percentage of PLHIV diagnosed (first 90 target): 66,4 %
- Percentage of PLHIV on treatment (second 90 target): 90,6 %
- Percentage of PLHIV with undetectable viral load (third 90 target): 94,3 %

MAIN EPIDEMIOLOGICAL TRENDS

The Republic of North Macedonia has a low-level, concentrated HIV prevalence. There is an increasing trend of new HIV diagnoses registered in the last years. Several categories of data suggest that the epidemic is under control among people who inject drugs and female sex workers, but prevalence is rising among men who have sex with men (MSM).[141]

Cumulatively, until the end of 2020, among reported HIV cases, sex between men was the most frequently reported mode of transmission at 58,3 %. Heterosexual contact was reported in 34,7 % of the cases and injecting drug use was reported in 2,4 % of the cases. For 2,2 % of the new cases, the mode of transmission was not reported,while other routes of transmission are sporadic.

Surveillance data show an increasing proportion of MSM among newly diagnosed HIV cases; during the period of 2013 to 2020, this proportion ranges between 58 % and 90 % on an annual basis. In 2018, 82 % of newly diagnosed cases were MSM.[142]

RELEVANT ANTI-DISCRIMINATION LEGISLATION APPLICABLE IN HEALTHCARE SETTINGS

Legislation that shall protect PLHIV against discrimination in healthcare settings can be found at multiple legislation levels (constitutional level, primary legislation, and also in some soft law instruments). The legislation is not formulated as HIV-specific; protection is provided through general anti-discrimination provisions.

Constitutional level

The Constitution of Republic of North Macedonia[143] (hereinafter "Constitution") does provide protection against discrimination that is applicable to PLHIV. Article 9(2) of the Constitution provides that all citizens are equal before the Constitution and the laws. However, the Constitution only includes an exhaustive list of protected discriminatory grounds. Article 9(2), and similarly also Article 54 (which provides additional protection), are neither HIV-specific, nor do they recognise a "health condition" as a protected ground of discrimination.

Nevertheless, the Constitution does stipulate that the international agreements ratified by the Parliament of the Republic of North Macedonia (hereinafter "Parliament") are part of the internal legal regulations, i.e. that all the international United Nations conventions (such as the European Convention of Human Rights) are directly applicable in the North Macedonian legal system.

Primary legislation level

The Law on Prevention and Protection Against Discrimination was enacted in 2011 and later replaced in 2019. In May 2020, the newly adopted law was repealed by the Constitutional Court due to procedural irregularities. A new bill was not enacted until October 2020[144] which resulted in a time of "legal vacuum" in the context of protection against discrimination.

Neither of the three versions of the Law on Prevention and Protection Against Discrimination explicitly recognized HIV/AIDS as a discriminatory ground; instead, the law contains protection against discrimination on the basis of "health condition" which is applicable to PLHIV.

Sexual orientation and gender identity were not recognized as discriminatory grounds until 2019, which caused problems in dealing with some cases of cumulative or multiple discrimination against PLHIV.

Other laws relevant to the healthcare sector and discrimination of PLHIV that contain provisions on protection against discrimination, in which a "health condition" is specifically mentioned as a protected discriminatory ground: the Law on Protection of Patients' Rights[145], the Law on Health Protection[146], and the Law on Social Protection[147].

Laws that address the protection against discrimination, but do not mention health status as discriminatory ground, include the phrase “and any other status”: Law on Personal Data Protection[148], and the Criminal Code of the Republic of North Macedonia[149].

LEGISLATION THAT MAY PROVIDE BASIS FOR DISCRIMINATION AGAINST PLHIV IN HEALTHCARE SETTINGS

Articles 9(2) and 54 of the Constitution bring doubts about sufficiency of protection against discrimination based on grounds that are not included in the exhaustive lists. Although protection is granted in other legal provisions of lesser legal value, this limitation on the constitutional level may be seen as creating inequalities in the access to legal remedies among the various potential discriminatory grounds. An adoption of an open-ended list would possibly settle these doubts.

MEANS OF REPORTING DISCRIMINATION IN HEALTHCARE SETTINGS (LEGAL AND OTHER REMEDIES)

When PLHIV come across discrimination in healthcare settings, several means of protection are available to them under the law of North Macedonia. These include:

- complaint within the structure of the healthcare institution or with the Ministry of Health;
- complaint to the Commission for Prevention and Protection Against Discrimination;
- complaint to the Ombudsman;
- initiative for inspection by the State Sanitary and Health Inspectorate;
- complaint to the Agency for Personal Data Protection;
- complaint to the local Commission for Advancing Patients’ Rights;
- legal intervention.

Complaint within the structure of the healthcare institution

If a medical professional discriminated a patient due to their HIV+ status, a complaint can be filed to the director of the healthcare facility (under Article 47 of the Law on Protection of Patients’ Rights). Through the complaint, the patient can ask for a disciplinary procedure to be conducted and for the medical professional to be punished appropriately for the discriminatory behaviour. The director of the healthcare facility is obliged to investigate the allegations and notify the complainant within 15 days.

In accordance with Article 45 of the Law on Protection of Patients' Rights, the Ministry of Health is obliged to appoint an Adviser for Protection of Patients' Rights (hereinafter "Adviser") in every healthcare facility in which patients are hospitalized. The role of the Adviser is to train health workers of the healthcare institution, give legal advice, provide free legal aid to patients, review oral and written complaints, and to mediate for peaceful resolution of conflicts between the patient and medical professionals. However, it has been reported that this legal obligation is not being sufficiently implemented in practice.

In accordance with Articles 44 and 46 of the Law on Protection of Patients' Rights, in case a healthcare facility does not hospitalize patients, it is the responsibility of such healthcare facility itself to ensure that patients have access to services that are equivalent to those that the Adviser provides (see previous paragraph).

Additionally, in case that the complaint was not resolved through the abovementioned complaints, the patient has the right to lodge a complaint with the Ministry of Health (under Article 49 of the Law on Protection of Patients' Rights). the Ministry of Health has the obligation to decide upon the complaint within 15 days of receival.

Complaint to the Commission for Prevention and Protection Against Discrimination

The Commission for Prevention and Protection Against Discrimination is an independent body, whose members are elected by the Parliament, and works as an equality body. Complaints regarding discrimination can be filed regarding any discriminatory basis.

Complaint to the Ombudsman

In Accordance with the Constitution and the Law on the Ombudsman[150], the Ombudsman is an independent national institution with powers to protect human rights and freedoms of individuals or groups of citizens when they are violated by the state government. The competences of the Ombudsman do not apply to the private sector; the Ombudsman can only deal with discrimination by state bodies or institutions with public authority. The procedure for the protection of citizens' constitutional and legal rights is commenced with the filing of a complaint/petition. The Ombudsman may initiate an ex oficio procedure whenever violations of constitutional and legal rights of citizens are found.

Initiative for inspection by the State Sanitary and Health Inspectorate;

State Sanitary and Health Inspectorate (hereinafter "Inspectorate") has been established as an integral part of the Ministry of Health. Patients who have experienced discrimination in healthcare setting can file an initiative for inspection of the healthcare facility.

The Inspectorate has a mandate to conduct inspection on the matter of how the rights to health care are being executed, including the right to access to quality health care services without discrimination.

The inspector has to conduct the inspection and has the competence: to point out the identified irregularities and set a deadline for their removal; to order the healthcare facility to take appropriate measures; to temporarily prohibit the medical professional or medical facility from performing an activity, profession or duty; to submit a request for initiating a misdemeanour procedure and to file criminal charges or to initiate another appropriate procedure.

Complaint to the local Commission for Advancing Patients’ Rights

On the local level, in some municipalities there are Commissions for Advancing patients’ Rights (hereinafter “Commission”). Although Article 39 of the Law on Protection of Patients’ Rights obliges every municipality to have such a Commission, this duty has not been implemented everywhere. The patients who have been discriminated can file a complaint with this Commission. However, the role of this Commission is limited; the Commission only documents the violations, proposes measures, and follows up with their implementation. The Commission does not have the power to impose fines.

Legal interventions

Any person who was a victim of discrimination may proceed to take legal action. Claims can be brought before the court both thorough an individual lawsuit or by using the action popularis.

OBLIGATION OF PLHIV TO DISCLOSE THEIR HIV+ STATUS IN HEALTHCARE SETTINGS

Under North Macedonia law, there is no HIV-specific provision for mandatory disclosure of HIV status. However, there is a provision in the Law on Protection of Patients’ Rights that introduces a general obligation to provide true and sufficient data about one’s condition of health; Article 29(2) provides:

“The patient during the stay in the healthcare institution shall be obliged to give true and sufficient data for his/her health condition in accordance with his/her personal capacity and the level of being informed, thus, actively help the health workers providing him/her with healthcare.”

If a patient does not give “true and sufficient data for his/her health condition in accordance with his/hers personal capacity and level of being informed“, such action may constitute a misdemeanour and a fine in the amount of 50 to 100 € may be imposed.

Confidentiality and accessibility of personal data related to HIV

The Law on Personal Data Protection is fully harmonised with the EU General Data Protection Regulation. Any data concerning health (including the HIV status) belongs to a special category of data that is subject to the most rigorous protection standards.

There are no clear, specific and publicly available information regarding who and when can have access to the data on HIV status, once that info is disclosed in a healthcare facility. From practice, the association Stronger Together has information that the doctors in primary health care do not have access to such information. It is also clear that at least some specialists do not have access to such information (e.g. endocrinologists, dermatologists, surgeons and others). However, patients have reported that some of the specialists, such as the internists, do have access to their HIV status.

Regarding the disclosing of data to third parties, medical professionals are obliged to report every case of HIV infection or AIDS to the Centre for Public Health (in compliance with the Law on Protection of the Population from Infectious Diseases). Such reports must be anonymous, i.e. without the personal data of the patient.

Prohibitions and limitations on working in specific healthcare professions for PLHIV

No direct legal limitations or restrictions for the employment of PLHIV in the healthcare sector were reported in North Macedonia.

A person's HIV+ status may, however, impact the period health check-up of workers. The first check-up (prior check-up) should be done before employment in specific areas with increased risk in the workplace, and it includes testing for specific biomarkers and for contact with HIV. An authorized medical institution must do the check-up.

After the check-up, the institution issues a report for the examinations, which is consists of: 1. pathological conditions (diagnosis); 2. recommendations for the patient; 3. recommendations for the employer and data on professional diseases and diseases in relation with the work; 4. assessment of the work capacity / professional opinion. The report is issued in two copies, one for the employee and one for the employer. The sample for the employer must not include items 1 (pathological conditions (diagnosis)) and 2 (recommendations for the patient).

The assessment whether HIV will be considered as a factor in relation with the capacity to work is made entirely by the medical institutions that issue the reports. There are no legal regulations that further specify or set criteria on this matter.

PRIVATE INSURANCE POLICIES CONCERNING PLHIV

In North Macedonia, insurance providers offer a variety of insurance policies. Most insurance providers do not offer these insurance policies to PLHIV, despite the medical progress achieved in the treatment of HIV.

Some of the insurance providers have even implemented documents (publicly available) which state that PLHIV cannot obtain insurance (e.g. voluntary private health insurance). For example, the insurance provider UNIQA Macedonia (part of UNIQA Insurance Group) has published Additional Conditions for Private Health Insurance that state:

"The obligation of the insurer for compensation of costs for treatment of the insured person is void, if the insured person is ill and being treated of the following prior health conditions: [...] AIDS, and AIDS Related Complex Syndrome (ARCS) and all diseases related to the HIV virus [...]." [151]

The insurance provider Winner Life (part of the Vienna Insurance Group), has stipulated in its Special Conditions for Life Insurance in case of Serious Diseases that:
"Severe diseases, in terms of these Conditions, are not considered Kaposi's sarcoma and other tumours in the co-existence of HIV infection or in patients with AIDS."[152]

This means that patients with tumours in co-existence of HIV or AIDS shall not have right to obtain the insurance. The same provision is stipulated in the Special Conditions for Insurance of Serious Diseases[153] of the insurance provider Triglav Insurance AD (part of Triglav Group).

COMMON FORMS OF DISCRIMINATION IN HEALTHCARE SETTINGS

The quantity and most of all the nature of reported instances in which PLHIV in North Macedonia were discriminated against by medical professionals is among the most concerning submissions. Moreover, in the reported cases of discrimination, the perpetrators did not face any retribution. This lack of law enforcement gives rise to the question of the effectivity of the national anti-discrimination legal framework.

Presence of discriminatory behaviour has been reported to take place in all the indicated areas of healthcare: at the general practitioner's, in special outpatient care, during hospital stay, and in dental care. Refusal-of-care and providing treatment at the end of office hours were marked as most common forms of discriminatory practices in the North Macedonian healthcare system.

CASE STUDIES

The cases described in this section did not have a significant impact on legislation, policies or practices in North Macedonia. This is due to the fact that the perpetrators of the discriminatory conduct did not face any sanctions. Nevertheless, the description of these cases is included in the country profile because they pose as a reflection of the situation in North Macedonia throughout the last 10 years; they took place between 2012 and 2015. Considering the relatively low number of diagnosed PLHIV (330), even the presence of a few cases can be alarming. No newer cases were reported; that might signal an improvement since 2015.

Mole removal procedure (2012)

When seeking a procedure for removal of a mole, an HIV+ patient was refused by a private dermatology clinic. The clinic provided the justification that it did not have sufficient conditions for “double sterilisation”. A complaint was filed with the State Sanitary and Health Inspectorate. Although the inspectorate confirmed that there was no requirement of “double sterilisation” when treating PLHIV, it did not find discrimination.
Leg amputation (2015)

When diagnosed with osteomyelitis resulting in the need to have a leg amputation, an HIV+ patient was refused by several hospitals. The patient was diagnosed at the University Clinic for Traumatology, Orthopaedic Diseases, Anaesthesia, Resuscitation, Intensive Care and Emergency Centre (hereinafter “TOARILUC”). At the appointment with the surgeon that was assigned to perform the surgery, the patient disclosed his HIV+ status. The surgeon immediately refused performing the surgery and the patient was assigned to another surgeon who also refused. The patient was then referred to two other clinics. Both of these clinics refused to perform the surgery with the explanation that this type of surgery can only be performed at TOARILUC.

Complaints with the director and with the Ombudsman were filed. The response of the director stated that only “clean and elective surgeries” may be performed at the clinic for orthopaedic disease which is allegedly not technically equipped for performing surgeries with a high risk for the personnel. A suggestion was made that the patient is to be transferred to a different clinic where there is a possibility for “isolation of the patient”. The refusal of care was only resolved after the intervention of the Ministry of Health. The surgery was not performed, but the doctors found a safe way to save the leg.

Neither the director, nor the clinics faced any consequences for their discrimination against the HIV+ patient. A concerning lack of knowledge regarding the transmission of HIV was visible in this case.

Discriminatory treatment during hospitalisation (2015)

When being hospitalised in a state hospital due to appendicitis, a patient was tested for HIV without his knowledge. After he was diagnosed with HIV a drastic change in his treatment occurred. He was isolated in a separate room with a protective yellow tape at the door with an inscription "FORBIDDEN ENTRY". The health and technical staff in the hospital entered the patient's room with protective suits, protective masks, gloves, and disinfectant solution, indicating a lack of general and professional knowledge on the characteristics of HIV. The patient was informed that his hospital clothes would be kept in disinfectant solution for 24 hours. The medical instruments used by the doctors and nurses during the patient's intervention and examinations were thrown in a medical waste container and the medical waste from the patient's room was not allowed to be mixed with the other medical waste from the health facility. During the hospitalisation in the health institution, the patient's room was never cleaned by the cleaning personnel, they only emptied the trash in the room, and the patient changed his hospital clothes only once in 4 days. During a standard and routine application of a venous needle by one of the nurses, the venous needle cap fell off and the patient asked for it to be changed because he could have been exposed to bacteria. The nurse refused to change the needle replying that "you are already infected". For several days, the patient was referred to as "the one with AIDS".

This created panic among other patients and medical staff, who learned about the HIV+ status of the patient. As a result of such violations of the patient's rights, the information about his HIV+ status spread outside the hospital and reached the patient's mother, his friends, neighbours, and close family, which contributed to irreparable damage to the patient's privacy and personal integrity.

The association Stronger Together initiated procedures before the Commission Against Discrimination, the Ombudsman and the State Sanitary and Health Inspectorate.
The Commission Against Discrimination reached a decision that the hospital committed indirect discrimination towards the patient. However, this decision came with a questionable reasoning that only focused on the breach of confidentiality: *"[…] the patient was treated in seemingly neutral practice, equal for every patient and the anonymity of the HIV status was not kept confidential. With this practice, indirect discrimination was caused."*

The Ombudsman also reached a decision that the behaviour of the staff of the hospital was discriminatory and sent a recommendation that the hospital change the discriminatory practice, especially regarding the confidentiality and protection of privacy of the patients.

The State Sanitary and Health Inspectorate adopted quite contrary decision in the same case. Namely, it concluded that no discriminatory behaviour by the hospital was observed, because: "the patient was provided with healthcare, and according to the law, he was obliged to give true and correct info regarding his condition, which he did not do."

Psychological evaluation for diagnostic purposes

When undergoing a psychological evaluation for diagnostic purposes a patient disclosed that he was a homosexual and HIV+. The psychologist proceeded to make homophobic and demeaning remarks throughout the evaluation. Moreover, the psychologist reflected her views on the matter in the results of the evaluation stating that the patient suffered from "psychosexual inconsistency".

The association Stronger Together filed complaints with the hospital, the Commission for Protection against Discrimination, the Ombudsman, the State Sanitary and Health Inspectorate, as well as to the Chamber of Psychologists. The Commission concluded that no discrimination was found. The State Sanitary and Health Inspectorate declared it did not have mandate to handle this matter (contrary to Article 4(1) of the Law on State Sanitary and Health Inspection[154]). The Chamber of Psychologists responded that there was no internal act for conducting disciplinary procedures at the time.

When such internal act was enacted and the disciplinary procedure was conducted, the Chamber of Psychologists reached the conclusion that no discrimination took place. When the disciplinary procedure was questioned by the association Stronger Together and later by the Ombudsman, the Chamber declared that it did not have mandate to supervise psychologists employed in public health institutions.

GOOD PRACTICES IN THE NATIONAL CONTEXT

Adoption of soft-law instruments and allocation of sufficient funding from the state

The Government of the Republic of North Macedonia enacts a special Programme for Protection of the Population from HIV Infection in the Republic of Macedonia (hereinafter "National HIV Programme") on an annual basis. It provides that the Ministry of Health allocate funding for treatment, prevention, as well as support and care for PLHIV.

The funding comes partially from the general state budget, as well as from a separate branch of funding secured from the consumption tax on alcohol and tobacco (until the end of 2017 the main portion of the National HIV Programme's funding used to come from the Global Fund to fight AIDS, Tuberculosis and Malaria).

ISSUES AND BAD PRACTICES IN THE NATIONAL CONTEXT

Disclosure of HIV+ status on medical certificates submitted to the employer in case of work absences longer than 14 days

A commonly occurring bad practice takes place when PLHIV need to obtain a medical certificate from the hospital for the purposes of requiring sick leave from their employer. According to the North Macedonian law, in order to obtain the right to sick leave longer than 14 days, a patient must file specific documentation and undergo an assessment by a health commission formed by three doctors.

When patients need this kind of longer-lasting leave of absence due to conditions that occur as a result of HIV complications, the diagnosis B.20 (Human immunodeficiency virus [HIV]) is written in all patient documentation, including the certificate that should be submitted to the patients' employer.

In order to obtain certificates in which the B.20 diagnosis will not be specified, the patients usually need to send a special request to the commissions. There are positive outcomes from such requests. However, in general, specific rules shall be adopted in order to guarantee that the HIV+ status of a patient remains private and non-disclosed to their employer.

COVID-19 IMPACT ON PLHIV

Due to the COVID-19 pandemic, a state of emergency was declared in the country. The Government of the Republic of North of Macedonia (hereinafter "Government") has issued multiple decrees enacting public health measures which affected the exercising of human rights. When adopting these measures, the Government failed to analyse their impact on the most vulnerable communities, including PLHIV.

Restrictions of movement

Restrictions of movement and public transport directly influenced PLHIV, especially those who live outside the capital city. In North Macedonia, the healthcare for PLHIV is centralized and can be obtained only in the State Clinic for Infectious Diseases and Febrile Conditions, where PLHIV also obtain their antiretroviral therapy. The organizations for support of PLHIV did find a way to help in this matter and offered free distribution of ART medication to all the people that needed it; however, this was solely the initiative of those organizations.

Employment

Due to measures that imposed the closure of entire business sectors, e.g. the gastronomy sector, some PLHIV lost their jobs which also resulted in the loss of public health insurance and access to free antiretroviral therapy. More obstacles were faced due to limitations of working hours of public administrative offices. PLHIV with low-income or with limited capacity to work struggled with the opening hours of the Centres for Social Protection. For some of them, this resulted in the loss of some social security benefits during the pandemic.

Non-inclusion of PLHIV in the recommendation for granting leave of absence

At the beginning of the pandemic, when the knowledge of the risks and consequences of COVID-19 were limited, the Government issued a recommendation for employers to grant leave from work and work activities for people with chronic diseases, among other categories. HIV was not included in the list.

Non-inclusion in the priority vaccination groups

PLHIV were not included by the Ministry of Health among the categories of citizens with priority for COVID-19 vaccination, despite a written request from civil society organizations. Requests from the University Clinic for Infectious Diseases to be supplied with a certain quantity of vaccines in order to immunize its patients were likewise not responded to by the Ministry of Health.

PORTUGAL

STATISTICAL DATA

Population size of the country was estimated at 10.197.000[155] (year 2020).

Estimate number of PLHIV is 41.305[156].

The state of the 90-90-90 treatment target in 2019[157] was as follows:
- Percentage of PLHIV diagnosed (first 90 target): 92 %
- Percentage of PLHIV on treatment (second 90 target): 90,2 %
- Percentage of PLHIV with undetectable viral load (third 90 target): 93 %

MAIN EPIDEMIOLOGICAL TRENDS

The most recent data from the epidemiological surveillance of HIV in Portugal show that in 2019[158], 778 new cases of HIV infection were diagnosed, equivalent to 7,6 new cases per 100.000 inhabitants. 172 new AIDS cases and 197 deaths occurred in 2019. A total of 61.433 cases of HIV infection are cumulatively registered, of which 22.835 cases are at the AIDS stage. In the same time period, 15.213 deaths in relation to HIV/AIDS were reported.

New diagnoses in 2019 occurred mostly in residents of the Lisbon Metropolitan Area (50,4 %), with a diagnosis rate of 13,7 new cases per 100.000 inhabitants. Out of the reported cases, 69,3 % accounted to men.

In 97,3 % of the cases, the transmission occurred through sex, with 57,8 % reporting heterosexual contact. Cases in men who have sex with men (MSM) accounted to 56,7 % of diagnosed male cases. Infections associated with injecting drug use constituted 2,1 % of new diagnoses.

Between 2009 and 2018 there was a 47 % reduction in the number of new cases of HIV infection and 65 % reduction in the number of new cases of AIDS. Notwithstanding this descending trend, Portugal stands out for its high rates of new cases of HIV infection among European Union countries.

RELEVANT ANTI-DISCRIMINATION LEGISLATION APPLICABLE IN HEALTHCARE SETTINGS

Legislation that shall protect PLHIV against discrimination in healthcare settings can be found at multiple legislation levels (constitutional level, primary legislation, and also in some soft law instruments). The legislation is not formulated as HIV-specific; protection is provided through general anti-discrimination provisions.

Constitutional level

The Constitution of Portugal[159] foresees several protections against discrimination that are also applicable to PLHIV. Nevertheless, such protection was not drafted or intended to be HIV-specific, but rather to apply to all types of discrimination. Article 13 is a general clause on the principle of equality. Paragraph 1 introduces the principle of equal treatment before the law. Paragraph 2 prohibits discrimination founded on an extensive and non-exhaustive list of protected grounds.[160]

Article 26 of the Portuguese Constitution provides that all citizens have constitutional protection against any and all forms of discrimination. This includes any type of discrimination in healthcare settings.

In addition, Article 26 of the Portuguese Constitution anchors the principle of human dignity and the right to privacy. It states that regardless of the human being background and of any other condition, all people have the right to enjoy a “privacy sphere”, whether in the context of domestic, family, sexual or affective life. The protection of medical confidentiality also falls within the scope of this article.

The constitutional right of privacy and protection against any kind of discrimination combined provide all citizens with a powerful constitutional weapon against any offenses or abuses by healthcare institutions regarding anyone’s health status, including the HIV+ status.

Primary legislation level

Some national bills foresee protection against discrimination that is also applicable to PLHIV. Nevertheless, none of these provisions was drafted to be HIV-specific.

Law No. 46/2006[161] prohibits and punishes discrimination based on disability and the existence of aggravated health risk. This law covers situations in which a person has no disability as of yet, but has a health problem or condition that could develop in a way that might result in a disability in future. The provisions of this law apply to any economic, social, cultural or other rights and protect against discrimination by any person – all natural and legal persons, public or private.

The Labour Code of Portugal[162] dedicates several articles to impose equality and non-discrimination rules on worksites. Apart from establishing a general framework for equal treatment, the Portuguese Labour Code also prohibits discrimination in regard to employers' medical tests for occupational medicine. In Article 19 it expressly states that medical staff that carries out such medical exams is forbidden to disclose any results to the employer, and it is only responsible for informing the employer if the employee is fit to work or not.

The Criminal Code of Portugal[163] does not protect against discrimination of PLHIV directly, but it foresees some offenses against behaviours that could lead to an intrusion of someone's personal life and the right of privacy. Any arbitrary or unjustified disclosure or discrimination against PLHIV by healthcare staff constitutes an attack on someone's intimacy and private life and it can be qualified as a crime of invasion of privacy under Article 192 of the Portuguese Criminal Code or even the crime of violation of secrecy under Article 195 of the same legal document.

LEGISLATION THAT MAY PROVIDE BASIS FOR DISCRIMINATION AGAINST PLHIV IN HEALTHCARE SETTINGS

No legislation that could directly or indirectly discriminate against or provide basis for discrimination against PLHIV/AIDS in healthcare settings was reported.

MEANS OF REPORTING DISCRIMINATION IN HEALTHCARE SETTINGS (LEGAL AND OTHER REMEDIES)

Complaint procedures

All healthcare facilities in Portugal are obliged to have a complaint book[164] available in a visible place to all patients. The main goal of the complaint book is to provide all patients a simple and clear way to report any unpleasant situations whenever they are assisted by the healthcare staff.

Healthcare institutions are obliged to disclose all complaints written in the complaint book to the Authority for Food and Economic Security (ASAE), the state authority that controls compliance for the legislation and consumer rights in all the public attendance services and also in all public administration services and bodies. It is also possible for the healthcare patients not to write a complaint in loco, but rather to do it online, as all healthcare institutions are obliged to have an online complaint book[165] [166], as well.

Whenever they constitute a crime or violation of legal obligations, these complaints may lead to infraction proceedings and, depending on the gravity of the infringement, criminal proceedings against the healthcare institution can be triggered. In case of discrimination due to someone's HIV-status, as it infringes both constitutional and human rights, it is also possible for anyone to directly write a letter to the Portuguese Attorney General's Office.

Legal intervention

In addition, anyone whose rights have been infringed or who has been a victim of any type of discrimination can file a civil lawsuit against whoever infringed those rights or who has deliberately discriminated. The Portuguese law does not limit the extent of claims for monetary compensation – the awarded amount depends on the severity of each case. Generally speaking, monetary compensation in Portugal is quite low (specially compared to compensation commonly awarded in the UK or the USA).

OBLIGATION OF PLHIV TO DISCLOSE THEIR HIV+ STATUS IN HEALTHCARE SETTINGS

There is no legislation in Portugal that requires any person to disclose his/her health status, including the HIV status. In other words, there is no legal obligation for any person to disclose that they are HIV+ to healthcare workers.

However, in specific situations the duty to disclose the HIV status might occur. A case-by-case assessment shall be done by the PLHIV whenever they use healthcare services, especially when their life might be in jeopardy. For instance, no one is ever obliged to disclose his/her HIV status during a dentist appointment, even if such question is directly asked by the healthcare workers. On the other hand, it might be relevant for a patient to disclose his/her HIV status to healthcare workers if he/she has to be hospitalised (in order to adhere to the ARV treatment).

CONFIDENTIALITY AND ACCESSIBILITY OF PERSONAL DATA RELATED TO HIV

HIV-related data is not accessible to third parties unless there is a prior informed and clear consent from the HIV+ patient. Sharing HIV-related data with other healthcare facilities is also strictly prohibited. If the obligation of secrecy is violated, significant penalties could be imposed. As institutions dealing with personal data, all healthcare institutions must adhere to the EU General Data Protection Regulation which lays down rules relating to the processing of personal data (e.g. collection, recording, organisation, structuring, storage, etc.). Any data concerning health (including the HIV status) is classified as sensitive personal data under the EU General Data Protection Regulation and is protected as such.

PROHIBITIONS AND LIMITATIONS ON WORKING IN SPECIFIC HEALTHCARE PROFESSIONS FOR PLHIV

Under Portuguese law, there are no restrictions for the employment of PLHIV in the healthcare sector. However, there is a relevant internal regulation of the Portuguese Health Authority[167] regarding the Department of Quality System for Blood Establishments. This regulation states that "professionals affected by any infectious disease or with continuity lesions on the exposed surface of the body should be formally prevented from intervening in the preparation of blood components and be subject to subsequent clinical evaluation".
The Centre for Anti-Discrimination sent a letter to the Health Authority requesting for clarification in order to better understand whether there is a real discrimination for PLHIV to carry out blood collection and/or handling service. Until this day, the Centre for Anti-Discrimination has not received any answer to its letter. As soon as the COVID-19 pandemic is under control, a new request will be made.

PRIVATE INSURANCE POLICIES CONCERNING PLHIV

PLHIV encounter difficulties in access to life or health-related insurance policies as they are frequently denied to them or, alternatively, the insurance premiums are disproportionally increased. The Centre for Anti-Discrimination recently received a complaint from a person whose insurance coverage was denied by a health insurance company exclusively because he revealed that he was HIV+. Due to that disclosure, the insurance company automatically refused any coverage to any treatment that could anyhow be related to the HIV+ status. Such instances of discrimination are unfortunately still common.

Notwithstanding the foregoing, new positive development in this matter occurred in Portugal during the second half of 2021. A bold innovative act[168] was approved by the Portuguese Parliament and promulgated by the President of the Republic. This act enshrines the so called "right to be forgotten" allowing for people who have overcome serious illnesses (e.g. cancer) or have successfully mitigated situations of aggravated health risk or disability (e.g. HIV) to have data regarding these previous illnesses or health risks disguised from insurance companies and credit institutions.

From a practical standpoint, insurance companies will be forbidden to collect this kind of health-related personal data (thus, they will not be able to reflect such information into the insurance policy conditions) if a person living with HIV has been undergoing a continuous and effective therapeutic protocol (i.e. has had an undetectable viral load) for over 2 years.

For PLHIV, this act – which comes into effect on January 1st, 2022 – guarantees that they cannot be subject to an increase in insurance premiums. Furthermore, as no HIV-related data can be collected by the insurance companies once the infection is being successfully treated, this act shall also ensure that PLHIV are not denied insurance coverage. For the still very discriminative insurance market, this act represents a turning point.

COMMON FORMS OF DISCRIMINATION IN HEALTHCARE SETTINGS

Since PLHIV do not have a general obligation to disclose their HIV+ status, instances of discrimination in healthcare setting do not occur often. All known cases reported to the Centre for Anti-Discrimination took place in specialist outpatient care, most of them in dental care settings. These cases of discrimination involved refusal-of-care, separation of other patients, and providing treatment at the end of the office hours.

1) The reported refusal-of-care cases most often occurred in connection to PLHIV who use drugs or to PLHIV who are also transgender, as the stigma and discrimination around drug use and transgender people is still a real problem in Portugal. A case was reported in 2020, in which an HIV+ patient was denied a biopsy because the medical doctor who was responsible for performing such procedure alleged a *"high risk of doing the procedure due to the fact that the patient was HIV+"*.

2) The reported cases of separation of PLHIV from other patients took place in Santa Maria Hospital, based in Lisbon which provides healthcare services of all specialties, including dental surgery[169]. PLHIV in Portugal facing economic and financial difficulties have, by law, access to dental treatment for free under the dentist-cheque programme (other population groups that have access to this programme are (i.) children until the age of 18; (ii.) pregnant women; and (iii.) people who are/were diagnosed with oral cancer).[170]

Although the dentist-cheque programme does not list why a specific patient has access to it, it is easy for healthcare staff to deduce the reason. The Centre for Anti-Discrimination received several complaints of PLHIV regarding the fact that although there are several dental cabinets available in the hospital, PLHIV were only being headed to cabinet No. 16, even if that would imply longer waiting hours or even if the other cabinets were available. After further analysis, it was found that a serious case of HIV discrimination was happening in the dental surgery section of the hospital – deliberately separating PLHIV patients from other patients.

3) The reported cases of providing treatment at the end of the office hours also occurred in dental care settings. The Centre for Anti-Discrimination received several complaints regarding dental clinics that, also due to the dentist-cheque program, would only treat HIV+ patients at the end of the office hours. When approached by the Centre for Anti-Discrimination to provide an explanation for this behaviour, most of them stated they were providing treatment to PLHIV last to protect the health and safety of all other patients.

CASE STUDIES

No litigation cases dealing with discrimination against PLHIV in healthcare settings, that would have significant impact on legislation, policies, or practices in Portugal, were reported in the questionnaire.

GOOD PRACTICES IN THE NATIONAL CONTEXT

Activities to increase legal literacy of PLHIV and healthcare staff

Most PLHIV in Portugal are unaware of their rights and obligations, as well as most legislation that protects them in healthcare settings. Additionally, most hospitals and healthcare facilities in Portugal do not have any procedures in place to treat and to deal with PLHIV in such premises; namely, in crowded public areas such as receptions and secretariats where sensitive personal data disclosures and conversations are held.

Stigma and discrimination in healthcare settings towards PLHIV is not a common issue in Portugal, although there are still some isolated cases. These mostly occur regarding PLHIV who are also drug users, immigrants, or transgender. It might be concluded that the main problem in healthcare settings around PLHIV in Portugal is not the stigma and discrimination per se, but rather the ignorance around the HIV topic, that unfortunately is still disseminated among the healthcare staff.

To tackle these issues, the Group of Activists for Treatments (hereinafter "GAT") has been implementing several activities that have shown positive impacts on fighting discrimination and stigma towards PLHIV in healthcare settings and can nowadays be considered as good practices.

1) Support group available to newly diagnosed PLHIV
A group of volunteers in Portugal provides emotional support and further assistance to people who receive their first HIV+ diagnosis. They are also available to accompany the PLHIV in their initial doctor appointments for their ARV treatment. These volunteers are quite comfortable with the healthcare settings procedures and are aware of the current legislations and policies in place regarding HIV treatment and hospital environments, so that they can address any discrimination or stigmatizing behaviour (by educating everyone on the good practices to follow). It has become clear that this support has helped several PLHIV in the beginning of their treatment – especially empowering PLHIV and mitigating any situations in which someone stops going to ARV treatment appoints due to fear of discrimination. It has also shown to be an incredible asset on educating both healthcare workers and PLHIV on their rights and obligations.

2) Guidance to PLHIV who have the status of immigrants
GAT provides guidance to PLHIV in Portugal that are also immigrants and still do not have a regular status in the country. These individuals do not have the national health number that allows for free access to the national health system and, consequently, to have free access to ARV treatment. GAT has drafted and translated in 10 different languages a Q&A flyer to clarify some vital topics related to access to healthcare for PLHIV and viral hepatitis[171] . This is a very useful tool, especially for individuals who do not speak Portuguese and who need to have urgent access to the Portuguese National Health System, but their immigration status is still irregular.

ISSUES AND BAD PRACTICES IN THE NATIONAL CONTEXT

In Portugal, there is little data available about bad practices directly or indirectly related to PLHIV in healthcare settings (other than the issues described in the previous sections). To tackle this issue, Portugal's Health Authority launched in 2020 a replication of the Stigma Index[172] research study to better assess the real issues and draft priorities for the years to come. However, due to the COVID-19 pandemic, the Stigma Index research had been interrupted and thus the data collection period was later extended until the end of January 2022.

In 2020, the Centre for Anti-Discrimination dealt with over 30 complaints regarding situations of discrimination or violation of PLHIV's rights in healthcare settings. The overwhelming majority of these complaints were directly related to discrimination against PLHIV by creating unnecessary and unjustified barriers to free and fast access to doctor appointments and ARV treatment. The Centre for Anti-Discrimination also received several complaints regarding the undue payment of user charges to PLHIV in healthcare setting when all doctor appointments and treatment are free of any charges as per the legislation in place.

It is quite clear, that most cases of discrimination and stigma against PLHIV are not deliberated. The main problem in healthcare settings around PLHIV in Portugal is the lack of knowledge regarding the topic of HIV as well as the lack of knowledge on the legislation, policies, and guidelines in place to prevent stigma and discrimination which leads to instances of bad practices.

COVID-19 IMPACT ON PLHIV

Access to HIV care

Due to the COVID-19 pandemic constraints in healthcare, the barriers in access to either consultations and/or treatment increased significantly, as the ART treatment is only available in the State Hospitals' pharmacies. Due to the frequent changes of personnel, operating hours as well as the measures introduced in order to tackle the COVID-19 pandemic, PLHIV faced challenging times.

In 2020, the Centre for Anti-Discrimination dealt with 30 complaints regarding situations of discrimination or violation of people's rights in healthcare settings. Most of those complaints are directly related to the consequences of the COVID-19 pandemic, namely difficulty in booking medical appointments and access to medication.

Notwithstanding the foregoing, there was no change in the legislation in response to the COVID-19 pandemic that has affected PLHIV disproportionately and/or discriminatorily.
Inclusion of PLHIV in priority vaccination groups[173]

COVID-19 vaccination in Portugal follows a 2-phase vaccination scheme in which priority vaccination groups have been established based on "vulnerability".

In Phase 2, from April 2021, immunocompromised PLHIV were included for priority vaccination.

SPAIN

STATISTICAL DATA

Population size of the country was estimated at 46.755.000[174] (year 2020).

Estimate number of PLHIV is 151.387.

The state of the 90-90-90 treatment target in 2019[175] was as follows:

- Percentage of PLHIV diagnosed (first 90 target): 87 %
- Percentage of PLHIV on treatment (second 90 target): 97,3 %
- Percentage of PLHIV with undetectable viral load (third 90 target): 90,4 %

MAIN EPIDEMIOLOGICAL TRENDS

In the period of 2010-2019, a decreasing trend in total numbers of new HIV diagnoses was observed both in relation to men and women. The rates of new diagnoses among the men who have sex with men (MSM) population group stabilized between 2010 and 2017; as of year 2017, this population group has also been showing a steady decrease in numbers of new HIV diagnoses.

In 2019, 2.698 new HIV diagnoses were reported, corresponding to a rate of 5,94 new cases per 100.000 inhabitants. The estimate rate (including corrections made due to delayed notifications) was 7,46 new cases per 100.000 inhabitants. 85,8 % of the new diagnoses were among males.

Transmission among MSM was the most frequent at 56,6 %. 36,1 % of the new cases were found among foreigners. A continuation in the trend of late diagnoses was observed; the percentage of late diagnoses remained high at 45,9 % of the new cases.

RELEVANT ANTI-DISCRIMINATION LEGISLATION APPLICABLE IN HEALTHCARE SETTINGS

Spanish legislation guarantees the protection of PLHIV against discriminations in healthcare settings at multiple levels. The legislation is sometimes formulated as HIV-specific; protection is also provided through general anti-discrimination provisions.

Constitutional level

The foundation of the Spanish anti-discrimination framework is laid down in Article 14 of the Spanish Constitution which provides, *"Spaniards are equal before the law and may not in any way be discriminated against on account of birth, race, sex, religion, opinion or any other personal or social condition or circumstance."*

Article 9.2 of the Constitution is also very important, establishing material equality. Equally important is the doctrine of the Constitutional Court which establishes that not all differential treatment is discriminatory and establishes the proportionality test to determine when there is discrimination.

PLHIV may be discriminated against either because of their health status or due to alleged disability; however, these two discriminatory grounds are not explicitly included in the quoted article. The indirect inclusion of both these protected characteristics is done through the demonstrative character of the provision indicated by the reference to "any other personal or social condition or circumstance". The Spanish Constitutional Court has previously recognised, that a "disease" may, under certain circumstances, be considered a discriminatory ground deserving of protection analogous to those grounds that are explicitly mentioned in Article 14 of the Spanish Constitution.[177]

The 'disability' has also been included by rulings of the Constitutional Court as a discrimination grounds. In Spain, people with HIV, unless they have HIV-HCV coinfection, are not automatically recognized as people with disabilities but must request recognition and obtain a percentage equal to or greater than 33% in a medical examination. Primary legislation

Protection against discrimination is also present at the primary legislation level. Article 6(1) of the Law on General Public Health[178] provides that "All persons have the right to ensure that public health action is carried out on an equal footing without discrimination on grounds of birth, racial or ethnic origin, sex, religion, conviction or opinion, age, disability, sexual orientation or identity, disease or any other personal or social condition or circumstance."

In 2018, the Law on Protection of Consumers and Users[179] was amended so that a single additional provision titled “Nullity of Certain Clauses” was added. The single additional provision states:
“1. Those clauses, stipulations, conditions or agreements that exclude one of the parties for having HIV/AIDS, or other health conditions, are null and void.
2. Likewise, the waiver of what is stipulated in this provision made by the party with HIV/AIDS, or other health conditions, is null and void.”

This HIV-specific amendment shall strengthen the fight against discrimination of PLHIV when they act as consumers.

In 2018, the Insurance Contract Act was also amended to guarantee that people living with HIV could have access to private insurance, such as,health, life, and burial insurance. However, arguably, the number of inquiries received at the Legal Clinic of the University of Alcalá between January 2019 and June 2021 shows that the legal reform has not been effective because insurance companies continue to practice a class exclusion towards people with HIV.[180]

An important milestone can also be seen in the recent adoption of the Royal Decree-Law on Universal Access to the National Health System[181], which eliminated social security contribution as a requirement for access to the National Health System; and ensured that some migrants in Spain have the right to healthcare under the same conditions as Spanish nationals (even after the reform, part of the migrant population would be excluded though; this includes student visas, family reunification visas and non-lucrative residence visas).

The right of all people to access the National Health System is currently ensured under conditions of equity and universality (even though local experts would argue this has not been fully achieved in reality). The significance of this Royal Decree-Law is especially notable in light of the statistics which show that, in 2019, 36,1 % of new HIV diagnoses were found among foreigners.

Protection against discrimination is also provided withing the Spanish Criminal Code. Under Article 512 of the Spanish Criminal Code, it is prohibited to deny a person a service to which he is entitled due to one of the discriminatory grounds that are listed. A sanction of special barring from the exercise of the profession, trade, industry, or commerce for a period of one to four years may be imposed.

Article 512 of the Spanish Criminal Code

“Those who, in the exercise of their professional or business activities, were to deny a person a service to which he is entitled due to his ideology, religion or belief, his belonging to an ethnic group, race or nation, his gender, sexual preference, family situation, illness or handicap, shall incur the punishment of special barring from exercise of profession, trade, industry or commerce, for a term of one to four year.”

Similar regulation as quoted above can be found in Article 511 of the Spanish Criminal Code aiming at public officials and public employees. Also, Article 22 names discrimination due to illness or disability as one of the aggravating circumstances that should have effect on the punishment.

Interestingly, in Catalonia, Law 19/2020 includes serological status as a cause of discrimination.

LEGISLATION THAT MAY PROVIDE BASIS FOR DISCRIMINATION AGAINST PLHIV IN HEALTHCARE SETTINGS

There is no legislation that would contain provisions that may provide basis for discrimination against PLHIV. Cases of discrimination happening to PLHIV have the form of infringement of local legislation.

MEANS OF REPORTING DISCRIMINATION IN HEALTHCARE SETTINGS (LEGAL AND OTHER REMEDIES)

Patients diagnosed with HIV are encouraged to contact the Spanish NGOs that provide support in the area of HIV including the protection of rights and interests of PLHIV. These

NGOs commonly provide practical support and guidance to build the patients case and assist them while seeking legal or other remedies.

Complaint procedures

If PLHIV (or any other patients) encounter discrimination by a medical professional, they can contact the Patients Care Center, Centros de Atención al Usuario, (hereinafter “User Centre”) of the hospital or healthcare facility. All healthcare facilities (private or public) are obliged to establish a User Centre to which a complaint may be submitted by a patient or its family member. Such complaint mainly serves the purpose of making the management of the facility aware of the existing discriminatory practices of its workers and to consider opening an internal investigation; it aims to prevent the reoccurrence of discrimination in the future.

Filing a complaint with the Spanish Medical College Organization, Organización Médical Colegial, (hereinafter as “OMC”) is another remedy available to patients who faced discrimination. Such complaints are filed at the level of Local Medical Colleges of the OMC. The competence to determine if there was a violation of the relevant ethical standards is given to special committees, established for individual specialties of the medical practice, that are obligated to issue a resolution of the submitted complaints. Similar complaints can be also filed with local nursing or dentist organizations.

Every patient also has the option to file a complaint with the Regional Health Services of the autonomous communities. Such complaint must be filed before resorting to the contentious-administrative jurisdiction.

Legal intervention

Furthermore, legal action can also be a viable remedy in instances of discrimination. A discriminatory conduct may, under certain circumstances, constitute a criminal offense under Article 511 and 512 of the Spanish Criminal Code, therefore a patient who is a victim of grave discriminatory conduct may file a criminal report with the Public Prosecutor's Office, or at the police station (both Policía Nacional and la Guardia Civil). A patient may also file a civil lawsuit and request to be compensated for the moral damages suffered as a result of discriminatory conduct.

OBLIGATION OF PLHIV TO DISCLOSE THEIR HIV+ STATUS IN HEALTHCARE SETTINGS

In Spain, PLHIV have the obligation to disclose their HIV+ status when they seek healthcare services. Under Article 2(5) of the Law No. 41/2002[182], all patients have the duty to provide information about their state of health in a truthful manner, especially when such information is necessary for reasons of public interests or because of provision of healthcare services. The limitation of the right to personal privacy is acknowledged in Article 18.1 of the Spanish Constitution.

CONFIDENTIALITY AND ACCESSIBILITY OF PERSONAL DATA RELATED TO HIV

Information about one's health is a protected category of data under the Organic Law No. 3/2018[183] and under the EU General Data Protection Regulation.

As institutions dealing with personal data, all healthcare facilities must adhere to the EU General Data Protection Regulation which lays down rules relating to the processing of personal data (e.g. collection, recording, organisation, structuring, storage, etc.). Any data concerning health (including the HIV status) is classified as sensitive personal data and is protected as such. In the area of healthcare, such data is subject to the most rigorous control measures.

Additionally, under Article 7 of the Law No. 41/2002, "Everyone has the right to have the confidential nature of their health data respected, since no one can access them without prior authorization under the Law". PLHIV have the right to limit access of third parties to data related to HIV and to know who accessed such data. When a patient's medical record is accessed for judicial, epidemiological, public-health, research or teaching purposes, the patient's personal identification data must be separated from the data of a clinical nature (see Article 16 of the Law No. 41/2002).

Local experts are aware of a case where a nurse who accessed a person's medical history without having a legitimate interest was sanctioned.[184]

PROHIBITIONS AND LIMITATIONS ON WORKING IN SPECIFIC HEALTHCARE PROFESSIONS FOR PLHIV

In Spain, the employment of PLHIV in healthcare is not normatively regulated. The generic occupational risk protection regulations established in Law 31/1995, especially article 22, are applied. They are, however, silent on this.

However, there are two recommendations on this matter from the Ministry of Health, published in 1998 and 2001 (hereinafter “Recommendations”). Both Recommendations recognise that infections by blood-borne viruses (including HIV, HBV and HCV) are rare, that the risk of transmission depends on the type of the virus, and that the risk can be minimized by applying general infection control procedures and the so-called “standard precautions” according to which it is to be assumed that blood and other bodily fluids of all people are potentially infectious.

The Recommendations point out that the limitation of activities or tasks should only be relevant for those procedures in which there is a risk that an accident involving a healthcare worker could put their blood in contact with the open tissues of a patient. Due to the fact that the health of third parties may be compromised, it can be justified that an HIV test is mandatory for healthcare workers that perform such invasive procedures (i.e. procedures with a risk of accidental exposure to blood). It shall also be justifiable that in case of an HIV+ diagnosis, a medical worker shall stop performing these procedures. However, the medical worker must be allowed to continue to perform other tasks related to their occupational position.

For many years, the Spanish NGOs have been demanding an update of these Recommendations which should allow for the inclusion of the doctrine of undetectability (i.e. no occupational limitations would apply if a person has an undetectable viral load). Similar developments can be observed in the guidelines of the United States and the United Kingdom. Since 2015, the Ministry of Health includes the task of updating the Recommendations in its annual action plans. In 2020, the Ministry of Health made a commitment to do so, but the execution of this commitment was delayed due to the COVID-19 pandemic.

Regarding the mandatory HIV tests, although the Recommendations indicate the duty of healthcare workers to undergo HIV testing if requested, such requests are not commonly made (they are more frequent in the private sector rather than in the public sector).

PRIVATE INSURANCE POLICIES CONCERNING PLHIV

Until recently, all private insurance policies in Spain commonly contained a clause that stipulated an exception for PLHIV, deeming HIV as an "uninsurable" disease. In June 2018, Law No. 4/2018[185] entered into force and modified the local insurance law so that clauses eliminating the insurability of PLHIV (or people suffering from other diseases) are to be considered null and void.

Prior to the adoption of Law No. 4/2018, PLHIV were being automatically rejected when seeking private insurance policies (e.g. life insurance or private health insurance) which also resulted in difficulties when accessing loans, mortgages and other economic services. Moreover, many insurance policies used to include a clause which would deny insurance coverage in case the client was diagnosed as HIV+ after having taken out the insurance.

In its preamble, Law No. 50/1980 (in its amended version) declares that it is necessary to eliminate from the legal system those aspects that limit equal opportunities and promote discrimination for any reason, in this case for living with HIV/AIDS or other health conditions.

Regarding the private insurance field, the fifth additional provision titled "Non-discrimination on the grounds of HIV/AIDS or other health conditions" was added to Law on the Insurance Contract.[186] This provision states, *"People with HIV/AIDS or other health conditions cannot be discriminated against. In particular, the denial of access to contracting, the initiation of contracting procedures different from those normally used by the insurer or the imposition of more onerous conditions, due to having HIV/AIDS or other health conditions, is prohibited, unless such steps are founded on justified, proportionate and reasonable causes, which are previously and objectively documented."* In other words, this provision introduced a general obligation of non-discrimination for reasons of health conditions in regard to insurance contracts.

In contrast, when it comes to the insurance premiums, their amount is still a matter in which insurance providers have some level of autonomy even though the principles of sufficiency of the premium and fairness of the premium must be combined and both observed. Insurance providers still have the option to find out about an HIV+ status of a potential client, because under Article 10 of the Law on the Insurance Contract, a person who seeks an insurance policy is obligated to provided truthful answers to the insurance companies' questionnaires on his/her state of health for the purposes of risk assessment. A question on HIV status is commonly included (and accepted by local jurisprudence).

When it comes to insurance contracts that were stipulated prior to an HIV diagnosis, since January 1st, 2016, due to the modification of the Law on the Insurance Contract, the insured has no obligation to communicate the variation in circumstances related to the state of health. Thus, if a person had entered into an insurance contract and is diagnosed with HIV afterwards, they do not have to inform the insurance provider about the diagnoses.

In 2021, an analysis on the effects of Law No. 4/2018 was published[187] [188] (hereinafter "Analysis"). It provides an assessment of the general conditions of different types of insurance policies from various insurance providers based in Spain. According to the Analysis, the rules stipulated in Law No. 4/2018 have not been fully incorporated in the practices of the analysed insurance providers; many insurance policies' terms and conditions still contain clauses that maintain either an exclusion of insurance coverage or a limitation of its amount due to HIV/AIDS.

Another issue that mainly affects HIV+ foreigners in Spain is the structural discrimination that is institutionalized since HIV/AIDS is not taken into account when allowing access to health services for people with HIV who came to study or conduct research in Spain.[189] The study visa requires applicants to take out health insurance, public or private, that covers antiretroviral treatment. In light of everything that was mentioned above, it might be difficult to obtain such insurance.

COMMON FORMS OF DISCRIMINATION IN HEALTHCARE SETTINGS

According to data provided by the Legal Clinic of the University of Alcalá, specialized in legal literacy for people with HIV, the most common cases of discrimination against PLHIV in the area of healthcare are the following:

- exclusion of PLHIV from contracting private health insurance;
- barriers in the hiring of PLHIV in the health field, especially if they perform invasive procedures that put transmission routes at risk;
- denial or postponement of dental services due to the person's serological status;
- denial of access to advanced therapy drugs based on autologous blood donation;
- exclusion of people without HIV who live with PLHIV in the blood donation procedure (discrimination by association);

All of these discriminatory practices have had an impact on the country's legislation and policies. They motivated a legal reform and the adoption of a manual of good practices regarding PLHIV. Moreover, they have been incorporated into the Social Pact for Non-Discrimination and Equal Treatment Associated with HIV, adopted in 2018.

Among the common forms of discrimination indicated in the questionnaire for this report, PLHIV in Spain may come across the following:

- refusal of care;
- separation from other patients;
- provision of treatment at the end of office hours;
- unjustified imposition of higher medical fees on the grounds that facilities and
- instruments must be subjected to a thorough disinfection.

Such discriminatory treatment may take place in all the facilities indicated in the questionnaire, i.e. the GP clinic, the specialist outpatient care facilities, during hospital stay, or in dental care.

CASE STUDIES

No litigation cases dealing with discrimination against PLHIV in healthcare settings, that would have significant impact on legislation, policies, or practices in Spain, were reported in the questionnaire.

GOOD PRACTICES IN THE NATIONAL CONTEXT

Adoption of the Social Pact for Non-Discrimination and Equal Treatment Associated with HIV

In 2018, the Social Pact for Non-Discrimination and Equal Treatment Associated with HIV[190] was adopted (hereinafter "Social Pact"). Among its action measures, the Social Pact includes promotion of equal treatment and opportunities for PLHIV as a response to the occurrence of discriminatory practices in healthcare settings.

Support provided to PLHIV by the Legal Clinic of the University of Alcalá

The Legal Clinic of the University of Alcalá (hereinafter "Legal Clinic") offers legal literacy services to PLHIV regarding health, labour, migration, access to insurance and discrimination. The Legal Clinic organises training courses for medical personnel on the rights of PLHIV; organises training courses for societies such as Gesida, Sogasida, Canarian Society of Family and Community Medicine, etc.; carries out legal literacy actions, using the 'Street Law' methodology, for PLHIV in terms of rights in the field of healthcare through various associations (CESIDA, Imagina Más, OMSIDA, CCASIPA); provides legal advice upon submission of individual cases. It also published a series of 38 brochures with summaries of recurring legal issues reported by PLHIV.[191]

Regarding legal literacy of PLHIV, in 2019, the Legal Clinic published a series of 14 brochures with summaries of recurring issues that PLHIV raise in their submissions when they seek legal advice[192]. The brochures provide information about matters such as the right to privacy, criminal liability for transmission of HIV, rights of irregular immigrants, disability, incapacity for work, contracting private insurance, etc.

ISSUES AND BAD PRACTICES IN THE NATIONAL CONTEXT

Apart from the issues described in the previous sections (e.g. non-availability of insurance policies for PLHIV, discriminatory practices, inappropriate questions or behaviour of healthcare professionals, etc.), no other issues or bad practices in the national context were reported in the questionnaire.

COVID-19 IMPACT ON PLHIV

Increase in rights' violation

During the first months of the COVID-19 pandemic, some of the measures adopted by companies to prevent the contagion and spread of COVID-19 in workspaces led to an increase in situations of violation of rights of PLHIV. For example, the right to privacy and confidentiality of the worker's HIV+ diagnosis was challenged in favour of their right to health protection (due to their consideration as especially vulnerable workers' group). The same issue was raised when workers were allowed to return to workspaces; during this time, specific measures were being taken to protect the health of workers recognized as especially vulnerable.

Summary of measures adopted

No specific measures were implemented for PLHIV by public administrations, beyond facilitating the dispensing of ARVs by tele-pharmacy or home delivery of the same in some hospitals and, in some Autonomous Communities, rapid linkage to the Health System of people with HIV in an irregular administrative situation through the suppression of administrative procedures . The Ministry of Health provided safety equipment to NGOs from all areas, including those dealing with PLHIV. Still, the lack of protection materials and of communication and coordination with public administrations has been reported as an issue.

The NGOs have supported their target groups mostly through tele-assistance, focusing especially on:

- psychosocial support in chemsex;
- Peer programs;
- Mutual aid groups;
- Emotional and psychological support;
- Information about COVID 19 and HIV or job orientation.

Vaccination priority

After several discussions and reviews, the Government has laid down in Update 5 of the Vaccination Strategy against COVID-19 in Spain, on March 30, that a priority Group 7, “People with very high-risk conditions” included people with HIV infection with less than 200 cells/ml despite effective ART and undetectable viral load. People with these conditions would receive the vaccine within a group 5B (mostly consisting of people between 70 and 79 years of age), or within any later group.

Interruption of service in HIV centres

Some of the largest STI clinics and HIV testing centers in Spain closed during lockdown, while others at least limited their working hours. There are some examples of centers in Madrid and Barcelona that either closed fully, or restricted their care for emergencies and symptomatic cases. Sites attempted to maintain telephone consultation and support for PrEP users. As a result, HIV testing declined in the first half of 2020.

Access to ART medication

No cases have been reported where PLHIV would be unable to get ART medication on time. Several cases of individual travellers from foreign countries trapped in Spain during lockdown have been reported. These cases have been resolved successfully on an individual basis.

UNITED KINGDOM

STATISTICAL DATA

Population size of the country was estimated at 67.886.000[193] (year 2020).

Estimate number of PLHIV is 106.890.

The state of the 90-90-90 treatment target in 2020[194] was as follows:
- Percentage of PLHIV diagnosed (first 90 target): 95 %
- Percentage of PLHIV on treatment (second 90 target): 99 %
- Percentage of PLHIV with undetectable viral load (third 90 target): 97 %

MAIN EPIDEMIOLOGICAL TRENDS[195]

In 2020, 2.780 new HIV cases were diagnosed in the UK, equivalent to 4,1 new cases per 100.000 inhabitants. Compared to 2019, the number of all new HIV diagnoses decreased by 33 %.

Due to the COVID-19 pandemic, data for Scotland for 2020 is unavailable and data completeness and quality were compromised in other areas of the UK. Consequently, the HIV annual report of 2020 focuses primarily on England.

In England, the equivalent figure was 2.630 (new cases). Out of the new cases reported in England, 70,7 % accounted to men. 45,3 % of the new diagnoses were attributed to gay and bisexual men. London continues to have the highest rates of HIV in England: 37% of new diagnoses in 2020 were in London residents.

Late HIV diagnosis presents itself as a problem especially among heterosexual men and women. In 2020, 670 new diagnoses (among people first diagnosed in the UK) were made at a late stage of infection in the UK. Figures show that 55 % and 51 % of heterosexual men and women respectively were diagnosed with a low CD4 count; in comparison, only 29 % of gay and bisexual men were diagnosed at a late stage of the infection.

Only 3 % of people diagnosed with HIV in the UK in 2019 had contracted HIV via injecting drug use; New diagnoses among people who inject drugs remained stable and low. However, an outbreak of HIV in Glasgow (Scotland) among people who inject drugs that started in 2015 has been persistent.[196] There is new evidence to suggest that this outbreak has now extended beyond Glasgow into other UK populations.

RELEVANT ANTI-DISCRIMINATION LEGISLATION APPLICABLE IN HEALTHCARE SETTINGS

The UK has no formal written constitution that can overturn legislation. Individual rights are protected in the courts, which balances these rights with respect for the sovereign law-making authority of the Parliament. However, the Human Rights Act incorporates most of the rights and freedoms contained in the European Convention on Human Rights (ECHR), and the UK respects the European Court of Human Rights.

The Human Rights Act[197] prohibits discrimination in Article 14 which provides that the enjoyment of the rights and freedoms shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth, or other status. It is not entirely clear whether the open-ended nature of this list through the inclusion of “other status” shall ensure that protection against discrimination is also provided to PLHIV.
In late 2021, the UK Government commenced a public consultation regarding possible changes to the Human Rights Act, which has raised some concerns among local human rights activists as potential changes may be to the detriment of human rights.

The Equality Act 2010[198] (which applies in England, Scotland and Wales, but not Northern Ireland) protects individuals who fall under nine protected characteristics from discrimination by employers, providers of goods and services (including healthcare services, whether publicly or privately provided) and public bodies. One of the nine protected characteristics is disability, and people automatically meet the disability definition from the point of diagnosis if they have HIV (also cancer and multiple sclerosis).

People cannot be asked about disability or health conditions in relation to the provision of goods and services, except where that may be done to protect the person receiving the goods or services (i.e. if provision of goods or services would put you at risk because of your health condition). This has, for example, been an issue in the UK in relation to tattooing and beauty parlours, where practitioners refuse to provide the service to PLHIV.

There is also a duty on public bodies to have due regard for the need to eliminate unlawful discrimination, harassment and victimisation, and to promote equality.

Protection against discrimination is also indirectly provided through legislation on personal data protection (the Data Protection Act 2018, the Human Rights Act, and also some soft law instrument). [see section on “Confidentiality and accessibility of personal data related to HIV positivity]

LEGISLATION THAT MAY PROVIDE BASIS FOR DISCRIMINATION AGAINST PLHIV IN HEALTHCARE SETTINGS

No legislation that could directly or indirectly discriminate against or provide basis for discrimination against PLHIV/AIDS in healthcare settings was reported.

MEANS OF REPORTING DISCRIMINATION IN HEALTHCARE SETTINGS (LEGAL AND OTHER REMEDIES)

When PLHIV come across discrimination in healthcare settings, several means of protection are available to them under UK law. These include:

- complaint to the healthcare provider/commissioner of the healthcare provider;
- complaint to the Parliamentary and Health Service Ombudsman;
- complaint to the Equality and Human Rights Commission;
- complaint to the Department of Health and Social Care (only applicable to complaints about services provided by the Department of Health and Social Care (i.e. not about the conduct ofhospitals, GPs or other NHS workers);
- civil lawsuit;

PLHIV in the UK are always encouraged to contact the NGOs working on discrimination and equality issues. [see the section on “Good practices in the national context”]

Complaint within the healthcare settings

Everyone has the right to make a complaint about any aspect of an NHS service. This is written into the NHS Constitution[199] and also in legislation – The Local Authority Social Services and National Health Service Complaints Regulations 2009[200].

Firstly, a patient should complain to the person or organisation providing the required healthcare service (e.g. the GP, dentist, hospital or pharmacist). Such complaint must be acknowledged within 3 working days and the provider should offer a meeting to discuss the problem. People are usually advised to attempt solving the problem informally rather than escalating to a formal complaint.

Secondly, a patient may choose to complain to the commissioner of the healthcare service in question – either NHS England (which commissions most primary care services, including GPs and dental services) or to the Clinical Commissioning Group (which oversees the commissioning of secondary care, including hospital care and some community services). Such complaints are to be submitted instead of the direct complaints to the provider as described in the previous paragraphs (i.e. a patient must select which complaint procedure he/she prefers; concurrent complaints may not be filed).

In addition, local authorities fund independent NHS complaints advocacy services which offer support to people that decide to lodge a complaint. These services are open to everybody and are free of charge. Each area also has a Healthwatch, which has a mission to feed local voices into the NHS leadership, but also carry out advocacy services including support with complaints.

People can also access the Patient Advice and Liaison Service, usually located in each hospital, which offers confidential advice, support and information on health-related matters and can support the complaints process.

Complaint to the Parliamentary and Health Service Ombudsman

If a complaint made to a local healthcare provider or to the commissioner is not resolved, people can request an independent review from the Parliamentary and Health Service Ombudsman (hereinafter "PHSO"). A review will not take place if the PHSO believes that the complaint should be resolved locally (i.e. with the provider/commissioner), or if legal action is viable (regardless of whether it's underway). The PHSO can ask the relevant organisation to apologise to the complainant, can award financial compensation (although this would usually be lower than compensation awarded in court), and can ask the organisation to review and/or change procedures. If the complainant is not satisfied, the PHSO's decision can be appealed.

Complaint to the Equality and Human Rights Commission

The Equality and Human Right Commission (hereinafter "EHRC") promotes and upholds equality and human rights ideals and laws across England, Scotland, and Wales. The EHRC is a public body, and its budget has been slashed severely in recent years. It now only takes strategic cases. In Northern Ireland there is a separate Equality Commission (ECNI) and a Human Rights Commission (NIHRC).

Civil lawsuit

PLHIV who have been discriminated against by a healthcare provider can make a complaint or discrimination claim in the civil courts. Taking legal action via a court can be a stressful and expensive process. Since 2013, cuts to legal aid, which help people to pay for court action, have made it increasingly difficult for many people to challenge discrimination in the courts. It is often easier and more efficient to seek a resolution through the other remedies described above, however legal interventions are possible.

The court can order the healthcare provider to compensate the person who was discriminated against or grant an injunction. There are strict time limits for making a discrimination claim in the courts of six months less one day of the act which is the cause of the complaint. Although it is often encouraged that people take informal action before legal action to address discrimination, the time limits can make it difficult.

OBLIGATION OF PLHIV TO DISCLOSE THEIR HIV+ STATUS IN HEALTHCARE SETTINGS

In the UK, there is no legal obligation for PLHIV that requires them to communicate their HIV+ status in healthcare settings.

CONFIDENTIALITY AND ACCESSIBILITY OF PERSONAL DATA RELATED TO HIV

In the UK, personal data protection is secured by several legislative documents. These protections are not HIV-specific. The Human Rights Act states that all individuals have a right to “respect for private and family life”. The Data Protection Act 2018 controls how personal information is used and shared by organisations, businesses, or the government. The National Health Service Act 2006 clarifies that identifiable health-related data is confidential. In addition, General Medical Guidelines and National Health Service Guidelines on preserving patient confidentiality include specific guidance for “serious communicable diseases”. [201] [202] [203]

Medical professionals are obliged, under common law, to keep personal information about a patient confidential, and are only entitled to share that information either: a) with the person’s consent; or b) if the disclosure is in the “public interest”.

Ad. a) A person is generally assumed to have implied their consent to their information being shared with another healthcare professional for their treatment or care, but they can refuse to have their information shared. Also, implied consent means that information can be shared by people who need to know the information to provide appropriate care, but not everyone (i.e. not to a person’s family, care workers, etc.). In other words, any individual delivering care can access the person’s health care record in order to provide appropriate healthcare. Individuals can withdraw consent for sharing of that information. If clinicians want to share information in instances unrelated to a person’s treatment or care, explicit consent is required and may be withdrawn at any time.

Ad. b) Any disclosure of information in the public interest has to be shown to override the public interest of maintaining medical confidentiality.

There are some other (very uncommon) situations when the normal rules of confidentiality may not apply or be broken:

- if a court requests the information;
- in some cases, if the police request the information (attached to serious crimes such as terrorism and murder, not generally);
- if a doctor believes that someone with HIV is putting the life of another person in danger, the doctor may have the right to disclose information to the person in danger (this can only be as a last resort, and after telling the person with HIV that confidentiality will be broken).

Storing medical records

Health care information is stored in a Summary Care Record (hereinafter "SCR") held by the GP. Technically, this can be seen by all healthcare providers including pharmacists (to avoid drug interaction). Once a piece of information is added to the SCR it is virtually impossible to have it removed, even if it has been added in error. The most likely remedy is that it will also be recorded that the information is wrong.

Some HIV care is delivered in Genitourinary Medicine (hereinafter "GUM") clinics, but HIV care can also be delivered in, for example, an infectious diseases department in a hospital. GUM clinics hold records separately from hospital records with separate identifying numbers, but if you a person is seen for care in a department of a hospital then his/her HIV care record is part of the overall hospital record and therefore visible outside the HIV clinic. HIV care is "open access", meaning that anyone can go to any clinic. Therefore, a person could ensure that their sexual health information is not linked to their hospital record by going to a GUM clinic, but they'd have to know in advance the different systems and which providers are in which system, which is quite unlikely.

Pharmacists can read the SCR but not the full health record. Most pharmacists would be able to deduce a person's HIV status from their SCR, even if the HIV+ status is not recorded through withdrawal of consent.

For the last 5 years there has been a push in the healthcare settings to centralise medical records, and there are projects underway to replace SCR with shared care records, which would hold all healthcare information from all healthcare providers, rather than just the key information currently held in the SCR. These projects are locally specific.

Over the last decade there have also been nationally led efforts to centralise and standardise data collection and storage, including a recent attempt to secure anonymous data for research. The public are generally very wary of these efforts; and they have, as of yet, not been successful.

PROHIBITIONS AND LIMITATIONS ON WORKING IN SPECIFIC HEALTHCARE PROFESSIONS FOR PLHIV

Employment rights are guaranteed in the Equality Act 2010. Essentially, a person with a disability (which includes PLHIV) can be discriminated against in employment without a good reason.

Historically, there have been more restrictions but there has been considerable change over the last decade. Currently, there is no restriction on healthcare providers who are living with HIV, except for those who are conducting "Exposure Prone Procedures" (hereinafter "EPPs"). These are procedures, in which there is possibility for bleed back – commonly recognised as when the practitioner cannot see their own hands, e.g. in surgery.

Healthcare providers living with HIV can practice EPPs only if they are on ART, have a viral load of less than 200, have 3 monthly viral load monitoring checks, remain under the care of an HIV clinician, and register with the Occupational Health. Dentists are subject to the same rules as healthcare providers.

PRIVATE INSURANCE POLICIES CONCERNING PLHIV

The provision of private insurance policies for people living with HIV has historically been very limited in the UK. Although PLHIV are increasingly able to access affordable life and travel insurance, most insurance products related directly to someone's health remain inaccessible for them.

PLHIV remain ineligible for most income protection policies. The reason given by most insurers for this is that there is very little data on how HIV affects someone's attendance at work. Some PLHIV are able to access income protection insurance through their employer (group income protection) because it is usually not medically underwritten, meaning individual employees do not need to complete a medical questionnaire. HIV is usually included in these policies. People who are diagnosed with HIV after taking out a policy are sometimes covered for income loss as a result of their HIV, but it depends on the policy.

PLHIV are also not eligible for most critical illness policies as individuals. Some policies provide cover without a medical questionnaire; however, they usually state that the policy will not pay out if a pre-existing medical condition contributes to the occurrence of a critical illness. HIV itself is not a critical illness, but some policies will pay out for an HIV diagnosis depending on route of transmission. As with income protection policies, it is possible for PLHIV to secure cover through their employer.

COMMON FORMS OF DISCRIMINATION IN HEALTHCARE SETTINGS

All the common forms of discrimination against PLHIV indicated in the questionnaire (refusal-of-care, separation from other patients, provision of treatment at the end of office hours) were reported as occurring to some extent. Further problems were reported in the context of stigmatising behaviour (which, in some cases, does not reach the level to constitute discrimination by itself) and confidentiality breaches.

In 2017, Public Health England collected data from a random sample of people attending HIV clinics (4.422) in the survey "Positive Voices".[204] PLHIV were asked if they had been worried that they would be treated differently, had avoided seeking healthcare, had been treated differently from other patients, and if they felt they had been refused or delayed treatment.

81,8 % of the respondents had not avoided seeking healthcare, but 9,8 % had in the past year and 8,4 % had more than a year ago. Therefore, 2 in 10 people had avoided seeking healthcare when they need it, and 1 in 10 had avoided care in the past year.

81 % of the respondents said they had not been treated differently from other patients, but 7,6 % had in the past year, and 11,4 % had more than a year ago. This means 2 in 10 people had been treated differently from others because of their HIV status and 1 in 13 had been treated differently in the past year.

88,7 % of respondents did not feel that they had been refused or delayed medical care, but 5 % had in the past year and 6,3 % had more than a year ago. Therefore, 1 in 10 people had been refused or delayed access to care and for 1 in 20 this had happened in the past year.

Regarding the different healthcare settings, to some extent PLHIV may encounter discrimination in all the settings indicated in the questionnaire. The National AIDS Trust conducted a poll among PLHIV, accessed through the UK Community Advisory Board.

The poll received 48 responses, meaning that it cannot be taken as representative of the entire community of PLHIV in the UK. However, certain recurring examples of discriminatory behaviour were described. This data may be used to at least illustrate what types of discriminatory practices PLHIV may come across in the various areas of healthcare.

In regard to secondary healthcare facilities, PLHIV most commonly reported being subjected to improper questions and comments, as well as practices of taking unnecessary “hygienic” precautions (e.g. double disinfection, double gloves, visors, etc.) or provision of treatment in special settings (i.e. providing ordinary procedures, that usually take place in clinic settings, in operating theatres). Similarly, PLHIV are often met with inappropriate and intrusive questions during GP visits. Although some of these practices by themselves may not always reach the severity to constitute discrimination, their cumulative impact may result in avoidance of seeking healthcare and worsening of a person’s overall health condition. When respondents were asked about dental care, refusal-of-care or providing only the “absolutely necessary dental services” were frequently reported.

CASE STUDIES

Several cases of discrimination against PLHIV in healthcare settings were dealt with over the past years by the UK equality bodies and other relevant institutions. The following cases best illustrate how the anti-discrimination instruments set out in the country function.

Discriminatory infection control policy (2020)

An individual living with HIV requiring elective surgery was moved to the end of the daily operating list because of his HIV status. The individual challenged the decision after his surgery by writing to the NHS Trust and asking for an explanation for why he was moved to the end of the daily operating lists. The NHS Trust replied to him saying that moving people living with HIV to end of daily operating lists was in accordance with their Standard Operational Policy for booking cases in theatres. The individual contacted National AIDS Trust for advice, and we wrote to the Chief Executive of the NHS Trust asking them to change the Standard Operational Policy for booking cases into theatres and set out that moving PLHIV to the end of the daily operating lists is not necessary and amounts to direct discrimination.

National AIDS Trust received a response from the NHS Trust which included an apology for the distress they had caused to the patient. The NHS Trust amended the Standard Operational Policy so that PLHIV would not be moved to the end of daily operating lists. The complaint letter was also shared with the surgery division so that staff could understand how and why the Standard Operational Policy had been amended.

Healthcare student removed from their course (2017)

A university student studying to be a mental health nurse contacted National AIDS Trust for support because they were threatened with expulsion (and ultimately removed) from their course for not disclosing their HIV+ status. There had also been several breaches of confidentiality between the university's occupational health service and the academic staff concerning the student's healthcare status.

The student's viral load was undetectable, and they were not performing or training to perform exposure prone procedures (hereinafter "EPPs"). It is well established in the UK that, under these circumstances, healthcare workers are not required to disclose their HIV+ status. National AIDS Trust supported the student to contest the decision to remove them from their course, and ultimately a satisfactory conclusion was reached.

National AIDS Trust also wrote to the UK Advisory Panel for Healthcare Workers Infected with Bloodborne Viruses, on the basis that ambiguity in its "Integrated Guidance on Health Clearance and the Management of HCWs Living with BBVs" led to the university's decision to discipline the student. The guidance was edited to ensure clarity regarding healthcare workers' right not to disclose their HIV+ status if they are not carrying out EPPs, and to make clear that it is inappropriate to ask healthcare workers specific questions about blood borne viruses in health screening questionnaires (if they wish to carry out EPPs they will be tested for BBVs).

Hair transplant procedure (2021)

George House Trust was approached by a man who was refused a hair transplant procedure at a clinic in Manchester. He was denied the treatment when he attended, with the clinician citing issues with insurance, COVID-19 precautions and the fact that he had not notified them of his HIV+ status before the procedure (on the form he said that he was ‘undetectable’ when it asked if he’d had a test for HIV).

During initial conversations, representatives made remarks about the “amount of blood involved” and how they only perform “riskier” procedures at their clinic in London as they have the necessary facilities. George House Trust have had ongoing discussions, notifying them of their responsibilities under the Equality Act and the need for universal precautions that should mean the procedure can be carried out at any of their clinics. They have also stated that the clinic in question is not directly managed by them and therefore they cannot force the clinician to perform the procedure. The issue has caused the service user much distress and discomfort. He had booked a hotel, told friends and family about the procedure, most of which do not know about his HIV+ status and taken time off work. The company have offered to do the procedure in London and to reimburse him for the cost of the hotel. They have also offered a payment of £500 as a goodwill gesture.

George House Trust have approached the Care Quality Commission and notified them of the incident.

GOOD PRACTICES IN THE NATIONAL CONTEXT

Strategies introduced to tackle stigma and additional peer-support programmes

In 2019, an independent commission was launched to establish how to end HIV transmissions in England, supported and funded by National AIDS Trust, Terrence Higgins Trust and the Elton John AIDS Foundation.[205] Its recommendations incorporate considerations regarding stigma and health equity. These recommendations pertain to specific groups, e.g. trans people, or specific problems to be addressed, e.g. late diagnosis.

The Government has said that it will announce a new HIV Action Plan in England to incorporate the findings of the independent commission. In addition, an announcement is expected regarding the World AIDS Day and a new Sexual Health Strategy in 2022.

On the World AIDS Day 2020 the Scottish Government similarly announced a proposal for a plan to end HIV transmissions and stigma, but that appears to have been delayed due to COVID-19.

Some secondary care providers are developing anti-stigma policies and working on monitoring the level of HIV awareness and knowledge. HIV clinics have also often embedded peer support. Some Primary Care Networks (groups of GP practices), especially those in higher prevalence areas, have so called “HIV champions”.

Healthy London Partnerships (a collaboration of London local government and health bodies) has proposals to tackle HIV-related stigma in London, including in healthcare settings.[206] Fast-track Cities London, in collaboration with Healthy London Partnership, has also been doing a wider piece of work on integrated care which includes a considerable stigma component and is specifically working on tackling HIV-related stigma in London, including in healthcare settings.[207] Work on this front has been delayed by COVID-19.

Support provided by local NGOs

PLHIV in the UK are always encouraged to contact the NGOs working on discrimination and equality issues. These include the British Institute for Human Rights (BIHR) and Equally Ours (formerly, the Equality and Diversity Forum). National Voices is an umbrella organisation that aims to ensure patient voice is represented in all decisions made about people living with health conditions and impairments.

Specifically in relation to HIV, National AIDS Trust works with HIV support services and others working with PLHIV to challenge discrimination experienced by their clients. This includes discrimination in healthcare settings, as well as in employment and accessing private services.

The information and support provided through this work is informed by advice from specialist civil rights and judicial rights solicitors Deighton Pierce Glynn. As part of this work, National AIDS Trust has been contacted by HIV support service staff, social workers and clinicians for advice relating to potential incidences of discrimination based on someone's HIV+ status in healthcare settings.

In addition to providing advice, the NGOs are also creating resources to help those supporting PLHIV challenge discrimination in healthcare settings. These include fact sheets, guidance and template letters. The NGOs also provide annual training to the HIV sector, in conjunction with Deighton Pierce Glynn, on using the law to challenge discrimination experienced by their clients. In 2021, the organised session focuses on challenging discrimination in healthcare settings.

Age+ project

An HIV specialist support service, George House Trust, has recently launched a project called "Age+" that provides a range of activities and services for people aged 55 and over. As part of the project, they are currently developing a kite marked training programme for care providers in Greater Manchester. This has been done in recognition of the fact that many older people are anxious at the prospect of entering care/nursing homes due to the risk of discrimination and potential prejudice. The training is being developed and will be delivered by a team of volunteers and PLHIV. The project is funded by George House Trust and Viiv Healthcare.

GP training programme in greater Manchester

George House Trust has been working with GPs across Greater Manchester as part of their "Positively Speaking" programme. The aim is to increase knowledge and understanding amongst GPs and staff in primary care. The sessions include a Q&A with a clinician and a talk from one of our Positive Speakers (PLHIV).

ISSUES AND BAD PRACTICES IN THE NATIONAL CONTEXT

In the UK, issues and bad practices in the national context were reported to mainly consist of the behaviour described in the sections on discrimination and confidentiality. These issues are further supported by the lack of appropriate knowledge about HIV/AIDS among doctors, nurses and particularly GPs who are not aware of the up-to-date knowledge regarding HIV transmission risks, development in treatment, and the U=U doctrine. [see sections on "Confidentiality and accessibility of personal data related to HIV" and "Common forms of discrimination"]

COVID-19 IMPACT ON PLHIV

Access to HIV care[208]

The Covid-19 pandemic had an impact on the provision of HIV-related services in 2020. Fewer people accessed HIV care. 93.780 people diagnosed as HIV+ were expected to attend HIV services in 2020; however, only 88.800 people did. This means that approximately 5.000 people with diagnosed HIV infection did not seek HIV treatment. In comparison, in 2019, this number was reported to be significantly lower at 3.600. Delivery of HIV care also changed with telephone consultations increasing from 7.910 consultations in 2019 to 59.280 consultations in 2020.

Inclusion of PLHIV in priority vaccination groups[209]

COVID-19 vaccination in the UK follows vaccination scheme in which 10 vaccination groups have been established based on "vulnerability". PLHIV were included in priority group 6 "Adults aged 16 to 65 years in an at-risk group". PLHIV with a low CD4 count were included in priority group 4 "All those 70 years of age and over and clinically extremely vulnerable individuals"; for these individuals, a shielding programme was introduced in England.

Shielding of PLHIV with a low CD4 count

The centrally-administered list of "clinically extremely vulnerable" people, who were advised to shield from COVID-19 exposure, was managed through general practice records. General practice records in the UK do not routinely hold data on the severity of HIV infection, e.g. CD4 counts.

British HIV Association (BHIVA) advice was that HIV infection only constituted grounds for shielding if the patient had a CD4 count below 50 cells/mm3, or if the patient had experienced an opportunistic infection in the past 6 months. This specification was not built into the central system for communicating with people who were clinically extremely vulnerable.As a result, shielding instructions for PLHIV often went out unnecessarily, or not at all.

National AIDS Trust and other HIV charities received communications from many people living with HIV who were asked to shield in error (e.g. because they were incorrectly reported to be ‘immunosuppressed’ in GP data, or latterly because the 2021 QCovid algorithm overstated the vulnerability of people living with HIV to serious illness from COVID-19 without accounting for CD4 count). HIV clinicians were in the end able to remove patients from this centrally-managed list, but this option was not centrally communicated.

PLHIV who indeed needed to shield on these grounds reported concerns around sharing their HIV+ status with their employer. National AIDS Trust produced guidance on how to secure certification of shielding status without disclosing one’s HIV+ status.

ANNEX 1
QUESTIONNAIRE

DISCRIMINATION AGAINST PLHIV IN HEALTHCARE SETTINGS PROJECT – 2020-2021

Legal survey

The objective of this survey is to collect legal information on and capture cases of discrimination against PLHIV in healthcare settings at the national level in 11 countries of Europe and Central Asia. The information and data collected will be integrated as country profiles in the EHLF legal report on discrimination against PLHIV in healthcare settings and the follow-up policy brief and recommendations to support national and regional advocacy efforts to review and reform discriminative legislation and policies, to improve practices, and to reduce discrimination against PLHIV in healthcare settings. Please fill in the survey to the best of your knowledge – if needed in consultation with relevant stakeholders – by 31st July 2021. Please include references and sources of information if available.

GENERAL INFORMATION:

Name:
Organisation:
Country:

Country statistics:
Population size:
Estimate number of PLHIV:
Percentage of PLHIV diagnosed (first 90 target):
Percentage of PLHIV on treatment (second 90 target):
Percentage of PLHIV with undetectable viral load (third 90 target):
Main epidemiological trends:

PART 1: LEGAL AND POLICY BACKGROUND

Protection against discrimination in healthcare settings - relevant to HIV status:

Constitutional level

Is there protection against discrimination at the constitutional level that is applicable to PLHIV?

YES/NO Is it HIV-specific? YES/NO Please provide detail: (text etc.)

Primary legislation level - legislation by the parliament (Acts, Statutes etc.)
Is there protection against discrimination at the primary legislation level that is applicable to PLHIV?
YES/NO Is it HIV-specific? YES/NO Please provide detail: (text etc.)

Secondary legislation level – legislation by the government or members of government/ministers (Decrees, Orders etc.)
Is there protection against discrimination at the secondary legislation level that is applicable to PLHIV?
YES/NO Is it HIV-specific? YES/NO Please provide detail: (text etc.)

Soft law – guidance, protocols, methodology etc.
Is there protection against discrimination at the quasi-legislation level that is applicable to PLHIV?
YES/NO Is it HIV-specific? YES/NO Please provide detail: (text etc.)

Legislation that directly or indirectly discriminate against or provides basis for discrimination against people living with HIV/AIDS

Constitutional level
Is there any provision at the constitutional level that discriminate against PLHIV or can provide basis for discrimination against PLHIV?
YES/NO Please provide detail: (text etc.)

Primary legislation level - legislation by the parliament (Acts, Statutes etc.)
Is there any provision at the primary legislation level that discriminate against PLHIV or can provide basis for discrimination against PLHIV?
YES/NO Please provide detail: (text etc.)

Secondary legislation level – legislation by the government or members of government/ministers (Decrees, Orders etc.)
Is there any provision at the secondary legislation level that discriminate against PLHIV or can provide basis for discrimination against PLHIV?
YES/NO Please provide detail: (text etc.)

Soft law – guidance, protocols, methodology etc.
Is there any provision at the quasi-legislation level that discriminate against PLHIV or can provide basis for discrimination against PLHIV?
YES/NO Please provide detail: (text etc.)

Reporting discrimination in healthcare settings, legal and other remedies

In this section, we would like to collect information of the different possibilities for complaints, legal and other remedies once a discrimination happened in the healthcare setting.

Which of the following is a possibility for filing a complaint and seek legal interventions/remedies in your country?

In healthcare settings:
YES/NO
If yes, please provide details:

At local health authorities:
YES/NO
If yes, please provide details:

At national health authorities:
YES/NO
If yes, please provide details:

Other not health specific local or national authority working on discrimination and equal treatment issues:
YES/NO
If yes, please provide details:

Ministry of Health:
YES/NO
If yes, please provide details:

Legal interventions:
YES/NO
If yes, please provide details:

Rights and obligations of PLHIV in healthcare settings

In this section, we would like to collect information on the rights and obligations of PLHIV in healthcare settings, especially on mandatory disclosure of one´s HIV-status and how this information is handled by the medical staff.

Is there a legal obligation for PLHIV to disclose their HIV-status to healthcare workers?
YES/NO
If YES, please provide details:

When one´s HIV-status is disclosed in a healthcare setting, who can access this information?
Please provide details of where and how data is stored and who can access them.

Is one´s health data, including HIV-status, accessible in other settings related to health (e.g. pharmacies, health insurance companies etc.)? YES/NO
If YES, please provide details about other health related settings where one´s HIV-status can be accessed by staff (e.g. pharmacy, health insurance, etc.) and how data is protected from being accessed by third parties.

Prohibition or limitations on working in specific healthcare professions for PLHIV

Are there any professions in healthcare that PLHIV cannot do/or can only do under certain conditions in your country? YES/NO
If YES, please provide details: which professions are affected and whether there is total prohibition or limitations subject to certain conditions:

Private insurance policies concerning PLHIV

Are PLHIV able to take out health/health care related insurances? YES/NO
If NO, please provide details on the policies (e.g. mandatory health check-ups including HIV-test, mandatory disclosure of HIV-status, etc.):

Are PLHIV who already have health/health care related insurances able to get coverage for health issues connected to their HIV-status? YES/NO
Please provide details if any:

PART 2: DISCRIMINATION AGAINST PLHIV IN HEALTHCARE SETTINGS

In this section, we would like to collect information regarding what is happening in practice. Please include findings of national/regional/local survey/studies if any on experiences of PLHIV in healthcare settings. In case there are not reports available, please include information that you acquired via client or community contact (with PLHIV and/or their representatives, including organisation).

Most typical forms of discrimination reported:

a) Refusal of treatment or care – YES/NO
If YES, please provide details and/or examples

b) Separation from other patients – YES/NO
If YES, please provide details and/or examples

c) Providing treatment at the end of the office hours/day – YES/NO
If YES, please provide details and/or examples

d) Other
If YES, please provide details and/or examples

What are the most typical places/sites/disease areas where discrimination against PLHIV is taking place/reported:

a) At the general practitioners – YES/NO
If YES, please provide details and/or examples

b) At specialist outpatient care – YES/NO
If YES, please provide details and/or examples of which specialist discriminate most frequently

c) During hospital stay – YES/NO
If YES, please provide details and/or examples of which departments discriminate most frequently

d) In dental care – YES/NO
If YES, please provide details and/or examples

e) Other– YES/NO
If YES, please provide details and/or examples

PART 3: CASE STUDIES

In this section, please share cases of discrimination against PLHIV in healthcare settings, which you are aware of, and have made an impact on legislation/policies and/or practice in your country.

Please describe the case(s):

PART 4: GOOD PRACTICE

In this section we would like to collect information about good practice, addressing the issue of discrimination against PLHIV in healthcare settings. These can include but not limited to advocacy work towards changing legislation/policies, strategic litigation, trainings both for healthcare workers and PLHIV, etc.

Please describe the good practice(s), if available, add relevant links/documents, etc.:

PART 5: BAD PRACTICE/ NATIONAL CONTEXT

In this section we would like to collect information about bad practice that do not qualify as direct or indirect discrimination against PLHIV in healthcare settings. Additionally, we would like to hear from you if there are any particular issues or priorities for your national context.

Please describe bad practice/priorities issues in the national context:

PART 6: SARS-COV-2/COVID-19 PUBLIC HEALTH MEASURES IMPACT ON PEOPLE LIVING WITH HIV

In this section we would like to collect information about public health measures, change of legislation and/or guidelines, protocols etc. in response to the COVID-19 pandemic that have affected PLHIV disproportionately and/or discriminatively.

Please describe these measures/changes, and how they have affected PLHIV:

REFERENCES

1 WHO. Global HIV/AIDS Response: Epidemic update and health sector progress towards Universal Access: Progress report 2011. Available at:
https://apps.who.int/iris/bitstream/handle/10665/44787/9789241502986_eng.pdf?sequence=1&isAllowed=y
UNAIDS. Guidance note: Reduction of HIV-related stigma and discrimination. Available at:
https://www.unaids.org/sites/default/files/media_asset/2014unaidsguidancenote_stigma_en.pdf

2 WHO. Constitution of the World Health Organization. Available at:
https://www.who.int/governance/eb/who_constitution_en.pdf

3 Article 25 of the Universal Declaration of Human Rights. Available at:
https://www.un.org/en/about-us/universal-declaration-of-human-rights

4 Article 12(1) of the International Covenant on Economic, Social and Cultural Rights. Available at:
https://www.ohchr.org/en/professionalinterest/pages/cescr.aspx

5 UN. Declaration of Commitment on HIV/AIDS. Available at:
https://www.hivlawandpolicy.org/resources/declaration-commitment-hivaids-ga-res-s-262-un-doc-aress-262-2001

6 UN. Political Declaration on HIV/AIDS. Available at:
https://www.hivlawandpolicy.org/resources/political-declaration-hivaids-ga-res-60262-un-doc-ares60262-2006

7 WHO. Action plan for the health sector response to HIV in the WHO European Region. Available at:
https://www.euro.who.int/__data/assets/pdf_file/0007/357478/HIV-action-plan-en.pdf

Council of Europe. European Convention on Human Rights. Available at:
8 https://www.echr.coe.int/documents/convention_eng.pdf

9 Council of Europe. The Court in Brief. Available at:
https://www.echr.coe.int/Documents/Court_in_brief_ENG.pdf

10 ECtHR. L.C.B. v United Kingdom. App. No. 23413/94.
ECtHR. Roche v United Kingdom. App. No. 32555/96.
ECtHR. Pentiacova and 48 Others v Moldova. App. No. 14462/03

11 ECtHR. Mehmet Sentürk and Bekir Sentürk v Turkey. App. No. 13423/09.

12 Council of Europe. Charter of Signatures and ratifications of Treaty 177. Available at:
https://www.coe.int/en/web/conventions/full-list?module=signatures-by-treaty&treatynum=177

13 Council of Europe. The European Social Charter. Available at:
https://www.coe.int/en/web/conventions/full-list?module=treaty-detail&treatynum=035

14 Council of Europe. Charter of Signatures and ratifications of Treaty 035. Available at: https://www.coe.int/en/web/conventions/full-list?module=signatures-by-treaty&treatynum=035

15 Council of Europe. The European Social Charter (Revised). Available at: https://rm.coe.int/168007cf93

16 Council of Europe. Charter of Signatures and ratifications of Treaty 163. Available at: https://www.coe.int/en/web/conventions/full-list?module=signatures-by-treaty&treatynum=163

17 The original European Social Charter does not mention prevention of accidents.

18 Secretariat of the European Social Charter. Information document: The Right to Health and the European Social Charter. Available at: https://www.ilga-europe.org/sites/default/files/right_to_health_and_esc.pdf

19 EU. Charter of Fundamental Rights of the European Union. Available at: https://www.europarl.europa.eu/charter/pdf/text_en.pdf

20 UN. Convention on the Rights of Persons with Disabilities. Available at: www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities.html

21 UN. Status of signatories of the Convention on the Rights of Persons with Disabilities. Available at: https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-15&chapter=4&clang=_en

22 UN. Status of signatories of the Optional Protocol to the Convention on the Rights of Persons with Disabilities. Available at: https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-15-a&chapter=4&clang=_en

23 ECtHR. Glor v Switzerland. App. No. 13444/04.

24 UN. Declaration of Commitment on HIV/AIDS. Available at: https://www.hivlawandpolicy.org/resources/declaration-commitment-hivaids-ga-res-s-262-un-doc-aress-262-2001

25 UN. Fact sheet No. 31: The Right to Health. Available at: https://www.ohchr.org/documents/publications/factsheet31.pdf

26 ECtHR. Kiyutin v Russia. App. No. 2700/10.

27 ECtHR. I.B. v Greece. App. No. 552/10.

28 Although, the Republic of Kyrgyzstan is not a member state of the Council of Europe, it is currently eligible to be the so called “Partner of Democracy“. It also participates in two European Union/Council of Europe regional initiatives for Central Asia (namely: “Central Asia Rule of Law Programme” and “Support to reforms of electoral legislation and practice and regional Human Rights instruments and mechanisms in countries of Latin America, Central Asia and Mongolia”).

29 UN Department of Economic and social Affairs, Population Division. World Population Prospects 2019. Available at: https://population.un.org/wpp/Download/Standard/Population/

30 Data provided by the Czech Statistical Office summarising the current 90-90-90 target excluding patients who refuse to undergo treatment.

31 Constitutional Act. No. 2/1993 Coll., the Charter of Fundamental Rights and Freedoms. Available at: https://www.psp.cz/docs/laws/listina.html

32 Act No. 198/2009 Coll., on Equal Treatment and Legal Remedies for Protection against Discrimination and on Amendment of Certain Laws, as amended. Available at: https://ppropo.mpsv.cz/zakon_198_2009

33 Judgment of the Municipal court in Prague dated November 9th, 2017. File No. 20 Co 343/2017-279.

34 Act No. 258/2000 Coll., on the Protection of Public Health, as amended. Available at: https://ppropo.mpsv.cz/zakon_258_2000

35 Act No. 361/2003 Coll., on the Civil Service Employment of Members of the Security Forces, as amended. Available at: https://ppropo.mpsv.cz/zakon_361_2003

36 Act No. 372/2011 Coll., on Healthcare Services and Conditions for their provision, as amended. Available at: https://ppropo.mpsv.cz/zakon_372_2011

37 CMC Statute No. 4 – Disciplinary Code. Available at: https://www.lkcr.cz/stavovske-predpisy-clk-212.html

38 CMC Statute No. 10 – Ethical Codex. Available at: https://www.lkcr.cz/stavovske-predpisy-clk-212.html

39 CSC Statute No. 1/2010 – Disciplinary Code. Available at: https://www.dent.cz/o-nas/stavovske-predpisy/

40 Public Defender of Rights. Decision-making of Czech Courts in discrimination disputes 2015-2019. Available at: https://www.ochrance.cz/uploads-import/ESO/Decision-making%20of%20Czech%20courts%20in%20discrimination%20disputes%202015%E2%80%932019.pdf

41 Act No. 373/2011 Coll., on Specific Healthcare Services, as amended. Available at: https://ppropo.mpsv.cz/zakon_373_2011

42 Act No. 277/2009 Coll., the Insurance Act, as amended. Available at: https://www.zakonyprolidi.cz/cs/2009-277

43 Act No. 89/2012 Coll., the Civil Code, as amended. Available at: https://www.zakonyprolidi.cz/cs/2012-89

44 Judgment of the District Court in Pilsen – city dated August 1st, 2018. File No. 13 C 47/2018.

45 Judgment (second instance) of the Regional Court in Pilsen dated December 12th, 2018. File No. 18 Co 240/2018.

46 Resolution of the District Court in Prague 7 dated November 24th, 2015. File No. 29 C 274/2015.

47 Judgment of the Municipal court in Prague dated November 9th, 2017. File No. 20 Co 343/2017-279.

48 Ministry of Health. National HIV/AIDS programme of 2018-2022. Available at: https://www.infekce.cz/Standardy/NarodProg18.pdf

49 UN Department of Economic and social Affairs, Population Division. World Population Prospects 2019. Available at: https://population.un.org/wpp/Download/Standard/Population/

50 As reported by Positiiviset ry and HivFinland.

51 WHO Regional Office for Europe. HIV/AIDS surveillance in Europe 2021: 2020 data. Available at: https://www.euro.who.int/en/health-topics/communicable-diseases/hivaids/publications/2021/hivaids-surveillance-in-europe-2021-2020-data

52 Constitution of Finland (No. 731/1999). Available at: https://finlex.fi/en/laki/kaannokset/1999/en19990731.pdf

53 The Non-discrimination Act (No. 1325/2014; Finland). Available at: https://www.finlex.fi/fi/laki/alkup/2014/20141325

54 The Act on the status and Rights of Patients (No. 785/1992; Finland). Available at: https://www.finlex.fi/en/laki/kaannokset/1992/en19920785

55 The Criminal Code (No. 39/1889; Finland). Available at: https://finlex.fi/en/laki/kaannokset/1889/en18890039?search%5Btype%5D=pika&search%5Bkieli%5D%5B0%5D=en&search%5Bpika%5D=rikoslaki

56 Non-Discrimination Ombudsman. Help from the Non-Discrimination Ombudsman. Available at: https://syrjinta.fi/en/help-from-the-non-discrimination-ombudsman

57 Parliamentary Ombudsman of Finland. The Complaint. Available at: https://www.oikeusasiamies.fi/en_GB/web/selkosuomi/the-complaint

58 The Data Protection Act (No. 1050/2018; Finland). Available at: https://www.finlex.fi/en/laki/kaannokset/2018/en20181050.pdf

59 UN Department of Economic and social Affairs, Population Division. World Population Prospects 2019. Available at: https://population.un.org/wpp/Download/Standard/Population/

60 As reported by AIDES.

61 Constitution of France (dated October 4th, 1958). Available at: https://www.conseil-constitutionnel.fr/sites/default/files/as/root/bank_mm/anglais/constiution_anglais_oct2009.pdf

62 Article 71-1 of the Constitution of France (as introduced by the amendment of Constitutional Law No. 2008-724, on the Creation of a Defender of Rights). Available at: https://www.conseil-constitutionnel.fr/sites/default/files/as/root/bank_mm/anglais/constiution_anglais_oct2009.pdf

63 The Act on Patients' Rights (France). Available at: https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000000227015/

64 The Public Health Code (France). Available at: https://www.legifrance.gouv.fr/codes/texte_lc/LEGITEXT000006072665?init=true&page=1&query=Code+de+la+sant%C3%A9+publique&searchField=ALL&tab_selection=all

65 A National Board of medical practitioners is a legal entity that gathers members of the same profession within a territory (mostly private healthcare practitioners). There are National Boards for doctors, dentists, midwives, as well as pharmacists, medical nurses, physiotherapist, etc. The National Boards apply their own disciplinary rules and may sanction their members who have violated the rules of medical ethics.

66 Similar rules exist for dentists.

67 The Criminal Code (France). Available at: https://www.legifrance.gouv.fr/codes/texte_lc/LEGITEXT000006070719?etatTexte=VIGUEUR&etatTexte=VIGUEUR_DIFF

68 Decree No. 2016-1009. Available at: https://www.legifrance.gouv.fr/loda/id/LEGIARTI000032929854/#LEGIARTI000032929854

69 The CDF is the national body with the widest membership base of dentists and its magazine is well distributed.

70 TRT5. VIH et COVID-19 – Pour une vaccination des PVVIH immunodéprimées. Available at: https://www.trt-5.org/covid-19-et-vih/

71 AIDES. Rapport discriminations 2020. Available at: https://www.aides.org/publication/rapport-discriminations-2020

72 Santé publique France. Effet de la pandémie COVID-19. Available at: https://www.santepubliquefrance.fr/presse/2021/effet-de-la-pandemie-covid-19-le-nombre-de-depistages-et-de-nouveaux-diagnostics-du-vih-est-en-baisse-en-2020.-connaitre-son-statut-serologique-c

73 UN Department of Economic and social Affairs, Population Division. World Population Prospects 2019. Available at: https://population.un.org/wpp/Download/Standard/Population/

74 As reported by the Centre for Information and Counseling on Reproductive Health – Tanadgoma.

75 Law of Georgia on Health Care. Available at: https://matsne.gov.ge/en/document/view/29980?publication=37

76 Law of Georgia on Patient Rights. Available at: https://matsne.gov.ge/en/document/view/16978?publication=7

77 Law of Georgia on the Elimination of All Forms of Discrimination. Available at: https://matsne.gov.ge/en/document/view/2339687?publication=0

78 The Criminal Code of Georgia. Available at: https://matsne.gov.ge/en/document/view/16426?publication=209

79 Law of Georgia on HIV Infection/AIDS. Available at: https://matsne.gov.ge/en/document/view/90088?publication=3

80 Law of Georgia on the Legal Status of Aliens and Stateless Persons. Available at: https://matsne.gov.ge/en/document/view/2278806?publication=12

81 Order of the Minister of Labour, Health, and Social Affairs of Georgia No. 300/N. Available at: https://matsne.gov.ge/ka/document/view/67696?publication=0

82 Order of the Minister of Labour, Health, and Social Affairs of Georgia No. 01-64/6. Available at: https://matsne.gov.ge/ka/document/view/1544211?publication=9

83 Article 363 of the Civil Procedure Code of Georgia. Available at: https://matsne.gov.ge/en/document/view/29962?publication=134

84 Tanadgoma, UNFPA, NCDC. Access of Key Populations, People Living with HIV and TB to Medical, Prevention and Social Services During COVID-19 Pandemic. Available at: https://georgia.unfpa.org/sites/default/files/pub-pdf/covid-19-kps-plhiv-tb_eng.pdf

85 UN Department of Economic and social Affairs, Population Division. World Population Prospects 2019. Available at: https://population.un.org/wpp/Download/Standard/Population/

86 As reported by Deutsche Aidshilfe.

87 Robert Koch Institut. Epidemiologisches Bulletin: HIV-Jahresbericht 2019-2020. Available at: https://www.rki.de/DE/Content/Infekt/EpidBull/Archiv/2021/Ausgaben/31_21.pdf?__blob=publicationFile

88 The Basic Law of the Federal Republic of Germany. Available at: https://www.gesetze-im-internet.de/englisch_gg/

89 Judgment of the Federal Labour Court dated December 19th, 2013. No. 6 AZR 190/12.

90 The General Equal Treatment Act (Germany). Available at: https://www.antidiskriminierungsstelle.de/SharedDocs/downloads/DE/publikationen/AGG/agg_gleichbehandlungsgesetz.pdf?__blob=publicationFile

91 Berlin State Anti-Discrimination Act (Germany). Available at: https://www.hwr-berlin.de/fileadmin/portal/Dokumente/HWR-Berlin/Organisation/Frauenbeauftragte/LADG.pdf

92 The Federal Data Protection Act (Germany). Available at: https://www.gesetze-im-internet.de/englisch_bdsg/

93 The Social Security Code – Book X (Germany). Available at: https://www.gesetze-im-internet.de/sgb_10/

94 R Holger F. Rabenau et al. Empfehlungen der Deutschen Vereinigung zur Bekämpfung der Virus-krankheiten (DVV) e.V. und der Gesellschaft für Virologie (GfV) e.V. Available at: https://edoc.rki.de/bitstream/handle/176904/1471/23UOZT6sKnns.pdf?sequence=1&isAllowed=y

95 Deutsche Aidshilfe, Institut für Demokratie und Zivilgesellschaft. Positive Stimmen 2.0: Living with HIV, breaking down discrminiation. Available at: https://hiv-diskriminierung.de/sites/default/files/documents/broschuere_englisch_final.pdf

96 The Survey involved almost 500 HIV+ interviewees and around 1000 online submissions.

97 Bundesministerium für Gesundheit. Strategie zur Eindämmung von HIV, Hepatitis B und C und anderen sexuell übertragbaren Infektionen. Available at: https://www.bundesgesundheitsministerium.de/fileadmin/Dateien/5_Publikationen/Praevention/Broschueren/Strategie_BIS_2030_HIV_HEP_STI.pdf

98 Deutsche Aidshilfe. Keine Angst vor HIV, HBV und HCV!. Available at: https://www.bzaek.de/fileadmin/PDFs/Fachangestellte/Keine_Angst_vor_HIV.pdf

99 Deutsche Aidshilfe. Keine Angst vor HIV in der Zahnarztpraxis!. Available at: https://www.youtube.com/watch?v=zOZrJw_aleQ

100 Deutsche Aidshilfe. Informationen zu HIV für die medizinische Praxis. Available at: https://www.aidshilfe.de/shop/pdf/11879

101 Deutsche Aidshilfe. HIV positive Patient*innen gut und vertrauensvoll behandeln (YouTube Video). Available at: https://www.aidshilfe.de/shop/hiv-positive-patientinnen-gut-vertrauensvoll-behandeln-youtube-video

102 UN Department of Economic and social Affairs, Population Division. World Population Prospects 2019. Available at: https://population.un.org/wpp/Download/Standard/Population/

103 Data reported by the Italian Focal Point in the Dublin Declaration monitoring questionnaire 2021.

104 Istituto Superiore di Sanità. Notiziario dell'Istituto Superiore di Sanità: Aggiornamento delle Nuove Diagnosi di infezione da HIV e dei Casi di AIDS in Italia al 31 Dicember 2020. Available at: https://www.salute.gov.it/imgs/C_17_notizie_5705_0_file.pdf

105 Constitution of the Italian Republic. Available at: https://www.senato.it/documenti/repository/istituzione/costituzione_inglese.pdf

106 Law No. 833/1978, on the Establishment of the National Health Service, as amended (Italy). Available at: https://www.gazzettaufficiale.it/eli/id/1978/12/28/078U0833/sg

107 Law No. 135/1990, on the Urgent interventions Programme for the Prevention and Fight Against AIDS, as amended (Italy). Available at: https://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:legge:1990;135

108 The Code of Medical Ethics (Italy). Available at: https://portale.fnomceo.it/wp-content/uploads/2020/04/CODICE-DEONTOLOGIA-MEDICA-2014-e-aggiornamenti.pdf

109 The Civil Code (No. 262/1942, as amended; Italy). Available at: https://www.gazzettaufficiale.it/sommario/codici/codiceCivile

110 Decree-Law No. 196/2003 (Italy). Available at: https://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.legislativo:2003-06-30;196!vig

111 Judgment of the Constitutional Court of the Italian Republic dated June 2nd, 1994. No. 218.

112 UN Department of Economic and social Affairs, Population Division. World Population Prospects 2019. Available at: https://population.un.org/wpp/Download/Standard/Population/

113 As reported by the association Partner Network.

114 Constitution of the Kyrgyz Republic (entered into force by Law of the Kyrgyz Republic No. 59/2021. Available at: http://cbd.minjust.gov.kg/act/view/ru-ru/112213?cl=ru-ru

115 Law of the Kyrgyz Republic No. 149/2005, on HIV/AIDS in the Kyrgyz Republic, as amended. Available at: http://cbd.minjust.gov.kg/act/view/ru-ru/1747

116 Law of the Kyrgyz Republic No. 6/2005, on the Protection of Health of Citizens in the Kyrgyz Republic, as amended. Available at: http://cbd.minjust.gov.kg/act/view/ru-ru/1602

117 Law of the Kyrgyz Republic No. 19/2017, the Criminal Code of the Kyrgyz Republic, as amended. Available at: http://cbd.minjust.gov.kg/act/view/ru-ru/111527

118 Law of the Kyrgyz Republic No. 67/2007, on the Procedure for Considering Citizens' Appeals, as amended. Available at: http://cbd.minjust.gov.kg/act/view/ru-ru/202100?cl=ru-ru

119 Law of the Kyrgyz Republic No. 106/2004, the Labour Code of the Kyrgyz Republic. Available at: http://cbd.minjust.gov.kg/act/view/ru-ru/1505

120 Decree of the Government of the Kyrgyz Republic No. 447/2003, on the Order of Management of the Healthcare System in the Cities of Bishkek, Osh and the Regions of the Kyrgyz Republic. Available at: http://cbd.minjust.gov.kg/act/view/ky-kg/54589

121 Law of the Kyrgyz Republic No. 136/2002, on the Ombudsman of the Kyrgyz Republic, as amended. Available at: http://cbd.minjust.gov.kg/act/view/ru-ru/1093

122 Law of the Kyrgyz Republic No. 143/2020, on the Prosecutor's Office of the Kyrgyz Republic, as amended. Available at: http://cbd.minjust.gov.kg/act/view/ru-ru/112108

123 Law of the Kyrgyz Republic No. 13/2017, the Administrative Procedure Code of the Kyrgyz Republic, as amended. Available at: http://cbd.minjust.gov.kg/act/view/ru-ru/111520?cl=ru-ru

124 Law of the Kyrgyz Republic No. 81/2013, on the Status of Medical Workers, as amended. Available at: http://cbd.minjust.gov.kg/act/view/ru-ru/203889?cl=ru-ru

125 Order of the Ministry of Health of the Kyrgyz Republic No. 192/2018

126 Order of the Ministry of Health of the Kyrgyz Republic No. 75/2020, on the approval of the Clinical Guidelines "Treatment of HIV infection and comorbid conditions at all levels of medical care in the Kyrgyz Republic"

127 Order of the Ministry of Health of the Kyrgyz Republic No. 542/2019, on approval of mechanisms for decentralization of medical services to people living with HIV in the Kyrgyz Republic

128 Special list of professions and positions in which the employment of people living with HIV/AIDS is not allowed as approved by the Decree of the Government of the Kyrgyz Republic No. 296/2006. Available at: http://cbd.minjust.gov.kg/act/view/ru-ru/57395?cl=ru-ru

129 Rules for medical screening to detect human immunodeficiency virus, medical records and monitoring of persons with positive and dubious results of HIV testing in the Kyrgyz Republic as approved by the Decree of the Government of the Kyrgyz Republic No. 296/2006. Available at: http://cbd.minjust.gov.kg/act/view/ru-ru/57394?cl=ru-ru

130 REAct Kyrgyzstan. Аналитический отчет за первое полугодие 2020: Нарушения прав людей, живущих с ВИЧ и представителей ключевых групп. Available at: https://react-aph.org/wp-content/uploads/2021/01/analiticheskij_otchet_za_pervoe_polugodie_2020_react_kyrgyzstan.pdf

131 REAct Kyrgyzstan. Violations of key populations rights in Kyrgyzstan: Evidence collected through the REAct tool during 2020. Available at: https://react-aph.org/wp-content/uploads/2021/07/zvit-reakt-kyrgyzstan-eng-final-06.07.2021.pdf

132 Research report: Definition of the Human Stigma Index of PLHIV and key populations in the Kyrgyz Republic 2020.

133 Paris declaration on Fast-Track Cities (dated December 1st, 2014). Available at: https://www.iapac.org/files/2020/09/Paris-Declaration-3.0-December-2019-1.pdf

134 Global Partnership for Action to Eliminate All Forms of HIV-Related Stigma and Discrimination (dated December 10th, 2018). Available at: https://www.unaids.org/en/resources/documents/2018/global-partnership-hiv-stigma-discrimination

135 Dublin Declaration on Partnership to Fight HIV/AIDS in Europe and Central Asia (dated February 24th, 2004). Available at: https://www.osce.org/secretariat/29873

136 Decision of the Constitutional Chamber of the Supreme Court of the Kyrgyz Republic dated January 27th, 2021. No. 03-r.

137 Programme of the Government of the Kyrgyz Republic on Overcoming HIV infection in the Kyrgyz Republic for 2017-2021, as approved by the Resolution of the Government of the Kyrgyz Republic No. 852/17. Available at: http://cbd.minjust.gov.kg/act/view/ru-ru/11590?cl=ru-ru

138 Sotsium. Вакцина от COVID-19 для людей, живущих с ВИЧ. Available at: http://sotsium.kg/vich/

139 UN Department of Economic and social Affairs, Population Division. World Population Prospects 2019. Available at: https://population.un.org/wpp/Download/Standard/Population/

140 As reported by Stronger Together.

141 Vladimir Mikikj et al. The Continuum of HIV Care in North Macedonia: Assessment Report for 2017 with a Special Focus on Men Who Have Sex with Men. Available at: https://zp.mk/wp-content/uploads/2020/08/the-continuum-of-hiv-care-in-north-macedonia-in-2017.pdf

142 Institute of Public Health. Annual Reports on Activities and Results within the National HIV Programme. Available at: http://iph.mk/multimedija/dokumenti/godisni-izvestai/

143 Constitution of the Republic of North Macedonia (Official Gazette of the R. of North Macedonia No. 52/1991). Available at: https://www.sobranie.mk/content/Odluki%20USTAV/UstavSRSM.pdf

144 Law on Prevention and Protection Against Discrimination (Official Gazette of the R. of North Macedonia No. 258/2020, as amended). Available at: https://dejure.mk/zakon/zakon-za-sprechuvanje-i-zashtita-od-diskriminacija-1

145 Law on Protection of Patients' Rights (Official Gazette of the R. of North Macedonia No. 82/08, as amended). Available at: http://zdravstvo.gov.mk/zakon-za-zashtita-na-prava-na-pacienti/

146 Law on Health Protection (Official Gazette of the R. of North Macedonia No. 43/12, as amended). Available at: http://zdravstvo.gov.mk/zakon-za-zdravstvenata-zashtita/

147 Law on Social Protection (Official Gazette of the R. of North Macedonia No. 104/19, as amended). Available at: https://mtsp.gov.mk/zakoni.nspx

148 Law on Personal Data Protection (Official Gazette of the R. of North Macedonia No. 42/20, as amended). Available at: https://dzlp.mk/domasni_propisi

149 The Criminal Code (Official Gazette of the R. of North Macedonia no. 37/96, as amended). Available at: https://jorm.gov.mk/category/zakoni-i-podzakonski-akti/zakoni/

150 Law on the Ombudsman (Official Gazette of the R. of North Macedonia No. 60/2003, as amended). Available at: https://dejure.mk/zakon/zakon-za-narodniot-pravobranitel

151 Article 23, paragraph 5, line 20 of the Additional Conditions for Combined and Private Voluntary Health Insurance for Hospital and Non-hospital Treatment (MedUNIQA). Available at: https://www.uniqa.mk/repository/media_cnt/UNIQA-Macedonia-2018/Dopolnitelni~20uslovi~20za~20kombinirano~20dopolnitelno~20i~20privatno~20dobrovolno~20zdravstveno~20osiguruvanje~20za~20bolnicko~20i~20vonbolnicko~20lekuvanje~20MedUNIQACMYK_hcm0104538.pdf

152 Article 4, paragraph 1, line 1, paragraph 4, Additional Conditions for Insurance in Case of Terminal Diseases to the Life Insurance (WINNER Life). Available at: https://winnerlife.mk/wp-content/uploads/2020/07/2019-%D0%94%D0%BE%D0%BF%D0%BE%D0%BB%D0%BD%D0%B8%D1%82%D0%B5%D0%BB%D0%BD%D0%B8-%D1%83%D1%81%D0%BB%D0%BE%D0%B2%D0%B8-%D0%B7%D0%B0-%D0%BE%D1%81%D0%B8%D0%B3%D1%83%D1%80%D1%83%D0%B2%D0%B0%D1%9A%D0%B5-%D0%B2%D0%BE-%D1%81%D0%BB%D1%83%D1%87%D0%B0%D1%98-%D0%BD%D0%B0-%D0%BD%D0%B0%D1%81%D1%82%D0%B0%D0%BF%D1%83%D0%B2%D0%B0%D1%9A%D0%B5-%D0%BD%D0%B0-%D1%82%D0%B5%D1%88%D0%BA%D0%B8-%D0%B1%D0%BE%D0%BB%D0%B5%D1%81%D1%82%D0%B8-01.09.2019.pdf

153 Article 8, paragraph 18, lines 2 and 3 of the Additional Conditions for Insurance of Terminal Diseases (Triglav Insurance). Available at: https://www.triglav.mk/wps/wcm/connect/c73c6e9f-06cd-4dfb-8355-8be762b6f5e9/posebni+uslovi+teski+bolesti.pdf?MOD=AJPERES&CACHEID=c73c6e9f-06cd-4dfb-8355-8be762b6f5e9

154 Article 4, paragraph 1, line 1 of the Law on State Sanitary and Health Inspection (Official Gazette of the R. of North Macedonia No.71/06, as amended). Available at: http://zdravstvo.gov.mk/zakon-za-sanitarnata-i-zdravstvenata-inspekcija/

155 UN Department of Economic and social Affairs, Population Division. World Population Prospects 2019. Available at: https://population.un.org/wpp/Download/Standard/Population/

156 Direção-Geral da Saúde, Instituto Nacional de Saúde Doutor Ricardo Jorge. Infeção VIH e SIDA em Portugal – 2020. Available at: https://www.insa.min-saude.pt/relatorio-infecao-vih-e-sida-em-portugal-2020/

157 Ibid

158 Due to the COVID-19 pandemic, the 2019 data was not yet updated by the Portuguese National Health Authority for the years of 2020 and 2021. It is expected that the number of new HIV infections has increased in these past two years.

159 Constitution of Portugal (seventh revision). Available at: https://www.wipo.int/edocs/lexdocs/laws/en/pt/pt045en.pdf

160 Judgment of the Portuguese Supreme Court of Justice dated December 11th, 2011. No. 343/04.4TTBCL.P1.S1.

161 Law No. 46/2006, as amended (Portugal). Available at: https://dre.pt/dre/detalhe/lei/46-2006-540797

162 The Labour Code (No. 7/2009, as amended; Portugal). Available at: https://dre.pt/dre/legislacao-consolidada/lei/2009-34546475

163 The Criminal Code (No. 48/95, as amended; Portugal). Available at: https://dre.pt/dre/legislacao-consolidada/decreto-lei/1995-34437675

164 The complaint book is also available on-line in English at https://www.livroreclamacoes.pt/inicio..

165 Decree-Law No. 74/2017, as amended (Portugal). Available at: https://data.dre.pt/web/guest/pesquisa/-/search/107541411/details/maximized

166 Online complaint book for healthcare settings is available at https://www.ers.pt/pt/utentes/formularios/reclamacoes-online/.

167 Regulation of the Health Authority of Portugal No. 021/2017. Available at: http://www.ipst.pt/files/IPST/INFORMACAO_DOCUMENTACAO/Norma_21_2017_DGS_especificacoes_sistema_qualidade_servicos_sangue_medicina_transfusional.pdf.

168 Law No. 691/XIV/2 (Portugal). Available at: https://app.parlamento.pt/webutils/docs/doc.pdf?path=6148523063446f764c324679626d56304c334e706447567a4c31684a566b786c5a79394562324e3162575756447397a5357357059326c6864476c32595339694e325a6c596a55304f5330784e446c6c4c5451325a575174596a426b5a53316a4e7a686d4d324577593251785a5463755a47396a&fich=b7feb549-149e-46ed-b0de-c78f3a0cd1e7.doc&Inline=true

169 Frequent reports of this form of discrimination date to several years ago. The situation was addressed, tackled and currently there is no record of recurrence.

170 Order of the Ministry of Health No. 7402/2013 (Portugal). Available at: https://dre.pt/dre/detalhe/despacho/7402-2013-2947076

171 GAT Portugal. Publications: Leaflets. Available at: https://www.gatportugal.org/publicacoes/folhetos

172 SER+, GNP+. Avaliação do Índice de Estigma das PVV em Portugal. Available at: https://cad.vih.pt/wp-content/uploads/2020/06/stigma-index-portugal-relatrio-final-portugus-1-1.pdf

173 Ministry of Health of Portugal. Campanha de Vacinação Contra a COVID-19. Available at: https://covid19.min-saude.pt/wp-content/uploads/2021/05/i027514.pdf

174 UN Department of Economic and social Affairs, Population Division. World Population Prospects 2019. Available at: https://population.un.org/wpp/Download/Standard/Population/

175 HIV, STI and Hepatitis Surveillance Unit. Actualización del Continuo de Atención del VIH enEspaña, 2017-2019. Available at: https://www.mscbs.gob.es/ciudadanos/enfLesiones/enfTransmisibles/sida/vigilancia/ESTIMACION_DEL_CONTINUO_DE_ATENCIoN_DEL_VIH_EN_ESPAnA_Nov2020.pdf

176 Ministry of Health of Spain. Vigilancia epidemiológica. Available at: https://www.mscbs.gob.es/ciudadanos/enfLesiones/enfTransmisibles/sida/vigilancia/home.htm

177 Judgment of the Spanish Constitutional Court dated May 26th, 2008. No. 62/2008.

178 Law No. 33/2011, on General Public Health, as amended (Spain). Available at: https://www.boe.es/buscar/doc.php?id=BOE-A-2011-15623

179 Law No. 4/2018, which modifies the revised text of the General Law on the Protection of Consumers and Users and other complementary laws (Spain). Available at: https://www.boe.es/buscar/doc.php?id=BOE-A-2018-7832

180 https://www.sanidad.gob.es/ciudadanos/enfLesiones/enfTransmisibles/sida/PACTOSOCIAL/Datos_adjuntos_sin_titulo_00397.pdf

181 Royal Decree-Law No. 7/2018, on Universal Access to the National Health System, as amended (Spain). Available at: https://www.boe.es/buscar/doc.php?id=BOE-A-2018-10752

182 Law No. 41/2002, on the Regulation of Basic Patient Autonomy and Rights and Obligations Regarding Information and Clinical documentation, as amended (Spain). Available at: https://www.boe.es/buscar/act.php?id=BOE-A-2002-22188

183 Law No. 3/2018, on Data Protection and Digital Rights, as amended (Spain). Available at: https://www.boe.es/buscar/doc.php?id=BOE-A-2018-16673

184 TS of March 17, nº 250/2021, rec. 2463/2019.

185 Law No. 4/2018, which modifies the revised text of the General Law on the Protection of Consumers and Users and other complementary laws (Spain). Available at: https://www.boe.es/buscar/doc.php?id=BOE-A-2018-7832

186 Law No. 50/1980, on the Insurance Contract, as amended (Spain). Available at: https://www.boe.es/buscar/act.php?id=BOE-A-1980-22501

187 Bitia Buenaño Mora et al. Evaluación de la implementación y desarrollo de la Ley 4/2018, que modificó la Ley 50/1980, de 8 de octubre, de Contrato de Seguro. Available at: https://cesida.org/wp-content/uploads/2020/07/INFORME-CESIDA_Valencia.pdf

188 The access of people with HIV to the contracting of insurance. Available at: https://www.academia.edu/69478944/EL_ACCESO_DE_LAS_PERSONAS_CON_VIH_A_LA_CONTRATACI%C3%93N_DE_SEGUROS

189 For more detail, one can be referred to a local study: https://www.academia.edu/69489826/_Un_a_estudiante_extracomunitario_a_tiene_derecho_a_la_asistencia_gratuita_en_Espa%C3%B1a

190 National AIDS Plan, Ministerio de Sanidad, Consumo y Bienestar Social. Social Pact for the Equal Treatment and Non-discrimination Associated with HIV. Available at: https://pactosocialvih.es/wp-content/uploads/PACTO-SOCIAL-Ingles.pdf

191 The complete series of brochures of the Legal Clinic of the University of Alcalá is available at: https://uah-es.academia.edu/ClinicaLegalUniversidaddeAlcala

192 The complete series of brochures of the Legal Clinic of the University of Alcalá is available at: https://masmorbomenosriesgo.es/author/clinicalegaluniversidadalcala/.

193 UN Department of Economic and social Affairs, Population Division. World Population Prospects 2019. Available at: https://population.un.org/wpp/Download/Standard/Population/

194 UK Health Security Agency. HIV testing, new HIV diagnoses, outcomes and quality of care for people accessing HIV services: 2021 report. Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1037215/hiv-2021-report.pdf

195 Ibid

196 National AIDS Trust. HIV Outbreak in Glasgow. Available at: https://www.nat.org.uk/sites/default/files/HIV_outbreak_in_glasgow_1.pdf

197 The Human Rights Act 1998 c. 42 (UK). Available at: https://www.legislation.gov.uk/ukpga/1998/42/schedule/1

198 The Equality Act 2010 c. 15 (UK). Available at: https://www.legislation.gov.uk/ukpga/2010/15/contents

199 Department of Health and Social Care. The NHS Constitution for England. Available at: https://www.gov.uk/government/publications/the-nhs-constitution-for-england

200 The Local Authority Social Services and National Health Service Complaints Regulations 2009 No. 309 (UK). Available at: https://www.legislation.gov.uk/uksi/2009/309/contents/made

201 Department of Health and Social Care. Confidentiality: NHS Code of Practice. Available at: https://www.gov.uk/government/publications/confidentiality-nhs-code-of-practice

202 General Medical Council. Confidentiality: good practice in handling patient information. Available at: https://www.gmc-uk.org/ethical-guidance/ethical-guidance-for-doctors/confidentiality

203 General Medical Council. Confidentiality: disclosing information about serious communicable diseases. Available at: https://www.gmc-uk.org/ethical-guidance/ethical-guidance-for-doctors/confidentiality---disclosing-information-about-serious-communicable-diseases

204 Public Health England. Positive Voices: The National Survey of People Living with HIV. Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/857922/PHE_positive_voices_report_2019.pdf

205 HIV Commission. The HIV Commission's Final Report and Recommendations: Executive Summary. Available at: https://www.hivcommission.org.uk/wp-content/uploads/2020/12/HIV-Commission-Executive-Summary_online_final_pages.pdf

206 Healthy London Partnership. Fast-Track Cities HIV anti-stigma work. Available at: https://www.healthylondon.org/our-work/fast-track-cities-initiative/hiv-related-stigma-work-in-london/

207 Fast-Track Cities London. Draft proposals to tackle HIV-related stigma in London – have yousay. Available at: https://www.healthylondon.org/wp-content/uploads/2019/12/Fast-Track-Cities-London-stigma-proposal-engagement-document-for-feedback.pdf

208 UK Health Security Agency. HIV testing, new HIV diagnoses, outcomes and quality of care for people accessing HIV services: 2021 report. Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1037215/hiv-2021-report.pdf

209 Public Health England. COVID-19 vaccination first phase priority groups. Available at: https://www.gov.uk/government/publications/covid-19-vaccination-care-home-and-healthcare-settings-posters/covid-19-vaccination-first-phase-priority-groups