

FINLAND

Statistical data

Population size of the country was estimated at 5.541.000⁴⁹ (year 2020).

Estimate number of PLHIV is 3.265.

The latest reported state of the 90-90-90 treatment target⁵⁰ 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

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>

The Constitution of Finland⁵² 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 Act⁵³, 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 Patients⁵⁴ 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.

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>

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:

⁵⁶ Non-Discrimination Ombudsman. *Help from the Non-Discrimination Ombudsman*. Available at: <https://syrjinta.fi/en/help-from-the-non-discrimination-ombudsman>

- 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 Act⁵⁸. 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.

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>

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 $0,35 \times 10^9$ cells/l. PLHIV were encouraged to take the vaccine as soon as possible.