

**Legal analysis of legislative norms in the field of HIV / AIDS in the Republic of Tajikistan  
within the framework of the AFEW INTERNATINONAL project.**

**FOREWORD**

We bring to your attention a report on the results of the Legal analysis of legislative norms of the Republic of Tajikistan in the context of HIV / AIDS.

The purpose of the study is: to identify the key problems and needs of Women living with HIV in the field of sexual and reproductive health through the prism of human rights, as well as to identify priorities for inclusion in national strategies and action plans on measures to address the HIV / AIDS epidemic, taking into account gender aspects and human rights of women living with HIV.

List of sources used:

1. The Criminal Code of the Republic of Tajikistan, (Akhbori Majlisi Oli of the Republic of Tajikistan, 1998, No. 9.
2. The Criminal Code of the Russian Federation. Adopted by the State Duma on May 24, 1996, approved by the Federation Council on June 5, 1996.
3. The Health Care Code of the Republic of Tajikistan.
4. Family Code of RT
5. Law of RT « On Information »
6. Code of Administrative Offenses of the Republic of Tajikistan.
7. Declaration of Commitment on the fight against human immunodeficiency virus and acquired immunodeficiency syndrome.
8. (Office of the UN High Commissioner for Human Rights, HIV / AIDS and Human Rights. [Http://www.ohchr.org/ EN / Issues / HIV / Pages / HIV Index. Aspx](http://www.ohchr.org/EN/Issues/HIV/Pages/HIVIndex.aspx))
9. The course of criminal law. The special part. T. 3: Textbook / Ed. G.N. Borzenkova and V.S. Komisarova. - M., 2002.
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The experience of several years of protecting the rights of PLHIV has shown that the lack of attention on human rights in relation to people living with or affected by HIV often reduces the effectiveness of policies and programs. The international guidelines on HIV / AIDS and human rights adopted by the UN encourage all countries to ensure that their legislation is conducive to protecting the promotion and implementation of the human rights of people living with and vulnerable to HIV. As practice and case analysis show, legislation can protect rights, but it can also hinder their implementation. Over the years, it has happened that people living with or affected by HIV have successfully resorted to defending the law. In other cases, brave activists challenged the law by demanding that it embody the protection of human rights that they deserve.

-The Republic of Tajikistan has joined **and ratified almost all the main documents in the field of human rights, including those documents that are included in the International Bill of Human Rights, which are the source of human rights. The Republic of Tajikistan also adopted (acceded) to the main and specialized documents in the field of HIV / AIDS,** one of the most significant is the Declaration of Commitment on HIV / AIDS was adopted in 2001, and the other document is the “Political Declaration on HIV and AIDS: accelerated to step up the fight against HIV and end the AIDS epidemic by 2030,” which was adopted in 2016.

The provision of the Constitution of the Republic of Tajikistan (RT), adopted in 1994, which recognizes the priority of international law recognized by Tajikistan over national law, directly relates to the problem of observing the rights of people living with HIV (PLHIV). This is one of the progressive beginnings of the Constitution, as international standards expressly express the need to respect the rights of people living with HIV and to avoid discrimination due to the presence of HIV infection (Resolutions 45/187 and 46/203 of 1990 adopted by the UN General Assembly).

Having assumed international obligations, the RT is trying to implement into national legislation and policy. Since 2007, Tajikistan has been developing and adopting state programs in the field of HIV response. The next national HIV epidemic program was adopted on 02.25.2017. One of the priorities of this Program is the creation of a favorable non-discriminatory environment. The Program emphasizes that “the success of countering the human immunodeficiency virus also depends on protecting and promoting the rights of representatives of key populations. In addition, HIV / AIDS issues were integrated into other important political documents of the country, for example, in the National Strategy for the Development of the Republic of Tajikistan until 2030.

Thus, it can be noted that at the level of formation of national policy, the country pays special attention to HIV / AIDS and respect for the rights of PLHIV.

- On May 30, 2017, a new Health Code of the Republic of Tajikistan was adopted, and Article 163 of the new Health Code of the Republic of Tajikistan defines the list of rights of persons infected with human immunodeficiency virus and patients with acquired immunodeficiency syndrome. This article establishes that persons infected with immunodeficiency virus and patients with acquired immunodeficiency syndrome are entitled to:

- - humane attitude of the society, excluding the humiliation of human dignity;
- - requirements to keep secret information about the state of their health if the conditions and characteristics of their life and work do not pose a threat to the infection of others with the human immunodeficiency virus;
- - compensation for material and moral damage associated with the disclosure of information about the fact of infection of these persons with the human immunodeficiency virus;
- - professional activity in the chosen profession, with the exception of work in the specialties and at the positions established by the special list;
- - free of charge receiving all kinds of qualified and specialized medical care, including medication, in state healthcare organizations;
- - protection against discrimination, including access to treatment;
- - active participation in determining the goals of treatment, including the time and method of treatment, as well as its termination;
- - the receipt by parents or legal representatives of children born to mothers infected with the human immunodeficiency virus of breast milk substitutes from the moment they are born until the time they establish a final diagnosis of the presence of the human immunodeficiency virus, in order to further reduce the risk of infection with the human immunodeficiency virus.

**Human rights** are the inalienable rights of every person, regardless of their nationality, place of residence, gender, ethnicity, color, religion, language or any other signs.

**Human rights** - include the right to life and freedom, freedom from slavery and torture, freedom of opinion and expression, the right to work and education, etc. Everyone has the right to these

rights without any discrimination. Human rights are inextricably linked to the spread and impact of the HIV epidemic on people and communities around the world.

*- The rights of people living with HIV are often violated due to their alleged or known HIV status, which makes them suffer from the disease itself and the loss of other rights.*

But unfortunately, the Laws are still in force that continue to discriminate against PLHIV and Key populations, criminalize them, which leads to their higher risk of HIV infection, the creation of barriers to their treatment and the continuation of their lives. Stigma, discrimination, punitive laws, violence by law enforcement and lack of access to justice continue to fuel the epidemic.

The problem of infection with sexually transmitted infections and HIV infection has a pronounced social character and constantly causes great public interest.

Problems in the field of criminal legal regulation of the crime of HIV infection cause more and more questions in the law enforcement practice of the Republic of Tajikistan.

Stigma and discrimination can impede access to treatment and can affect the work, housing and other rights of PLHIV. This, in turn, contributes to the vulnerability of other people to infection, as HIV-related stigma and discrimination hinder people living with HIV from going to health and social care facilities. As a result, those most in need of information, education and counseling do not receive help.

*- Infectious diseases are the subject of increased attention and cause growing concern in society, which is undoubtedly recognized at the state level.*

Practical observations on protecting the rights of PLHIV in the Republic of Tajikistan show that the occurrence and development of the spread of HIV disease has a socio-economic condition, it is caused primarily by negative social phenomena such as drug addiction and prostitution. At the same time, problems in the field of criminal legal regulation of the crime of HIV infection raise more and more questions in the law enforcement practices of the Republic of Tajikistan.

The plot of the case number 1.

A woman has HIV status. She lives with her parents. She was in a civil marriage. When she became pregnant she had to be registered in her local polyclinic. But when visiting the gynecologist at the place of residence she was refused medical services, because the gynecologist does not want to accept women like her.

As a result, she gave birth to her child without any documents and analyzes. When the child

was 3 months old, he fell ill and, with a fever, she and the child were hospitalized. The child became to feel worse day by day and as a result, he died. Based on the tests, the child was diagnosed with HIV, and the woman was immediately tested and also diagnosed with HIV. The husband left her after he learned that the woman has HIV. The husband did not have HIV; he is healthy.

The woman had to feed herself and her old parents, but because of her status, no one employed her. She got a job as a waitress in a restaurant in the local area. **Based on the report of the District Prosecutor, a criminal case was initiated against this woman in accordance with part 1 of article 125 of the Criminal Code of the RT and a court sentenced her to a year in prison. How the prosecutor found out about the status of the woman remains a mystery.**

During the trial and investigation, the woman's viral load was not taken into account, the woman's social status was not taken into account, and the victim had no complaints against the woman.

Practically every PLHIV and Key populations face problems of stigma and then discrimination. Stigma is the social depreciation of PLHIV, and discrimination is a manifestation of an unfair / biased attitude due to the presence of a particular status.

**According to Article 125 of the Criminal Code of the Republic of Tajikistan, criminal liability for infection of human immunodeficiency is provided.**

Depending on the nature and degree of public danger, the acts provided for by the Criminal Code of the Republic of Tajikistan are divided into crimes of light gravity, moderate severity, grave and especially grave.

**Part 1 of Article 125 of the Criminal Code of the Republic of Tajikistan** - *Knowingly substituted another person at risk of contracting a human immunodeficiency virus in accordance with paragraph 2 of Article 18 of the Criminal Code of the Republic of Tajikistan, has been recognized as minor offenses in view of the fact that the maximum punishment provided for by this Code does not exceed two years in prison.*

**Part 2 of Article 125 of the Criminal Code of the Republic of Tajikistan** - *Infection of another person by infecting with a human immunodeficiency virus by a person who knew that he had this disease in accordance with part 3 of Article 18 of the Criminal Code of the Republic of Tajikistan was recognized as a moderate crime since the maximum penalty stipulated by this Code does not exceed five years in prison.*

**Part 3 of Article 125 of the Criminal Code of the Republic of Tajikistan** - *Infection of another person with the human immunodeficiency virus by a person who knew about the presence of this disease in relation to two or more persons, as well as in respect of a knowingly minor in accordance with paragraph 4 of Article 18 of the Criminal Code of the Republic of Tajikistan, was recognized as serious crimes in mind the fact that the maximum punishment provided for by this Code does not exceed ten years in prison.*

The presence in the criminal code of a separate article criminalizing infection of the human immunodeficiency virus causes a lot of discussion among scholars. There is an opinion that the separation of this article as a separate norm in the criminal code is contrary to international standards in the field of human rights. International practice follows the path of excluding from the criminal law and generally legislation in the field of public health of special offenses for cases of intentional and intentional transmission of HIV and proposes to use in these cases a set of ordinary crimes, such as causing harm to health. There are relevant recommendations from the UN, which are based on the norms of international treaties ratified by the Republic of Tajikistan, in particular the International Covenant on Economic, Social and Cultural Rights.

There is another approach, that it is necessary to completely decriminalize the crime of infection with the human immunodeficiency virus, since in many ways it contradicts international standards. Along with these opinions, there is another approach to this issue, which consists in the fact that the presence of a separate article in the criminal code criminalizing infection of the human immunodeficiency virus most likely contributes to the fulfillment of the preventive function of the criminal law.

In our opinion, at the present stage, the development of the legal system of the Republic of Tajikistan, the latter approach has a more real position and the question of the need to improve the legislation of the Republic of Tajikistan in this area is becoming increasingly important.

We believe that article 125 of the Criminal Code of the Republic of Tajikistan (infection with the human immunodeficiency virus) **in the current version raises more and more questions and requires improvement.** It should be emphasized that the issues of responsibility for the analyzed crime are regulated differently by the laws of other countries. Similarly to the domestic criminal law, the issues of liability for infection with a venereal disease and HIV infection are presented, for example, in the Criminal Codes of the Russian

Federation (Article 122 of HIV infection), Poland (Article 161), Kazakhstan (Articles 115, 116), and Kyrgyzstan (Art. 117, 118), Uzbekistan (Art. 113), etc. At the same time, the laws of France, Italy, Germany and Spain do not provide for criminal liability for such actions. For example, in France, the responsibility for acquiring HIV infection is provided for by another (non-criminal) law and the act is attributed to misconduct.

In our opinion, the first step towards improving article 125 of the Criminal Code of the Republic of Tajikistan should be considered the introduction of an addendum in the form of **notes** to article 125 of the Criminal Code of the Republic of Tajikistan on the exclusion of criminal liability when a person was warned in time that he had HIV. For example, article 122 of the Criminal Code of the Russian Federation provides **a note** according to which a person who has committed the acts provided for in the first or second parts of this article is exempted from criminal liability **if another person who is at risk of infection or is infected with HIV is warned in a timely manner about the presence of the first of this disease and voluntarily agreed to take actions that created the danger of infection.**

**In this regard, we propose, similarly to the Russian criminal code, it is necessary to amend Article 125 of the Criminal Code of the Republic of Tajikistan and provide for a NOTE** that a person is exempted from criminal liability if another person is at risk of infection or infected with HIV, was warned in advance of the presence of the first of this disease and voluntarily agreed to take actions that created a risk of infection. Thus, the social reasons for the introduction of this rule is the non-admission in a state of law, where rights, freedom of a person and citizen are the highest value, where everyone is equal before the law and the court to restrict the social right to full existence in society

**In addition, it is time to adopt the Plenum of the Supreme Court under this article, the Plenum of the Supreme Court of the Republic of Tajikistan - ensures the correct and uniform application of laws by the courts and provides clarifications and interpretations of the rule of law through the adoption of decisions.**

Practice shows that criminalization does not prevent new HIV infections, nor does it make women less vulnerable to HIV. In fact, criminalization harms women, rather than helping them.

The legislation of the Republic of Tajikistan in the field of rights of PLHIV is generally consistent with international human rights standards in the context of HIV / AIDS, with the exception of a number of aspects, such as testing, criminalization of Key Populations and PLHIV, disability issues, and some issues of labor law.

## Confidentiality and testing:

HIV confidentiality not always maintained

### **Declaration of Commitment on Human Immunodeficiency Virus and Acquired Immunodeficiency Syndrome**

60 (b) We pledge to use a variety of strategies and mechanisms, taking into account national circumstances, including, whenever possible, **voluntary, confidential, fully informed and secure community testing** to reach millions of people who are not aware of their status, including people living with HIV and to provide information prior to testing, counseling, issuing referrals for treatment based on testing and follow-up to facilitate the provision of care services, support The treatment and treatment, including monitoring of viral load, and the removal of socio-economic barriers to diagnosis and treatment, including regulatory barriers to testing in communities, and we commit ourselves to expanding the scope and spread of voluntary and confidential HIV testing and counseling, including HIV testing and counseling initiated by the service provider, and intensify national campaigns to promote testing for HIV and other sexually transmitted infections.

This provision of the Declaration is directly related to Art. 17 International Covenant on Civil and Political Rights:

1. No one may be subjected to arbitrary or unlawful interference with his personal and family life, arbitrary or unlawful encroachments on the inviolability of his home or the secrecy of his correspondence, or unlawful encroachments on his honor and reputation.
2. Everyone has the right to protection of the law **from such interference or such attacks.**

In practice, applications for disclosure of status by health workers, relatives, neighbors, etc. unfortunately, is the case.

National legislation on the right to privacy of patients with HIV and Key populations is currently regulated by the Constitution of the Republic of Tajikistan, Art. 49, 163 of the Health Code, Law of the Republic of Tajikistan "On Information" and others.

So, Art. 23 of the Constitution of the Republic of Tajikistan proclaims: "The collection, storage, use and dissemination of information about the personal life of a person without his consent is prohibited." In Art. 49 of the Health Code of the Republic of Tajikistan states that medical and pharmaceutical workers are obliged to keep medical confidentiality (information about the state of health, about visiting a healthcare organization) and other personal information, art. 163 of the same Code establishes the right of PLHIV to keep secret information about their state of health if the conditions and characteristics of their life and work do not pose a threat to the infection of others with the human immunodeficiency virus.

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In Art. 20 of the Law of the Republic of Tajikistan "On Information" determines what information is about a person and establishes a ban on its distribution without the consent of the person, with the exception of cases provided for by the legislation of the Republic of Tajikistan. So, the Law refers to confidential information about a person's personality, personal data, nationality, education, marital status, material status, religious affiliation, state of health, as well as address and place of birth.

The Law of the Republic of Tajikistan "On Information" does not establish in what cases information about a person can be disclosed by law and to whom. But it is indicated in Art. 27 denial of access to such information, its concealment, illegal collection, use, storage, or distribution may be appealed in court.

In part 7 of Art. 161 of the RT Health Code, it is established that RT citizens, foreign citizens, refugees, internally displaced persons and stateless persons are guaranteed the right to preventive monitoring in compliance with the principles of confidentiality, anonymity and voluntary testing in the manner determined by the Ministry of Health and Social Welfare of the Republic of Tajikistan and to voluntary, confidential and anonymous medical examination to detect human immunodeficiency virus infection and investigations at the health facilities, regardless of ownership.

Part 2 of Article 161 of the RT Health Code speaks about the principles of voluntariness and confidentiality of a medical HIV test. Also in this article, it is established that a person who has been diagnosed with a human immunodeficiency virus infection is provided with complete information about state guarantees, rights, freedoms and responsibilities related to life with a human immunodeficiency virus infection, as well as social and psychological support services and self-help groups virus infected with human immunodeficiency (after test consultation).

Mandatory medical examination for HIV established part 8-10 of Article 161 of the RT Health Code. Donors of blood, biological fluids, organs and tissues are subject to a mandatory medical examination. Article 162 of the RT Health Code established that information on HIV infection or AIDS infection defines it as medical confidentiality. In Art. 163 of the Criminal Code of the

Republic of Tajikistan established that PLHIV have the right to keep secret information about their state of health if the conditions and characteristics of their life and work do not pose a threat to infection of others with the human immunodeficiency virus, as well as compensation for material and moral damage associated with disclosure information about the fact of infection of these individuals with the human immunodeficiency virus.

The norms of the Health Code and Decree of the Government of the Republic of Tajikistan No. 171 of 04/01/2008, Decree of the Government of the Republic of Tajikistan of August 6, 2014 No. 528. There are cases of mandatory and confidential HIV testing. The right to preserve personal information is guaranteed both by the Constitution of the Republic of Tajikistan and a number of legislative acts. This right may be violated only on the basis of a reasoned decision of the bodies engaged in operational-search activities, at the request of an authorized prosecutor and with the sanction of an authorized judge, and if there is relevant information specified in art. 8 of the Law of the Republic of Tajikistan “On operational-search activity”.

But at the same time, there are contradictions between the Code of Health of the Republic of Tajikistan and the Code of Administrative Violations of the Republic of Tajikistan, which may lead to a violation of the rights of PLHIV to maintain confidentiality about their status. Article 163 of the Republic of Tajikistan provides for the voluntary treatment of HIV. And Article 119 of the Code of Administrative Violations of RT provides for administrative responsibility for avoiding compulsory medical examination and preventive treatment of people with infectious diseases and HIV infection.

Article 120 of the Code of Administrative Violations of RT contradicts the observance of the principle of the right to confidentiality. This article entails an administrative fine for concealing a person infected with HIV, an infectious disease, the source of infection, as well as people who have had contact with the person who poses a risk of contracting these diseases. This norm is contrary to Art. 163 of the RT Health Code.

### **The order of marriage and HIV.**

The plot of the case №2.

A man recently arrived back from migration and wanted to get married and register a marriage with his beloved girlfriend. According to the rules, they underwent a medical examination for registration of marriage. But, unfortunately, the man was diagnosed with

HIV. At the AIDS center, it was explained to him what it was like to take ARV therapy, and how to protect themselves. The second party, i.e. girl, was also consulted. We took a receipt on non-disclosure and on HIV information from the girl. Regardless of the status of the man, the girl agreed to marry him.

But the KADS employees, that is, the family doctor who must issue a certificate of medical examination for marriage registration, did not give out the certificate, having learned about the status of the groom.

These actions of the KADS employee were appealed to the KADS director, but unfortunately the man and woman who wanted to get married went to another area without waiting for an answer and got married according to religious tradition.

In our opinion, the institute of medical examination of persons entering into marriage is one of the most important and significant today. Future spouses need to know about each other's actual state of health, primarily in order to prevent the negative consequences of marriage.

The question of the relationship between the rights of PLHIV to confidentiality and the rights of people who have sex with him to an acceptable level of physical and mental health is very acute. Not every PLHIV complies with the requirements of the law prohibiting knowingly exposing people to danger or infecting another person (or several persons) with the human immunodeficiency virus. Statistical data indicated in the State program on combating HIV / AIDS for 2017-2020. show that in Tajikistan in recent years the proportion of HIV transmission has been increasing compared to other HIV transmission routes.

In this regard, steps were taken by the legislator to introduce mandatory premarital medical examination in Art. 15 of the Family Code of the Republic of Tajikistan. It should be noted about the shortcomings of the Decree of the Government of the Republic of Tajikistan of August 23, 2016, No. 374 "On approval of the rules for conducting a mandatory medical examination of persons entering into marriage." So, in paragraph 5 of these rules, it is noted that the civil registry offices of the Ministry of Justice of the Republic of Tajikistan accept a marriage application only if there is a certificate certifying the examination of each person entering into marriage. Then the question arises, how should doctors make sure that people who want to undergo a medical examination want to register a marriage.

And they will conduct a medical examination for free, as required by Art. 15 of the Family Code of RT. Paragraph 4 of these rules establishes: "Inspection and counseling on healthy lifestyles, family planning and the impact of diseases on the health of offspring (hereinafter

referred to as counseling) is carried out by family and, if necessary, specialized doctors of a state medical institution (hereinafter referred to as the institution) at the place of residence or permanent residence based on the application of the person entering into marriage. ”. Persons entering into marriage do not always live in the same area and can undergo medical examinations in different institutions, on the one hand, this can preserve the confidentiality of PLHIV identified, but on the other hand, when he/she is dishonest, it puts another person at risk. Therefore, the mechanism of these Rules is not thought out. Also, with the mandatory requirements of a medical examination prior to marriage, there is a risk of an increase in the number of unofficial religious marriages, especially since this does not entail legal liability for persons conducting the Nikoh rite, but entails the vulnerability of women and children in such marriages. According to experts, in matters of registration of acts of civil status, this may be the reason for reducing the registration of official marriages in the country.

***Article 15 of the Family Code of the Republic of Tajikistan establishes that citizens of the Republic of Tajikistan, foreign citizens and stateless persons undergo a compulsory medical examination free of charge before they marry in state healthcare institutions at the place of residence or permanent residence in accordance with the legislation of the Republic of Tajikistan and become familiar with the results of compulsory medical examinations of each other. Consultation on a healthy lifestyle, family planning and the impact of diseases on the health of offspring is carried out by state institutions of the healthcare system at the place of residence or permanent residence in accordance with the legislation of the Republic of Tajikistan (legislation of the Republic of Tajikistan dated 03.15.2016, No. 1290). This norm is also enshrined in Art. 51 of the Health Code. In more detail, this procedure for medical examination of spouses is established in the Rules for the compulsory medical examination of persons entering into marriage, approved by the Decree of the Government of the Republic of Tajikistan No. 374 of 08.23.2016***

In addition, confidentiality is a prerequisite for HIV testing in accordance with international standards. When conducting mandatory pre-wedding testing, confidentiality becomes almost impossible, since testing is followed by disclosure of status and the requirement to present a certificate. Mandatory testing often does not imply conducting pre- and post-test counseling. In most cases, this information becomes available to a wide range of people, which leads to the rejection of people and significant psychosocial consequences.

As an alternative to mandatory testing of spouses, as recommended by WHO and UNAIDS, it is necessary to consider the widespread introduction of universal testing approaches, such as:

- when a medical worker offers to take an HIV test at almost any visit to a medical institution and asks the patient for permission to conduct a test, or
- when the medical worker notifies the patient that this test will be performed as one of the usual tests, but the person has the right to agree or refuse it.

“International Guidelines on HIV / AIDS and Human Rights”, developed in 2006 by the Joint United Nations Program on HIV / AIDS and the Office of the United Nations High Commissioner for Human Rights, based on Art. 16 of the Universal Declaration of Human Rights proclaim the right to marry and found a family: “Men and women who have reached the age of majority have the right, without any restrictions on the basis of race, nationality or religion, to marry and found their own family. They enjoy the same rights with respect to marriage, during a state of marriage and during its dissolution. A marriage may be concluded only with the free and full consent of both parties to the marriage. The family is the natural and fundamental unit of society and has the right to protection from society and the state.”

#### **A child living with HIV and benefits.**

Initially, in national legislation, this human right is expressed in Art. 39 of the Constitution of the Republic of Tajikistan: "Everyone is guaranteed social security in old age, in cases of illness, disability, disability, loss of breadwinner and in other cases determined by law." In the context of HIV / AIDS, this right is also important.

According to part 4 of article 167 of the Health Code of the Republic of Tajikistan, it is established that “Monthly state benefit is assigned to children under the age of 16 years old, infected with human immunodeficiency virus or sick with acquired immunodeficiency syndrome. The procedure for assigning benefits, the amount and source of payment are determined by the Government of the Republic of Tajikistan.

Also, in accordance with Government Decision No. 232 of May 3, 2010. as amended by the Decree of the Government of the Republic of Tajikistan dated 06.06.2013 No. 262, dated October 4, 2013 No. 459, the procedure for assigning benefits to children with payment and the size of the state allowance for children under 16 years of age infected with human immunodeficiency virus (hereinafter - HIV) or patients with the syndrome acquired immunodeficiency (hereinafter - AIDS) .. According to this procedure, an application for benefits is submitted by the legal representative of the child to the local labor and social protection authorities. The application must be accompanied by a medical certificate and a certificate of residence.

### The plot of the case No.3

Parents of a child with HIV from the moment of registration at the AIDS center did not know and were not informed about the social rights of children living with HIV. Last year, they accidentally learned from the Doctors Without Borders organization that their child with HIV has the right to receive benefits from the state and turned to social welfare in the *hukumat* at the place of residence. For more than a year they cannot receive this allowance. Social security employees themselves, not knowing this procedure, promise them each time clarification. In relation to the social security agency, a complaint was filed with the district prosecutor's office and a complaint addressed to the district chairman about the late payment of benefits.

Unfortunately, this procedure does not determine a single point and time frame for all recipients, from which the right to receive benefits should be considered assigned, and from this moment the benefit should be calculated, and in what time frame the whole process should be completed. Studying this order, it turned out that the procedure for assigning benefits is a lengthy process and goes through several instances, starting from local authorities through the republican level and returning back to local authorities. As the practice of applying for complaints from citizens who do not receive benefits for a year, but filed all the documents in a timely manner, in different regions there are different practices for resolving this issue.

Children living with HIV are a vulnerable and specific group to protect their rights. An Ombudsman for the Protection of the Rights of the Child has been created in the Republic of Tajikistan. The Law of the Republic of Tajikistan "On the Protection of the Rights of the Child" adopted in 2015 does not take into account the interests of children with HIV, and in general this law is declarative, without mechanisms, some experts on the observance and protection of the rights of the child say.

Due to the fact that the Order does not establish this moment, but this moment may arbitrarily depend on the commission on the rights of the child.

### **Compulsory and voluntary HIV treatment**

Compulsory treatment of HIV by international standards is not allowed.

The norms of the Health Code and Decree of the Government of the Republic of Tajikistan No. 171 of 04/01/2008, Decree of the Government of the Republic of Tajikistan of August 6, 2014 No. 528. There are cases of mandatory and confidential HIV testing. The right to preserve personal information is guaranteed both by the Constitution of the Republic of Tajikistan and a number of legislative acts. This right may be violated only on the basis of a reasoned decision of the bodies engaged in operational-search activities, at the request of an authorized prosecutor and with the sanction of an authorized judge, and if there is relevant information specified in art. 8 of the Law of the Republic of Tajikistan “On operational-search activity”.

But at the same time, there are contradictions between the norms of the Health Code of the Republic of Tajikistan and the Code of Administrative Offenses of the Republic of Tajikistan, which may lead to a violation of the rights of PLHIV to maintain confidentiality about their status. Article 163 of the RT Code of Health provides for the voluntary treatment of HIV. And Article 119 of the Code on Administrative Offenses of the Republic of Tajikistan provides for administrative responsibility for evading mandatory medical examination and preventive treatment of persons with infectious diseases and HIV infection. (*Article 119 of the Code of Administrative Offenses of the Republic of Tajikistan, “Evasion of mandatory medical examination and preventive treatment of HIV infection and other infectious diseases, regardless of the warning made by the public health authorities, entails a fine of twenty to thirty indicators for calculation ( edition of the Law of the Republic of Tajikistan dated July 19, 2019 No. 1631).*

Article 120 of the Code on Administrative Offenses of the Republic of Tajikistan contradicts the observance of the principle of the right to confidentiality. This article entails an administrative fine for concealing a person infected with HIV, an infectious disease, the source of infection, as well as people who have had contact with the person who poses a risk of contracting these diseases. This norm is contrary to Art. 163 of the Health Code of the RT. Also, within the RT Health Code, there are contradictions between its various chapters on the issue of forced and voluntary treatment and on maintaining the confidentiality of PLHIV.

### **People living with HIV are not allowed to study in educational medical institutions of the Republic of Tajikistan**

In accordance with the Decree of the Government of the Republic of Tajikistan dated September 25, 2018, No. and in accordance with Article 5 of the Health Code of the Republic of Tajikistan, the

Government of the Republic of Tajikistan approved the List of Diseases that Do Not Allow People with Their Ills to Be Studied in Educational Medical Institutions (attached) . Also, the National Testing Center under the President of the Republic of Tajikistan and educational institutions with medical and pharmaceutical specialties should be guided by the approved list when accepting applicants' documents.

**Recommendations on the results of the analysis of the legislation of the Republic of Tajikistan and analysis of the results of the study:**

1. Article 125 of the Criminal Code of the Republic of Tajikistan (infection with human immunodeficiency virus) in the current version raises more and more questions and needs improvement. In this regard, we recommend that you add an addition to the article in the form of a note. It is necessary to amend Article 125 of the Criminal Code of the Republic of Tajikistan and provide a note stating that “a person is exempted from criminal liability if another person who is at risk of infection or who has been infected with HIV has been warned in time that the first one has this disease and voluntarily agreed to commit actions that created a risk of infection.”
2. The Supreme Court of the Republic of Tajikistan is recommended to study and summarize the practice of considering these categories of cases and with a view to the uniform application of legislative acts. In this area, develop and adopt decisions of the Plenum of the Supreme Court of the Republic of Tajikistan on the practice of considering criminal cases under article 125 of the Criminal Code of the Republic of Tajikistan (infection with human immunodeficiency virus).
3. The implementation of legal proceedings on the principles of the priority of protecting the rights, freedoms of man and citizen, inviolability, respect for the honor and dignity of the person, the presumption of innocence, adversarial justice, equality of all before the law and the court is inextricably linked to ensuring the constitutional right of everyone to receive qualified legal assistance from a lawyer (advocate). Although the current criminal procedure legislation of the Republic of Tajikistan does not provide for the mandatory participation of a criminal lawyer in relation to HIV-infected persons under article 125 of the Criminal Code of the Republic of Tajikistan, however, the mandatory participation of a lawyer in this category of criminal cases is dictated by moral, psychological and moral-humanistic considerations, as a person infected with HIV due to their illness, psycho-emotional vulnerable state, and receiving ARVT, they are not able to independently or fully defend their rights in criminal proceedings. In this regard, we recommend that the



bodies of inquiry and preliminary investigation ensure the right to protection for HIV-infected persons from the moment a criminal case is opened.

**For NGOs working in this area:** to intensify the actions of PLHIV and Key populations in applying to law enforcement agencies, courts for protecting their rights violated; - increase the legal awareness of PLHIV and Key populations on their rights. Develop a training manual for PLHIV on human rights.

4. To actively promote the protection of the rights of children with HIV and their parents.
5. More actively in protecting women's rights, including women living with HIV.
6. To amend the Law of the Republic of Tajikistan “On Prevention of Domestic Violence” in order to take into account the interests of PLHIV, children living with HIV and children in general, and other vulnerable groups of the population, and create mechanisms to protect victims of domestic violence;
7. When adopting the Law of the Republic of Tajikistan “On Free Legal Aid”, include PLHIV in the category of persons entitled to free secondary legal aid, both in criminal and civil cases.
8. Conduct monitoring of violations of the rights of PLHIV in law enforcement agencies.
9. To include in the Decree of the Government of the Republic of Tajikistan No. 232 dated May 3, 2010, as amended by the Decree of the Government of the Republic of Tajikistan dated 06.06.2013 No. 262, dated October 4, 2013 No. 459, the duty of employees of local executive authorities to maintain confidentiality when drawing up benefits for children with HIV.
10. The Ministry of Health and Social Welfare of the Republic of Tajikistan as a responsible body to amend the Government Decisions from which date to consider the right to receive benefits for children with HIV assigned and at what time.

### **Human rights in reproductive health.**

Article 38 of the Constitution of the Republic of Tajikistan states: *“Everyone has the right to protection of health. Everyone, within the framework defined by law, enjoys free medical care in state healthcare institutions. ”*

Despite the fact that the mechanisms for the realization of the right to health are increasingly being introduced by the country into its constitutional and national laws as fundamental and guaranteed rights, changes to the path to ensuring the highest attainable standard of physical and mental health represent significant progress, fully realize their right to health to all without exception. In fact, when accessing medical facilities, many Women living

with HIV face discrimination in violation of their fundamental rights and abuses by health workers.

The HIV epidemic is not only fueled by the existence of gender inequality, but also exacerbates it, increasing women's vulnerability to its effects. The adoption of measures to protect the sexual and reproductive health of women living with HIV, which are based on the principles of gender equality and the protection of human rights, should help to improve the quality of life of these women. It will also be a step towards the long-term promotion of their health and respect for the principle of health equity.

As a rule, HIV infection is sexually transmitted or associated with pregnancy, childbirth and breastfeeding - all these are fundamental elements of ensuring sexual and reproductive health. In addition, sexual and reproductive health problems are largely caused by the same root causes as HIV / AIDS, such as poverty, gender inequality, stigma and discrimination, and the marginalization of vulnerable groups.

The duty to protect rights and protect human health requires that the healthcare system and legislation support sexual and reproductive health and the rights of people living with HIV. People living with HIV have the right to good health; normal sex lives are enforced by laws that would protect this right. They also need appropriate services that support their sexual and reproductive health. In public health positions, decision-makers and service providers must recognize that people living with HIV enter into personal relationships, have sex, and give birth to children. A key factor in maintaining such people 's health as well as the health of their partners and members of their families is the ability to do all this in a safe manner. People living with HIV also need special services aimed at protecting their sexual and reproductive health, including recommendations on the use of hormonal contraceptives during the course of antiretroviral therapy. In addition, **stigma and discrimination can hamper access to health care for HIV-positive people.**

Pregnant women living with HIV need special care and support from the state due to their status. Social policies, including the National HIV / AIDS Prevention Program for 2017-2020, do not provide for social measures to support such women.

#### **Case No. 1.**

A woman living with HIV. She did not know about her diagnosis during pregnancy. When the time came to be on registry for childbirth, she came to the gynecologist. The gynecologist simply did not accept her because she represented a risk factor telling her: "Get out of my office I won't examine you." She does not have a medical examination, she gives birth at

home, not knowing that she has HIV and breastfeeding the baby. At 4 months, the child fell ill and was in intensive care. The child eventually died. After the death of the child, the woman is diagnosed with HIV. And a criminal case will be opened against her under Article 125 of the Criminal Code of the Republic of Tajikistan.

There is still discrimination regarding the right to health, including reproductive and sexual, of women living with HIV and women from HIV-infected groups among the medical workers themselves, such as in clinics, AIDS centers, maternity hospitals, gynecological rooms.

Various barriers to women's access to reproductive health and HIV prevention services are noted. The most common barrier is the lack of funds from respondents, which leads to an obstacle to receiving some paid medical services in government organizations.

#### **Case No. 2.**

A woman living with HIV, her husband also has HIV status. The woman started having pancreatic attacks due to stones, she had to remove them. The attacks intensified. She went to a medical institution to a surgeon to remove the pancreas. But upon learning of her diagnosis, the surgeon simply refused her that “if they operate on her, then they will just need to throw out the laser surgery equipment, which costs \$ 5000”. Then she turned to another surgeon, who, having also found out about her diagnosis, refused laser removal, and recommended removal without a laser. As a result, the pancreas was removed, taking a certain amount of money from her, justifying that they risked their health.

In accordance with Art. 163 of the Health Code of the Republic of Tajikistan, people living with HIV are entitled to receive all types of qualified and specialized medical care, including medication, free of charge in state healthcare organizations. But these norms do not work in practice.

In addition to ART and HIV counseling, people living with HIV do not receive any free medical care or medication.

Also, healthcare providers need resources, information, relevant skills, and sensitivity to the specific needs of HIV-positive people.

The legal system should provide special protection for such groups, as well as ensure access to quality legal services so that they can deal with human rights violations. The advocacy efforts of people living with HIV to improve their sexual and reproductive health and rights are mainly

aimed at ensuring changes in the healthcare system and the legal system and strengthening public systems. Human rights defenders should interact not only with the health care system and the legal system, but also go beyond them to combat stigma and discrimination against people living with HIV and their patriarchal attitude towards women. For too long, the issues of sexual and reproductive health and the rights of people living with HIV have not received due attention. A positive HIV test result was perceived as the end of a person's sex life.

Despite the growing understanding of the importance of protecting the sexual and reproductive health of people living with HIV in terms of both ensuring human rights and protecting public health, effective and ambitious measures and programs in this area are still very few. Health systems, legal systems, advocacy are closely related. This means that in many cases it will take action in all these areas to achieve real change.

### Case No. 3

M. found out about her HIV positive status when she was tested during her first pregnancy. It turned out that the woman was infected by her husband. In the last month of pregnancy, M had a menacing condition. She was not admitted to the maternity hospital where she turned in for help. M.'s relatives turned to an HIV service organization and only after that she was admitted to the maternity hospital, but put in a separate ward. Medical personnel practically did not approach her, and she did not receive proper attention and help. M. was not even allowed to go into the corridor of the maternity hospital, she was warned that when visiting the toilet she thoroughly washed off everything, did not hold onto the stair railing and the landing. She was not allowed to give birth herself, and was forced to have a cesarean section.

- ✚ In all these cases, one can observe a denial of medical care, as well as stigma and discrimination against PLHIV.
- ✚ Согласно части 2 статьи 163 КЗ РТ не допускается отказ в приеме в организации здравоохранения и оказании неотложной помощи лицам, инфицированным ВИЧ и СПИД. According to part 2 of article 163 of the Health Code of the Republic of Tajikistan, it is not allowed to refuse admission to a healthcare organization and to provide emergency care to people infected with HIV and AIDS.
- ✚ According to part 3 of article 165 of the Health Code of the Republic of Tajikistan, discrimination on the basis of the presence of human immunodeficiency virus infection is prohibited.

- ✚ Part 5 of Article 165 states that the restriction of the rights and freedoms of persons infected with human immunodeficiency virus and acquired immunodeficiency syndrome can be justified only with the aim of ensuring the rights and freedoms of others. And in this case, such a restriction must comply with the requirements of the Code and other regulatory legal acts of the Republic of Tajikistan.
- ✚ Article 221 of the Health Code of the Republic of Tajikistan states that individuals and legal entities for non-compliance with the requirements of this Code are held liable in accordance with the legislation of the Republic of Tajikistan.
- ✚ Thus, industry legislation clearly establishes the inadmissibility of refusal to provide medical care for PLHIV. In Art. 165 there is a reservation that refusal can be justified only with the aim of ensuring the rights and freedoms of others, but the code does not contain a list of such restrictions. In any case, it must be borne in mind that any refusal (or temporary restriction) in the provision of medical care must be objectively justified. For example, an objective reason may be if the institution does not have a sterilizer for needles that are used for acupuncture, but such a reason as the “contagiousness” of the disease cannot be justified and leads to a violation of rights. Or, for example, non-compliance by a patient with medical prescriptions or internal rules of a medical institution may also become the basis for the temporary restriction of certain rights, but cannot be the basis for a complete refusal.
- ✚ For the refusal to provide medical assistance to citizens, the Criminal Code of the Republic of Tajikistan (CC RT) provides for liability. Thus, in article 128 of the Criminal Code of the Republic of Tajikistan (Refusal to provide assistance to a patient) it is established that failure to provide assistance to a patient without good reason by a person who is obliged to provide it in accordance with the law or by special rules, which entailed, by negligence, causing moderate damage to the patient’s health, shall be punishable by compulsory labor for a term of 180 to 240 hours or a fine of 300 to 500 indicators for calculations or deprivation of the right to occupy certain positions or engage in certain activities for a period of 2 to 5 years or imprisonment for a period of up to 2 years. If these acts, through negligence, resulted in the death of the patient or caused grievous bodily harm, a person can be imprisoned for up to 3 years with the deprivation of the right to occupy certain positions or engage in certain activities for the same period, or fined from 500 to 1000 indicators for calculations.
- ✚ The improper fulfillment of professional duties by a medical worker is also punished as a result of a careless or dishonest attitude towards the patient and, as a result, causing the patient harm to his health (Article 129 of the Criminal Code of the Republic of

Tajikistan). For causing moderate damage to health, the guilty person is punished with compulsory labor for a period of 180 to 240 hours or a fine of five hundred to one thousand indicators for calculations or deprivation of the right to occupy certain positions, or engage in certain activities for up to three years or imprisonment for a term up to two years. The same act, if it negligently caused serious harm to health or the death of the patient, or infection with the human immunodeficiency virus, is punishable by deprivation of liberty for a term of three to five years with the deprivation of the right to occupy certain positions or engage in certain activities for up to five years.

- ✚ Article 127 of the Criminal Code of the Republic of Tajikistan provides for punishment for compulsory labor for a term of one hundred forty to two hundred and forty hours, or a fine in the amount of two hundred to four hundred indicators for calculations, or correctional labor for up to two years. Leaving in danger means knowingly leaving without the help of a person who is in a life-threatening state or health and deprived of the opportunity to take measures for self-preservation for infancy, old age, illness or because of his helplessness in cases where the perpetrator was able to provide assistance to this person and was obliged to take care of him or put him in a life-threatening condition,
- ✚ The same act, if it caused the death of the victim by negligence, shall be punishable by restraint of liberty for a term of up to three years, or imprisonment for a term of up to two with deprivation of the right to hold certain posts or engage in certain activities for a term of up to three years.

In order to increase the efficiency of public health services, include topics on gender aspects of health, including human rights, the impact of gender on the access of men and women to medical services in the curriculum of continuing education courses for medical staff.

Pay special attention to the rights of women living with HIV to equal access to health services and develop regulatory, organizational and financial mechanisms to ensure these rights, including:

- Increasing the capacity of gynecologists and other medical workers in the primary health care system for non-discrimination of WLH and women from affected groups;

- Establish a transparent procedure for the provision of free medical and social psychological assistance for all PLHIV, especially WLH, women who inject drugs, and former prisoners;
- development of a mechanism for exercising the right of parents or legal representatives of children born from HIV-infected mothers to substitute breast milk from the moment of birth to the time of final diagnosis;
- Consideration of the possibility of obtaining benefits for pregnant WLH to purchase the necessary medicines and improve their nutrition..
- Raise public awareness through (allowance, pocket books, guidelines for volunteers, etc.) about existing legal mechanisms that can be used to combat abuse in the provision of medical care.
- Attract specialists to work in the field of human rights in the context of medical care.
- Improve the dissemination of gender-sensitive statistics and information on public health. Make wider use of the websites of the Ministry of Health of the Republic of Tajikistan and the Republican Center for Statistics and Medical Information.