

Fourth meeting of the EECA Judges' Forum on HIV, Human Rights and the Law

Четвертое заседание Форума судей ВЕЦА по ВИЧ, правам человека и законодательству

17-18 November 2022
10:00 Tbilisi



17-18 Ноябрь 2022
10:00 Тбилиси



იუსტიციის უმაღლესი სკოლა
HIGH SCHOOL OF JUSTICE



Session 2

HIV infection: current state of the problem, evidence base and WHO recommendations

Dr Viatcheslav Grankov, WHO Regional office for Europe

Сессия 2

ВИЧ-инфекция: современное состояние проблемы, доказательная база и рекомендации ВОЗ

Д-р Вячеслав Граньков, Европейский региональный офис ВОЗ



თსუთიხიის უმაღლესი სკოლა
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MORBIDITY AND MORTALITY WEEKLY REPORT

Epidemiologic Notes and Reports

Kaposi's Sarcoma and *Pneumocystis* Pneumonia Among Homosexual Men — New York City and California

During the past 30 months, Kaposi's sarcoma (KS), an uncommonly reported malignancy in the United States, has been diagnosed in 26 homosexual men (20 in New York

City [NYC]; 6 in California). Eight years after KS was first reported, examination of 26 patients showed in 19 patients that skin or mucous membrane lesions were present. A review of 50 age group at seven KS patients and one had with *Pneumocystis* pneumonia; extensive megalovirus infection of peripheral available, CMV infection and

A review under age 50 age group at seven KS patients and one had with *Pneumocystis* pneumonia; extensive megalovirus infection of peripheral available, CMV infection and

Six patients and one had with *Pneumocystis* pneumonia; extensive megalovirus infection of peripheral available, CMV infection and

dence of peripheral available, CMV infection and

TABLE 1. Pre-

Present

Skin lesions
Skin lesions
Oral lesions

Inguinal adenopathy plus perirectal abscess
Weight loss and fever
Weight loss, fever, and pneumonia
(one due to *Pneumocystis carinii*)

CENTERS FOR DISEASE CONTROL

June 5, 1981 / Vol. 30 / No. 21



MORBIDITY AND MORTALITY WEEKLY REPORT

Epidemiologic Notes and Reports

Pneumocystis Pneumonia — Los Angeles

In the period October 1980-May 1981, 5 young men, all active homosexuals, were treated for biopsy-confirmed *Pneumocystis carinii* pneumonia at 3 different hospitals in Los Angeles, California. Two of the patients died. All 5 patients had laboratory-confirmed previous or current cytomegalovirus (CMV) infection and candidal mucosal infection. Case reports of these patients follow.

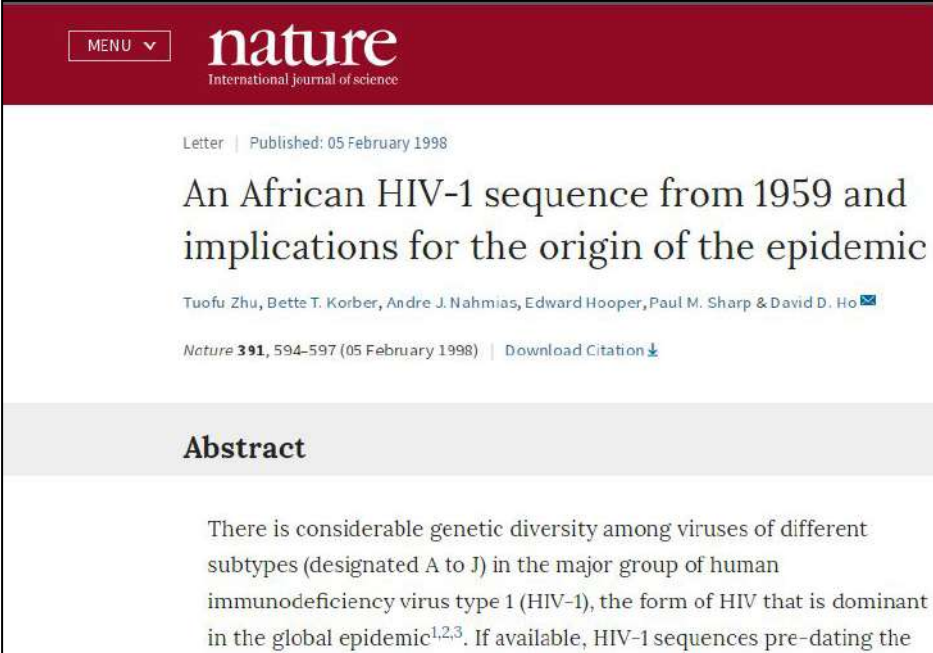
Inguinal adenopathy plus perirectal abscess	1 (5%)
Weight loss and fever	2 (10%)
Weight loss, fever, and pneumonia (one due to <i>Pneumocystis carinii</i>)	2 (10%)

Epidemiologic Notes and Reports	
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2021 - it was 40 years old!

- In 1981, the first three scientific articles on unusual cases of pneumocystis pneumonia and Kaposi's sarcoma (GRID) were published
- In July 1982, the term acquired immune deficiency syndrome (AIDS) was proposed to describe this condition


A retrospective analysis of blood samples taken after World War II documented the earliest documented case of HIV in a person whose blood was sampled in 1959




MENU ▾ **nature**
International journal of science

Letter | Published: 05 February 1998

An African HIV-1 sequence from 1959 and implications for the origin of the epidemic

Tuofu Zhu, Bette T. Korber, Andre J. Nahmias, Edward Hooper, Paul M. Sharp & David D. Ho 

Nature **391**, 594–597 (05 February 1998) | [Download Citation](#) 

Abstract

There is considerable genetic diversity among viruses of different subtypes (designated A to J) in the major group of human immunodeficiency virus type 1 (HIV-1), the form of HIV that is dominant in the global epidemic^{1,2,3}. If available, HIV-1 sequences pre-dating the

In 1985, the FDA approved the ELISA test as the first commercially available test for detecting HIV in blood

In 1987, AZT (zidovudine), the first antiretroviral drug, became available for treating HIV

In 1987, FDA approves Western blot test

1988 - The UN proclaims December 1 as World AIDS Day

In 1996, they began using a **three-drug ART** that affects different stages of the virus.

HIV infection is a "manageable" chronic disease

Because of advances in treatment, **HIV infection is no longer a fatal disease.**

As early as **2007**, the WHO Regional Office for Europe emphasized in the preface to the manual "HIV/AIDS Treatment and Care: Clinical Protocols for the WHO European Region" **that the prognosis for most people living with HIV is "life with a 'manageable' chronic disease.**

Separate articles on HIV infection were introduced in the criminal code of some countries back in the 1980s and 1990s, when HIV infection was a fatal disease.



«Чума XX века»



- ❖ Впервые сообщение о новом заболевании опубликовано 5 июля 1981 года в американском медицинском журнале
- ❖ В России о первом случае заражения официально объявлено в 1987 году
- ❖ Ежедневно инфицируются (заражается) 16 тысяч человек

СПИД

С - синдром (комплекс различных симптомов болезни) – на этой стадии у человека возникает множество различных симптомов и оппортунистических заболеваний

П - первичный – возникает заражения, а не по наследству

И - иммунная – поражает иммунную систему организма, которая борется с болезнью

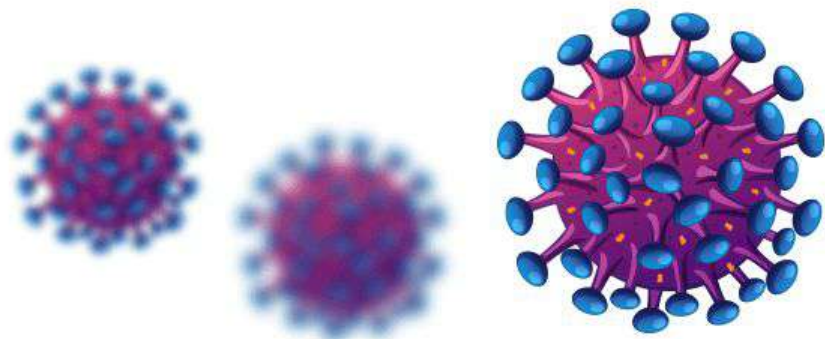
Д - деградация – иммунная система перестает работать должным образом, защищая человека от болезней



WHAT IS HIV?

Human Immunodeficiency Virus (HIV)

is a virus that attacks cells that help the body fight infection.

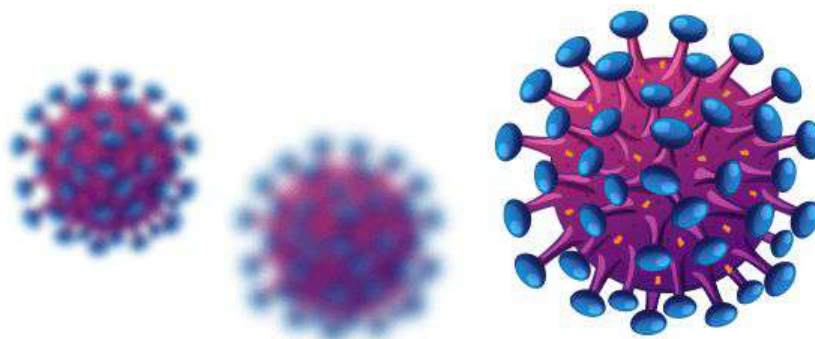


With continued antiretroviral treatment **HIV progression can be stopped.**

ЧТО ТАКОЕ ВИЧ?

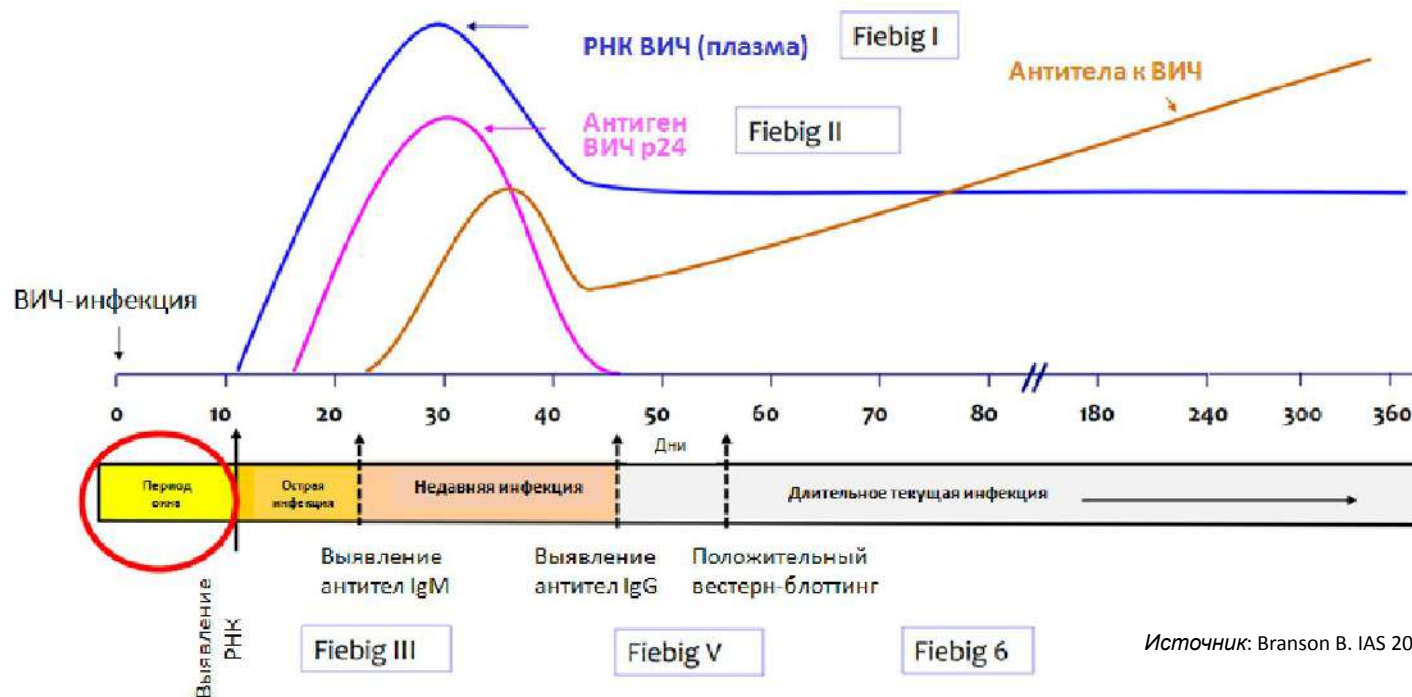
Вирус иммунодефицита человека (ВИЧ)

- это вирус, который повреждает клетки, которые помогают организму бороться с инфекциями.



Непрерывная антиретровирусная терапия позволяет **остановить прогрессирование ВИЧ-инфекции в организме.**

Occurrence timing of the HIV markers

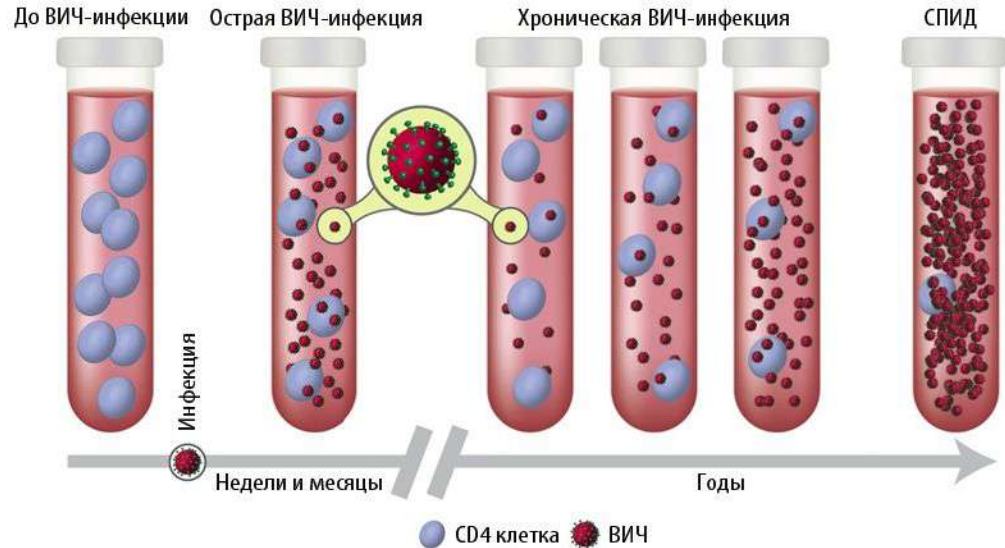


World Health Organization

What is AIDS?

- Acquired immunodeficiency syndrome (AIDS) is the term applied to the very last stages of HIV infection.
-
-
- Characterized by the occurrence of any out of more than 20 opportunistic infections or HIV-related cancers.

Прогрессирование ВИЧ



How is HIV transmitted?

HIV can be transmitted:

- **in case of unprotected sexual intercourse with an infected person***;
**In the absence of effective ARV therapy*
- through **transfusions of contaminated blood** or blood products or through transplants of contaminated tissue;
- when **sharing contaminated injection equipment** (needles, syringes);
- when using **contaminated surgical equipment and other sharp instruments**;
- **from mother to child during pregnancy, childbirth, and breastfeeding***;

**In the absence of effective ARV therapy*



Average Risk of HIV Transmission Per Exposure to Infected Source

SOURCE	PERCENTAGE	ODDS
NONSEXUAL MODES*		
Blood transfusion	90%	9 in 10
Needle sharing (injection drug use)	0.67%	1 in 149
Needlestick (percutaneous; through the skin)	0.30%	1 in 333
Biting, spitting, throwing body fluids (including semen or saliva), sharing sex toys	negligible	negligible
ORAL SEX*		
Receptive partner (example, giving a blow job)	0%-0.04%	0-1 in 2,500
Insertive partner (example, getting a blow job)	~0%	about zero
VAGINAL SEX**		
Risk to female with HIV-positive male partner		
High-income countries	0.08%	1 in 1,250
Low-income countries	0.30%	1 in 333
Risk to male with HIV-positive female partner		
High-income countries	0.04%	1 in 2,500
Low-income countries	0.38%	1 in 263
ANAL SEX***		
Insertive partner's risk (circumcised)	0.11%	1 in 909
Insertive partner's risk (uncircumcised)	0.62%	1 in 161
Receptive partner's risk (without ejaculation)	0.65%	1 in 154
Receptive partner's risk (with ejaculation)	1.43%	1 in 70

Sources: <https://www.cdc.gov/hiv/risk/estimates/riskbehaviors.html>
<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6195215/pdf/nihms867478.pdf>

Estimated probability of contracting HIV from an infected source	
Type of exposure	Risk per 10,000 contacts
Parenteral	
Blood transfusion	9,250
Sharing needles while injecting drug	63
Transcutaneous (with a needle)	23
Sexual transmission	
Receptive anal sex	138
Insertive anal sex	11
Receptive vaginal intercourse	8
Insertive vaginal intercourse	4
Receptive oral sex	Low
Insertive oral sex	Low
Others	
Bites	negligible
Spits	
Sharing sex toys	

INCREASED RISK of HIV transmission

- **Acute HIV infection**, within about 12 weeks of exposure to HIV, can increase the likelihood of transmission 26-fold, raising the risk from 1.43% to 37%. This is because the viral load increases dramatically during the acute phase.
- The presence of other sexually transmitted infections (STIs) can increase your risk by up to 8 times.
- Exposure to gender inequality and intimate partner violence can increase a woman's risk of contracting HIV by up to 1.5 times.

Factors affecting the possibility of HIV transmission

- Proper condom use prevents HIV transmission
- Low viral load significantly reduces, "undetectable" viral load eliminates the possibility of sexual transmission of HIV
- Pre-exposure prophylaxis (PrEP) significantly reduces the chance of contracting HIV
- Post-exposure prophylaxis (PEP) significantly reduces the likelihood of contracting HIV
- Medical male circumcision reduces likelihood of HIV transmission from women to men
- Sexually transmitted infections (STIs) can in some cases increase the likelihood of HIV transmission



THERE ARE MANY WAYS TO PREVENT HIV



The main components of HIV control programs

HIV TESTING

The HIV test determines the next steps and what is needed - treatment or pre-exposure prophylaxis (PrEP)

HIV TREATMENT

People diagnosed with HIV+ should receive daily ART to suppress viral load and prevent HIV transmission



PREVENTION

People without HIV but at risk of infection can take PrEP for prevention

Basic measures of combination prevention should be provided by the national HIV prevention program



"Treating Everyone."

September 30, 2015. GENEVA.

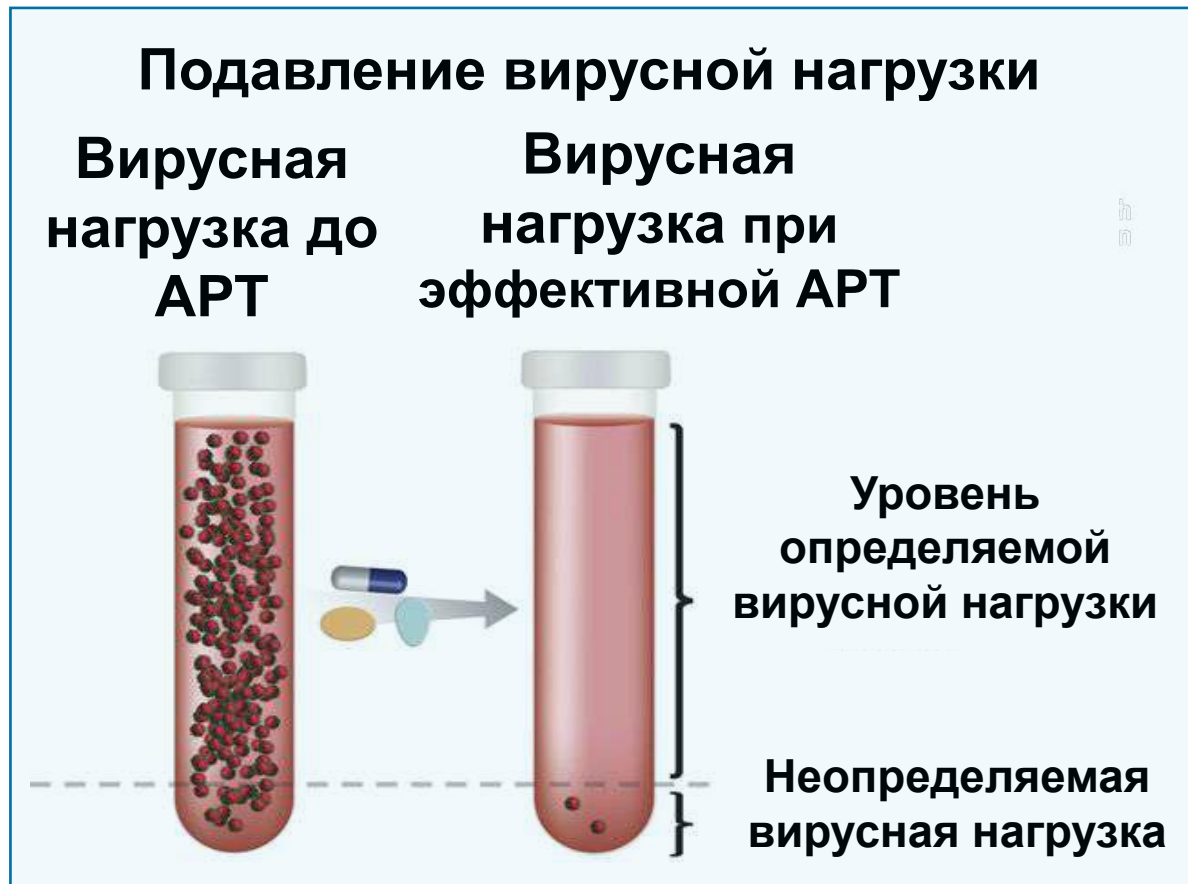
Everyone infected with HIV should begin antiretroviral treatment as soon as possible after diagnosis.

With its "Treat All" recommendation, WHO removes all restrictions on eligibility for antiretroviral therapy (ART) among people living with HIV; all populations and age groups are now eligible for treatment.

WHO: Antiretroviral therapy (ART) should be initiated as soon as a diagnosis of HIV infection is confirmed

and no later than 7 days from confirmation of the diagnosis

Effective antiretroviral therapy leads to suppression of viral load, i.e., undetectable VL



Treatment as prevention (TasP)

13 July 2018

HIV/AIDS

Viral suppression for HIV treatment success and prevention of sexual transmission of HIV

July 2018 – The World Health Organization (WHO) leads the health sector response to HIV as part of the Joint United Nations Programme on HIV/AIDS. WHO works to increase access to HIV testing, antiretroviral therapy (ART) and viral load monitoring, to improve the clinical management of HIV as an urgent public health priority to prevent HIV-related morbidity and mortality.

The science related to the use of ART as an additional prevention tool is clear: there is no evidence that individuals who have successfully achieved and maintained viral suppression through ART transmit the virus sexually to their HIV-negative partner(s). The preventive benefits of ART should be appropriately emphasized in HIV treatment and prevention programmes.

WHO recognizes that awareness of the treatment and prevention benefits of ART should be promoted, in order to encourage HIV testing uptake, and to support people to access and adhere to ART as early as possible.

"...This data has led to a growing consensus that **people who have reached and maintain an undetectable viral load cannot transmit HIV to their sexual partners.**"



1-6 months

To achieve an undetectable viral load level

+

6 months

To maintain viral load levels after the first test confirming an undetectable viral load

=

NO RISK of transmitting HIV to a sexual partner

as long as medications are taken and the viral load is maintained at an undetectable level

Undetectable VL

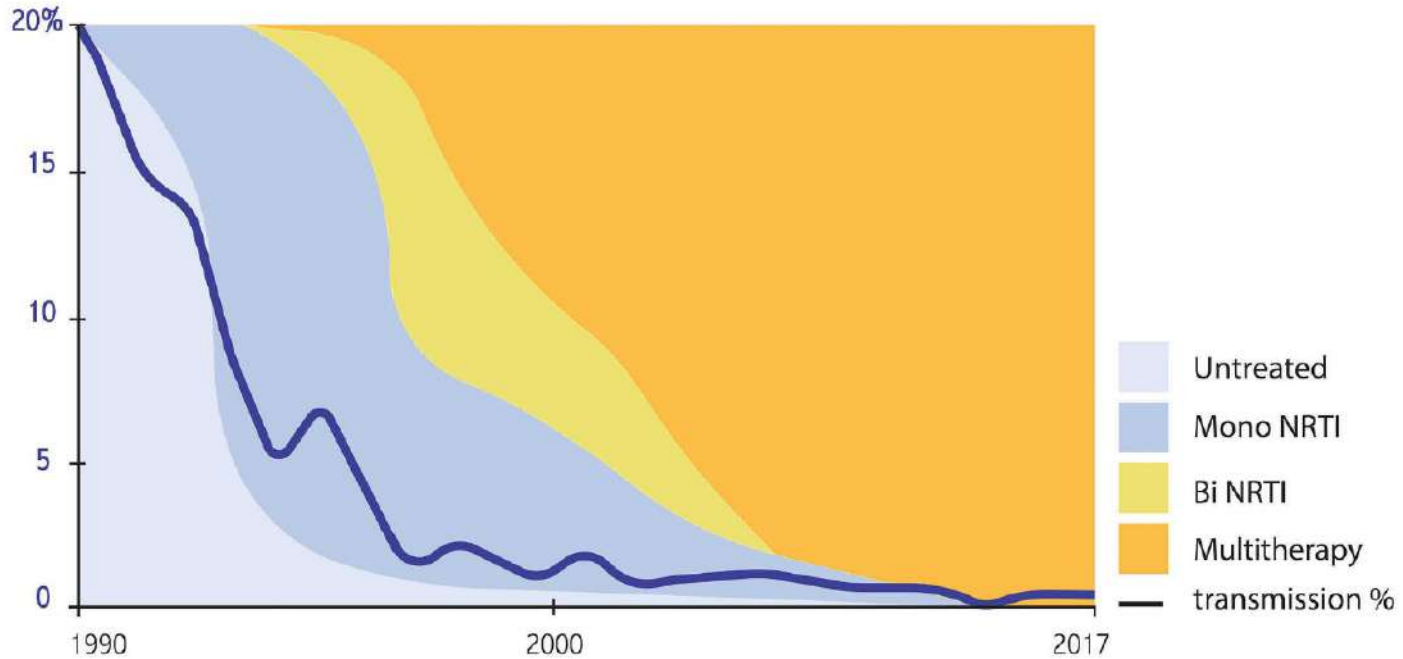
Take your medicine (antiretroviral drugs) every day without skipping a day

HIV infection is a "manageable" chronic disease

- **The availability of effective treatment** has changed the prognosis both for people currently living with HIV and for their partners (regular or occasional), who due to various circumstances (including carelessness, risky behavior, etc.) may be at risk of HIV infection.
- The **progress made** in antiretroviral therapy, with effective treatment and an undetectable viral load, eliminates the possibility of sexual transmission of HIV, **which certainly changes the importance and relevance of "putting another person at risk of HIV" in this situation.**

Evolution of risk of HIV transmission to child depending on the intensity of antiretroviral treatment with mono-, bi-, or triple therapy.

French Perinatal Study 1985-2017.



Source: Stéphane Blanche (2020) Mini review: Prevention of mother–child transmission of HIV: 25 years of continuous progress toward the eradication of pediatric AIDS?, *Virulence*, 11:1, 14-22, DOI: 10.1080/21505594.2019.1697136

Residual risk of HIV transmission in mothers with undetectable viral load at delivery as a function of time of treatment initiation

French Perinatal Study (2000-2011).

Начало АРВ	<i>n</i>	% IC
До зачатия	0/2651	0% [0.0–0.1]
1-й триместр	1/507	0.2% [0.0–1.1]
2-й триместр	9/1735	0.5% [0.2–1.0]
3-й триместр	4/452	0.9% [0.2–2.3]

All women received a combination of at least three antiretroviral drugs.

Life expectancy

nam aidsmap

HIV & AIDS - sharing knowledge, changing lives

News

About HIV

At

Yes, the same life expectancy as HIV-negative people, but far fewer years in good health

Roger Pebody | 13 March 2020



Marcus JL et al. Increased overall life expectancy but not comorbidity-free years for people with HIV. Conference on Retroviruses and Opportunistic Infections, abstract 151, March 2020.

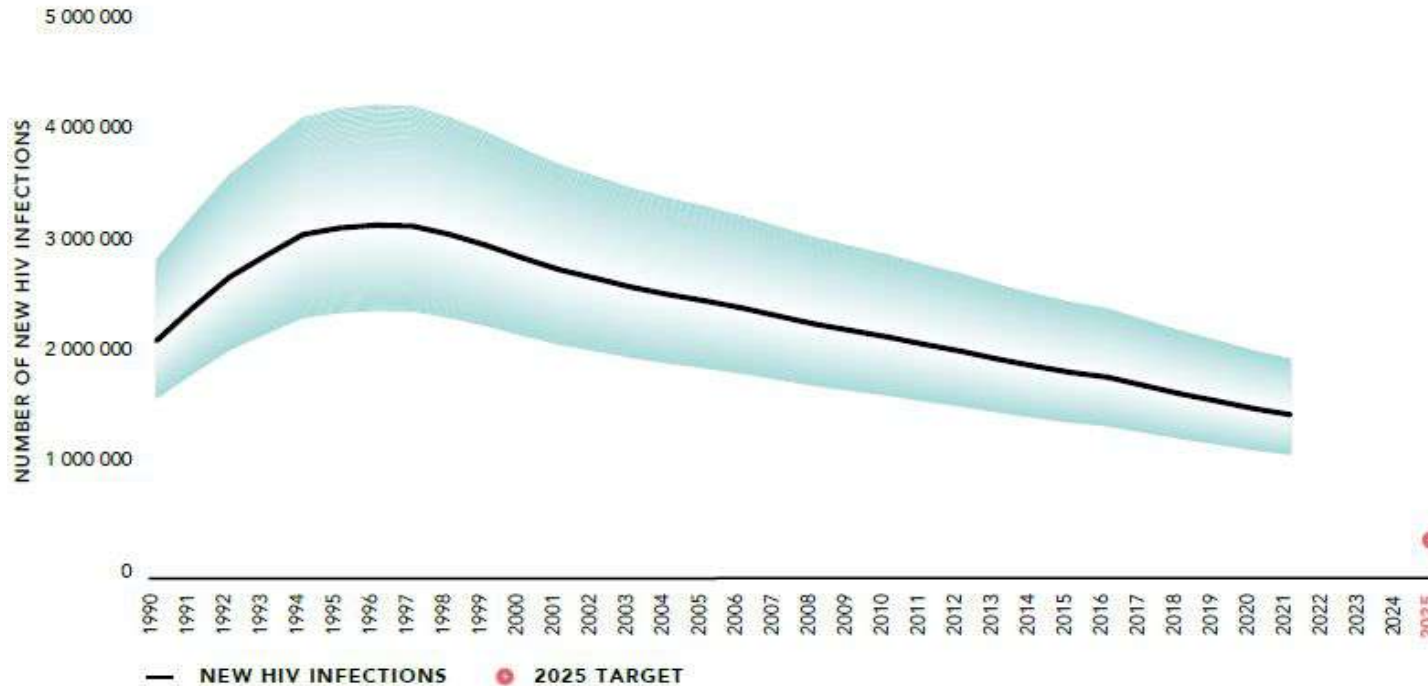
- HIV-positive people who start antiretroviral therapy (ART) immediately and have good access to medical care live as long as their HIV-negative peers.
- A 21-year-old with HIV will live to age 77, while a 21-year-old without HIV will live to age 86.
- **If a person with HIV started ART with a CD4 count above 500, life expectancy would be 87 years - slightly longer than for people without HIV.**

WHO recommends:

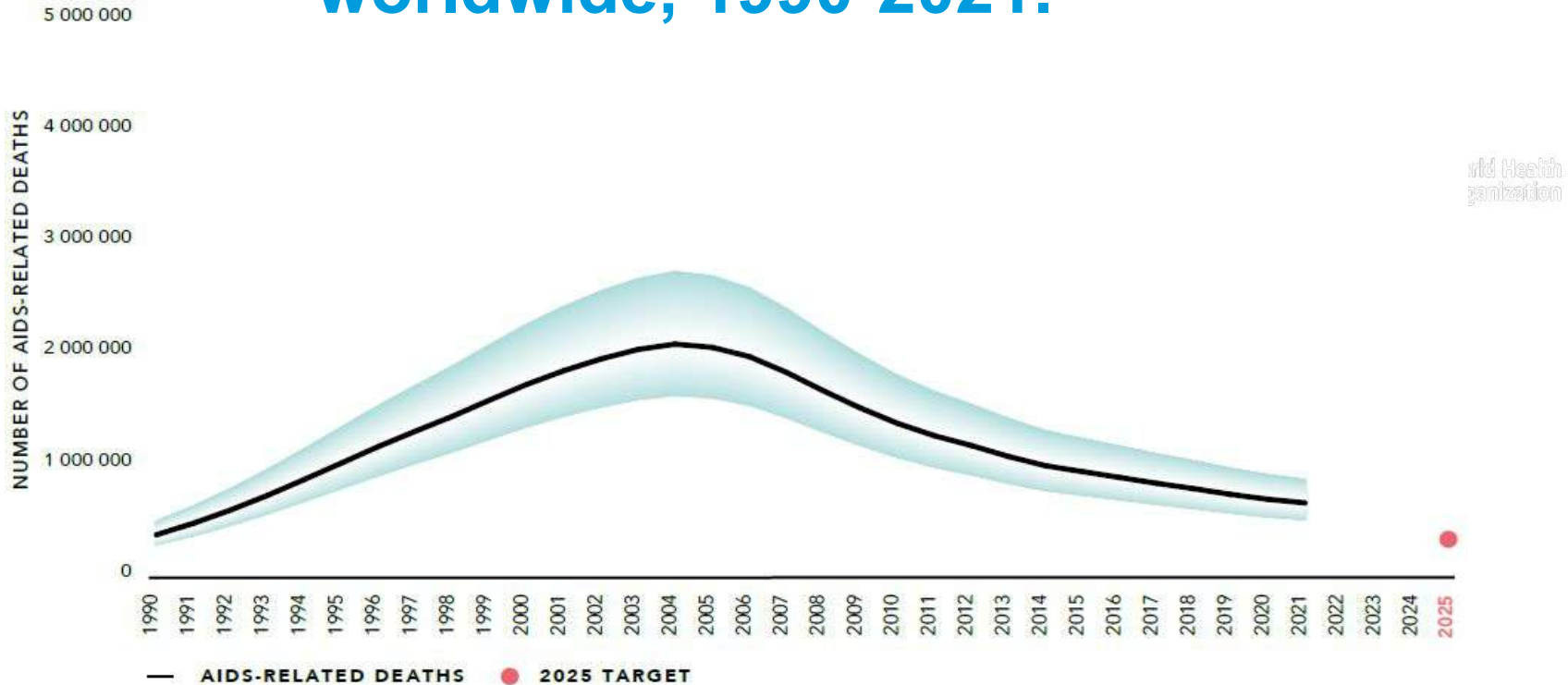
Oral PrEP containing TDF is recommended for anyone at significant risk of HIV

as a component of comprehensive prevention

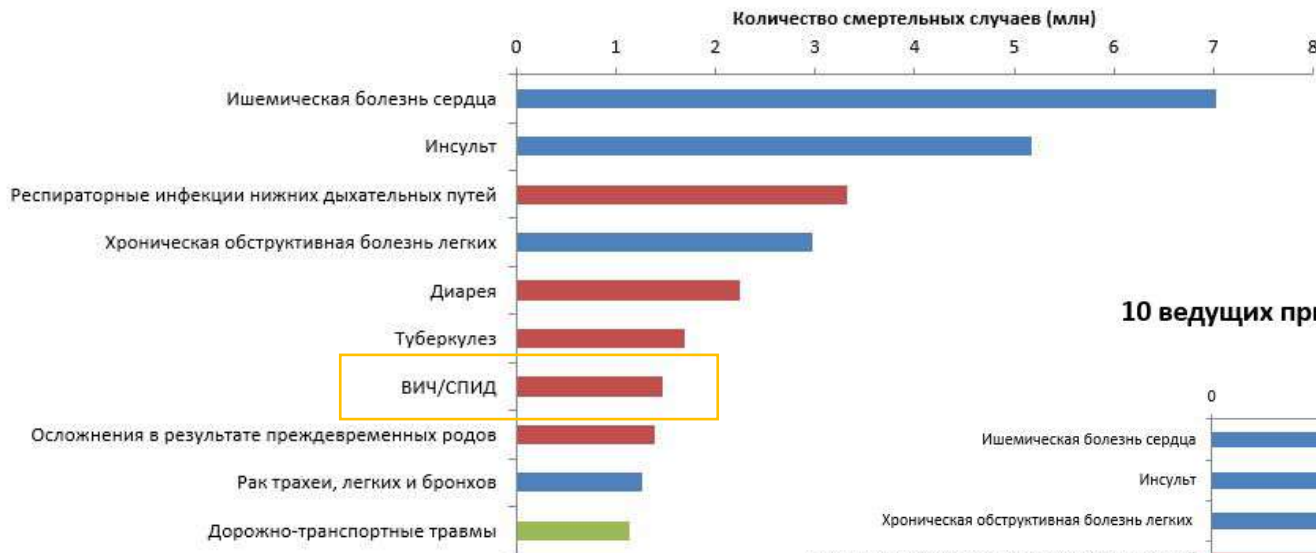
Incidence of HIV infection worldwide, 1990-2021.



Number of AIDS-related deaths worldwide, 1990-2021.

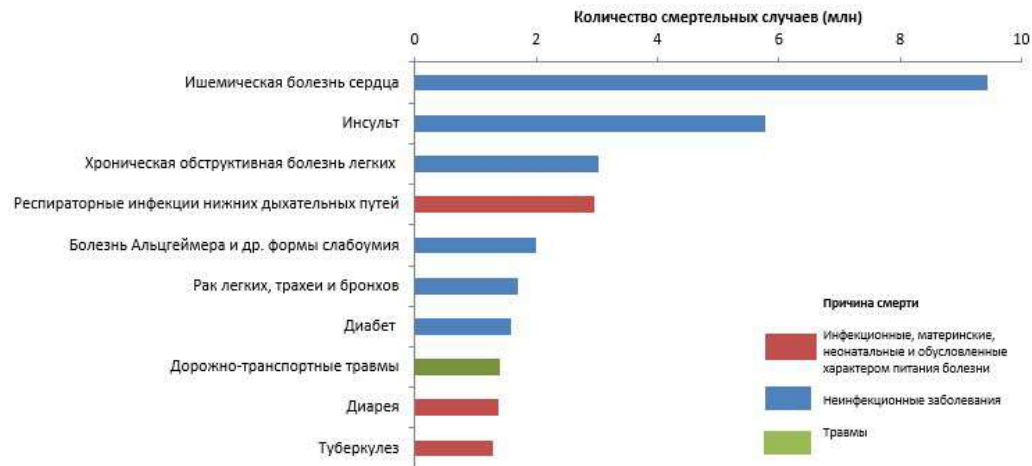


10 ведущих причин смерти в мире (2000 г.)



Источник: Global Health Estimates 2016: Deaths by Cause, Age, Sex, by Country and by Region, 2000-2016. Geneva, World Health Organization, 2018.

10 ведущих причин смерти в мире (2016 г.)



Источники: Global Health Estimates 2016: Deaths by Cause, Age, Sex, by Country and by Region, 2000-2016. Geneva, World Health Organization, 2018.



Запад
23 483
5.5 per 100 000

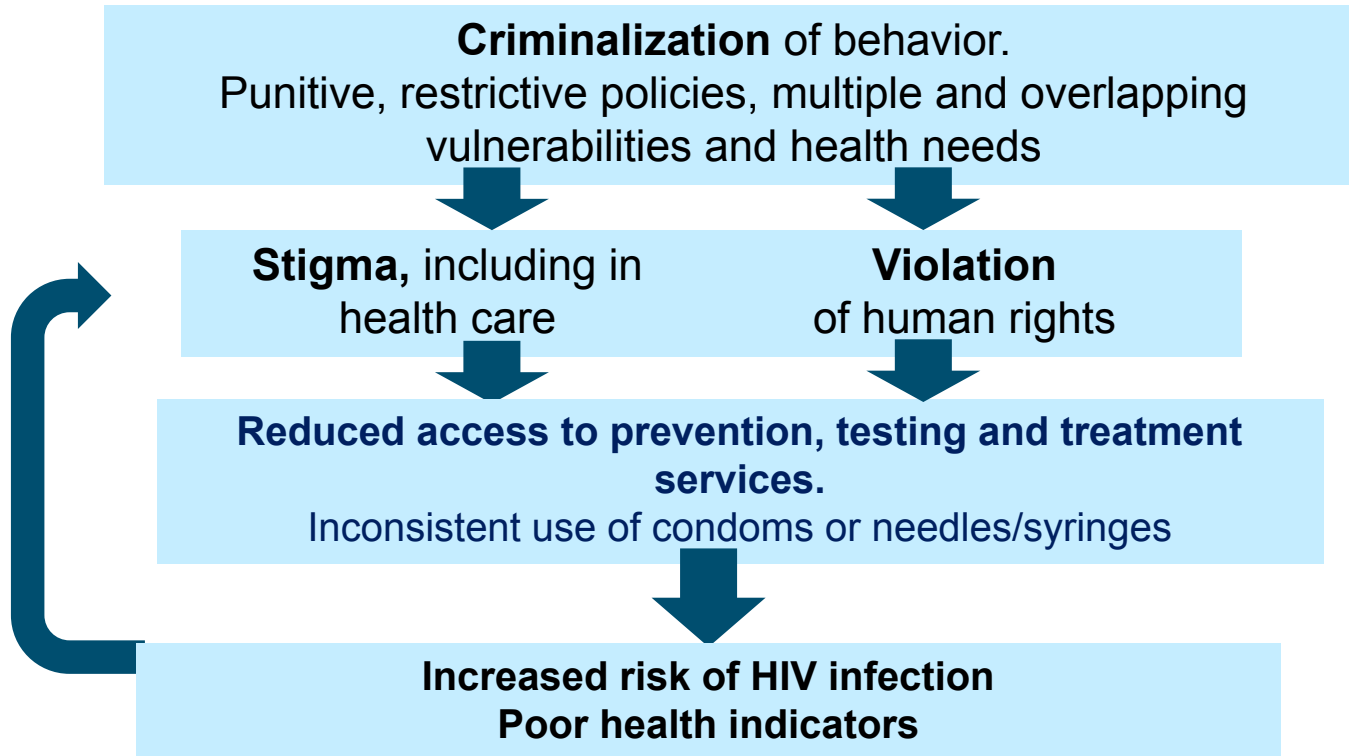
Центр
6 519
3.3 per 100 000

Восток
111 550
44.8 per 100 000

More than 80% of the cases are in the eastern part of the Region,

that is, where countries still have HIV-specific Articles of the Criminal Code

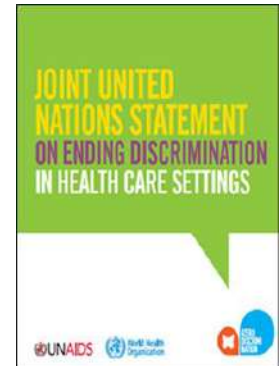
Structural determinants affect HIV risk



“When you go to visit the hospital, they will not attend to you. In fact I hate going to such hospitals. I do self-treatment from home.

You know I feel ashamed. I will visit the hospital and everybody will despise me.”
(Transgender woman, HIV-positive)

Adapted from Shannon K, Strathdee SA, Goldenberg SM, et al. Global epidemiology of HIV among female sex workers: influence of structural determinants. Lancet 2014; 385: 55-71



Stigma: A major barrier to HIV prevention and treatment



nature

Stigma impedes AIDS prevention

Medical advances cannot help those who deny they are at risk of HIV and avoid HIV tests. **Salim S. Abdool Karim** describes how such attitudes may be overcome.

5 things I fear



Источники: UNAIDS Together we will end AIDS 2012

Thank you for your attention!

Спасибо за внимание!



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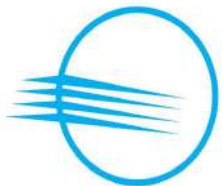
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Сессия 3

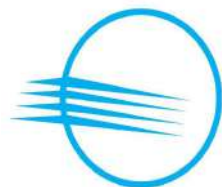
История и воздействие криминализации

ВИЧ
Абдурахмон Ёкубзода - Судья Верховного Суда Республики
Таджикистан

Session 3

History and Impact of HIV Criminalization

Abdurahmon Yokubzoda - Judge of the Supreme Court of the Republic
of Tajikistan



ОҶСҶИИТИНИ ҶАМАЛҶАНИ СҶОЛЛА
HIGH SCHOOL OF JUSTICE



ВЕРХОВНЫЙ СУД
РЕСПУБЛИКИ ТАДЖИКИСТАН





ФОРУМ СУДЕЙ ВЕЦА

ПО ВИЧ, ПРАВАМ ЧЕЛОВЕКА И ЗАКОНОДАТЕЛЬСТВУ

The rule of law is key to an effective human rights-based response to HIV, and public health interests must not conflict with human rights. On the contrary, it is generally accepted that fewer people are infected with HIV in rights-based societies and that people living with HIV are more successful in coping with the challenges of the disease.



ФОРУМ СУДЕЙ ВЕЦА

ПО ВИЧ, ПРАВАМ ЧЕЛОВЕКА И ЗАКОНОДАТЕЛЬСТВУ

HIV criminalization describes the application of criminal law to people living with HIV based solely on their HIV status. It includes the use, HIV-related special criminal procedures or the basic criminal law, to punish people living with HIV for HIV transmission, suspected or potential HIV infection.



ФОРУМ СУДЕЙ ВЕЦА

ПО ВИЧ, ПРАВАМ ЧЕЛОВЕКА И ЗАКОНОДАТЕЛЬСТВУ

Overly formalized interpretation and enforcement of laws criminalizing HIV is a public health problem because it discredits existing evidence-based HIV prevention, treatment, care, and support strategies for HIV-positive people and ignores scientific advances related to HIV.



ФОРУМ СУДЕЙ ВЕЦА

ПО ВИЧ, ПРАВАМ ЧЕЛОВЕКА И ЗАКОНОДАТЕЛЬСТВУ



*Empowered lives.
Resilient nations.*

The first official document that attempted to formalize the relationship of possible HIV-positive individuals with state health care authorities was the Temporary Instructions on Precautionary Measures for Employees of Medical Facilities Providing Medical Care to Foreign Nationals, which were a departmental act of the USSR Ministry of Health, but were binding and interdepartmental in nature.



ФОРУМ СУДЕЙ ВЕЦА

ПО ВИЧ, ПРАВАМ ЧЕЛОВЕКА И ЗАКОНОДАТЕЛЬСТВУ



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The title of the act implied that foreign nationals could be the source of the spread of HIV. The act reported that epidemiological studies conducted in the United States showed that homosexuals, drug addicts, and hemophiliacs who received blood and blood products accounted for the majority of HIV patients. The main route of transmission was sexual, "primarily in homosexuals," as well as parenteral and intrauterine.



ФОРУМ СУДЕЙ ВЕЦА

ПО ВИЧ, ПРАВАМ ЧЕЛОВЕКА И ЗАКОНОДАТЕЛЬСТВУ



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These provisions summarized the problem of regulating the spread of HIV-infection under the existing criminal and administrative law. The instructions prescribed that a physician who detected a "suspected AIDS patient" must inform the chief physician about the fact, and the latter was obligated to immediately report the detection to the Institute of Immunology of the USSR Ministry of Health and the RSFSR Ministry of Health.



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The source of the criminalization of HIV was the Decree of the Presidium of the Supreme Soviet of the USSR dated August 25, 1987, №7612-XI "On Measures to Prevent the HIV transmission.



ФОРУМ СУДЕЙ ВЕЦА

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The preamble to this decree of the Presidium of the Supreme Soviet of the USSR, stressed that it was adopted in order to protect public health and prevent infection with the AIDS virus (acquired immunodeficiency syndrome) in the USSR, as well as the importance of effective international cooperation in combating the disease, given that

That knowingly exposing another person to HIV, - shall be punishable by imprisonment for up to five years.

That HIV transmission by a person who knew he or she was infected with the disease shall be punished by imprisonment for up to eight years.



ФОРУМ СУДЕЙ ВЕЦА

ПО ВИЧ, ПРАВАМ ЧЕЛОВЕКА И ЗАКОНОДАТЕЛЬСТВУ



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This text of the decree was added to the Criminal Code of the RSFSR under Article 115-2 "Infection with HIV infection," which provided for a penalty of five to ten years in prison for "knowingly exposing another to HIV" and up to eight years for "HIV transmission by someone who knew he had the disease".

Almost simultaneously, similar articles appeared in the criminal codes of other republics of the USSR.



ФОРУМ СУДЕЙ ВЕЦА

ПО ВИЧ, ПРАВАМ ЧЕЛОВЕКА И ЗАКОНОДАТЕЛЬСТВУ



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For example, by the Decree of the Presidium of the Supreme Soviet of the Tajik SSR, dated November 9, 1987, Article 118.1. Infection with HIV was added to the Criminal Code, which similarly provided for disposition and sanction of the Criminal Code of the RSFSR



ФОРУМ СУДЕЙ ВЕЦА

ПО ВИЧ, ПРАВАМ ЧЕЛОВЕКА И ЗАКОНОДАТЕЛЬСТВУ



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After the collapse of the Soviet Union, the former Soviet republics adopted new criminal codes in which HIV transmission and exposure was either covered under a separate article or under an article on the spread of venereal diseases, but with a heavier penalty than the spread of venereal diseases.



ФОРУМ СУДЕЙ ВЕЦА

ПО ВИЧ, ПРАВАМ ЧЕЛОВЕКА И ЗАКОНОДАТЕЛЬСТВУ



Empowered lives.
Resilient nations.

In 2001, member states unanimously agreed to implement a legal and policy framework to eliminate all forms of discrimination against people living with HIV. In 2007, two out of every three countries reported having laws in place to protect people living with HIV from discrimination. The extent to which these anti-discrimination laws are enforced is unclear, and in some countries this favorable legal framework is weakened by an increasing trend toward criminalization of HIV transmission.



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Although the criminalization of HIV transmission and exposure is very common, more and more countries are reforming their criminal laws to conform to international recommendations. This is because more countries are recognizing the ineffectiveness of using criminal law to prevent the spread of HIV and the harms of excessive criminalization of HIV transmission.



ФОРУМ СУДЕЙ ВЕЦА

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Although the EECA region remains as with the highest rate of HIV incidence, positive developments have been noted as well.

For example, in the Baltic countries criminal liability is established only for intentional HIV infection, and liability is incurred not under HIV-specific article but under the general article "causing harm to health".

In Armenia in 2018, the government proposed amendments to the Criminal Code to remove the provision on punishment for knowingly placing another person at risk of HIV infection.



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Intent on improving the situation of people living with HIV, five EECA countries (Belarus, Kazakhstan, Kyrgyzstan, Moldova, and Russia) have adopted amendments to their criminal codes that exempt HIV-positive people from liability if they have disclosed their HIV status to those at risk of infection.



ФОРУМ СУДЕЙ ВЕЦА

ПО ВИЧ, ПРАВАМ ЧЕЛОВЕКА И ЗАКОНОДАТЕЛЬСТВУ



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Although the criminalization of HIV transmission and exposure is very common, more and more countries are reforming their criminal laws to conform to international recommendations. This is because more countries are recognizing the ineffectiveness of using criminal law to prevent the spread of HIV and the harms of excessive criminalization of HIV transmission.

Thank you for your attention!

Спасибо за внимание!



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Fourth meeting of the EECA Judges' Forum on HIV, Human Rights and the Law

Четвертое заседание Форума судей ВЕЦА по ВИЧ, правам человека и законодательству

17-18 November 2022
10:00 Tbilisi



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10:00 Тбилиси



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Session 3
Criminalization of HIV transmission in Belarus
Anatoli Leshanok, People PLUS

Сессия 3
Криминализация передачи ВИЧ в Беларуси
Анатолий Лешенок, РОО «Люди ПЛЮС»



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Changes in the Article "HIV transmission" of the Criminal Code of the Republic of Belarus



2019 - note to Article 157 of the Criminal Code:

A person who has committed the acts provided for in paragraphs 1 or 2 of this article shall be exempt from criminal liability if another person exposed to HIV or infected with HIV has been timely informed of the presence of the disease in the first person involved and voluntarily agreed to be involved in the acts that created the risk of exposure to the disease.

Changes in the Article "HIV transmission" of the Criminal Code of the Republic of Belarus

2021 - gradation of punishment towards easing

Part 1 is punishable by a fine, or arrest, or restriction of freedom for up to two years, or imprisonment for the same period.

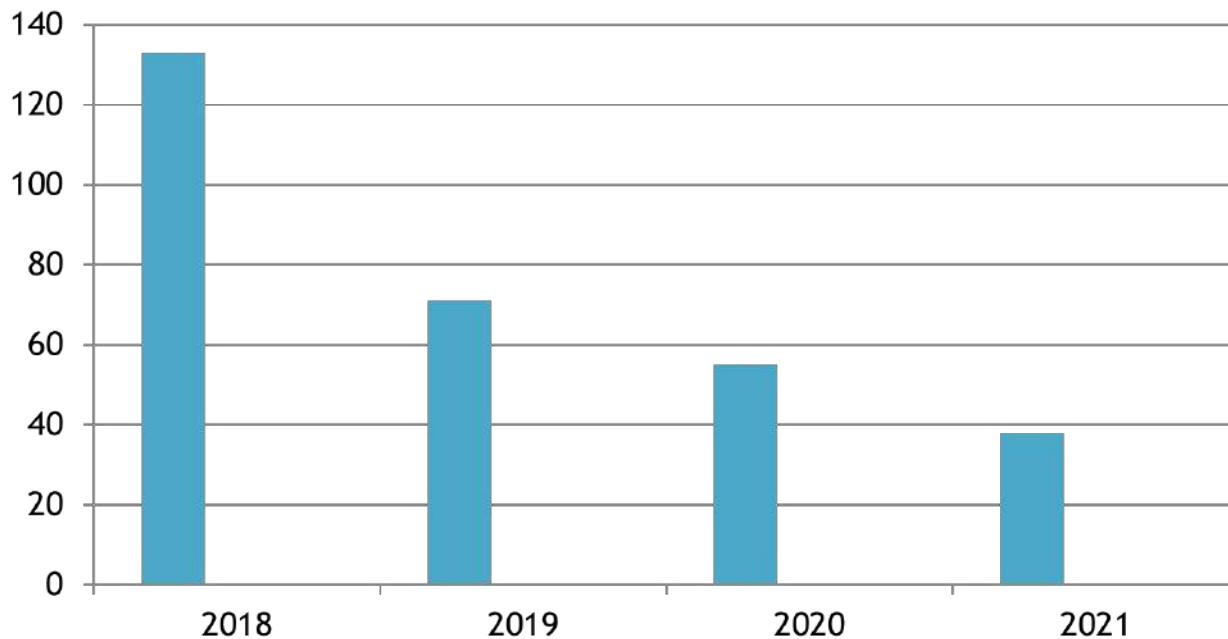
(Until 2021: fine, arrest or imprisonment up to three years)

Part 2 - is punishable by restriction of freedom or imprisonment for up to five years.

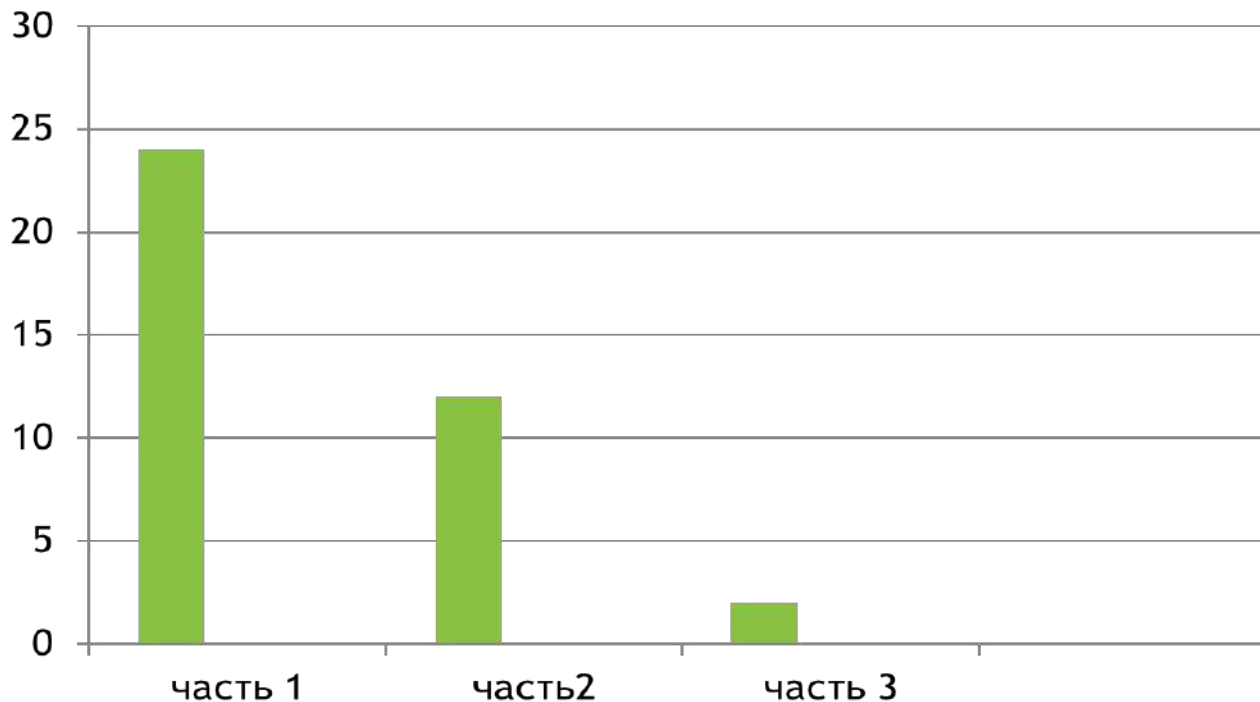
(up to 2021, imprisonment from two to seven years)

Part 3 - shall be punishable by imprisonment for five to ten years *(until 2021, five to thirteen years)*.

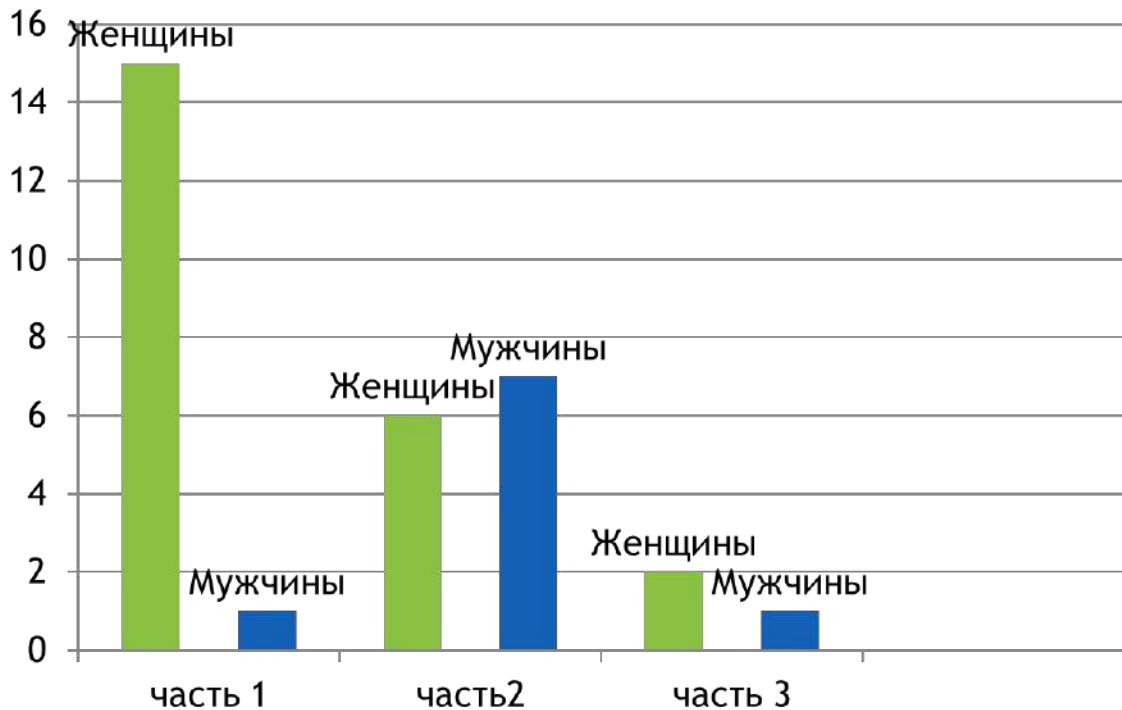
Reported crimes under Article 157 of the Criminal Code of the Republic of Belarus



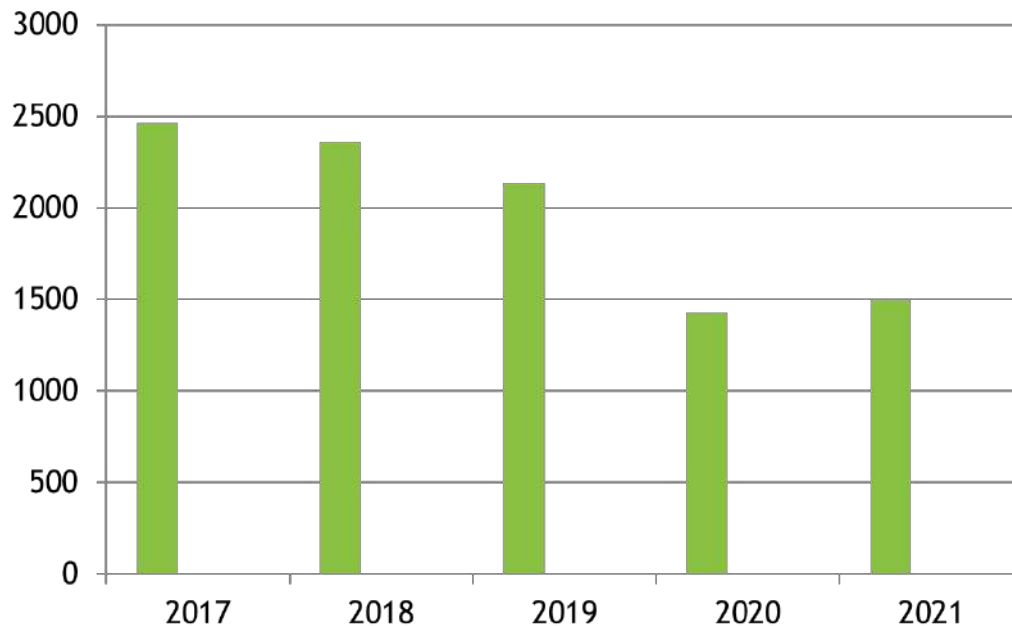
Reported crimes under Article 157 of the Criminal Code in 2021

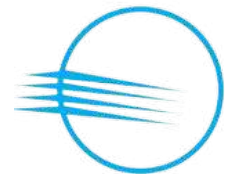


Identified persons on completed cases in 2021.



Incidence of new HIV cases in Belarus between 2017- 2021





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Documents presented to the court



WORLD HEALTH ORGANIZATION
ORGANISATION MONDIALE DE LA SANTÉ
WELTGESUNDHEITSDRORGANISATION
ВСЕМИРНАЯ ОРГАНИЗАЦИЯ ЗДРАВООХРАНЕНИЯ

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ЕВРОПЕЙСКОЕ РЕГИОНАЛЬНОЕ БЮРО

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Email: eur@who.int
Website: <http://www.euro.who.int>

Our reference: Your reference: 3902
Noto reference: Voto reference:
Uzasnias numer: № 182 No Zapisnik:
Ск. нум. коментар: Не Дава коментар:

О постановке в угрозу заражения ВИЧ

Уважаемая Татьяна Владимовна,

В Страновом офисе Всемирной Организации Здравоохранения (ВОЗ) внимательно изучено Ваше обращение. По существу поставленных Вами вопросов, поясняем следующее.

Лечение ВИЧ-инфекции комбинацией антиретровирусных (АРВ) препаратов в настоящее время даёт возможность людям, живущим с ВИЧ, достигать неопределяемой вирусной нагрузки. Это не только позволяет им иметь нормальные продолжительность и качество жизни, но и, как убедительно показали многочисленные исследования, прелотрашает передачу ВИЧ партнеру даже при незащищенных (то есть без использования презерватива) сексуальных контактах.

На основании результатов исследований высокого уровня доказательности, ВОЗ опубликовала официальное заявление, что (цитирую) *«люди, достигшие и поддерживающие неопределяемую вирусную нагрузку, не могут передавать ВИЧ своим сексуальным партнерам»*.

Таким образом, человек, живущий с ВИЧ и находящийся на АРВ-терапии с неопределяемой вирусной нагрузкой, не может передать ВИЧ при анальных или оральных контактах, вне зависимости от того, использовался презерватив или нет. Или, отвечая на два конкретных вопроса в вашем запросе, **риск передачи ВИЧ от человека с неопределяемой вирусной нагрузкой:**

- 1) при защищенном анальном сексуальном контакте – **отсутствует;**
- 2) при незащищенном оральном сексуальном контакте – **отсутствует.**

С уважением,

И.о. Руководителя Странового офиса ВОЗ в Республике Беларусь, координатор программы ВОЗ по инфекционным заболеваниям



Грын'ков В.И.

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+375 17 2277015
Fax: +375 17 3622165

Email: eur@who.int or
Website: <http://www.euro.who.int/belarus>

Дата: 08 августа 2022 года

РОО «Люди ШИОС»

Председатель Правления
Журавской Т.В.



МИНИСТЕРСТВО АКОМІ ЗДОРОВ'Я
РЭСПУБЛІКА БЕЛАРУСЬ

Дзяржаўнае ўстанова
«РЭСПУБЛІКАНСКІ ЦЭНТР ГІГІЕНЫ,
ЭПІДЭМІЯЛОГІІ І ГРАМАДСКАГА
ЗДОРОВ'Я»

вул. Касцюка, 98, 220099, г. Мінск, тэлеф. 986-92-56
Э-пошта: mail@shios.by
<http://www.shios.by/>

Журавская Т.В. 08.08.2022

№ 3.

МИНИСТЕРСТВО ЗДРАВООХРАНЕНИЯ
РЕСПУБЛИКИ БЕЛАРУСЬ

Государственное учреждение
«РЕСПУБЛИКАНСКИЙ ЦЕНТР ГИГИЕНЫ,
ЭПИДЕМИОЛОГИИ И ОБЩЕСТВЕННОГО
ЗДОРОВЬЯ»

ул. Касцюка, 98, 220099, г. Минск, тэлеф. 986-20-22-20
Э-пошта: mail@shios.by
<http://www.shios.by/>

Председатель Правления
РОО «Люди ШИОС»
Журавской Т.В.

О рассмотрении

Уважаемая Татьяна Владимовна!

Государственное учреждение «Республиканский центр гигиены, эпидемиологии и общественного здоровья», рассмотрев в пределах компетенции Ваше обращение, по существу поставленных вопросов информирует о следующем.

Лечение ВИЧ-инфекции комбинацией антиретровирусных препаратов в настоящее время даёт возможность людям, живущим с ВИЧ, (далее – ЛЖВ) достигать неопределяемой вирусной нагрузки – минимального количества копий вируса, наличие которых невозможно зафиксировать с помощью выбранного метода исследования (нижележащая малая концентрация вируса). Это не только позволяет ЛЖВ иметь нормальные продолжительность и качество жизни, но и, как показали многочисленные научные исследования, прелотрашает передачу ВИЧ партнеру даже при незащищенных (то есть без использования презерватива) сексуальных контактах.

На основании комплексного анализа сведений, полученных в течение всего времени наблюдения за эпидемией ВИЧ-инфекции, Всемирной организацией здравоохранения было опубликовано заявление о том, что ЛЖВ, достигшие и поддерживающие неопределяемую вирусную нагрузку, не могут передать ВИЧ своим сексуальным партнерам (<https://www.who.int/news/item/20-07-2018-viral-suppression-for-hiv-treatment-success-and-prevention-of-sexual-transmission-of-hiv>).

Таким образом, человек, живущий с ВИЧ и находящийся на антиретровирусной терапии с неопределяемой вирусной нагрузкой, не может передать ВИЧ при анальных или оральных контактах, вне зависимости от того, использовался презерватив или нет.

И.о. главного врача

А.Л. Зетскович

А.Л. Зетскович

Thank you for your attention!

Спасибо за внимание!



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10:00 Тбилиси



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Сессия 3

Анализ экономической неэффективности криминализации ВИЧ

**Шароф Аланазарзода - Судья Верховного Суда Республики
Таджикистан, член Координационного комитета Форума**

Session 3

Analysis of the economic ineffectiveness of the criminalization of HIV

**Sharof Alanazarzoda - Judge of the Supreme Court of the Republic of
Tajikistan, member of the Steering Committee of the Forum**



ОУСҶОИИҶИИ ҶАԤАԤҶИИ СҶОԤԤԤ
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**ВЕРХОВНЫЙ СУД
РЕСПУБЛИКИ ТАДЖИКИСТАН**





ФОРУМ СУДЕЙ ВЕЦА

ПО ВИЧ, ПРАВАМ ЧЕЛОВЕКА И ЗАКОНОДАТЕЛЬСТВУ

The international community has made a commitment to end the AIDS epidemic as a threat to global health by 2030.

This is one of the ambitious goals of the 2030 Agenda for Sustainable Development, adopted by the United Nations General Assembly in September 2015.



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ПО ВИЧ, ПРАВАМ ЧЕЛОВЕКА И ЗАКОНОДАТЕЛЬСТВУ

The colossal investments in the fight against HIV over the past 15 years are paying off.

The dramatic decline in HIV-related deaths seen over the past decade is a testament to the commitment, resources, and innovation devoted to responding to the global HIV epidemic.



ФОРУМ СУДЕЙ ВЕЦА

ПО ВИЧ, ПРАВАМ ЧЕЛОВЕКА И ЗАКОНОДАТЕЛЬСТВУ

UNAIDS REPORT ON THE GLOBAL AIDS EPIDEMIC 2022

Although significant progress has been made in the HIV response, the HIV epidemic remains a serious public health threat in all regions. Along with the successes come major challenges.

The populations most affected by the increase in new HIV infections are people who inject drugs, sex workers, and key populations.



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Eastern Europe and Central Asia are experiencing the fastest growing HIV epidemic in the world.

In 2021, 160,000 (130,000-180,000) people were infected with HIV, a 48% increase over 2010.

The number of AIDS-related deaths in the region in 2021 reached 44,000 (36,000-53,000) - a 32% increase over the number of deaths in 2010.



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In EECA countries, coverage of HIV prevention and treatment services remains insufficient.

As of 2021, 63% of people living with HIV knew their status, 81% of people who knew they were HIV positive were receiving treatment (51% of all people living with HIV), and 94% of people who received treatment had their viral load suppressed (48% of all infected).



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Stigma and discrimination continue to block effective responses to AIDS. Studies have documented high levels of stigma against HIV and key populations: in Tajikistan, for example, only 23% of people living with HIV surveyed cited the positive effect of publicly disclosing their HIV-positive status.



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The Criminal Codes of most EECA countries criminalize exposure to HIV and HIV transmission.

Although this norm aims to reduce the transmission of HIV, in practice it has the opposite effect-it increases the stigmatization of people living with HIV, limits their access to treatment, and reduces the effectiveness of government responses to HIV and AIDS.



ФОРУМ СУДЕЙ ВЕЦА

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UNAIDS REPORT ON THE GLOBAL AIDS EPIDEMIC 2022:

According to UNAIDS, discriminatory laws undermine the AIDS response by driving people away from services and undermining public health efforts to help those who are most at risk of infection or death.

Repealing these laws would help put the AIDS response back on track.



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Analysis of HIV criminalization cases shows that they do not reflect the demographics of the local epidemic and the likelihood of prosecution, compounded by discrimination against marginalized populations based on drug use, ethnicity, gender, gender identity, immigration status, incarceration, poverty (including homelessness), sex work and/or sexuality.



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HIV, tuberculosis, viral hepatitis (especially Hepatitis C), and now COVID-19 pose a serious threat to the nearly 12 million people worldwide who are constantly in prison and detention centers.

Prisoners are five times more likely to contract HIV than adults in the general population.

Data provided by UNAIDS in recent years show that, on average, more than 3 percent of the world's prisoners are living with HIV.

Overcrowding, poor ventilation, and malnutrition put people living and working in prisons, as well as others in closed institutions, at higher risk for HIV and TB infection.



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At the same time, the situation with employment of inmates, treatment of inmates with tuberculosis and HIV-infection, organization of adequate nutrition, provision of material and living conditions becomes more complicated. Treatment and prevention of these types of diseases require additional purchase of medical equipment.

Also, to ensure a guaranteed volume of free medical care in institutions of the penal system, based on its rational distribution between health care institutions of the penal system and institutions of the state health care system, based on the principles of improving its accessibility and quality, additional measures are required.



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The consequences of HIV criminalization do not end after release from prison.

There are new barriers associated with a number of issues, including employment, housing, travel, etc., and, of course, the continued stigmatization and discrimination based on HIV status alone.



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The Decree of the Government of the Republic of Tajikistan № 50 dated February 27, 2021 approved the "National Program and Plan of its implementation to combat the HIV epidemic in the Republic of Tajikistan for 2021 - 2025 years", which estimated that the total cost of the program for five years is more than fifty million dollars, but the lack of financial resources for program implementation is approximately 32%.



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It costs about \$240-250 per year to care for and treat one person living with HIV.

Currently, about 9,000 PLHIV in Tajikistan receive treatment at a cost of \$2.0 to \$2.3 million per year.

Over the 5 years of the National Program, \$11.5 million is needed for the care and treatment of PLHIV alone.



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It has been medically established that the consequences of discontinuing treatment can be:

Recurrent exacerbation of the disease;

Emergence of compatibility with antiretroviral drugs;

Deterioration of the patient's well-being;

A great burden on the health care system;

Reappearance of the source of infection in others;

Death of a sick person.



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Over the past two years, the multiple and compounding crises shaking the world have had a devastating impact on people living with and affected by HIV and have derailed the global response to the AIDS epidemic.

New data, frightening: progress is slowing, resources are shrinking, and inequality is increasing.

Lack of investment and action puts us all at risk: We will face millions of AIDS-related deaths and millions of new HIV infections if we continue on our current path.



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Unsustainable progress means that about 1.5 million new HIV infections were reported last year, more than 1 million more than the global target. For example, in 2021, a teenage girl or young woman was infected with HIV every two minutes, and the AIDS pandemic was also claiming lives every minute.



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The global response to AIDS is at risk.

As of the end of 2021, \$21.4 billion had been allocated to the AIDS response in low- and middle-income countries.

UNAIDS estimates that in 2025, the AIDS response will require \$29 billion in low- and middle-income countries, including those previously seen as high-income, to get back on track to end the AIDS epidemic.

Thank you for your attention!

Спасибо за внимание!



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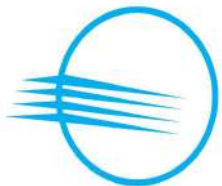
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Session 3

International experience of decriminalising HIV non-disclosure, exposure and/or transmission

Edwin J Bernard, HIV Justice Network

Сессия 3

Международный опыт декриминализации передачи ВИЧ, поставления в опасность инфицирования или несообщения своего ВИЧ-положительного статуса

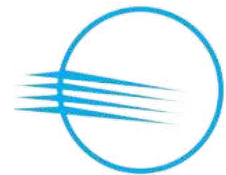
Эдвин Бернард, Сеть правосудия по ВИЧ



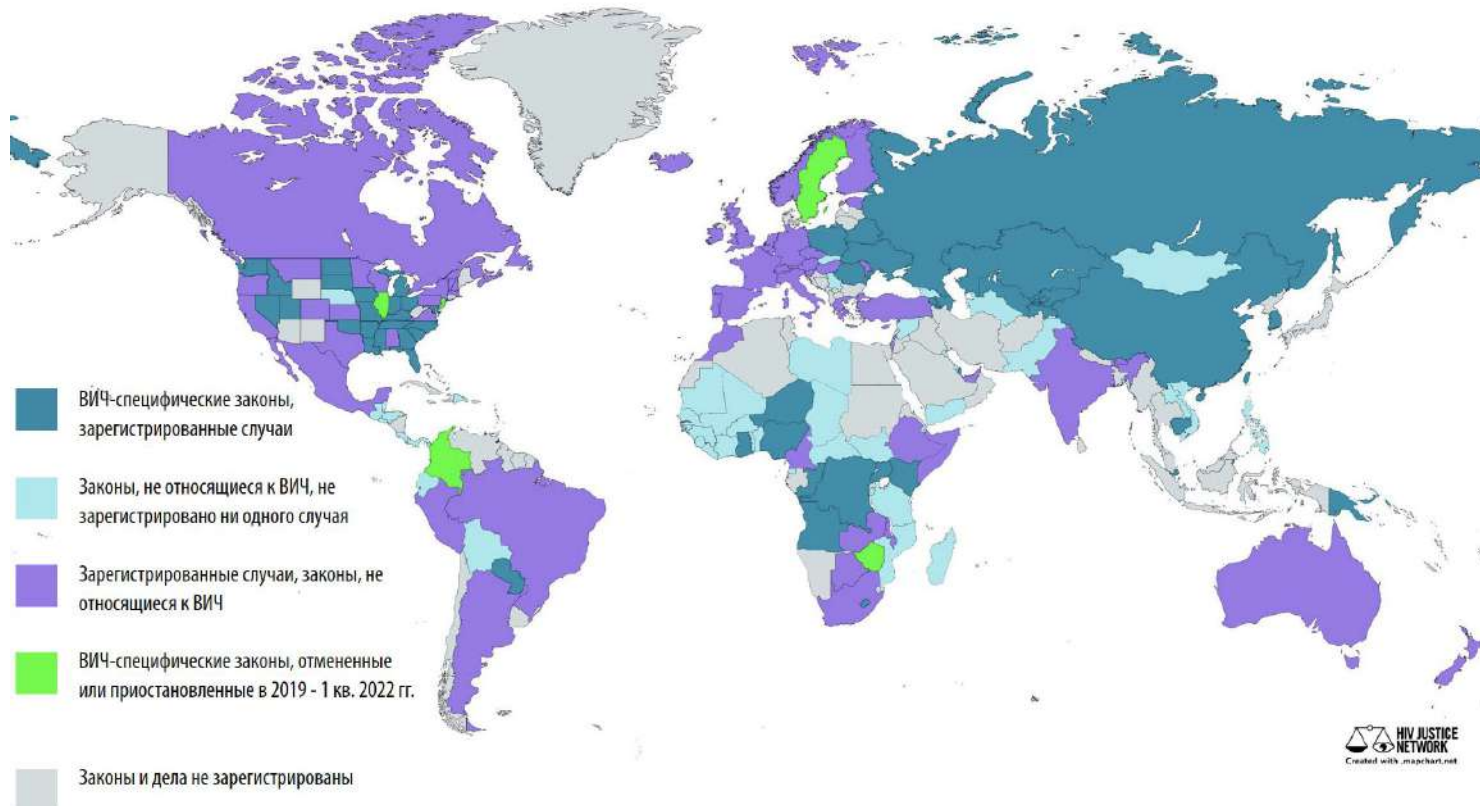
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- Proponents of criminalisation of HIV non-disclosure, exposure or transmission argue that invoking the criminal law promotes public health by **detering** and **punishing** behaviour that exposes others to the risk of HIV transmission.
- There is **no evidence** that HIV-specific criminal laws or criminal prosecutions under general laws help prevent new HIV infections.
- Rather, there is evidence that overly broad criminalisation of HIV non-disclosure, exposure or transmission **undermines public health** by:
 - contradicting public-health messages encouraging everyone to take **responsibility** for their own sexual health (i.e. criminalisation instead assigns responsibility for HIV prevention to people who know they are HIV-positive)
 - contributing to misconceptions about HIV and how it is transmitted, especially where low or negligible **risk** activities are being criminalised
 - creating a **false sense of security** in those who are HIV-negative or who do not know their HIV status by encouraging people to believe that the law can protect people from exposure to HIV
 - **undermining trust** between health professionals, service providers and their patients, and deterring people from talking openly about their sexual practices and seeking advice to minimise risk for fear that what they say could be used against them in a criminal investigation
 - **detering access to HIV prevention, testing, treatment and care** for fear of legal ramifications
 - reinforcing **stigma and discrimination** against people living with HIV.



ГЛОБАЛЬНЫЙ ОБЗОР ЗАКОНОДАТЕЛЬСТВА И УГОЛОВНЫХ ДЕЛ, ПО СОСТОЯНИЮ на 31 марта 2022 г.*



Summary of key HIV decriminalisation court decisions 1 / 2

- 2005: Netherlands Supreme Court limits application of general law based on understanding of HIV **risk**. (*Details*)
- 2009: Geneva Court of Justice, Switzerland, quashes HIV exposure conviction recognising “hypothetical” HIV **risk** on ARVs. (*Details*)
- 2011: Supreme Court of Victoria, Australia found the accused must believe they are infectious and be capable of infecting complainant to have required **intent**.
- 2012: Denmark court acquits accused on the basis of reduced HIV **harm**: HIV is no longer life-threatening. (*Details*)
- 2014: Iowa Supreme Court, USA, recognises reduced **risk** on ARVs; Iowa parliamentarians ‘modernize’ law.
- 2015: District Court of Aachen, Germany recognises that non-disclosure can be motivated by fear and does not mean **intent** to transmit; also recognises reduced **risk** on ARVs.
- 2015: High Court of Kenya finds HIV-specific criminal law unconstitutional because it is vague, over-broad and violates of **right to privacy**. (*Details*)
- 2016: High Court of Malawi recognises extremely low **risk** of breastfeeding on ART, and recognises **rights to privacy, dignity and fair trial**.

Summary of key HIV decriminalisation court decisions 2 / 2

- 2018: Sweden Supreme Court recognises no **risk** on ARVs: in 2020, Parliament abolishes obligation to disclose.
- 2019: Constitutional Court of Colombia acknowledges that scientific advancements related to **risk** and **harm** mean its HIV-specific law violates principle of equality; law suspended.
- 2020: Supreme Court of Spain upholds acquittal of man accused of HIV transmission as evidence points to complainant being aware of his status, and thus **consented**.
- 2020: High Court of Taiwan recognises that oral sex carries no **risk** of transmission and acquits a gay man living with HIV previously found guilty of having “risky” sex.
- 2022: Ontario Court of Appeal in Canada overturns 2013 conviction for aggravated sexual assault involving a woman with an undetectable viral load, but where no condom was used, after the Court accepted medical evidence that there was no **risk**; Canadian government now consulting on law reform.
- 2022: Lesotho High Court (acting as Constitutional Court) finds imposition of death sentence for sexual offences solely on the basis of HIV status unconstitutional and upholds that people living with HIV have the same right to life as all others.

HIV decriminalisation decisions based on risk

- The Netherlands was the first country to consider viral load as a factor in HIV risk. In 2005, a Supreme Court ruling – which closely examined scientific evidence of sexual transmission risk and found that the **per-act risk of unprotected sex, especially when viral load is low, does not create a ‘considerable chance’ of transmission** – substantially narrowed the scope of the law. As a result, only intentional HIV exposure or transmission is a crime.
- In 2009, the Geneva Court of Justice in Switzerland quashed an HIV exposure conviction after accepting testimony from Professor Bernard Hirschel, one of authors of the ‘Swiss statement’ which stated the **people on effective ARV treatment cannot transmit HIV**. It was Geneva’s Deputy Public Prosecutor, Yves Bertossa, who had called for the appeal after hearing about the ‘Swiss statement’. Bertossa told Swiss newspaper, Le Temps: **“One shouldn’t convict people for hypothetical risks”**. There have been no further reports of prosecutions for HIV exposure since the ruling. The law was repealed in January 2016, when the new Epidemics Act 2013 came into effect. The changes mean that a prosecution will only take place if there is a malicious (and scientifically possible) attempt to infect someone with HIV or another serious communicable disease.

HIV decriminalisation decision based on harm

- In 2011, Denmark's Minister of Justice suspended the only HIV-specific criminal law in western Europe noting that **the law cannot apply because HIV can no longer be considered a life-threatening disease** because effective HIV treatment is available in Denmark, making HIV a manageable, chronic health condition.
- In August 2012, the Denmark High Court acquitted a person living with HIV who had previously been found guilty under the suspended law. In its brief ruling, the Court reasoned that since there is now evidence that HIV is not a “life-threatening condition” he could no longer be guilty of exposing another to a “life-threatening illness”.
- The law remains suspended, with no further criminal cases.

HIV decriminalisation decision based on constitutional rights

- Section 24 of Kenya’s HIV and AIDS Prevention and Control Act (2006) states.
 - (1) A person who is and is aware of being infected with HIV or is carrying and is aware of carrying the HIV virus shall—
 - (a) take all reasonable measures and precautions to prevent the transmission of HIV to others; and
 - (b) inform, in advance, any sexual contact or person with whom needles are shared of that fact.
 - (2) A person who is and is aware of being infected with HIV or who is carrying and is aware of carrying HIV shall not, knowingly and recklessly, place another person at risk of becoming infected with HIV unless that other person knew that fact and voluntarily accepted the risk of being infected.
- High Court of Kenya: *Aids Law Project v Attorney General and Others [2015]*
 - The said section is **vague and overbroad and lacks certainty** especially with respect to the term “sexual contact”. It fails to meet the legal requirement that an offence must be clearly defined in law as one cannot know from the wording of the section what acts and omissions will make him or her liable.
 - Apart from that it is our view that the **limitation to privacy** imposed by section 24 aforesaid does not satisfy the requirements of Article 24 of the Constitution.
 - In the result we find that section 24 of the *HIV and AIDS Prevention and Control Act, No. 14 of 2006* is **unconstitutional for being vague and lacking in certainty**. The same is also overbroad and is likely to **violate the rights to privacy** as enshrined under Article 31 of the Constitution.

HIV decriminalisation: rationales for repeal

Illinois, USA, 2021

- *“Not a single study throughout the country shows HIV criminalisation has reduced HIV transmission in any jurisdiction where it exists. It was far past time to get rid of this harmful law.”* Illinois State Representative Carol Ammons
- *“We’re repealing Illinois’ archaic HIV criminalisation law, the likes of which swept the nation during the earlier years of the AIDS crisis. Research has shown these laws don’t decrease infection rates, but they do increase stigma. It’s high time we treat HIV as we do other treatable transmissible diseases, thereby treating our residents with dignity and furthering our mission to end this epidemic in Illinois.”* Illinois Governor J.B. Pritzker

Zimbabwe, 2022

- *“If a woman is HIV-positive and informs her husband, the husband rushes to the police and makes sure that the wife is arrested...When the case is presented in court, the women cannot defend themselves as they have no legal representation.”* Josephine Shava, MP
- *“Zimbabwe criminalises sexual activity when one is HIV-positive, yet our Constitution says that we should not discriminate against people with HIV and AIDS.”* Perseviarance Zhou, MP

Conclusion

- Earlier in the AIDS epidemic, HIV criminalisation laws were passed even though there was **no evidence** that criminalisation would positively impact behaviour and reduce HIV incidence.
- Instead, we have seen evidence of the harms that they cause to both **public health** and to **human rights** through miscarriages of justice.
- There is **no evidence** that in the jurisdictions where decriminalisation or modernisation has taken place, that the HIV epidemic has got worse.
- To the contrary, the first countries to fully decriminalise – Denmark and Netherlands – were two of only six countries globally to have reached UNAIDS' 90-90-90 targets by 2020.
- Any benefits of HIV criminalisation – which are hard to discern from existing research – must be weighed against the enormous costs of deepening stigma and fear among people living with HIV and that of incarceration, coercion and blackmail, police investigation, criminal proceedings, and media hysteria.
- HIV criminalisation also adds to the legal and societal burden faced by those who experience discrimination based on race, class, gender, sexual orientation, and immigration status as well as other forms of criminalisation.
- **People living with HIV in all their diversities must be** treated fairly and justly by the criminal law, based on up-to-date science combined with the application of key the legal principles of foreseeability, causality, intent, proof and proportionality – all within a human rights lens.
- **We must work towards decriminalising HIV non-disclosure, exposure, and transmission to reach the Global AIDS Strategy 10-10-10 targets.**

АКАДЕМИЯ ПРАВОСУДИЯ ПО ВИЧ

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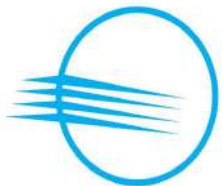
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17-18 November 2022
10:00 Tbilisi



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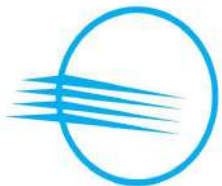


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Level of Risks in the Context of HIV exposure and transmission
Mikhail Golichenko, PhD, Lawyer

Уровень Риска в Контексте Передачи и Поставления в
Опасность Передачи ВИЧ-инфекции
Михаил Голиченко, кюн, адвокат



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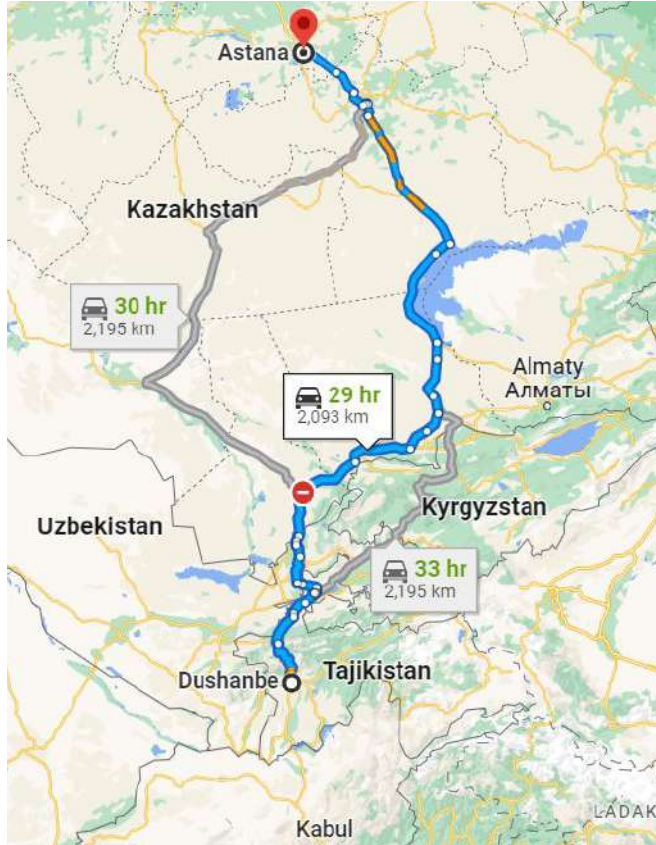


Определения и данные о рисках в контексте ВИЧ-инфекции

Knowingly exposing another person to **the risk** of HIV

The likelihood of HIV transmission during one act of vaginal intercourse is low: 0.08% (8 in 10,000) in the absence of risk cofactors

Expert consensus statement on the science of HIV in the context of criminal law

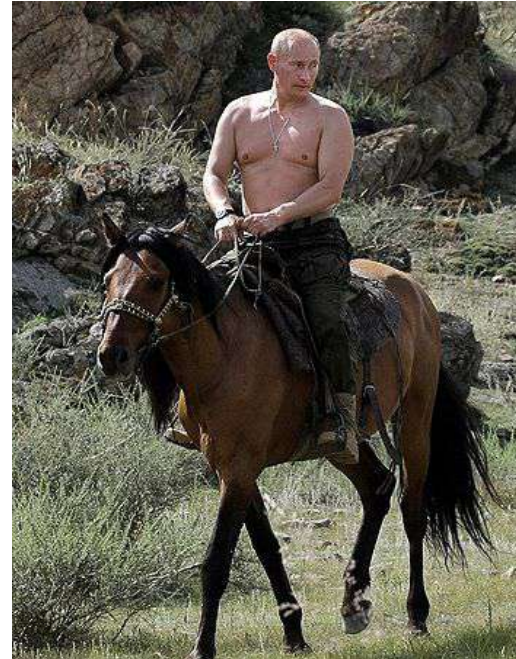


- 1 in 101 - Lifetime odds of death for in Motor-vehicle crash
- 1 in 366 of car accident for every 1000 miles you drive



Risks in Sport: Horse riding

Horse riding continues to be found more dangerous than motorcycling, skiing, football, and rugby



Risks in Sport: Ice Hockey

Ice hockey accounts for 9% of all youth-sport related injuries in Canada



Risks in Daily Life

About 430,000 people are injured by knives each year



Knife-related injuries treated in United States emergency departments, 1990-2008

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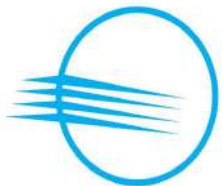
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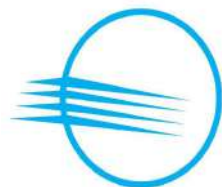


Оценка риска в контексте поставления в опасность инфицирования ВИЧ и других деяний

Шароф Аланазарзода - Судья Верховного Суда Республики Таджикистан, член Координационного комитета Форума

Risk assessment in the context of exposure to HIV and other offenses

Sharof Alanazarzoda - Judge of the Supreme Court of the Republic of Tajikistan, member of the Coordinating Committee of the Forum



ОУСҶОИИҶИИ ҶОАЛДҶОИИ СКОЛА
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ВЕРХОВНЫЙ СУД
РЕСПУБЛИКИ ТАДЖИКИСТАН





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ПО ВИЧ, ПРАВАМ ЧЕЛОВЕКА И ЗАКОНОДАТЕЛЬСТВУ

Article 125 of the Criminal Code of the Republic of Tajikistan - Transmission of HIV

- 1) To expose another person to HIV is punishable by restriction of freedom for up to three years or imprisonment for up to two years.
- 2) Transmission of HIV by a person who knew he had the disease shall be punishable by imprisonment for a term of two to five years.
- (3) An act referred to in paragraph two of this article, committed
 - (a) with respect to two or more persons;
 - (b) with regard to a person known to be a minor,- shall be punished by imprisonment for a term of five to ten years.



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The **object** of this crime is the social relations arising during the exercise of the natural human right to life and health, which ensures the safe use of this good.

Deliberate exposure to HIV creates a risk of harm to the social relations that ensures the safety of human life or health, but in case of HIV transmission, these relations are seriously disrupted.



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The **victim** of this crime can be anyone other than the perpetrator himself.

Self-contamination (for example, as a result of the intentional use of contaminated materials) cannot serve as a basis for criminal liability under Article 125 of the Criminal Code.



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The legislator in Article 125 of the Criminal Code establishes two independent corpus delicti of this crime in separate parts:

- 1) Exposing someone to HIV infection (Part 1, Article 125 of the Criminal Code);
- 2) HIV transmission by a person who knew he/she had the disease (parts 2 and 3 of Article 125 of the Criminal Code).



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The bodies of criminal prosecution, courts and judges should bear in mind that the *corpus delicti* under Part One and Parts Two and Three of Article 125 of the Criminal Code are distinguished by the existence or absence of consequences.

Thus, the first part of this (present) article establishes liability for intentionally putting another person in danger of contracting HIV (infection does not occur);

The second and third parts of the Article are responsible for infecting another person with HIV (transmission does not occur).



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The corpus delicti of the crime under Article 125(1) of the Criminal Code is actions by which a person knowingly puts another person in danger of contracting HIV.

The risk of HIV infection is defined as a person creating conditions that result in the risk of infecting another person (for example): sexual intercourse without a condom (without contraception) or through blood transfusions.



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The crime under Part 1 of Article 125 of the Criminal Code has a formal structure and is considered to be completed from the moment of exposure to HIV.



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Risk of contamination refers to actual contamination, not speculation (imagination, perceptions) in the mind of the perpetrator.

Refusing antiretroviral treatment and not reporting it creates no real (actual) danger, because there is no feedback loop between them and the possible consequences.

In this case, the risk arises not because of inaction by the perpetrator, but because of his specific actions (for example: transfusion of infected blood).



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In qualifying the crime under Article 125(1) of the Criminal Code, the following circumstances, which constitute exposing someone to risk of HIV, should be taken into account:

- Completing antiretroviral treatment and achieving a viral load below the risk norm or undetectable;
- Use of preventive (protective) measures (use of male or female condoms, disposable syringes, disinfection, artificial feeding).



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For, according to the achievements of modern medical science - the antiretroviral treatment and achievement of a viral load below the risk norm or undetermined ($H=H$), as well as the use of preventive (protective) means eliminates the risk of infection (contamination) of HIV.

Therefore, in such cases, a person cannot be prosecuted under Article 125(1) of the Criminal Code for exposing someone to risk HIV due to the absence of an actual risk of infection.



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The possibility of HIV infection through different routes is not the same. Therefore, the bodies of inquiry, preliminary investigation, judges at the stages of criminal proceedings in order to determine the actual risk, should be guided by scientific medical manuals.

Since this circumstance is important for establishing one of the elements of the objective aspect of the crime of knowingly exposing another person to HIV.



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It should also be noted that for the correct qualification of this crime, it is necessary to establish that the person knew that he/she is infected with HIV, knows the ways and means of infection, and foresees the possibility of infecting another person.

The proof of a person's knowledge of HIV infection can be obtained in the manner prescribed by procedural law, the relevant medical certificate on the results of the examination and the signing of a special notification form on criminal liability for infecting another person with HIV.



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The corpus delicti under paragraphs 2 and 3 of this article is infection of another person with HIV by a person who knew that he/she had the disease.

The content of infecting another person is expressed in the fact that the person infected with HIV, through their deliberate actions, provokes the entry of the virus into the body of the victim, which develops in the infected person a process of disease (illness).

Consequently, the objective side of this crime is only an act in the form of an active action and excludes inaction.



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The crime provided for by parts 2 and 3 of Article 125 of the Criminal Code has a material elements of crime and consists of the act of HIV transmission and the onset of consequences in the form of actual infection of one (part 2) or two or more persons (item "a" of part 3) or a minor deliberately (item "b" of part 3).



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Thus, the corpus delicti under paragraphs 2 and 3 of Article 125 of the Criminal Code - being material, is considered to be completed from the moment another person is infected with HIV.

The subsequent development of the disease, the rate of its growth, and the time of death (lethal outcome) are irrelevant to the qualification of the act.



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One of the obligatory elements of the *corpus delicti* under paragraphs 2 and 3 of Article 125 of the Criminal Code is a causal link between the act and the consequence.

Therefore, in criminal proceedings in this category, the relevant body needs to establish the following circumstances:

- (a) Are certain activities aimed at transmitting the virus?
- b) was the victim subsequently infected with the virus?
- c) Was the victim's (his/her) infection caused by the actions of the infected (carrier)?



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The legislator, in parts 1, 2 and 3 of Article 125 of the Criminal Code, provides for different (general and special) features of the subject of the crime.

The subject of the crime under paragraph 1 of Article 125 of the Criminal Code is general.

That is, a sane person of sixteen years of age who exposes another person to HIV infection through his or her actions.



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The criminal law does not clearly indicate the characteristics of a specific subject in committing a crime under part 1 of Article 125 of the Criminal Code, so the subject of this part of this article can be a person infected with HIV, as well as a healthy person.

A healthy person is considered a subject of a crime under Article 125(1) of the Criminal Code if his or her intent is directly aimed at infecting another person with HIV (for example, by using non-sterile syringes for injecting).



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The subject of the crime under paragraphs 2 and 3 of Article 125 of the Criminal Code is special.

That is, a physically sane person who has reached the age of sixteen and is infected with HIV, knowing that he is infected (infected with the virus).

In order to determine these signs in the establishment of a special subject, it is necessary that the person had prior and reliable knowledge that he was infected with HIV, i.e. was informed that HIV was present (detected) in his body and this fact was confirmed by a medical examination.



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The subjective side of the crime under Part 1 of Article 125 of the Criminal Code is expressed only in the form of direct intent, which is indicated in the disposition by the term "**WILLING**", i.e. "**CONSCIOUSLY**".

The perpetrator must be aware that by his or her actions, he or she is putting another person at risk of HIV infection and wants it to happen.

That is, the formal corpus delicti excludes culpability in the form of indirect intent or negligence.



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In order to establish the factual circumstances relevant to cases involving offenses provided for in Article 125 of the CC, according to the requirements of Article 209 of the CPC, the appointment and production of an appropriate expert examination is mandatory.

HIV infection is specific and related to the characteristics of the patient's body, the course of the disease, the viral load.

Determination of these circumstances at the time of the crime is important for the correct qualification of the act.

Thus, when appointing a forensic examination, it is necessary to ask experts and specialists questions related to the subject of proof, respecting its limits, which are regulated in the CPC.



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The science has established that the causative agent of HIV belongs to the lentivirus subgroup and the retrovirus family.

Two types (kinds) of viruses have been identified: HIV-1 and HIV-2.

Thus, in order to identify the similarity of the types and strains of HIV transmitted from one person to another, it is necessary to appoint and conduct forensic phylogenetic and other relevant examinations to confirm the circumstances of the infection (infection) by the suspect (accused, defendant) of the victim or third parties.

It is necessary to establish whether A has infected B or C has infected B.

Thank you for your attention!

Спасибо за внимание!



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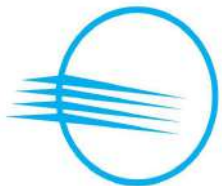
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ПО ВИЧ, ПРАВАМ ЧЕЛОВЕКА И ЗАКОНОДАТЕЛЬСТВУ

The right to privacy is a fundamental human right guaranteed by international human rights law, including the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and other international instruments.



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People living with HIV and key populations, based on the principle of non-discrimination, have all the rights and freedoms stipulated in Chapter 2 of the Constitution of the Republic of Tajikistan - the right to life, to judicial protection, to education, to physical and mental health, to social protection, to information and privacy.



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In accordance with the requirements of the Health Code of Tajikistan, the term confidentiality refers to keeping secret the fact of visiting a medical facility, the state of health and received information about the person.

Information about a person's HIV status is a doctor-patient confidentiality and is protected by law.

The rights of persons infected with HIV/AIDS include humane treatment by society, which precludes the humiliation and the requirement to keep secret information about their state of health.



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In accordance with paragraph 2 of Article 162 of the Code of Health of the Republic of Tajikistan, information received about HIV infection is confidential (medical secrecy) and at the request of health authorities, if it is required in the interests of public health in order not to spread infectious diseases, on the basis of a court order or at the request of investigative authorities such information is provided.

But it is also prohibited to use this information for the purposes of criminal administrative prosecution of persons, except in cases prescribed by the legislation of the Republic of Tajikistan.



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The fact that a person underwent a medical examination to detect HIV and its results (a person's HIV status) constitute medical confidentiality.

Also a doctor's secret is (information about health status, about visiting a health care organization) and other information of a personal nature.



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Thus, the prohibition on the disclosure of information about the actual or presumed HIV status of an infected person implements the very right to privacy, which is guaranteed by international treaties and the laws of Tajikistan.



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Operational and investigative activities are carried out only to achieve the goals and objectives set forth in the Law of the Republic of Tajikistan "On Operational and Investigative Activities".

When carrying out operational and investigative activities, the body carrying out operational and investigative activities shall ensure respect for the human and civil rights to inviolability of private life, personal and family secrets, inviolability of the home, the privacy of correspondence, telephone conversations, telegraphic and other personal communications.



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In accordance with Article 14 of the CPC, personal and family secrets are protected by law. Everyone has personal data protection the secrecy of savings and deposits, correspondence, telephone conversations, postal, telegraph and other communications. Restriction of these rights in the course of criminal proceedings is permitted only by court order in the cases and in the manner directly prescribed by law.



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Also, by virtue of the requirements of paragraph 2 of Article 192 of the CPC, the search and seizure of documents containing state or other secrets protected by law must be authorized by a court or a judge.

In view of this, a judge's order is required by law to obtain such personal information protected by law.



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Medical institutions and their officials are obliged to maintain medical secrecy and confidentiality about people living with HIV (PLHIV) and acquired immunodeficiency syndrome (AIDS) and to request the basis and purpose of requests from the operational and investigative agencies, investigators and prosecutors and provide information about medical secrecy and secrecy protected by law only on the basis of a court order.



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In this regard, Article 145 of the Criminal Code provides for criminal liability for disclosure of medical secrecy, that is, the disclosure by a medical, pharmaceutical or other employee without professional or official need of information about the disease or the results of medical examinations of a patient, as well as the same acts of disclosure of information about the presence of HIV infection and acts if they entailed serious consequences.



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It should be noted that the legislator ensures protection of obtained information, which is a confidential medical secret (part 2 of art. 162 of the Code of Health Care and art. 14 of the CPC). Failure to comply with the procedure established by law is a ground for declaring evidence invalid and inadmissible (Article 881 of the CPC).



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According to the provisions of Article 24(3) of the CCP, cases of crimes under Article 125(1) of the CC are recognized as cases of private-public charges. and are initiated only upon complaint of the person who has suffered from the crime or his/her legal representative.



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In accordance with Article 140 of the CCP, only a statement by the victim or his legal representative may serve as grounds for initiating criminal proceedings under Part 1 of Article 125 of the CC.

Grounds for bringing a criminal case under Part 2 and 3 of Article 125 of the Criminal Code may serve in the aggregate quite realistic data on the presence of signs of the crime of HIV infection, since these crimes are public.



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When a victim or his/her legal representative reports the commission of a crime under Part 1 of Article 125 of the Criminal Code, the body of inquiry, the investigator, and the prosecutor have the right to institute criminal proceedings (Articles 145 and 147 of the CCP) and, within the limits of their authority, in strict compliance with the rules of investigative jurisdiction, adopt a reasoned decision.



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In the absence of a statement by the victim or his legal representative concerning the commission of a crime under Article 125 § 1 of the CC, in the presence of the exceptional circumstances set forth in Article 147 § 2 of the CCP, only the procurator may initiate criminal proceedings, but he is required to issue a reasoned ruling stating the reasons for the victim's lack of a statement.



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In order to ensure constitutional guarantees of the rights to liberty and security of person, to personal life and health, if the victim or his legal representative fails to submit a statement and there are no exceptional circumstances entitling the procurator to institute criminal proceedings under Article 125 § 1, the body of inquiry, the investigator, the prosecutor, the court and the judges shall issue a reasoned decision, as required by Article 27 § 6 of the CCP, not to institute or to terminate criminal proceedings.



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Also in accordance with the requirements of paragraph 3 of Article 24, as well as paragraph 2 of Article 147 of the CPC, in the case of reconciliation of the person affected by the crime with the accused and compensation for the damage caused to the victim, the proceedings in any case are terminated.



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The protection of the rights of the suspect (accused, defendant and convicted person) is ensured by the persons entrusted with conducting criminal proceedings. Criminal procedural legislation provides for the mandatory participation of a defender (Article 51 of the CCP).

Persons infected with HIV inevitably face physical and mental disabilities (including: depression, neuropathy, nephropathy, encephalopathy, etc.) because the immune system in their body is weakened (paralyzed).

Therefore, the court, judge, prosecutor, investigator, and inquirer are obliged, when conducting and examining criminal cases under Article 125 of the Criminal Code, to ensure the mandatory participation of defense counsel in the case.



ФОРУМ СУДЕЙ ВЕЦА

ПО ВИЧ, ПРАВАМ ЧЕЛОВЕКА И ЗАКОНОДАТЕЛЬСТВУ



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During the investigation and consideration of cases under Article 125 of the Criminal Code, it is necessary to comply with the procedure established by criminal procedural law for the collection and processing of evidence.

To prove the circumstances of the crime and the state of illness of the suspect (accused, defendant and convicted person), it is necessary to obtain information about HIV infection from the relevant medical institutions.

It should be noted that the legislator ensures protection of obtained information, which is a confidential medical secret (Part 2, Article 162 of the CP and Article 14 of the CPC).

Failure to comply with the procedure established by law serves as a basis for declaring evidence invalid and inadmissible (Article 881 of the Code of Criminal Procedure).



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It should be noted that under Article 88 of the Constitution of the Republic of Tajikistan and Article 19 of the Code of Criminal Procedure of the Republic of Tajikistan, the trial of a criminal case in court is, as a rule, public.

However, due to the fact that in criminal cases under Article 125 of the Criminal Code of the RT there is information that is confidential (medical secret) (part 2 of Article 162 of the Health Code of the Republic of Tajikistan), the trial of such cases according to part 1 of Article 273 of the CPC is held in closed session of the court.

Closed proceedings imply that judges and courts take appropriate procedural steps to protect confidential (medical (personal) secrets).

Thank you for your attention!

Спасибо за внимание!



იუსტიციის უმაღლესი სკოლა
HIGH SCHOOL OF JUSTICE



Fourth meeting of the EECA Judges' Forum on HIV, Human Rights and the Law

17-18 November 2022
10:00 Tbilisi



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იუსტიციის უმაღლესი სკოლა
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Session 7: HIV and human rights. Access to justice.
Topic of presentation: Access to justice for people from key populations, including in the context of armed conflict conflicts and other emergencies

**Speaker: Hannah Dovbach,
Eurasian Harm Reduction Association (EHRA)**



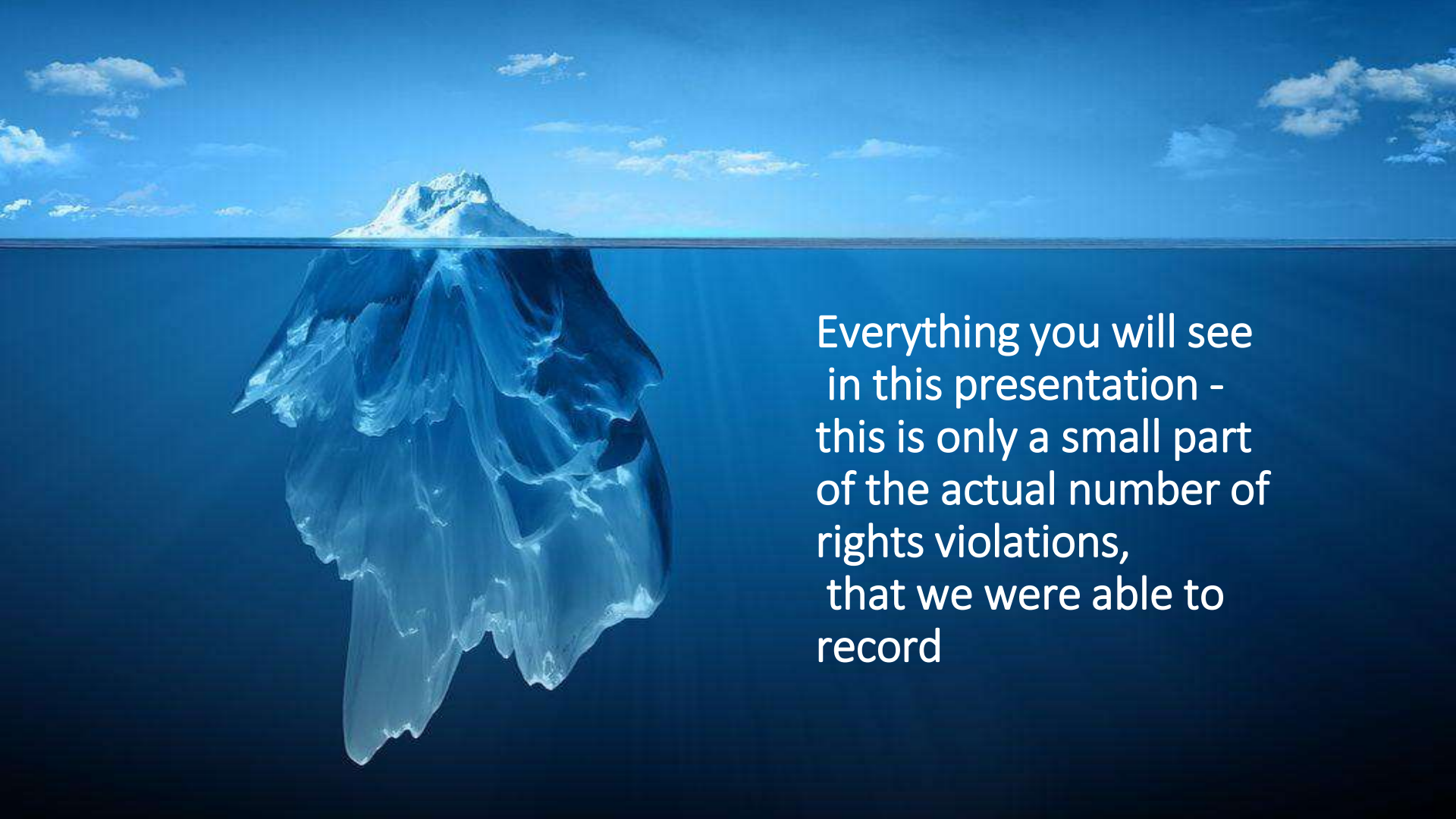
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Alliance
for Public Health

REACT
PROJECT



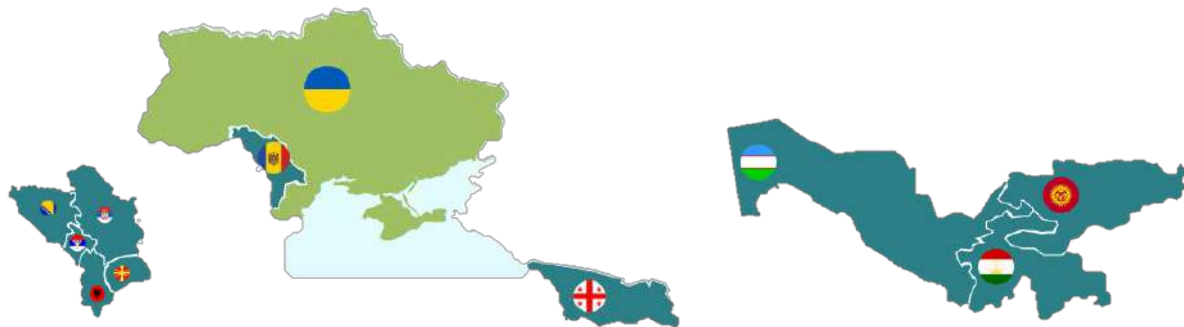


Everything you will see
in this presentation -
this is only a small part
of the actual number of
rights violations,
that we were able to
record

REAct : ПРАВА-ДОКАЗАТЕЛЬСТВА-ДЕЙСТВИЯ PROJECT

REAct tool - brings together 180+ communities in the EECA region to document and respond to human rights violations against members of vulnerable groups.

Since 2019, 12k+ incidents documented



<https://react-aph.org/>



A small proportion of recorded cases go to court.

One in three cases involves violations of rights by law enforcement agencies.



ПРАВООХРАНИТЕЛИ ИЛИ ПРАВОНАРУШИТЕЛИ?

ВЛИЯНИЕ НЕЗАКОННЫХ ДЕЙСТВИЙ
ПОЛИЦИИ НА ПРАВА ЧЕЛОВЕКА И ВИЧ



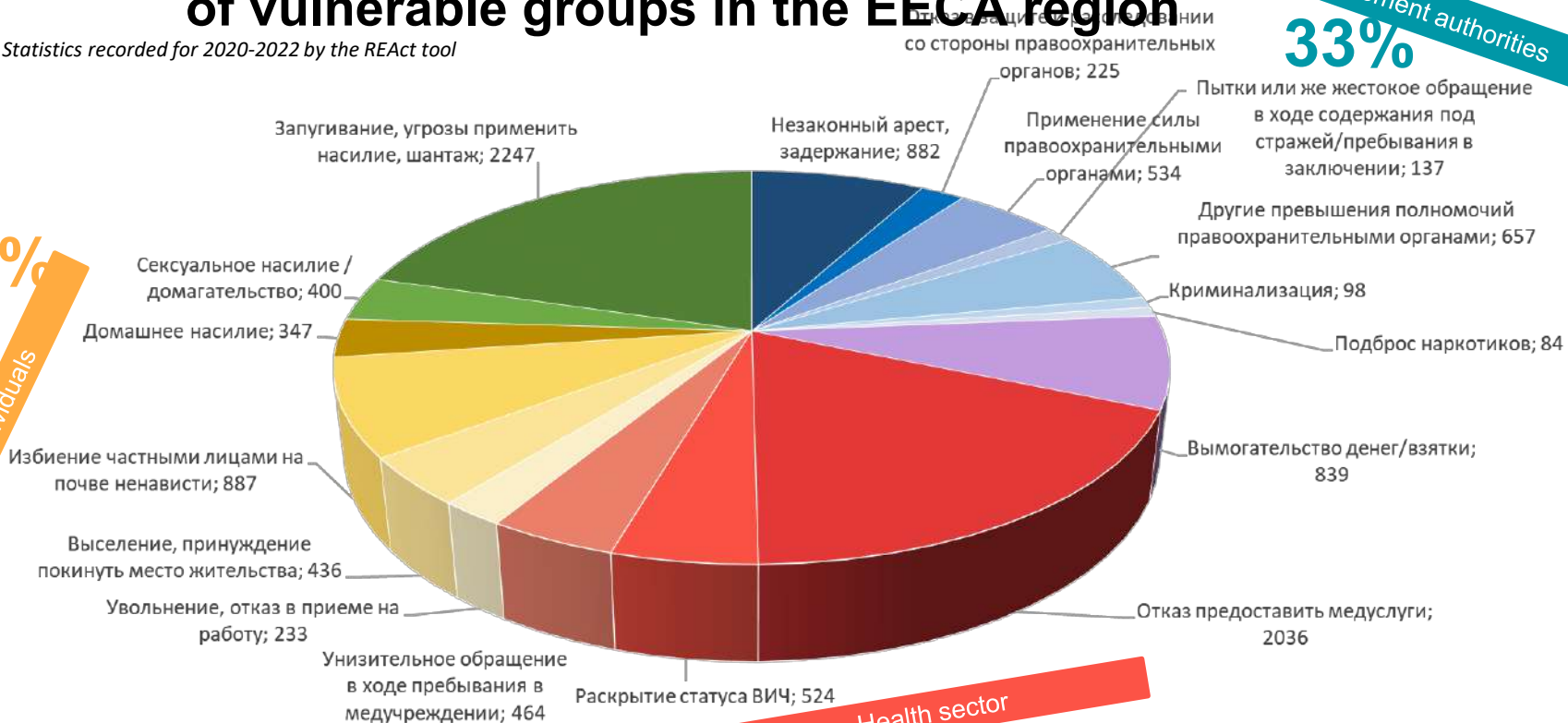
Statistics on human rights violations among of vulnerable groups in the EECA region

* Statistics recorded for 2020-2022 by the REAct tool

30%
Individuals

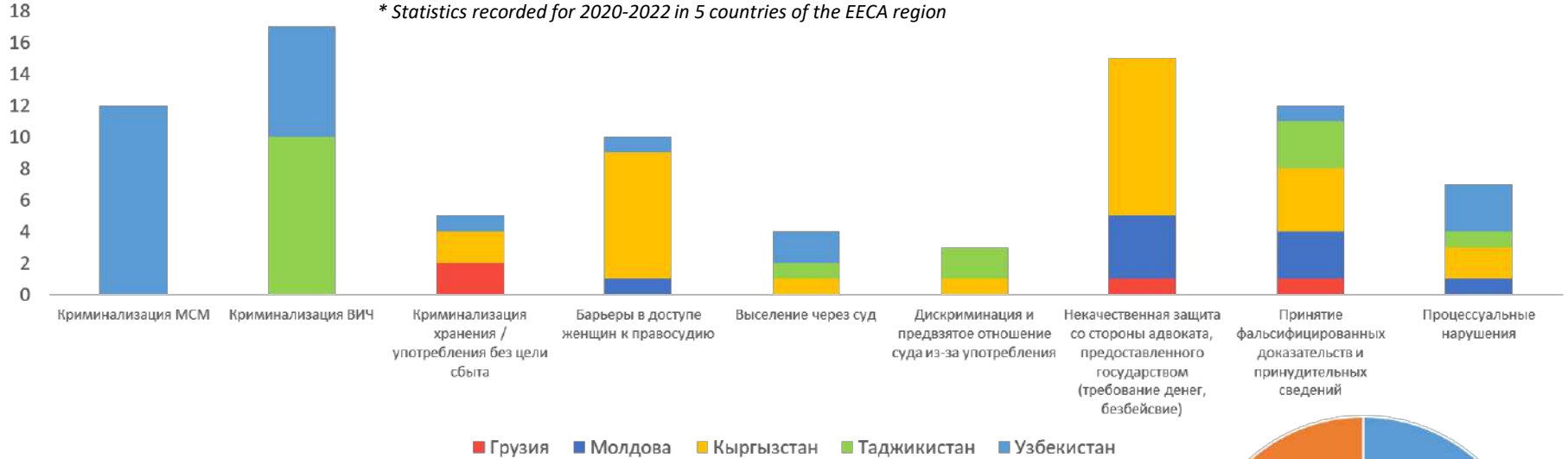
Law enforcement authorities
33%

Health sector
37%

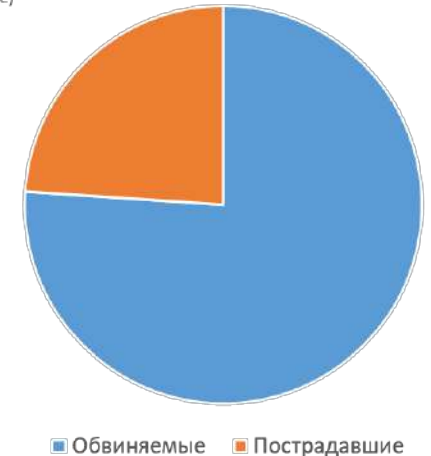


Нарушения прав человека со стороны судебной системы*

* Statistics recorded for 2020-2022 in 5 countries of the EECA region



- Particularly vulnerable position of women at risk and barriers to accessing justice
- Drug use as an aggravating factor
- Legal aid guaranteed by the state is not effective
- Enforcement of criminalising laws



What barriers have been overcome in relation to the beneficiaries?

People who use drugs



Lack of ID, residence registration, health insurance



Financial hardship, lack of housing, geographical inaccessibility of services, inability to earn an income



No access to social services on disability



Police involvement in the HIV services continuum



Fear of disclosure outside the realm of HIV services



Stigma and discrimination in relation to HIV/AIDS related to drug abuse



Harassment by the police
Police prosecution for drug-related offences
narcotics



Lack of access to evidence-based drug treatment services without subsequent inclusion of patients on the mandatory drug register

What barriers have been overcome in relation to the beneficiaries?

Sex workers/ki



Access to health care (SRH, STIs, COVID, HCV)
~30% of all cases



Financial problems, social vulnerability



Police violence, inhuman and degrading treatment



Violence by intimate partners/clients (more than 50% of cases of violence are recorded in Moldova)



Gay, MSM and trans* people



High levels of homophobia and transphobia



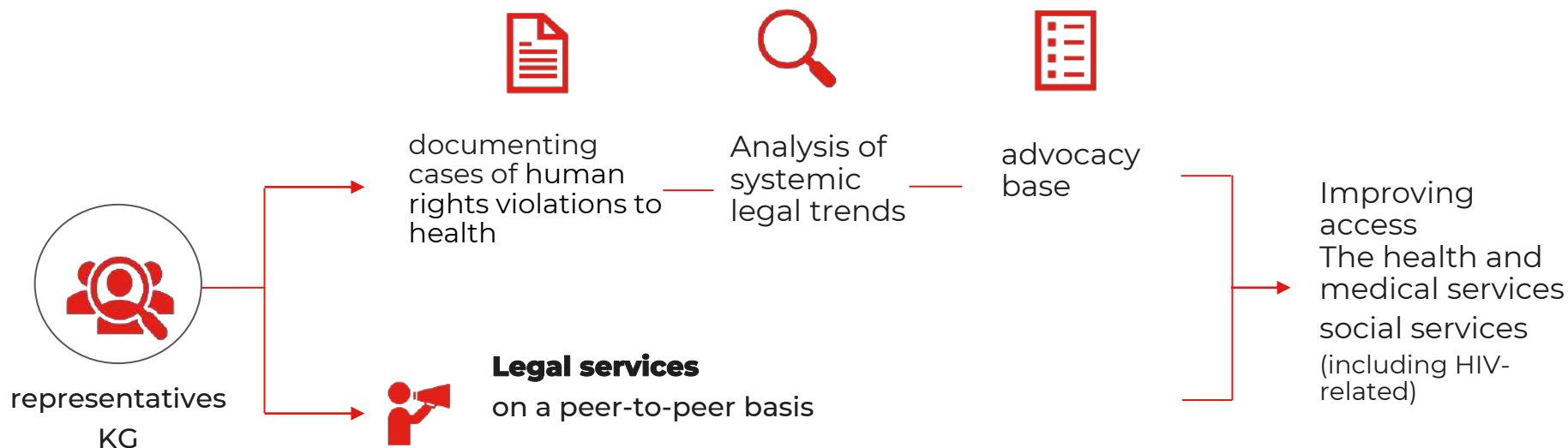
Denial of medical care before the patient's diagnosis has been disclosed



Hate-motivated harassment and violence

Legal services from paralegals

3077



Services usually supporting women in case of violence are not available for women who use drugs, even harm reduction services **often are inaccessible due to lack of gender-sensitiveness.**



HELP IMPOSSIBLE TO IGNORE:

A guide to ensure shelter, psychosocial and legal services for women who use drugs and experience violence



<https://www.youtube.com/watch?v=mwarjwBCrNI>

Russia's large-scale war against Ukraine - impact on human rights in the region

Survival of communities in the face of war and growing authoritarianism:

How to ensure the sustainability of civil society and community-led responses for people with HIV and TB and key populations

Communiqué of the Regional Consultation "During and After the War: Rethinking the Role of Regional Networks of PLHIV Communities and Key Groups and Other Civil Society Organisations

<https://eecaplatform.org/wp-content/uploads/2022/10/communique-final.pdf>

#StandwithUkraine human rights violations

- Gender-based violence, rapes, murders
- Torture and abuse
- Lack of access to life-saving medicines, shelter and food
- OST (opioid substitution therapy) patients in Russian-occupied territory: torture, blackmail, imprisonment under Russian law

Thank you for your attention!

Thank you for your attention!



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სამსახური



Session 7

The work of the Legal Aid Service of Georgia in promoting access to justice for people living with HIV and persons with disabilities

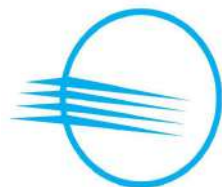
Nino Meladze

Сессия 7

Работа Службы юридической помощи Грузии по обеспечению доступа к правосудию для людей, живущих с ВИЧ, и людей с ограниченными

возможностями

Нино Меладзе



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სამსახური





Legal Aid includes:

legal advice

preparation of legal documents

representation in a court with respect to civil, administrative and criminal cases and in an administrative body



Legal Aid Service Mandate



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According to the Law on legal Aid, legal aid is provided to the:

- Socially vulnerable persons;
- Minors;
- Persons With Disabilities;
- Persons receiving Support;
- Asylum seekers and international protected persons;
- Victims of violence against women/domestic violence/ alleged victims

According to exceptional criteria approved by the Legal Aid Board legal aid is provided to the:

- Persons with serious or incurable disease



General Statistics



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Up to 20 000 cases each year

Up to 40 000 Consultations each year

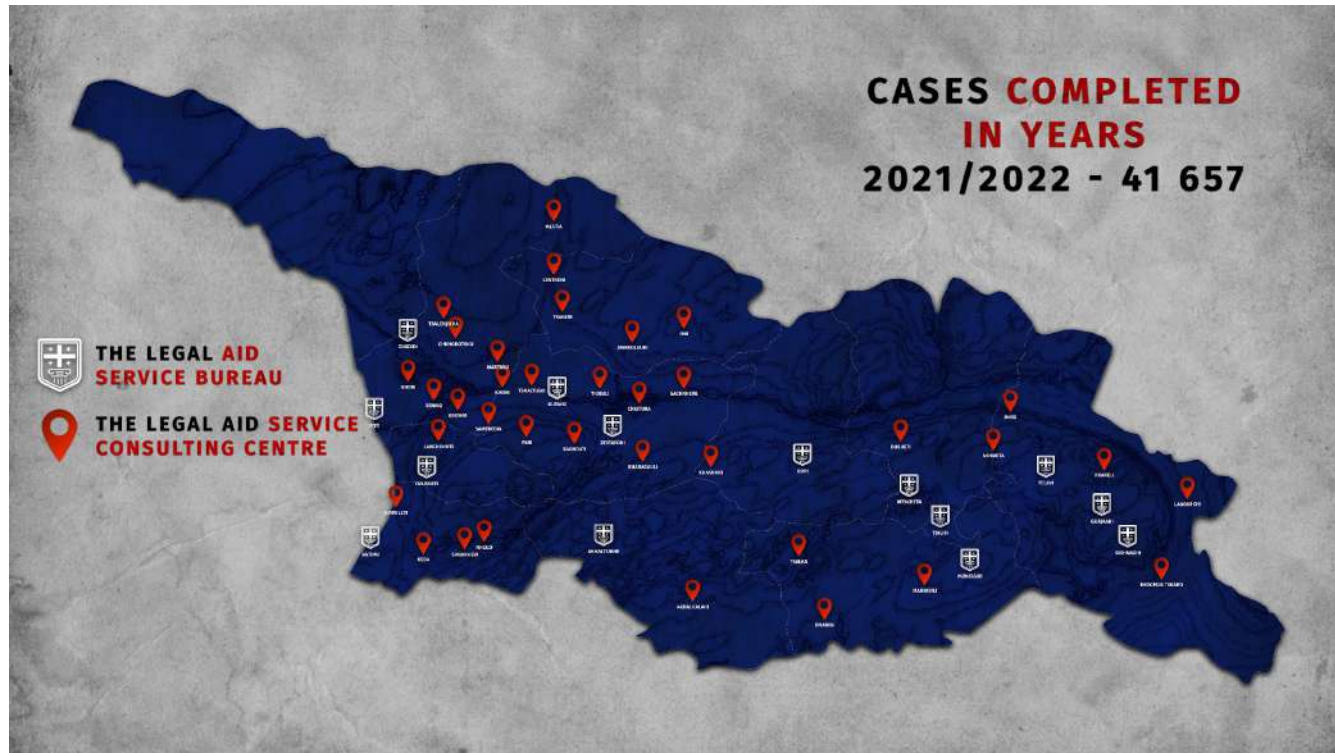
Up to 2 000 legal document each year



Territorial Accessibility to the Legal Aid



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14
**Legal Aid
Bureaus**

37
**Consultation
Centers**

Accessibility to the Legal Aid

Access to the Services



APPLICATION



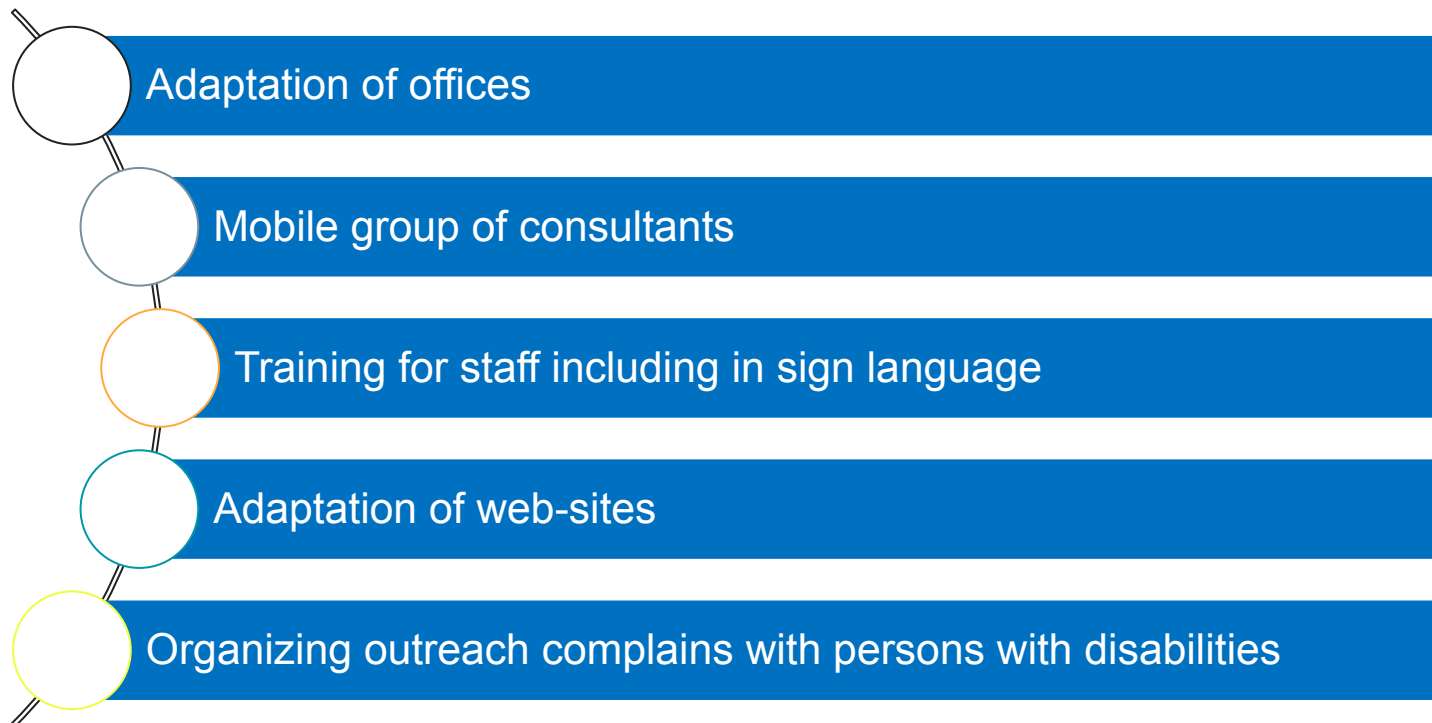
იურიდიული
დახმარების
სამსახური

Orien

Uninstall

Open

2020 Action Plan for persons with disabilities





Public Outreach Campaigns:

2022 - 45 Meetings

2021 – 43 meetings

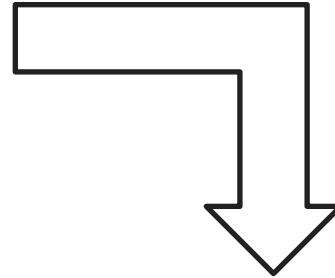
2020 – 31 meetings

2019 – 117 meetings

Project “Paralegals”



A paralegal can be any person from the age of 15 who will provide initial legal advice to locals.



Goals:

- raising legal awareness in society;
- Effective access to justice for everyone;
- Economic development;
- Establishing a peaceful legal environment.



Quality of the Service



Quality assessment
system since 2020

Artificial Intelligence
since 2022



On November 11, 2022, Legal Aid Service launched a panel discussions at the National University of Georgia.

First topic: "Current issues of medical law"

- Informed consent of the patient;
- Medical error;
- burden of proof;
- The problem of determining the causal connection;

Thank you for your attention!

Спасибо за внимание!



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Session 7

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Nicolaj Sonderbye, Senior Democracy and Human Rights Advisor,
Istanbul Regional Hub, UNDP

Сессия 7

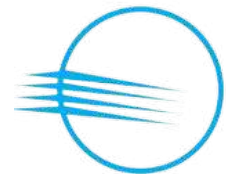
Форум судей ВЕЦА по ВИЧ, правам человека и законодательству

Николай Сондербай, старший советник по вопросам демократии и прав человека, Стамбульский региональный центр ПРООН



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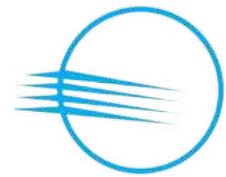




1. Overall regional challenges and trends that impact rule of law and access to justice



- **Covid-19 pandemic** – the pandemic has had a significant impact on the most marginalized communities in the region – with regard to accessing economic, social rights (this includes access to health care and treatment for people living with HIV or TB)
- **Displacement and mobility** - more than 12 millions Ukrainians have been forcibly displaced, of which about 4.2 millions have left Ukraine. Needs to support local integration prospects and access to justice
- Significant **increase of violence** - survivors of conflict related crimes and gender-based violence, reparation of trauma including victims of PTSD – impacting rights holders, judiciary, health worker



1. Overall regional challenges and trends that impact rule of law and access to justice



- **Overburdened governance structures** at national and sub-national level (e.g. sustaining access to health, justice and legal aid)
- **Securitization and militarization** - enhanced state surveillance and impact on personal freedoms/privacy
- **Inequality and discrimination** – minorities and marginalized at-risk
- **Shrinking civic space**
- **Hate speech, misinformation, disinformation** (e.g. hate crime due to stereotypes, social norms – often on the basis of sexual orientation or gender identity)
- **Lack of awareness and lack of trust** (most people do not turn to courts due to lack of awareness or lack of trust in judiciary or effective remedy)

2. HIV/AIDS regional challenges / progress

- Eastern Europe and Central Asia (EECA) has **the fastest growing HIV epidemic in the world**. In 2021, 160,000 [130,000–180,000] people were newly infected with HIV— representing a 48% increase since 2010.
- **Stigma and discrimination continue** to block effective responses to AIDS. Studies have documented high levels of stigma against HIV and key populations: in Tajikistan, for instance, only 23% of people living with HIV surveyed reported a positive experience after disclosing their HIV-positive status.

2. HIV/AIDS – regional challenges / progress

- While there have been **improvements in the legal environment** relevant to HIV and TB in the region, **legal barriers persist** (lack of protection for persons living with HIV).
- **Legal, policy and regulatory frameworks** that govern national efforts in prevention, treatment, care and support **need significant strengthening**.

Key obstacles include:

- 1. criminalization of HIV transmission, non-disclosure and exposure;
- 2. criminalization of sex work or introduction of increased punitive measures against sex workers;
- 3. criminalization of drug use and/or possession for personal use;
- 4. forced and coerced HIV testings.

2. HIV/AIDS – regional challenges / progress

- **Legal and policy frameworks vary across the region.** HIV transmission, exposure and non-disclosure are criminalized in all countries except Bosnia and Herzegovina and North Macedonia, although prosecution varies from country to country. Sex work and drug use are decriminalized in some countries, but prosecutions still occur for organized sex work and possession of drugs.
- While some countries (Armenia, Kazakhstan, Kyrgyzstan, the Republic of Moldova and Tajikistan) have decriminalized same-sex sexual relations, **stigma against gay men and other men who have sex with men (MSM) remains common**, including reports of police violence.
- **Functional and effective judicial systems are imperative to ensure the protection of the rights of key populations.** In this regard, the judiciary in several of the EECA countries has been quite **progressive** including through important enabling court decisions.

3. IDPs / Refugees at heightened risk

- IDPs and refugees living with HIV or special medical needs are **at-heightened risk**
- Both the Covid pandemic and Displacement crisis (with its regional spill over) have had an impact of such rights holders who have **difficulties to access their rights to health**. Prevention and diagnosis services have been disrupted in Ukraine or the region, and vulnerable people with HIV (or TB) have been forced to interrupt their treatment
- Since the invasion in Ukraine **more than 150 health facilities have been damaged or destroyed**, leaving health care workers and patients displaced, injured or killed.
- Overall, the work on **prevention, testing and treatment for HIV is challenged by the dangerous environment caused by the conflict**.

4. Opportunities and Lessons Learned

- **Work with the NHRIs (and independent media) and CSOs** to raise the awareness on human rights promotion and protection and specifically with regard to confidentiality and access to healthcare for persons living with HIV
- **Target attorneys, prosecutor offices representatives, legislators, policy makers and legal aid services in your awareness raising** (to ensure legislation and judicial control integrate human rights)
- Ensure that human rights and specific training on issues related to HIV and access to health care are included in the judiciary **curricula** of the training in your National School of Judges
- **Work with the Ministry of Education and Universities / Legal Faculties** to ensure high quality education on human rights in law schools
- NHRIs may conduct **monitoring visits** to places where HIV patients stay to ensure their rights are not violated

5. Way forwards

- A need to apply a **Human Rights Based Approach**
- Make a thorough **human rights gaps analysis** to identify legislative and policy gaps and the root causes of discrimination, stereotypes, stigma
- Analyze the national legislation and practices against the international, regional human rights **commitments** (incl. the UPR, UN Special Procedures, ECHR, ECtHR, and the *EU acquis*)
- Assess the **capacity of duty-bearers and rights-holders**
- Ensure **non-discrimination** and that **no one are left behind**
- Ensure **transparency** and **accountability** (incl. human rights monitoring)
- Tailor **awareness raising** – target the **drivers of change** and target **leadership** to ensure political will and ownership in a **systemic manner**(policy makers, legislators, oversight bodies, CSOs, academia, religious leaders, communities).

Thank you for your attention!

Спасибо за внимание!



იუსტიციის უმაღლესი სკოლა
HIGH SCHOOL OF JUSTICE



Fourth meeting of the EECA Judges' Forum on HIV, Human Rights and the Law

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17-18 November 2022
10:00 Tbilisi



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10:00 Тбилиси



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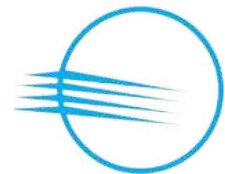
Session 8
HIV-related educational restrictions
Tatyana Zhuravskaya. ROO "People PLUS"

Сессия 8
Ограничения в образовании, связанные с ВИЧ
Журавская Татьяна. РОО «Люди ПЛЮС»



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Документы для приема на подготовительное отделение иностранных граждан

Прием документов по ранее выданным [приглашениям](#) осуществляется в деканате факультета профориентации и довузовской подготовки.

В день прибытия в Республику Беларусь иностранный гражданин **представляет** следующие документы в деканат факультета профориентации и довузовской подготовки по адресу: 220083, г. Минск, пр. Дзержинского, 83, 5 корпус, 3 этаж, каб. 324а:

- паспорт (предъявляется лично), копия паспорта и её перевод на русский язык, заверенный в установленном порядке (нотариально заверенная в Беларуси);
- оригинал свидетельства (документа, диплома) об образовании с перечнем (указанием) изученных предметов и полученных по ним на экзаменах отметок (баллов), нотариально заверенный перевод копий этих документов на русский язык;
- медицинская справка (заключение) о состоянии здоровья и пригодности к обучению в медицинском вузе, выданная официальным органом системы здравоохранения (поликлиникой, стационаром) страны проживания абитуриента (должна быть запись, что абитуриент физически здоров и пригоден к обучению), перевод ее копии на русский язык, нотариально заверенный;
- сертификат (справка) об отсутствии ВИЧ-инфекции, выданный официальным органом системы здравоохранения страны, из которой прибыл абитуриент, нотариально заверенный перевод ее копии на русский язык;
- медицинская справка об отсутствии психиатрического учета (сведения о том, что заявитель

Restrictions on enrollment to educational institutions in Belarus

HIV-positive citizens of the Republic of Belarus and foreign citizens **cannot study in**

- specialized educational institutions that train personnel for the Ministry of Defense, the Ministry of Internal Affairs, and the Ministry of Emergency Situations
- at military faculties of specialized secondary education institutions and institutions of higher education that train personnel in specialties (specialty areas, specialties) for the Armed Forces, border service agencies, internal troops of the Ministry of Internal Affairs;
- Cadet and Suvorov Colleges.

Restrictions on enrollment to educational institutions in Belarus

The following medical professions and qualifications are not allowed to employ people with HIV virus:

Наименование специальности	Наименование квалификации
1. Акушерство и гинекология	врач-акушер-гинеколог
2. Сосудистая хирургия	врач-ангиохирург, врач – сосудистый хирург
3. Детская хирургия	врач – детский хирург
4. Кардиохирургия	врач-кардиохирург
5. Комбустиология	врач-комбустиолог-хирург
6. Нейрохирургия	врач-нейрохирург
7. Онкохирургия	врач-онколог-хирург
8. Стоматология хирургическая	врач-стоматолог-хирург
9. Торакальная хирургия	врач – торакальный хирург
10. Трансплантология	врач-трансплантолог
11. Хирургия	врач-хирург
12. Челюстно-лицевая хирургия	врач – челюстно-лицевой хирург

List of medical contraindications to engage in sports

- In 2011 - a complete ban
- As of 2017 - restrictions :

basketball, baseball, boxing, wrestling, freestyle wrestling, Greco-Roman wrestling, women's wrestling, cycling, cycling, (BMX), volleyball, viet vodao, handball, judo, karate, kickboxing, pankration, rugby, hand-to-hand fighting, sambo, sumo, Thai boxing, taekwondo, wushu, soccer, field hockey, ball hockey (BANDY), ice hockey

Thank you for your attention!

Спасибо за внимание!



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**Session 8: HIV and the rights to education and labor
“HIV and employment”**

**Evghenii Alexandrovici Goloșceanov, LL.M.,
Equality Council, Republic of Moldova**

**Сессия 8: ВИЧ и права на образование и на труд
“ВИЧ и занятость”**

**Евгений Александрович Голощапов, LL.M.,
Совет по равенству, Республика Молдова**



**ОУНДИЦИОНА СЪВЕЩАТЕЛСКИ СКОЛА
HIGH SCHOOL OF JUSTICE**



Prohibition of discrimination on the basis of HIV status in Moldova

Law No. 23 of 2007 on the Prevention of HIV/AIDS Infection

Article 22. Prohibition of Discrimination in Employment

(1) **Any form of discrimination on the basis of HIV-positive status** is prohibited at all stages of employment, promotion or assignment in any public or private sector activity, election or appointment to public office.

(2) Persons with HIV-positive status employed in any public or private sector occupation shall enjoy the same rights, guarantees and opportunities as other workers.

(3) Dismissal on the basis of HIV-positive status is not allowed.

~~(4) (Deleted 2012) The list of professions and specialties to which persons with HIV positive status are not allowed is approved by the Ministry of Health and the Ministry of Social Protection, Family and Child.~~

(5) **Victims** of discrimination have the right to apply to the courts for **moral and material damages.**

(6) Depending on the stage of infection, persons with HIV or AIDS are entitled to **vocational guidance or reorientation services in accordance with the law.**

Prohibition of discrimination on the basis of HIV status in Moldova

Labor Code (LC) of 2003

(prohibition of discrimination on the basis of HIV status was introduced into the Labor Code in 2010)

Article 8: Prohibition of Discrimination in Employment

- (1) The employment relationship is governed by the principle of equal treatment of all employees. **Any direct or indirect discrimination against an employee on the basis of sex, age, race, color, nationality, religion, political opinion, social origin, place of residence, disability, HIV/AIDS, union membership or participation in trade union activities, as well as other criteria not related to the professional qualities of the employee is prohibited.**
- (2) It is not discrimination to establish distinctions, exceptions, preferences or separate rights for employees due to **requirements specific to this type of work** or provided for by the current legislation, or the state's special concern for persons in need of increased social and legal protection.

Prohibition of discrimination on the basis of HIV status in Moldova

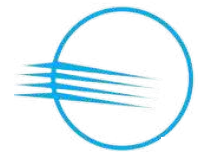
Equality Act No. 121 of 2012

Article 1: Purpose and Scope of the Law

- (1) **The purpose of this law** is to prevent and combat discrimination and to ensure equal rights to all persons on the territory of the Republic of Moldova in political, economic, social, cultural and other spheres of life, regardless of race, color, nationality, ethnic origin, language, religion or belief, sex, age, disability, views, political affiliation, as well as **on the basis of any other such characteristic**.

The list of attributes is open and may be supplemented!

The plan is to change the law and add "health status" and "HIV status" to the list of protected characteristics.

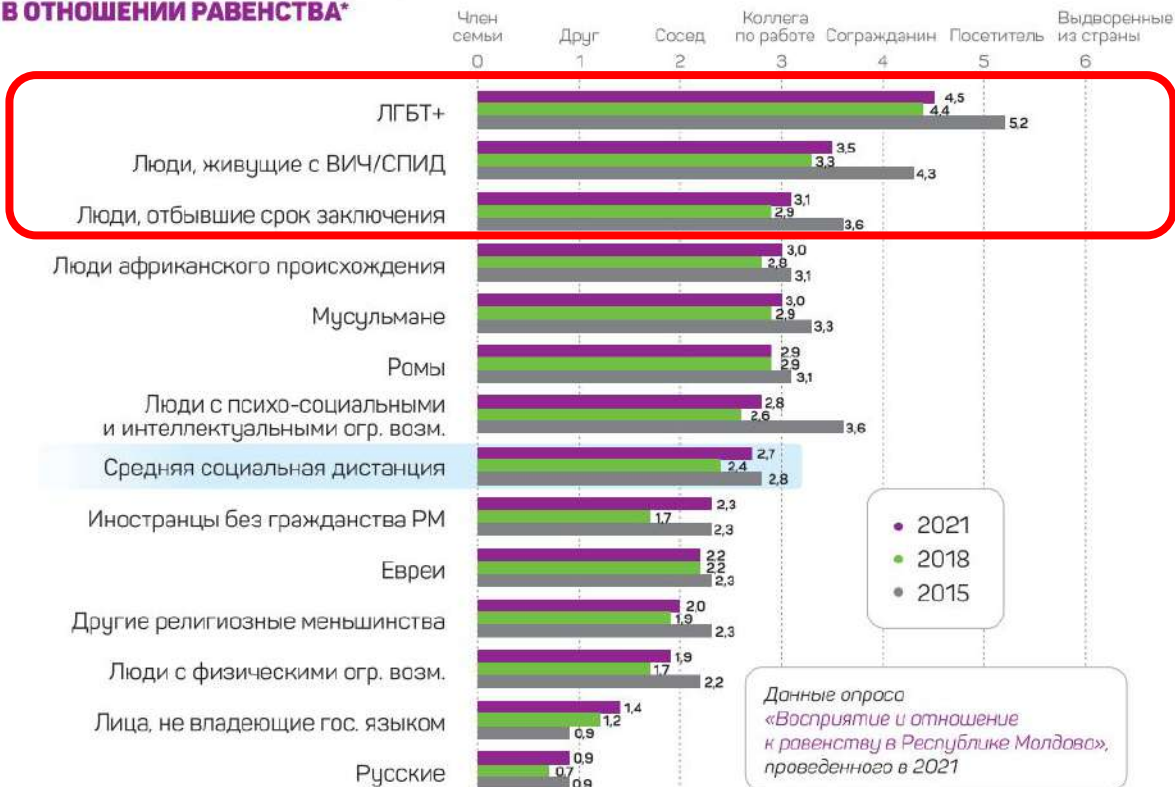


SOCIAL DISTANCE INDEX 2015-2021



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ПРЕДСТАВЛЕНИЯ И УСТАНОВКИ В ОТНОШЕНИИ РАВЕНСТВА*



- 2021
- 2018
- 2015

Данные опроса
«Восприятие и отношение
к равенству в Республике Молдова»,
проведенного в 2021



CONSILIUL PENTRU PREVENIREA SI ELIMINAREA DISCRIMINARII SI ASIGURAREA EGALITATII
CONSILIU PENTRU PREVENIREA SI ELIMINAREA DISCRIMINARII SI ASIGURAREA EGALITATII
COUNCIL FOR PREVENTING AND ELIMINATING DISCRIMINATION AND ENSURING EQUALITY



UNITED NATIONS
HUMAN RIGHTS
OFFICE OF THE HIGH COMMISSIONER



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COUNCIL OF EUROPE



CONSEIL DE L'EUROPE



Norwegian Ministry
of Foreign Affairs



CONSILIUL PENTRU PREVENIREA ȘI ELIMINAREA
DISCRIMINĂRII ȘI ASIGURAREA EGALITĂȚII
СОВЕТ ПО ПРЕДУПРЕЖДЕНИЮ И ЛИКВИДАЦИИ
ДИСКРИМИНАЦИИ И ОБЕСПЕЧЕНИЮ РАВЕНСТВА
COUNCIL FOR PREVENTING AND ELIMINATING
DISCRIMINATION AND ENSURING EQUALITY

- Established in 2013
- An independent public authority, a national human rights institution specialized in non-discrimination and equality
- Consists of:
 - 5 members appointed by Parliament for 5 years and
 - 20 full-time employees

Equality Act No. 121 of May 25, 2012

https://www.legis.md/cautare/getResults?doc_id=106454&lang=ru

Law on the Activities of the Council for the Prevention and Elimination of Discrimination and Ensuring Equality № 298 of 21.12.2012

https://www.legis.md/cautare/getResults?doc_id=120696&lang=ru

- **PROTECTION AGAINST DISCRIMINATION**
- **PREVENTION OF DISCRIMINATION**
- **PROMOTION OF EQUALITY**

2013-2022: a total of 13 cases related to HIV

Of these, 2 cases related to labor disputes:

- Decision No. 055/14 of May 1, 2014

No causal link has been proven between termination of employment and HIV+ status

- Decision No. 16/20 of March 11, 2020

Discrimination was found: dismissal on the basis of HIV+ status and social status (former prisoner)

Equality Council Decision No. 16/20



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The applicant was hired on November 11, 2019 as a loader at the store. He learned about the position from an acquaintance who worked at the same store.

The acquaintance knew about the applicant's HIV+ status.

On December 18, 2019, an acquaintance demanded that the complainant resign or he would disclose his HIV+ status to management.

Equality Council Decision No. 16/20



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December 19, 2019 The applicant tells the branch administrator about his HIV+ status: it's okay, he can keep working.

December 20, 2019 Applicant speaks to Human Resources: need to resign because the staff does not want to work with HIV+. Applicant refuses to resign at will.

On December 24, 2019, the applicant presents the branch head with the criminal record certificate he requested: he is suspended.

On December 24, 2019, an internal investigation was initiated against the complainant.

Equality Council Decision No. 16/20

The applicant sends a letter to the administration describing the situation, their questions, and the possibility of continuing.

On December 26, 2019, an order of termination is issued.

December 27, 2019 Applicant is verbally informed of dismissal due to past criminal record.

On December 31, 2019, the applicant receives by mail an order of dismissal with the committee's protocol of internal investigation. Grounds for dismissal: loss of trust and violation of work discipline: embezzlement of property of other employees, took money from clients for services, provided false information to management (did not report HIV+ status and former criminal record).

Equality Council Decision No. 16/20



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From the moment the problems arose, the applicant turned to the public patient organization Positive Initiative for legal assistance.

The complainant followed all the instructions of the lawyer.

The applicant kept an audio recording of all conversations with management - important evidence for the Board's decision!

Equality Council Decision No. 16/20

Council Arguments:

- 1) audio recordings prove that the employer knew about the applicant's HIV+ before all the problems began;
- 2) the composition of the commission on the internal investigation: it included an acquaintance who demanded that the complainant resign - this proves the bias and bias of the commission from the moment of its creation;
- 3) the committee minutes are a screen to cover up the real reasons for the dismissal. The employer has not provided customer complaints or other evidence of wrongdoing on the part of the complainant;
- 4) The employer had no legal right to demand information about an employee's HIV status;
- 5) It is an unreasonable requirement to require a certificate of criminal record to work as a loader.

Equality Council Decision No. 16/20



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Board Decision:

- 1) the dismissal is discriminatory on the basis of the applicant's HIV+ status and social status (former prisoner);
- 2) take action to restore the applicant's rights;
- 3) to exclude questions about health and criminal record from the employment questionnaire;
- 4) Conduct training on non-discrimination for everyone involved in hiring employees;
- 5) within 10 days to report on the actions taken.

Equality Council Decision No. 16/20



Chisinau Court Decision of November 23, 2020

- 1) The dismissal order is annulled and the applicant is reinstated.
- 2) To pay salary for the period of forced absence from work from December 27, 2019 to November 23, 2020 in the amount of 71,921.33 lei (about 4,300 USD).
- 3) Pay 6,633.24 lei (about 400 USD) for damages according to paragraph (2) of Article 330 of the Labor Code (0.3% per day of unpaid wages on time).
- 4) Pay 20,000 lei as moral damages (about 1,200 USD).
- 5) Job reinstatement and payment of wages shall be made immediately.

Thank you for your attention!

Спасибо за внимание!

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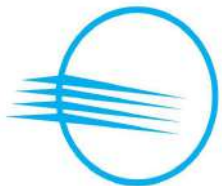
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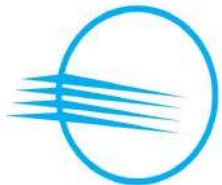
Session 9

Adoption, guardianship and trusteeship of people living with HIV
Baktygul Israilova, Head of Country Network of Women Living with HIV
(Kyrgyzstan), Ilimbek Sadykov, Public Health Program Coordinator, Soros
Foundation-Kyrgyzstan

Сессия 9

Усыновление (удочерение), опека и попечительство людьми,
живущими с ВИЧ

Бактыгуль Исраилова, Руководитель Страновой сети женщин, живущих
с ВИЧ (Кыргызстан), Илимбек Садыков, Координатор программы
"Общественное здравоохранение» Фонда Сорос-Кыргызстан



ՕՄՏԻՑԻՈՆ ՄԵԾԼԱՅՆ ԵՎՈՒԼ
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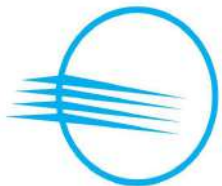
UN
DP

Stages of execution of the decision of the Constitutional Chamber of the Supreme Court of the Kyrgyz Republic

1. Order of the Cabinet of Ministers of the Kyrgyz Republic of 18.02.2021 in order to implement the decision of the Constitutional Chamber of the Supreme Court.
2. Draft Resolution of the Cabinet of Ministers
3. Approval of the Regulation on the Procedure for the Transfer of Children for Adoption by Citizens of the KR, as well as the List of Diseases
4. WG to discuss adoption criteria for PLHIV - developed by RCAIDS together with CS/PLHIV representatives
5. A medical opinion that PLHIV belong to the group of stable patients.
6. Development of a medical report form according to the clinical protocol for determining the stability of the HIV+ patient.
7. The Ministry of Labor, Social Security and Migration of the Kyrgyz Republic needs to take appropriate measures arising from the Decree
8. Bring decisions in accordance with the Resolution of the Cabinet of Ministers of the Kyrgyz Republic.
9. Entered into force and sent to the relevant authorities, all social services are notified and work in accordance with the procedures specified in the decree.

Thank you for your attention!

Спасибо за внимание!



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Session 9
HIV and Child Adoption in Georgia
Khatuna Jinoria

Сессия 9
ВИЧ и усыновление/удочерение детей в Грузии
Хатуна Джинория



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Types of adoption

- Inside the country adoption
- International adoption

Foster care

Children available for adopted

- Orphans or parents declared missing;
- Abandoned child;
- Whose parents were deprived of parental rights;
- All legal representatives have given them for adoption

Matching of Adoptees and Prospective Parents

Child available for adoption placed in the list



Adoptive Parents placed in the list

HIV and Adoption

A person who cannot fulfil his/her parental duties properly due to health status can not adopt a child;

List of diseases that prevent a parent from fulfilling their duties include infectious diseases

HIV/AIDS are placed under infectious diseases

Thank you for your attention!

Спасибо за внимание!



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HIGH SCHOOL OF JUSTICE



Session 9
HIV and Marriage in Georgia
Khatuna Jinoria

Сессия 9
ВИЧ и брак в Грузии
Хатуна Джинория



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Definition of Marriage

Marriage, as a union of a woman and a man for the purpose of founding a family, shall be based on the equality of rights and the free will of spouses.

Impediment of Marriage

Marriage shall not be allowed:

- a) between the persons at least one of whom is married to a third person;
- b) between lineal ascendants and descendants;
- c) between biological and non-biological siblings;
- d) between an adoptive parent and an adoptee;
- e) between the persons, at least one of whom is a beneficiary of support and who have not entered into a marriage contract

Termination of marriage

Marriage shall be terminated if:

- a) a spouse dies;
- b) a spouse is declared dead according to the procedure laid down by law;
- c) the spouses divorce.

Divorce doesn't require any specific reasons

HIV and Divorce

HIV can be a basis for divorce

Spouse with HIV has the same property rights

They can not be deprived the opportunity to interact with children

Whether the spouse with HIV can be a primary custodian must be decided in each individual case.

Thank you for your attention!

Спасибо за внимание!



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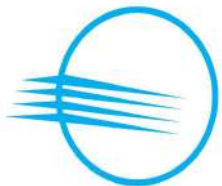
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Session 9

"HIV as a Barrier to Marriage and Grounds for the Divorce"
Larisa Aleksandrova, Public Association "Center for Human Rights"

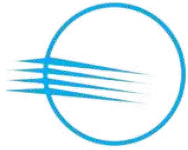
Сессия 9

“ВИЧ как препятствие для заключения и основание для
расторжения брака”
Лариса Александрова, ОО «Центр по правам человека»



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Medical examination of the married



In March 2016. The Family Code of the Republic of Tajikistan was amended to require all married couples to undergo a free of charge compulsory medical examination in public health institutions at their place of residence or permanent residence and to familiarize themselves with the results of the medical examination of each other before they get married.

In August 2016, in order to implement this norm, the Government of Tajikistan adopted the Rules for mandatory medical examination of persons getting married by Decree No. 374.

The examination consists of:

- 1) a general clinical examination by the family physician and, if necessary, specialists;
- 2) laboratory and functional research methods:
 - - Blood test for Wasserman reaction (syphilis);
 - - performing an enzyme immunoassay (HIV/AIDS);
 - - fluorography/chest radiography (tuberculosis);
 - - for hepatitis B and C.

Norms, leading to a violation of the rights of PLHIV

Neither the Family Code of the RT nor the Rules provide for prior consent to be acquainted with the results of the marriage.

Examination and counseling on healthy lifestyles, including HIV testing, is conducted at the place of residence or permanent residence on the basis of the application of the person getting married.

The order specifies that the marrying parties must be acquainted with each other's results. The marrying parties may live in different areas, and the mechanism of familiarization is not elaborated. In practice, there are difficulties.

Other barriers

- The peculiarities of HIV-infection do not allow detecting HIV in its initial period. If the result is negative. The newlyweds are sure that they are healthy, but during the pregnancy, the couple is later diagnosed with HIV and the newlyweds blame the doctors for misinforming them.
- HIV testing is free of charge according to Article 15 of the Family Code. This norm is not observed everywhere, especially in the regions.
- The lack of HIV tests for married couples was also noted in some regions.
- Family doctors, as well as private clinics that perform HIV testing do not provide pre- and post-test HIV counseling to married couples (In violation of Government Decree № 171)
- In some cases, close relatives of the bridegroom and the bride were present when the results of the examination were reviewed.

Post-marriage barriers

- If HIV is detected after a marriage is registered, the prosecutor's office can initiate criminal proceedings under Article 125 of the Criminal Code of the Republic of Tajikistan. In this situation, the prosecutor's office puts pressure on family doctors because they issue certificates for marriages.
- There are also facts when the future wife was acquainted and agreed to the marriage, but later, being married, she refuses her consent, and indicates that she did not understand what was explained to her.
- The lack of consideration of the informed consent of the sexual partner under Article 125 of the Criminal Code (HIV infection) in the legislation of Tajikistan also puts a married person with HIV at risk of prosecution under Article 125 of the Criminal Code of Tajikistan.

Recommendations

As an alternative to mandatory examination of marrying couples, as recommended by WHO and UNAIDS, we should consider the widespread implementation of universal testing approaches, such as

- When a health care provider offers to test for HIV at almost any visit to a health care facility and asks the patient's permission to be tested, or
- when the health care provider notifies the patient that the test will be administered as one of the usual tests, but the person has the right to agree to or refuse it.
- to strengthen post-test HIV counseling, as well as to provide services of a family psychologist and a lawyer.

Thank you for your attention!

Спасибо за внимание!



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Fourth meeting of the EECA Judges' Forum on HIV, Human Rights and the Law

Четвертое заседание Форума судей ВЕЦА по ВИЧ, правам человека и законодательству

17-18 November 2022
10:00 Tbilisi



17-18 Ноябрь 2022
10:00 Тбилиси



იუსტიციის უმაღლესი სკოლა
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Session 10
Disclosure of the HIV-positive diagnosis
Ekaterine Gasitashvili
Justice of the Supreme Court of Georgia

Сессия 10
Раскрытие ВИЧ-положительного диагноза
Екатерина Гаситашвили
Судья Верховного суда Грузии



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The Law of Georgia on HIV/AIDS was adopted on November 17, 2009 (№ 2042-II) With the adoption of this law, the Law № 683 dated March 21, 1995 "On the prevention of infections caused by human immunodeficiency virus/AIDS" was declared invalid.

The purpose of the law is to protect the health of citizens, state and public security, as well as to meet the requirements of international treaties and agreements of Georgia on HIV/AIDS.

Protection of the right of patients with HIV/AIDS to medical services;

Protection of the rights, honor and dignity of individuals and non-discrimination in connection with HIV/AIDS;

Establishing universally recognized professional and ethical standards in the field of HIV/AIDS.

The **Georgia Health Care Act** provides that patients may not be discriminated against on the basis of race, color, language, sex, religion, political or other views, national, ethnic or social affiliation, origin, property or employment status, place of residence, disability, illness, sexual orientation, or personal negative attitude

According to the Law of Georgia on Patients' Rights (Article 40)

A parent or legal representative is not provided with information about a minor's health status if there are objections to providing the information;

However, the parent or legal representative of a minor patient between the ages of 14 and 18 will only be provided information if the patient **has informed consent to provide** this information and/or if the patient **refuses to undergo** appropriate treatment and the patient is considered incompetent under Georgian law.

On May 1, 2012 in Georgia entered into force the **Law on Personal Data Protection** (adopted on December 28, 2011 № 5669-PC). By adopting this law, the state has emphasized the importance and ensuring the protection of human rights and freedoms, **including privacy, in the processing of personal data.**

The law stipulates that the processing of personal data must ensure the protection of human rights and freedoms, including privacy, **a special category of data are related to the health of the person.**

Data subject - any natural individual about whom data is processed;

The Law on Personal Data Protection establishes the obligation to comply with certain principles in data processing

- Data must be processed fairly and lawfully, without violating the dignity of the data subject;
- Data may only be processed for specific, clearly defined legitimate purposes. Further processing for other purposes that are incompatible with the original purpose is not permitted;

-
- Data may only be processed to the extent necessary to achieve the relevant legitimate purpose. The data must be adequate and proportional to the purpose for which it is being processed;
 - Data must be true and accurate and must be updated as necessary. Data collected without legitimate grounds and irrelevant to the purpose of the processing must be blocked, deleted or destroyed;

-Data may only be stored for the period necessary to achieve the purpose of data processing. Once the purpose for which the data is processed has been achieved, the data must be blocked, deleted or destroyed, or stored in a form that excludes the identification of the person, unless otherwise established by law.

Article 22. The data subject has the right to request rectification, updating, addition, blocking, deletion and destruction of data

The law also provides for the exclusive rule of restricting the rights of the data subject, which primarily involves a legitimate and proportionate restriction to achieve the purpose of the restriction.

Obviously, legal regulation alone is not enough.

What is most important is the effective use of national legislation and international instruments.

ECoHR, Z v. Finland, 25.02.1997, the case concerned the disclosure of the applicant's personal information related to his HIV-positive diagnosis. This information was disclosed in the course of criminal proceedings against his wife.

The European Court of Human Rights found that there had been a violation of Article 8 of the Convention because it was not necessary to mention the applicant's name and diagnosis in the judgment, which was available to the press.

In addition, the publication of this information led to a violation of the applicant's right to respect for private and family life.

The Court pointed out that the confidentiality of personal health data is a vital principle in the legal systems of all the countries party to the Convention.

According to the Court, national legislation should contain appropriate safeguards to prevent the disclosure of personal health data that may contravene the requirements of Article 8 of the Convention.

ECoHR believes that people living with HIV are a vulnerable group to prejudice and discrimination.

**Киютин против России (заявление N 2700/10),
10.03.2011.**

Procedural mechanisms;
Application of the rule of law and non-discrimination;
Professional ethics of a judge.

Thank you for your attention!

Спасибо за внимание!



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Session 11
Claiming moral and material damages
in HIV-related cases
Irma Gelashvili

Сессия 11
Взыскание морального и материального ущерба
в делах, связанных с ВИЧ
Ирма Гелашвили



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Grounds for claiming moral and material damages in HIV related cases

- In cases of Bodily injury or harm inflicted to a persons health, the injured party may claim non-property damages as well, which corresponds to the suffering of the victim and the impairment of his bodily or mental health.
- Infringement of non-property rights of patient also gives rise to compensation for non-property damages (In case of discrimination that, along with the elimination of the action, the victim has the right to claim moral damages, as well as in the case of a violation of privacy or other personal rights, such as forced treatment, as happened in the famous ECHR decision *Einhorn v. Sweden*).

Supreme court of Georgia

Decision (296-624-07)

- The plaintiff gave birth to a son via C-section. Due to the loss of a large amount of blood during the operation, the woman in labor needed a blood transfusion. Blood was purchased from a blood bank by relatives and transfused to the woman.
- After a while, both the child and the mother began to suffer from various diseases, and after a few years, the doctors contacted the plaintiff and informed her that several people from the blood bank where she had purchased blood had contracted AIDS; both the mother and the child were tested, and both were confirmed to have AIDS. They filed a lawsuit against the blood bank for both moral and material damages (200,000 GEL).

- The blood bank refused to recognize the lawsuit because the guilt was not proven; all that was provided was a letter from the clinic director stating that one donor could not be tested for infection because he had traveled to Russia. The first-instance court partially satisfied the lawsuit, imposing a 20,000 GEL fine on the blood bank. The decision was appealed by both parties. The appeals were denied by the appellate court.
- Despite the fact that a blood sample could not be taken/tested from the suspected donor, the court determined that the donor had AIDS because the recipients who received blood transfusions from this donor were infected with the HIV virus, according to the court's explanation. Furthermore, the plaintiff was tested for AIDS multiple times during her pregnancy, proving that she did not have AIDS prior to the blood transfusion.
- In the cassation complaint, the clinic cited the 6-month "window period" and the fact that there was no accurate method for detecting HIV infection due to the high cost of the equipment, in addition to the lack of fault. Despite the lack of direct evidence of the clinic's fault and causation, the Supreme Court agreed with the Court of Appeals that the blood bank, as a manufacturer, should be held liable for consumer harm caused by a substandard product (a product is considered substandard if it fails to meet the reliability that, given the circumstances, is expected of this product) and dismissed the clinic's claim

Tbilisi Court of Appeals, decision No2B/B1082-21

- The decision of 2022 is also noteworthy in terms of the burden of proof: the claimant underwent an emergency aortic valve replacement, he was not tested for HIV negative when admitted to the clinic, and he received blood transfusions from different donors 38 times in the clinic.
- The patient was admitted to the hospital for pain a few months after being discharged from the clinic, and tests confirmed AIDS. The patient sought joint and several liability from all blood suppliers. In turn, clinics presented donor verification documents proving that all donors were HIV-negative and still active donors. Furthermore, all of the state's standards were met.
- Consequently, no fault-misdemeanor on the part of the clinics could be established, and therefore, the lawsuit was dismissed, despite the fact that according to experts, the level of virus that the patient had could only be obtained through open concentration (blood transfusion).

- According to the explanation provided by the court, it should be established that the doctor was negligent, acting without the necessary care and attention. The fact that there was no infection prior to the operation was not considered sufficient evidence to establish a causal relationship, and the plaintiff's claim was dismissed because he did not prove the fact of damage with other evidence.
- In conclusion, the plaintiff bears the burden of proof; he must demonstrate that the defendant caused damage, and if there is no direct evidence, he must demonstrate that there was a violation on the part of the clinic, which can be considered the cause of the damage in each specific case.

Thank you for your attention!

Спасибо за внимание!



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Session 12: Forum development, next steps and closing
Topic: Outcomes of the Forum Steering Committee retreat (July 2022)
Speaker: Sharof Alanazarzoda

Сессия 12: Развитие Форума, последующие шаги и закрытие
Тема: Результаты рабочей встречи Координационного комитета Форума (июль 2022 г.)
Выступающий: Шароф Аланазарзода



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Forum Steering Committee



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Resilient nations.

Forum Steering Committee (SC) was formed at the end of the first Forum meeting in 2019

The composition has been changing, and presently consists of:

- *Alanazarzoda, Sharof (Tajikistan)*
- *Budeci, Vitalie (Moldova)*
- *Koval, Oksana (Ukraine)*
- *Meskhisvili, Ketevan (Georgia)*
- *Volkova, Olena (Ukraine)*

Forum Steering Committee Retreat



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The SC has been working online (email, WhatsApp, Zoom)

The first face-to-face retreat of the SC took place in Istanbul in July 2022, where SC members:

- Reviewed the work of the Forum since 2019
- Formulated vision statement (strategic framework)
- Developed Membership and Governance Policy

Forum vision and mission



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Vision: People affected by HIV are free and protected by justice

Mission: To ensure effective and fair justice in relation to HIV

Core principles



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- Relying on cutting-edge scientific evidence and international standards
- Accessibility
- Openness
- “Listen and Hear”
- Flexibility and openness to innovation

Priorities/Strategic Directions



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1. Strengthening of the Forum

- Membership expansion
- Geography expansion
- Resource mobilization
- Ensuring sustainability

2. Information gathering, analysis, and publication

- International standards
- Scientific data
- Best practices

3. Promoting positive changes at country level

- National forums
- Training programs
- Dissemination of information

Forum Membership



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Forum membership is not the same as participation:

- participation means attendance at Forum events or subscription to the Forum newsletter, but it does not entail rights and responsibilities
- membership in the Forum entails rights and responsibilities and is subject to certain conditions

Members have:

- a priority right to attend Forum events
- a right to vote
- a right to be elected to the Forum Steering Committee

Forum membership criteria



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Professional:

- Acting judge or
- Trainer of the School of Justice or another national institution in charge of judges training

Geographic:

- Working in the EECA region

Steering Committee of the Forum



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The SC is the main governing body of the Forum

The SC consists of five or seven members, depending on the total number of Forum members:

- If the Forum has fewer than 100 members, the SC should have five members
- If the Forum has 100 or more members, the SC should have seven members

Membership on the SC is voluntary and non-remunerated

Members of the SC serve in their individual capacity

One term for SC membership is three years

Membership is allowed for a maximum of two terms

Forum Secretariat



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The United Nations Development Program (UNDP) serves as the secretariat of the Forum

Under the leadership of the SC, the secretariat supports the implementation of projects and activities of the Forum

To ensure effective communication and coordination with the SC, the Secretariat uses email, a WhatsApp group, Zoom calls and face-to-face meetings.

Thank you for your attention!

Спасибо за внимание!



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