

# CZECHIA

## Statistical data

Population size of the country was estimated at 10.709.000<sup>29</sup> (year 2020).

Estimate number of PLHIV is 3.280.

The state of the 90-90-90 treatment target in 2020<sup>30</sup> 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**<sup>31</sup> (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**<sup>32</sup> 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

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<sup>29</sup> UN Department of Economic and social Affairs, Population Division. *World Population Prospects 2019*. Available at: <https://population.un.org/wpp/Download/Standard/Population/>

<sup>30</sup> Data provided by the Czech Statistical Office summarising the current 90-90-90 target excluding patients who refuse to undergo treatment.

<sup>31</sup> Constitutional Act. No. 2/1993 Coll., the Charter of Fundamental Rights and Freedoms. Available at: <https://www.psp.cz/docs/laws/listina.html>

<sup>32</sup> 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](https://ppropo.mpsv.cz/zakon_198_2009)

Czech courts have previously adjudicated that HIV may amount to disability as defined in the Anti-discrimination Act<sup>33</sup> 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**<sup>34</sup>) 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**<sup>35</sup> (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

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<sup>33</sup> Judgment of the Municipal court in Prague dated November 9<sup>th</sup>, 2017. File No. 20 Co 343/2017-279.

<sup>34</sup> Act No. 258/2000 Coll., on the Protection of Public Health, as amended. Available at: [https://ppropo.mpsv.cz/zakon\\_258\\_2000](https://ppropo.mpsv.cz/zakon_258_2000)

<sup>35</sup> 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](https://ppropo.mpsv.cz/zakon_361_2003)

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<sup>36</sup>. 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 receipt 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 receipt (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)

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<sup>36</sup> Act No. 372/2011 Coll., on Healthcare Services and Conditions for their provision, as amended. Available at: [https://ppropo.mpsv.cz/zakon\\_372\\_2011](https://ppropo.mpsv.cz/zakon_372_2011)

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 receipt.

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")<sup>37</sup>/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<sup>38</sup> 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.<sup>39</sup>

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

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<sup>37</sup> CMC Statute No. 4 – Disciplinary Code. Available at: <https://www.lkcr.cz/stavovske-predpisy-clk-212.html>

<sup>38</sup> CMC Statute No. 10 – Ethical Codex. Available at: <https://www.lkcr.cz/stavovske-predpisy-clk-212.html>

<sup>39</sup> CSC Statute No. 1/2010 – Disciplinary Code. Available at: <https://www.dent.cz/o-nas/stavovske-predpisy/>

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:<sup>40</sup>

- 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.

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<sup>40</sup> 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>

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).

### **Confidentiality and accessibility of personal data related to HIV**

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.

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.<sup>41</sup>

### **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<sup>42</sup>, 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.

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<sup>41</sup> Act No. 373/2011 Coll., on Specific Healthcare Services, as amended. Available at: [https://ppropo.mpsv.cz/zakon\\_373\\_2011](https://ppropo.mpsv.cz/zakon_373_2011)

<sup>42</sup> Act No. 277/2009 Coll., the Insurance Act, as amended. Available at: <https://www.zakonyprolidi.cz/cs/2009-277>

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<sup>43</sup>, 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

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<sup>43</sup> Act No. 89/2012 Coll., the Civil Code, as amended. Available at: <https://www.zakonyprolidi.cz/cs/2012-89>

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.<sup>44,45</sup> The other case was settled amicably after the dentist agreed to provide the required services and made a monetary donation to the HIV+ community.<sup>46</sup> 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.<sup>47</sup> 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")<sup>48</sup>

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);

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<sup>44</sup> Judgment of the District Court in Pilsen – city dated August 1<sup>st</sup>, 2018. File No. 13 C 47/2018.

<sup>45</sup> Judgment (second instance) of the Regional Court in Pilsen dated December 12<sup>th</sup>, 2018. File No. 18 Co 240/2018.

<sup>46</sup> Resolution of the District Court in Prague 7 dated November 24<sup>th</sup>, 2015. File No. 29 C 274/2015.

<sup>47</sup> Judgment of the Municipal court in Prague dated November 9<sup>th</sup>, 2017. File No. 20 Co 343/2017-279.

<sup>48</sup> Ministry of Health. *National HIV/AIDS programme of 2018-2022*. Available at: <https://www.infekce.cz/Standardy/NarodProg18.pdf>

- 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).

#### On-line 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.

### Filing of criminal reports against PLHIV by the Regional Health Authority in Prague

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 12<sup>th</sup>, 2021, and June 14<sup>th</sup>, 2021. Starting June 15<sup>th</sup>, 2021, all people above 16 years old are allowed to register for vaccination without a priority code.