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# HIV Legal Environment Assessment in the Republic of Moldova

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* http://www.ccm.md/prevenire-membri

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# ABBREVIATIONS, DEFINITIONS

| | |
|---|---|
| **AIDS** | Acquired immunodeficiency syndrome |
| **ARVT** | Antiretroviral therapy |
| **ARV** | Antiretroviral |
| **CCM** | Country Coordinating Mechanism |
| **CoE** | Council of Europe |
| **CESCR** | UN Committee on Economic, Social and Cultural Rights |
| **CIS** | Commonwealth of Independent States |
| **CPTS** | Centre for temporary placement of foreigners |
| **DPI** | Department of Penitentiary Institutions |
| **ECtHR** | European Court of Human Rights |
| **EU** | European Union |
| **GPI** | General Police Inspectorate |
| **HIV** | Human immunodeficiency virus |
| **IBBS** | Integrated bio-behavioural survey |
| **ILO** | International Labour Organization |
| **LEA** | Legal Environment Assessment |
| **LGBT** | Lesbian, gay, bisexual and transgender |
| **MHLSP** | Ministry of Health, Labour and Social Protection |
| **MIA** | Ministry of Internal Affairs |
| **MoH** | Ministry of Health |
| **MoJ** | Ministry of Justice |
| **MoLSPF** | Ministry of Labour, Social Protection and Family |
| **MPHT** | Methadone pharmacotherapy |
| **MSM** | Men who have sex with men |
| **NAP** | National Administration of Prisons |
| **NHIC** | National Health Insurance Company |
| **National HIV/AIDS/STIs Programme** | National Program on prevention and control of HIV/AIDS infection and sexually transmitted infections for the years 2016-2020 (Government Decision no. 1164/2016) |
| **OSCE** | Organization for Security and Cooperation in Europe |
| **OST** | Opioid substitution treatment |

| | |
|---|---|
| **PHC AIS** | Primary Health Care Automated Information System |
| **PEP** | HIV post-exposure prophylaxis |
| **PLHIV** | Person/pPeople living with HIV |
| **PrEP** | HIV pre-exposure prophylaxis |
| **PWID** | Person/pPeople who inject drugs |
| **RM** | Republic of Moldova |
| **STI** | Sexually transmitted infection |
| **SW** | Sex worker(s) |
| **TRIPS** | Agreement on Trade-Related Aspects of Intellectual Property Rights |
| **UN** | United Nations |
| **UNAIDS** | United Nations Joint Programme on HIV/AIDS |
| **UNDP** | United Nations Development Programme |
| **UNODC** | United Nations Office on Drugs and Crime |
| **WHO** | World Health Organization |
| **WTO** | World Trade Organization |

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# EXECUTIVE SUMMARY

This report includes the findings and recommendations of the HIV legal environment assessment in the Republic of Moldova, conducted by a multidisciplinary team of experts, contracted by UNDP Moldova. The research was conducted in cooperation with UNAIDS, UNODC Moldova, civil society organizations and other stakeholders.

The team of experts has found that, despite the significant progress made during the recent years in the improvement of the HIV-related legal framework, still practical, standardized, evidence-based guidelines are necessary to enable the efficient transformation of the legal environment, so that the legislation and practice would support the implementation of the national HIV response, which aims to protect public health, promote human rights and ensure a full enjoyment of life by people living with HIV (PLHIV).

A 300% increase in the HIV burden among men who have sex with men (MSM) from 2012 to 2016, documented by integrated bio-behavioural study (IBBS)[1], a ten times higher weighted prevalence of HIV among sex workers (SW) and people who inject drugs (PWID) than in the general population, and less than 60% coverage with HIV prevention interventions among these groups – all these facts suggest that key affected populations are left behind and highlight the stringent need to address these groups in a priority, focused, and people-centred manner.

Thus, the neglect, marginalization and rejection of key and vulnerable populations, criminalization and penalization of HIV transmission, drug use and sex work, the perpetuation of the lack of trust in the health care system continue to be the main legal barriers in accessing HIV prevention, treatment and care services. Criminalization of drug use in places of detention results in limited access to syringe exchange programmes and methadone substitution therapy despite their availability, thus contributing to transmission of HIV and other blood borne infections. Stigma and discrimination against persons affected by HIV, especially in health care facilities, are among the barriers to testing and treatment.

Confidentiality of personal data is not always respected; the current protection mechanisms do not provide full security to PLHIV. It is necessary to review the mechanism of data transmission and to clearly define the circle of health workers who need this information. Moreover, we believe that a greater patient involvement is necessary in making decisions on the transfer and processing of their data.

There are shortcomings in the practice of providing gender-specific services, including cases of segregation in healthcare facilities of women living with HIV who addressed for childbirth services, although the norms regulating this have been repealed. There are limitations regarding the

1 Center for Health Policies and Studies (PAS Center), Integrated Bio-behavioural Study in Key Populations at Higher Risk, 2016, http://pas.md/en/PAS/Studies/Details/174

right of PLHIV to adoption and taking under guardianship of children left without parental care. Access of minors to HIV testing only with the consent of their parents or guardians is a barrier. Thus, the incidence of sexually transmitted infections among adolescents of 15-19 years of age in the Republic of Moldova is 50% higher than in the general population, suicide rate among adolescents is three times higher than in the general population, while about 70% of early adult mortality, according to the estimations of the World Health Organization, are determined by risky behaviour initiated during adolescence.[2]

Formally, there are no impediments for the access of children living with and affected by HIV to education. However, when confidentiality of HIV status is compromised, it may lead to discrimination by isolating and excluding these children from the group or from educational institutions.

Access to essential medicines and to medicines for the treatment of opportunistic infections is insufficiently regulated to ensure universal coverage with health services and meeting the needs of a person. There are rigid provisions in the legislation and draft laws developed as part of the Republic of Moldova – European Union (RM–EU) association process, which would permit "data exclusivity" – the protection of data on preclinical tests and clinical trials for 8 years in favour of patent holders thus restricting the access of generic medicines to the market. So, the Republic of Moldova established harsh conditions on the exclusivity of preclinical data for the registration of pharmaceutical products in the country, while TRIPS flexibilities, such as compulsory licensing, Bolar provision or parallel import, are insufficiently introduced and implemented. Although the national legislation provides for the possibility of using a compulsory licensing, there has not been a single case when this provision was used in practice. Therefore, it is of utmost importance that draft Law on medicines[3] and draft amendments[4] to the Law on the protection of inventions[5] foresee efficient mechanisms for ensuring access of the population to pharmaceutical products.

Currently, compulsory HIV testing in the Republic of Moldova is only allowed in cases expressly stipulated by law, such as donation of blood, liquids, tissues, and organs, or based on a court decision. At the same time, in practice testing without adequate counselling and information on the purpose and reasons for conducting the tests was reported, in particular among pregnant women and prisoners.

Both general population and prison population are entitled to equal access to HIV prevention and treatment services (treatment cascade starting with testing and ending with investigations for treatment monitoring), methadone pharmacotherapy (MPHT), care and support, prevention of mother-to-child transmission.

At present, migrants are eligible for HIV testing under the Law on the prevention of HIV/AIDS (hereinafter, HIV Law). However, migrants are a vulnerable group which at certain stages face impediments in accessing health care services, including antiretroviral therapy (ART).

Financial sustainability of prevention interventions carried out through NGOs is not ensured, being implemented only a transitional mechanism from the contingency fund of the National Health Insurance Company (NHIC).

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2 Draft National Development Strategy "Moldova 2030", https://cancelaria.gov.md/sites/default/files/cu_privire_la_aprobarea_proiectului_de_lege_pentru_aprobarea_strategiei_nationale_de_dezvoltare_moldova_2030.pdf

3 https://particip.gov.md/ro/document/stages/proiectul-hotaririi-guvernului-pentru-aprobarea-proiectului-de-lege-cu-privire-la-medicamente/5261

4 https://particip.gov.md/ro/document/stages/proiectul-legiipentru-modificarea-legii-nr50-xvi-din-7-martie-2008-privind-protectia-inventiilor/5769

5 https://www.legis.md/cautare/getResults?doc_id=107070&lang=ro#

The draft National Development Strategy "Moldova 2030"[6] includes a number of health-related priorities. The strategic goal is for healthcare policies and interventions to focus primarily on promoting a healthy and active lifestyle and on prophylaxis/prevention, quality diagnosis and early and continuous intervention, reducing health inequities, especially concerning the access to services in rural areas and health insurance coverage.

Priority actions in the Strategy include:

- Strengthening the prevention and treatment of drug abuse, alcohol and tobacco consumption, including among adolescents, by providing information and education to the population at all levels, beginning with pre-school, primary and secondary education, as well as by family and community involvement;
- Adjusting healthcare interventions to the needs of disadvantaged and marginalized persons (including those related to access to services), especially of persons with physical, mental and sensory disabilities, the elderly, adolescents and youth, Roma people, migrants, people living with HIV and those belonging to key affected populations at higher risk of HIV infection (people who inject drugs, sex workers, etc.), refugees and asylum seekers, ensuring fair access to care and health services, as well as raising awareness among professionals about the specific needs of these groups.

Therefore, the findings and recommendations on the review and improvement/amendment of HIV/AIDS laws, policies and practices, contained in this report, are meant to sustain the implementation of the abovementioned strategic priorities, and to support the national efforts for achieving the targets set in line with the Sustainable Development Goals. They also represent a source of information and guidance for national authorities to undertake sectoral reforms compatible with international standards and good practices.

## SUMMARY OF RECOMMENDATIONS

### CHAPTER 1. Right to equality and legal protection

**Participation in political, social and cultural life**

1. To amend the HIV Law to strengthen the prevention of discrimination and exclude ambiguous interpretation of legal provisions.
2. To amend the applicable normative acts to exclude the unjustified transmission to third parties of medical data about the HIV-positive status.
3. To revise the provisions of the 'informed consent' agreement on the transmission of medical data so that the consequences of the refusal/consent of the PLHIV to disclose their status while requesting healthcare services are explicitly mentioned.

**Respect for private and family life. Sexual and reproductive health**

1. To repeal the discriminatory provisions restricting the access of women living with HIV to reproductive health services, including in-vitro fertilization, as well as provisions that promote voluntary sterilization of women living with HIV.
2. To improve the testing mechanism of pregnant women, established by the MoH Order no. 1018/2016 on the organisation of measures for the prevention

6 https://cancelaria.gov.md/ro/apc/moldova-2030

of mother-to-child transmission of HIV, by defining clear situations and eligibility criteria for repeated HIV testing of pregnant women in order to ensure the correct and uniform interpretation by all involved parties of measures for the prevention of mother-to-child transmission of HIV.

3. To carry out an operational study on the practices regarding pregnant women with HIV-positive or negative status in order to inform on measures required to ensure unconditional hospitalization and provision of childbirth assistance in health care facilities of all levels.
4. To align MoH Order no. 396/1995 on the organization of medical examination for young people before marriage with existing legal provisions which exclude an obligation to undergo a medical examination.

**The right of the PLHIV to adopt and take under custody/guardianship children left without parental care**

1. To harmonize bylaws with the national laws and international recommendations by explicitly prohibiting the use of HIV-positive status as a contraindication for adoption, custody/guardianship of children, and to define a clear list of medical contraindications for persons who intend to adopt children or to take them under custody/guardianship.

**Right to education**

1. To conduct strategic litigation for the development of effective legal protection mechanisms for children living with HIV or affected by HIV to ensure that they enjoy equal treatment and protection of private life in all educational institutions.
2. To review the MoH Order no. 828/2011 to modify some primary medical record forms in health care facilities in order to exclude the disclosure of medical data upon admission to the educational institutions.

**Right to work**

1. To adjust the labour regulatory framework in line with the ILO's HIV and AIDS Recommendation (R200), to protect workers, in particular jobseekers and job applicants, against discrimination or stigmatization on the grounds of real or perceived HIV status or belonging to groups more vulnerable to HIV infection.
2. To amend the Contravention Code in order to sanction employers for requesting during recruitment of additional documents which are not provided for by the law.
3. To harmonise the departmental bylaws with the provisions of the national legislation in force in order to ensure confidentiality and non-discrimination on the grounds of HIV status in the employment process.
4. To develop and disseminate a "code of conduct" for employers, which would prohibit discrimination and stigmatization of employees living with HIV and would ensure confidentiality and privacy.
5. To promote HIV prevention measures at the workplace as part of the national HIV-related policies, which should include provisions regarding labour, education, social security and health care.

**Social protection**

1. To adopt legal provisions which would provide equal opportunities of and positive measures for the employment of PLHIV and other vulnerable groups, to ensure a standard of living, which would not endanger their lives, considering the special needs of these persons.

2. To introduce regulations that will ensure non-discrimination of PLHIV and key affected populations in the field of employment, pensions and other areas of social-economic life.
3. To develop programs which would raise awareness of people living with HIV and those belonging to key affected populations about the fundamental social, economic and cultural rights.
4. To improve the social protection system from the Republic of Moldova by addressing systemic weaknesses affecting people living with HIV (low amounts of allowances, their dependence on work experience, unnecessary check-ups, corruption, etc.)

**Criminalization**

1. To modernize the HIV-related legislation by excluding specific criminal provisions which criminalize HIV and applying general criminal law provisions regarding the infliction of intentional harm to health in the case of intentional HIV transmission. To this end, Art. 212 (Infection with AIDS) of the Criminal Code of the Republic of Moldova should be repealed to exclude stigmatization of PLHIV and protect their right to privacy; instead, general provisions on inflicting harm to health (such as Art 152) should be applied.
2. To harmonize the language in the criminal legislation and national laws in accordance with the terminology recommended at the international level.

## CHAPTER 2. Key and vulnerable populations

**People who use drugs**

1. To ensure coordination of health and law enforcement policies, with the emphasis on preventing harmful effects of drug use.
2. To review and adjust the criminal and contravention legal framework in accordance with the international recommendations on decriminalization and/or depenalization of the use of drugs for non-medical purposes and the purchase and the possession of drugs for personal use, unless it is proven that they were purchased or possessed with an intent to sell.
3. To amend the Government Decision no. 79/2006 in order to adjust the quantities of narcotic substances held by persons who use drugs for personal use, considering also the possession of multiple doses for personal use. The same provisions should apply to persons in detention.
4. To amend the Criminal Code by providing for drug dependence treatment as an alternative to deprivation of liberty or instead of a complementary punishment and to include an option of suspended conditional sentencing for persons who voluntarily accept drug dependence treatment.
5. To evaluate the narcological registration system with a view to reforming or disbanding it, should the evaluation reveal lack of effectiveness or a negative impact on public health and human rights.
6. To integrate psycho-social and health care services provided for people who use drugs.
7. To ensure adequate funding from the national and local budgets for the implementation of HIV prevention programs for PWID.
8. To establish a protection mechanism for the implementation of harm reduction programs for providers and beneficiaries.

9. To introduce alternative measures to detention by creating referral mechanism to rehabilitation, treatment and re-socialization programs for drug dependence.
10. To create a permanent secretariat of the National Anti-Drug Commission.

**Sex workers (adults)**

1. To decriminalize sex work. According to the International Guidelines on HIV/AIDS and Human Rights, laws related to adult sex work should be reviewed with the aim of decriminalizing, then legally regulating occupational health and safety conditions to protect sex workers and their clients, including support for safe sex during sex work.
2. To develop and introduce an administrative mechanism for monitoring the enforcement of legislation on the rights of patients and compulsory reporting (registration) of cases of SW discrimination when they seek health care or prevention services.
3. To develop and implement discrimination reduction programs by involving all relevant stakeholders in order to protect the rights of SW; to take a systematic approach towards assistance for planning anti-discrimination activities considered as an integral part of health service provision.
4. To carry out awareness raising campaigns to reduce stigma, discrimination and harassment of SW by service providers (including health service providers).
5. To develop integrated programs for sex workers and to add them as a target group of social centres for PLHIV/PWID, where they could be provided with psychological, material and medical assistance, including treatment for alcohol and drug dependence, as well as support in finding a place of work and in the process of social inclusion.
6. To conduct a survey among SW on the impact of risk reduction programmes, including in the regions, aiming at developing recommendations for their adaptation and improvement.

**LGBT persons**

1. To review the Law no. 121/2012 on ensuring equality and include "sexual orientation" and "gender identity" into the list of protected grounds.
2. To develop and adopt procedures and regulations on replacing/updating all official documentation (e.g., birth certificate, passport/ID, diplomas, identification codes, etc.), so that transgender people can officially change their sexual identity, thus ensuring the respect for their dignity and privacy.
3. To revise healthcare assistance provision training curricula to include modules on the health of vulnerable groups, including LGBT persons.
4. To undertake measures to ensure adequate investigation of cases of violence against LGBT persons, such as training for law enforcement staff, drafting investigation guidelines and recommendations.
5. To strengthen the involvement of LGBT community, including by adjusting HIV response coordination mechanisms to include representatives of all sexual minorities and to be better adapted to the specific health and other needs of LGBT persons.

**Women**

1. To revise the legislation on the prevention of domestic violence to introduce measures sensitive to the intersectional vulnerability of women living with HIV, female sex workers and women who use drugs due to their criminalized behaviour.

2. To amend national legislation to ensure full compliance with the provisions of the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention).
3. To scale up the implementation of HIV prevention and treatment programs for girls and women, including the revision of the HIV Law in terms of gender specific aspects (e.g., providing for girl's and women's access to hygiene products, psychological counselling, reproductive health services).

**Children, adolescents and youth**

1. To continue the improvement, development and implementation of strategic HIV prevention actions for children and adolescents at risk.
2. To adopt and implement a minimum package of services for children living with HIV in order to ensure adequate and non-discriminatory access to prevention, treatment, rehabilitation and social integration services, as well as to provide the necessary funding.
3. To amend the legal framework by reducing to the age of 14 the threshold for mandatory consent of legal representatives for voluntary and confidential HIV counselling and testing of minors.
4. To amend the legal framework to ensure the confidentiality of the minor's HIV test and non-disclosure of the test results to third parties, including legal representatives, without the minor's consent.

**Migrants and refugees**

1. To amend the legal framework to ensure access to treatment and support services for all migrants, including those who have violated the legal provisions on migration or are in the process of being documented.
2. To align departmental orders on health care in the Temporary Placement Centre for Foreigners to the HIV Law, including in terms of requirements for HIV testing, counselling and confidentiality.
3. To include HIV issues among migrants into the agenda of international and regional relations (within the UN, CoE, CIS, EU, OSCE, etc.), as well as of bilateral and multilateral interstate relations, especially with the countries (e.g., the Russian Federation requires foreigners to be tested for HIV in cases of their long-term stay) with a large number of migrant workers from the Republic of Moldova, in order to remove legal barriers in these countries with regard to HIV testing, information, prevention, ART and related services, non-discrimination, non-expulsion and ensuring of human rights, including the right to work in the country of destination.
4. To ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

**Persons deprived of their liberty**

1. To amend the legislation in order to exclude compulsory/forced treatment of drug dependence.
2. To amend Art. $217^5$ of the Criminal Code to decriminalize drug use in prisons in order to eliminate barriers in access to treatment.
3. To adopt measures to ensure the observance of human rights of PLHIV in detention, including the prohibition of mandatory HIV testing and keeping the confidentiality of the diagnosis.
4. To undertake legislative, institutional and administrative measures that would ensure the continuity and the unhampered access of people who use drugs to

syringe distribution and exchange programs, drug dependence treatment (including OST) or other harm reduction programs in prisons.

5. To extend the number of recommended HIV prevention interventions in prisons, as well as their full geographic coverage.
6. To evaluate policies and programs on the prevention and addressing of rape and other forms of sexual violence in prisons and collection of relevant data. The penitentiary systems should draft and enact multi-pronged strategies to enhance detection, prevention and reduction of all forms of sexual violence in prisons and to ensure criminal prosecution of offenders. Victims of sexual abuse in prisons must have access to HIV post-exposure prophylaxis.
7. To ensure that policies address services for people deprived of their liberty to ensure connection with testing, prevention and continuation of treatment after their release.
8. To amend the legal framework in order to ensure the independence and confidentiality of the medical act and respect of detainees' right to health, including for the achievement of the 90/90/90 targets by transferring medical services from the subordination of the NAP and GPI to the MHLSP.

## CHAPTER 3. Access to services

### HIV prevention programs

1. To adopt national policies and regulations on financing HIV prevention in all key affected populations from national and local budgets thus reducing the dependence on donor funding.
2. To develop and implement communication strategies in order to enhance the level of knowledge about HIV among the general population. To develop and implement specific prevention programs for adolescents involved in HIV-related risk behaviours.

### Testing, counselling, referral, confidentiality

1. To amend Art. 398 of the Contravention Code in order to exclude the competence of the Administrative Commission to resolve cases, provided for in Art. 75 "Disclosure of confidential information regarding HIV tests".
2. To introduce disciplinary, contravention or criminal liability for violation of the rules on pre- and post-testing counselling, disclosure of HIV status at any level (health care, social, law enforcement bodies, employers, civil servants, etc.).
3. To ensure adequate protection of medical and/or social data at the system level; to bring the MoH Order no. 198/2015 in line with the provisions of the Law no. 133/2011 on personal data protection.
4. To revise the HIV Law in order to improve protection of patients' data confidentiality.
5. To revise PHC AIS implementation policy from the point of view of HIV status personal data protection (MHLSP Order no. 1497/2018, MHLSP Order no. 1498/2018).

### Occupational health and safety of medical personnel

1. To adopt the Law on medical malpractice.
2. To establish, through the employment contract, the individual liability of medical staff for cases of discrimination and to adopt the respective policies at the level of health care institutions.

**Treatment and care**

1. To include specific provisions on the integration of human-centred services into the normative acts related to the implementation of National programs on HIV and tuberculosis and to ensure uninterrupted supply of ARV medicines and MPHT.
2. To ensure the implementation of the HIV resistance monitoring system.
3. To maintain strategies promoting adherence to ART; to train medical personnel in order to ensure that ART is provided in a stigma and discrimination free environment.
4. To revise the Law on the Protection of Inventions in order to regulate higher/stricter standards regarding the patentability criteria, in order to promote the patenting of inventions that represent novelty, inventive step and non-obviousness.
5. To define the terms "public interest", "state of emergency", as well as to complete the legal framework with principles, following the example of art. 7 and 8 of TRIPS Agreement, which would guide the interpretation of the law in the field of protection of inventions.
6. To introduce more precise provisions on conditions/criteria for compulsory licensing, examining the appropriateness of separate regulation of compulsory licenses and licenses for (governmental) non-commercial use.
7. To introduce legislation regarding Bolar provision.
8. To exclude from patentability the diagnostic, therapeutic and surgical methods for the treatment of humans.
9. To mitigate the effects of data exclusivity rules on the public health system and potential adverse effects on the access to medicines by limiting the duration and/or scope of these rules (for new chemical entities only) and allowing the use of safety and efficacy data of the reference manufacturer (original) in case of compulsory licenses.

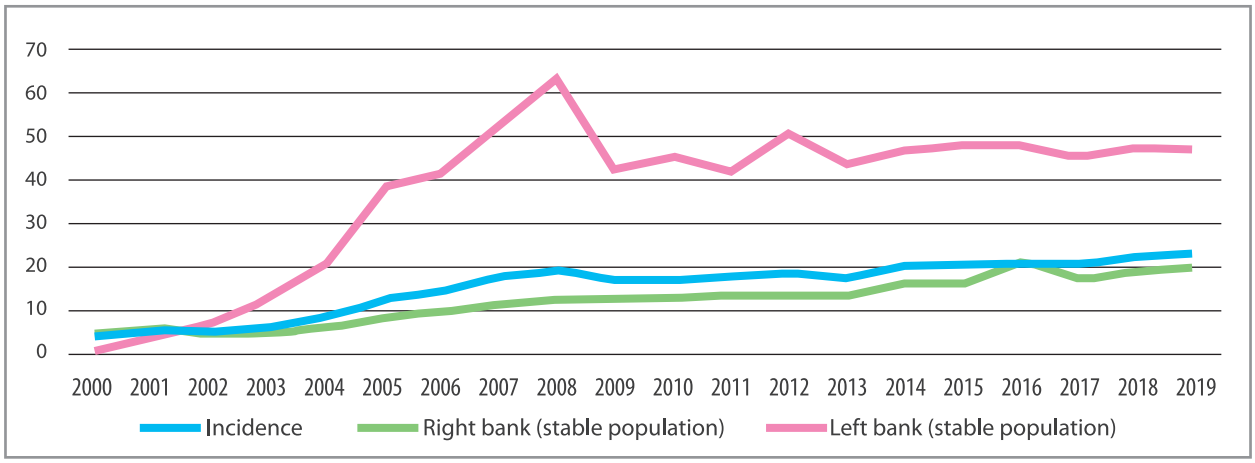
**Integration of health services**

1. To strengthen the capacities of medical institutions in order to improve services, including prevention, diagnosis, treatment and care for TB, HIV and drug use, as well as their integration with other related services (one stop shop).
2. To develop standard operational procedures (mechanisms) in order to ensure the provision of integrated services focused on the person's needs, including care continuity between different medical institutions (TB, HIV, OST).
3. To develop guidelines on adherence to TB treatment envisaging a wide range of methods of promoting adherence which have to be tried and failed before compulsory hospitalization is sought.

# INTRODUCTION

The first case of HIV infection was recorded in the Republic of Moldova in 1987. The country experiences a concentrated HIV epidemic since mid-1990s. According to SPECTRUM, the estimated HIV prevalence in the general adult population is 0.6% (0.3 in women and 0.6 in men), new infections occur mostly in adult population over 24 years of age: the estimated incidence of 0.04 occur in in the population of 0-14 years, 0.29 in 15-24 years, 0.45 in 25-49 years, and 0.08 in 50+ years. The latest estimated number of people living with HIV in Moldova is 14,589. According to the national statistics,[7] a total of 13,706 people with HIV were cumulatively registered on both banks of the Nistru River since 1987 until 2020,[8] of whom 4,112 had AIDS and 4,110 died. The prevalence is 310 cases per 100,000 inhabitants. In 2019, 922 new HIV cases were registered, out of which 59% were men, 41% – women and 8.5% – young people at the age of 15-24. The incidence was 26.1 cases per 100,000 inhabitants on the Right Bank of Nistru and 45.7 cases per 100,000 inhabitants in Transnistrian region (Left Bank). Geographically, there is a higher concentration of people living with HIV in urban areas.

**Fig. 1. HIV incidence (new cases per 100,000), years 2000-2019**




*Source: National Public Health Agency*

The HIV epidemic continues to be concentrated among key affected populations, mostly PWID, SW and MSM. These groups are difficult to access because of the associated stigma and discrimination, caused by their high-risk behaviours and/or criminalized activity.[9] Therefore, their addressing to the specifically adapted health services is reduced.[10]

Available data suggest that the epidemic has progressed from being driven by injecting drug use to one in which transmission to sexual partners and other key populations has become the primary route of HIV transmission. In 2019, 88.5% of new HIV infections were transmitted heterosexually, 3.7% – homosexually, 5.1% – through injecting drugs use, and 2.6% – through mother-to-child transmission.

7 Dermatology and Communicable Diseases Hospital, Monitoring the HIV infection in the Republic of Moldova in 2019, https://sdmc.md/wp-content/uploads/2021/02/MD_Raport_anual_HIV_RO_2019_FINAL_DB-modificat.pdf
8 The Report is mainly based on epidemiological data available as of 1 January 2020.
9 Dermatology and Communicable Diseases Hospital, Integrated Bio-Behavioural Surveillance Survey among Female Sex Workers, People Who Inject Drugs and Men Who Have Sex with Men in the Republic of Moldova, 2020, https://sdmc.md/wp-content/uploads/2020/12/IBBS_REPORT_MD_2020_FINAL_eng.pdf
10 Centre for Health Policies and Studies (PAS Centre), Integrated Bio-Behavioural Study in Key Populations at Higher Risk, 2016, http://pas.md/en/PAS/Studies/Details/174

There has been a change in the trends related to gender and age. The highest number of newly diagnosed cases are registered among people aged between 25–39 (54%), while people over 26 years of age accounting for 84% of cases. Since 2010, the share of 15–24-year age group has decreased from 22% in 2010 to 8% in 2019. Gender distribution of HIV cases changed over time: initially, the share of women increased from 27% in 2001 to 52% in 2010, followed by a decrease to 41% in 2019. In absolute terms, the number of new cases is stable among women (<380 cases per year) and is increasing in men from 341 in 2010 to 544 in 2019.[11]

**Fig. 2. Relative distribution ratio of new HIV cases, 2010-2019**

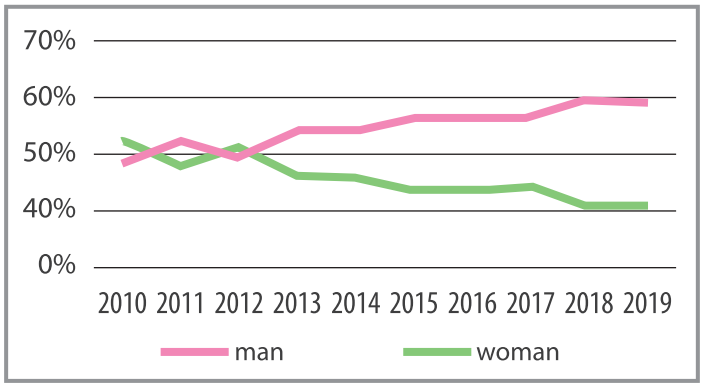



**Fig. 3. Distribution by age groups, cumulative 2010-2019**

| Age, years | # | % |
|---|---|---|
| 6-14 | 32 | 0% |
| 15-19 | 237 | 3% |
| 20-24 | 886 | 11% |
| 25-39 | 4,320 | 54% |
| 40-49 | 1,463 | 18% |
| 50-59 | 723 | 9% |
| 60> | 263 | 3% |
| Cumulative total | **8,031** | **100%** |

*Source: National Public Health Agency*

Thus, HIV infection in the Republic of Moldova continues to be a priority health issue. In this context, understanding the HIV-related laws and background factors that affect human rights and the access to basic services in various epidemiological conditions is as important as knowing the epidemic.

Therefore, this assessment is meant to determine Moldova's actual and anticipated needs regarding the removal of existing barriers, including legal ones, to the national HIV response and stopping the epidemic. To efficiently control HIV and to diminish its impact, it is essential to promote and protect the rights of people living with HIV, key affected populations, as well as vulnerable groups. The assessment also looks at identifying possible actions which the central public authorities could undertake in order to consolidate the national partners in achieving the objectives of the National Program on HIV/AIDS/STI and the international commitments, especially the actions related to areas of inter-ministerial and inter-institutional cooperation.

The main purpose of the legal environment assessment is to analyse the HIV-related laws, policies, and practices that have a negative impact on the national response to HIV and to recommend subsequent steps, including amendments to the legal framework, in order to ensure better legal protection for people living with HIV. As HIV is not just a medical issue, the assessment covered a wide range of laws and practices. It also involved cross-sector issues, which required a thorough study of the structural factors of inequality, power, personal and social dynamic.

**The objectives of this legal environment assessment were as follows:**

- To identify legal barriers and law enforcement practices that have an impact on the national HIV response;
- To analyse national HIV regulations compared to international and national human rights standards;

11 Country Coordinating Mechanism, Draft 2021-2023 Funding Request on TB/HIV to The Global Fund to Fight AIDS, Tuberculosis and Malaria, http://ccm.md/sites/default/files/inline-files/FG_focusedportfolio_template_MDA_Prefinal_Draft_June_19.docx

- To provide recommendations on harmonization of national legislation with the HIV-related international standards.

The HIV legal environment assessment was conducted focusing on three components:

1) equality and rights;
2) key affected populations;
3) access to basic services, and has included in particular:
    - Assessment of compatibility of national legal and regulatory policies with international documents and guidelines, and their impact;
    - Identification of specific gaps, which hinder progress in ensuring access to HIV prevention, treatment and care services, and also the full enjoyment of life by people living with HIV.

The report represents a thorough overview of the current situation with key findings, provides recommendations for potential legislative amendments and represents a source of information and guidance for national authorities in undertaking HIV-related reforms compliant with international standards and good practices.

**Transnistrian region**

The Transnistrian region[12] is located on the left bank of Nistru river and borders to the East with Ukraine. Although officially a part of Moldova, since the end of the armed conflict in 1992, the region is controlled by a non-recognized de facto administration covering all sectors. The 1992 ceasefire agreement converted the conflict into a "frozen" one, generating more than two decades of conventional peace and ambivalent negotiations and making it one of the oldest unresolved post-soviet conflicts.

The Transnistrian region remains isolated. Fulfilment of human rights in this region is trapped between the de facto Transnistrian authorities' will and hardly realization on this territory of Moldova's commitments under the international human rights instruments. Information related to human rights situation in the region is based mostly on the reports of independent experts and on the visits of various high-level representatives of international organizations, mostly UN. The Senior UN Expert on Human Rights, Thomas Hammarberg, has conducted an initial field mission to the Transnistrian region in 2013.[13] The Expert concluded that HIV prevention, treatment, access to HIV testing, stigmatizations of people living with HIV and people who use drugs are of a major concern in the Transnistrian region. People in penitentiary institutions were also mentioned to be extremely vulnerable especially to HIV and TB and these groups needed specialised assistance while being kept in these institutions as well as after their release. During the 2018 follow-up visit, the Expert found that conditions for identification and treatment of HIV and tuberculosis in penitentiary institutions have been improved significantly.[14]

The Transnistrian region de facto has a regulatory framework, which, to a large extent, is a reproduction of the Russian Federation's legislation, and which contains significant differences in comparison with the legislation of the Republic of Moldova. Thus, methadone pharmacotherapy on the left bank of the Nistru river is not provided. In 2018, a referral mechanism from de facto law enforcement bodies (militia) to the HIV and TB treatment services and NGOs was established. HIV testing is compulsory for a large part of the population (including people in detention), when

12 Several alternative formulations (Transnistrian region, Eastern districts, Left Bank, Left Bank of Nistru River), referring to the same geographical area, are used throughout the text.

13 Thomas Hammarberg, Report on Human Rights in the Transnistrian Region of the Republic of Moldova, 2013, https://childhub.org/sites/default/files/library/attachments/1583_Senior_Expert_Hammarberg_Report_TN_Human_Rights_original.pdf

14 Thomas Hammarberg, Follow-up Report on Human Rights in the Transnistrian Region, 2018, https://moldova.un.org/en/14666-un-human-rights-senior-expert-thomas-hammarberg-presents-his-follow-report-human-rights

public services or employment is sought. Prevention services for PWID, SW and MSM are provided on the left bank. However, any individual residing on the left bank of Nistru river can access the HIV prevention, treatment or care services provided on the right bank, should they choose to request these services.

According to the 2018 Stigma Index,[15] stigma and discrimination are more widespread on the left bank of Nistru river. Prevention services are declared to be accessible in the penitentiaries on the left bank, however it is difficult to estimate the access and the impact of these interventions.

Only the legislation adopted and applied on the right bank of Nistru river was analysed in this report. Regulations applied on the left bank were not considered. Data available from the Transnistrian region are presented throughout the text for comparison purpose only.

# METHODOLOGY

The survey was conducted during November 2018 – February 2020, based on the Legal Environment Assessment methodology[16] elaborated by UNDP. The entire working process included the validation by the CCM's HIV Technical Working Groups, starting with identification of intervention areas and approval of intermediate and final results.

Relevant international and regional human rights instruments, international commitments and recommendations on HIV control were reviewed in order to assess their implementation in the legal system of the RM. The report is based on epidemiological data and legislation in force as of 1 January 2020.

Information from representatives of key affected populations was collected using various methods of qualitative survey with mixed methodology: semi-structured interviews, focus groups, literature review and individual interviews.

**Focus groups**

Five focus groups were organized in various geographic areas of the Republic of Moldova (Cahul, Chisinau and Balti). Each focus group comprised of 8-12 persons from the local community and key affected populations. The duration of a focus group was about 1-2 hours. All in all, 55 persons were involved, including PLHIV – 52.7%, PWID – 52.7%, former prisoners – 20%, SW – 14.5%, LGBT persons – 25.4%, and parents of children living with HIV – 16.4%.

**Interviews**

35 individual interviews with key stakeholders (governmental structures, civil society and international agencies) in the area of HIV and persons affected by HIV have been conducted. Respondents were identified during focus group discussions or through a direct contact. The valuable data from an operational survey on the situation of people living with HIV and people from vulnerable groups and their personal experiences and issues faced in accessing HIV services (2018, not published), conducted by the NGO League of People Living with HIV, were used for the purpose of this report.

15 UNAIDS Moldova, The People Living with HIV Stigma Index, 2018, https://www.stigmaindex.org/wp-content/uploads/2019/11/Moldova_PLHIV-Stigma-Index_2018.pdf

16 UNDP, Legal environment assessment for HIV: An operational guide to conducting national legal, regulatory and policy assessments for HIV, 2014, https://www.undp.org/publications/practical-manual-legal-environment-assessment-hiv-operational-guide-conducting-national-legal-regulatory-and-policy-assessments-hiv

The collected information was analysed and structured into the following chapters:
**Chapter 1. The right to equality and legal protection** includes an assessment regarding human rights; employment and work environment; decriminalization of HIV exposure and transmission.
**Chapter 2. Key affected populations** reviews laws, regulations, and policies, which affect certain population groups: people who inject drugs (PWID), sex workers (SW), men who have sex with men (MSM) and persons deprived of their liberty. In addition to this, specific issues related to women, children and youth are also addressed.
**Chapter 3. Access to services** looks at access to HIV prevention, care and treatment services.

Each chapter includes references to international and national standards, analysis of the situation, legislative discrepancies and gaps, case studies, findings obtained via interviews and focus group discussions, conclusions and recommendations.

# HUMAN RIGHTS and HIV

Besides the fact that HIV is a public health issue, it also represents a complex human rights problem that affects not only a person's health but also relations with the community the person belongs to. Failure to respect human rights is associated with HIV vulnerability: persons are marginalized, they face inequality, prejudice, lack of trust and have limited access to basic services, such as education, employment, health care, and others.

It needs to be mentioned that realization of human rights in the field of HIV is vital not only for the protection of rights of an individual, but also for the protection of collective interests having as impact a greater efficiency of measures meant to prevent the spread of the disease.

Public health and human rights share a joint objective of protecting and promoting the wellbeing of every person. Nevertheless, the differences between approaches to the achievement of the objective often cause tensions, because they are linked with human rights infringements due to stereotypes and fears fed for a long time in the society via populist discourses and policies. However, measures taken to prevent the spread of HIV have proved that traditional approaches to public health and human rights can and must complement each other.

For instance, in the context of HIV, the protection of personal data, including medical information, is of fundamental importance to a person's enjoyment of his or her right to privacy. It is crucial not only to respect the sense of privacy of a patient but also to preserve his or her confidence in the medical profession and in the health services in general.[17]

On the other hand, coercive or punitive responses increase the spread and exacerbate the impact of HIV and AIDS, resulting in failed efforts to protect the rights of people living with HIV, as well as of other vulnerable groups and key populations at higher risk of HIV exposure.

17 Z v. Finland, Application No. 22009/93, http://hudoc.echr.coe.int/eng?i=001-58033

# CHAPTER 1.
# RIGHT TO EQUALITY AND LEGAL PROTECTION

According to the law, the fundamental principles of equality and legal protection, including of people living with HIV, are based on the equal rights to participate, without any discrimination, in the political, social and cultural life.

## PARTICIPATION IN POLITICAL, SOCIAL AND CULTURAL LIFE

### FUNDAMENTAL PRINCIPLES

PLHIV should enjoy full equality and inclusion in political, social and cultural life. The state must secure the respect of rights of people living with HIV.[18]

Equality before the law, equal protection of rights by the law and the right to non-discrimination are recognized as fundamental rights under international human rights law (Tab. 1) and the Constitution of the Republic of Moldova (Tab. 2). International human rights law prohibits discrimination based on HIV-positive status, as well as other health status.[19]

### Tab. 1. Human rights: international standards

**International Covenant on Civil and Political Rights (1966)[20]**

- **Article 2**
  1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.
- **Article 17**
  1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.

18 UNDP, Legal environment assessment for HIV: An operational guide to conducting national legal, regulatory and policy assessments for HIV, 2014, http://www.undp.org/content/undp/en/home/librarypage/hiv-aids/practical-manual--legal-environment-assessment-for-hiv--an-opera.html

19 See, for example, General Comment 14 of the UN Committee on Economic, Social and Cultural Rights, https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2f2000%2f4&Lang=en

20 https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights

### International Covenant on Economic, Social and Cultural Rights (1966)[21]

- **Article 2**
  2. The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.
- **Article 12**
  1. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

### European Convention for the Protection of Human Rights and Fundamental Freedoms (1950)[22]

- **Article 8. ght to respect for private and family life**
  1. Everyone has the right to respect for his private and family life, his home and his correspondence.
- **Article 14. Prohibition of discrimination**
  The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status

### International Guidelines on HIV/AIDS and Human Rights, Consolidated Version (2006)[23]

- **Guideline 11**
  States should ensure monitoring and enforcement mechanisms to guarantee the protection of HIV-related human rights, including those of people living with HIV, their families and communities.

### UN General Assembly, Declaration of Commitment on HIV/AIDS (2001)[24]

- Realization of human rights and fundamental freedoms for all is essential to reduce vulnerability to HIV/AIDS. Respect for the rights of people living with HIV/AIDS drives an effective response.
- 58. Enact, strengthen or enforce, as appropriate, legislation, regulations and other measures to eliminate all forms of discrimination against and to ensure the full enjoyment of all human rights and fundamental freedoms by people living with HIV/AIDS and members of vulnerable groups, in particular to ensure their access to, inter alia, education, inheritance, employment, health care, social and health services, prevention, support and treatment, information and legal protection, while respecting their privacy and confidentiality; and develop strategies to combat stigma and social exclusion connected with the epidemic.

### UN Political Declaration on HIV/AIDS (2016)[25]

- 21. Emphasize… that people living with, at risk of and affected by HIV should enjoy equally all human rights and enjoy equal participation in civil, political, social, economic and cultural life, without prejudice, stigma or discrimination of any kind.

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21 https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights
22 https://www.echr.coe.int/documents/convention_eng.pdf
23 https://www.ohchr.org/Documents/Publications/HIVAIDSGuidelinesen.pdf
24 http://data.unaids.org/publications/irc-pub03/aidsdeclaration_en.pdf
25 http://www.unaids.org/sites/default/files/media_asset/2016-political-declaration-HIV-AIDS_en.pdf

## Tab. 2. Human rights: national legislation

### Constitution of the Republic of Moldova (1994)[26]

- **Title II, articles 15-59. Fundamental rights, freedoms and duties**

### Law no. 121/2012 on ensuring equality[27]

- **Article 1. Purpose and scope of the law**
  (1) The purpose of this law is to prevent and combat discrimination and ensure equality of all persons on the territory of the Republic of Moldova in the political, economic, social, cultural and other spheres of life, regardless of race, colour, nationality, ethnic origin, language, religion or belief, sex, age, disability, opinion, political affiliation or any other similar criteria.

### Law no. 5/2006 on ensuring equal opportunities for women and men[28]

- **Article 1. Scope of the law**
  The purpose of this Law is to ensure the exercise by women and men of their equal rights in the political, economic, social, cultural and other spheres of life, of the rights guaranteed by the Constitution of the Republic of Moldova, with a view to prevent and eliminate all forms of discrimination on the ground of sex.

### Labour Code (Law no. 154/2003)[29]

- **Art. 8. Prohibition of discrimination in the sphere of work**
  (1) Within the framework of labour relations acts the principle of equal rights of all employees. Any direct or indirect form of discrimination of the employee on the ground of sex, age, race, colour of skin, ethnicity, religion, political choice, social origin, place of residence, disability, HIV/AIDS infection, memberships in or activity within a trade union, as well as other criteria which are not related to the professional qualities of the worker, is prohibited.

### Law no. 23/2007 on the prevention of HIV/AIDS infection[30]

- **Article 1. The scope of regulation and the objectives of the law**
  (2.c) exclusion of discrimination of people affected by HIV/AIDS infection by guaranteeing human rights and respect for human dignity.
- **Article 2. Legal framework**
  (2) If the international treaties to which the Republic of Moldova is a party establish other norms than those contained in the present law, the norms of the international treaties shall apply.
- **Article 26[1]. Prohibition of any form of discrimination**
  Any form of discrimination on the ground of HIV-positive status is prohibited.

### Law no. 198/2007 on state-guaranteed legal aid[31]

- **Article 1. The object of the law**
  This law regulates the terms, volume and manner of providing state-guaranteed legal aid to defend fundamental human rights and freedoms and legitimate interests of human beings.
- **Article 5. State guarantees**
  To realize the principle of free access to legal assistance, the state shall ensure the organization and operation of the institutions responsible for providing state-guaranteed legal aid and allocates budgetary funds, necessary for the payment for legal services, provided in conformity with this law.

26 https://www.legis.md/cautare/getResults?doc_id=128016&lang=ro
27 https://www.legis.md/cautare/getResults?doc_id=106454&lang=ro
28 https://www.legis.md/cautare/getResults?doc_id=107179&lang=ro
29 https://www.legis.md/cautare/getResults?doc_id=131266&lang=ro#
30 https://www.legis.md/cautare/getResults?doc_id=110180&lang=ro#
31 https://www.legis.md/cautare/getResults?doc_id=123162&lang=ro#

**Government Decision no. 1164/2016 on the National program on the prevention and control of HIV/AIDS infection and sexually transmitted infections for 2016-2020[32]**

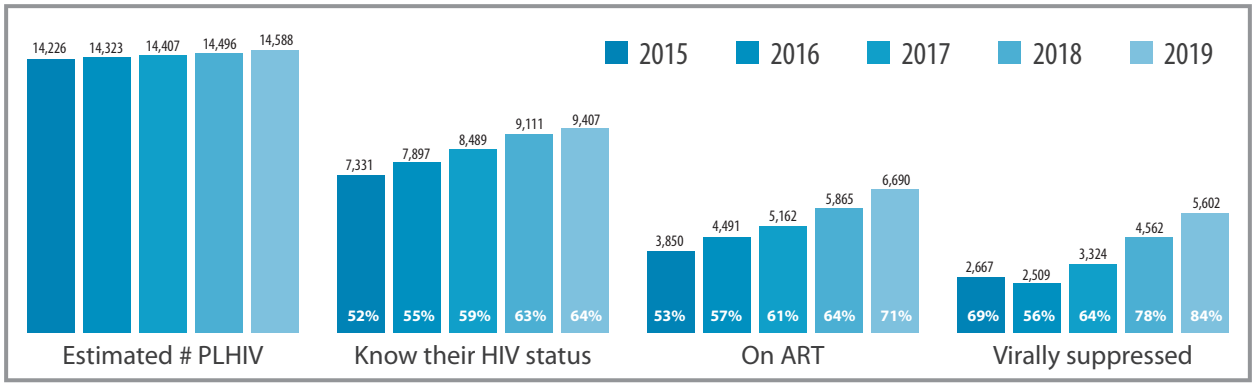
- **The elaboration of the Programme was based on the principles applied at the international and national level:**
  - Principle 2: Human rights-based approach;
  - Principle 3: Non-discrimination-based approach;
  - Principle 4: Ensuring universal access to the prophylaxis, treatment and care.

## ANALYSIS

According to the available data[33] on the situation of PLHIV in the Republic of Moldova, as well as according to the conclusions drawn based on individual interviews and focus group discussions, AIDS or HIV-positive status, real or perceived, is often a ground on which the rights of some people are violated. Although HIV-positive people are considered to have the same rights as other persons, the reality shows that most of people affected by HIV/AIDS choose not to exercise their rights, fearing that due to confidentiality breaches their diagnosis could become known in their community, which could lead to discrimination and marginalization.

The data[34] on treatment cascade for 2019 show that 64% of those who are estimated to live with HIV know their status, of which 71% have been enrolled in ART and 84% of those on ART had undetectable viral load.

**Fig. 4. 90-90-90 cascade (2015-2019)**




*Source: Country Coordination Mechanism, National Program on Prevention and Control of HIV/AIDS and STI*

Stigma and discrimination continue to be the main barriers for HIV treatment in Moldova. Due to initial fears and reluctance of people to seek health care, more than 50% of PLHIV are diagnosed late. These fears are also fuelled by the fact that HIV is associated with discrimination, marginalization, social exclusion, high risks of being held criminally liable for the exposure to the threat of HIV transmission.

32 https://www.legis.md/cautare/getResults?doc_id=111740&lang=ro
33 For instance, UNAIDS Moldova, The People Living with HIV Stigma Index, 2018, https://www.stigmaindex.org/wp-content/uploads/2019/11/Moldova_PLHIV-Stigma-Index_2018.pdf
34 Country Coordinating Mechanism, Draft 2021-2023 Funding Request on TB/HIV to The Global Fund to Fight AIDS, Tuberculosis and Malaria, http://ccm.md/sites/default/files/inline-files/FG_focusedportfolio_template_MDA_Prefinal_Draft_June_19.docx

**Focus group interviews** *(PLHIV, SW, PWID, former prisoners)* highlighted stigma and discrimination, which key affected populations are facing with. Most participants mentioned that they often face stigmatisation and discrimination, which affect all spheres and stages of their lives (including at the workplace, at the place of residence, at school, in health care facilities, etc.). In some cases, they have to change the place of residence, while they are not provided a new place of residence by the authorities. Discriminatory attitude is most frequently manifested by law enforcement staff (police), in particular towards PWID and SW, and in health care facilities towards PLHIV.

In this context, the biggest restrictions and barriers that PLHIV face over the years in the Republic of Moldova are stigmatisation and discrimination. **A 2011 study on perceptions of the population on discrimination**[35] showed that only a third of the population would accept an HIV-positive person as a neighbour or work colleague, about a fourth of the population – as a friend, and only 4% would agree with a family member marrying an HIV-positive person. At the same time, discriminatory attitudes persist also in relation to children – two-thirds of respondents believe that children living with HIV should study in separate classes.

**A 2015 survey on perceptions and attitudes towards equality in the Republic of Moldova**[36] pointed out that the higher the level of intolerance, the higher the number of mainly negative stereotypes shared by the public in relation to marginalized groups. At the same time, the quantity and the negative character of stereotypes have a natural correlation with the social distance towards the respective groups, calculated based on the Bogardus social distance scale.[37] The maximum social distance to the LGBT persons (score 5.2 – accepted as a visitor) is determined by the perception of this group in terms of such characteristics as "debauched", "abnormal", "stupid", "sick". The critical level of intolerance towards people living with HIV (score 4.3 – accepted as a citizen) is determined by the fact that they are perceived as carriers of viruses and sources of threat of infection. A series of widespread stereotypes about former prisoners ("dangerous", "aggressive", "thieves", "murderers", "lost people") also generate a high level of intolerance towards them and show a high social distance (score 3.6 – accepted as a co-worker).

**A similar survey conducted in 2018**[38] showed an improvement of the social distance index for all three groups. They are, however, much above the average social distance index (score 2.4). LGBT community (score 4.4 – accepted as a citizen), PLHIV (score 3.3 – accepted as a co-worker) and former prisoners (score 2.9 – accepted as a neighbour) remain in the top of groups with the highest level of rejection.

Based on these data, it can be concluded that the issue of intolerance and discriminatory attitudes, despite multiple obvious manifestations, remain in the shadow of the public discourse, without being perceived and understood by the wider public.

35 Soros Foundation-Moldova, Perceptions of the population of the Republic of Moldova on discrimination: sociological study, 2011.

36 Equality Council, Survey on perceptions and attitudes towards equality in the Republic of Moldova, 2015, http://egalitate.md/wp-content/uploads/2016/04/ENG-Studiu-Perceptii-2015_FINAL_2016_Imprimat.pdf

37 The Bogardus social distance scale empirically measures people's willingness to participate in social contacts of varying degrees of closeness with members of diverse social groups. The scale asks people the extent to which they would accept members of a group (i) as a close relative by marriage (score 0), (ii) as a friend (score 1), (iii) as a neighbour (score 2), (iv) as a co-worker (score 3), (v) as a citizen of my country (score 4), (vi) as a visitor in my country (score 5), (vii) would expel them from the country (score 6). The social distance index (SDI) represents an average of the points attributed to every position depending on the level of „rejection" (acceptance as family member shall be attributed 0 points – the smallest social distance, the wish to expel the person from the country – 6 points). Hence, the index which equals to 0 means acceptance in all positions, while the index which equals to 6 means unacceptance in all positions.

38 Equality Council, Survey on perceptions and attitudes towards equality in the Republic of Moldova, 2018, http://egalitate.md/wp-content/uploads/2016/04/ENG-Studiu-Perceptii-2015_FINAL_2016_Imprimat.pdf

It should be noted that the **HIV Law** prohibits discrimination (articles 22-27) in terms of access to employment, education, healthcare services, insurance services, crediting and lending. Nevertheless, prohibition of discrimination is ambiguous, while certain provisions of the law contradict the principle of non-discrimination. For instance, Art. 33 (Guarantees in case of nosocomial infection) applies differentiated treatment towards persons who had been infected with HIV as a result of blood transfusions, surgeries and medical procedures, discriminating against immigrants, refugees and stateless persons. Thus, **only the citizens of the Republic of Moldova** can benefit from a pension if they had been infected with HIV as a result of blood transfusions, surgeries and medical procedures. This provision violates **Art. 2(1) of the International Covenant on Civil and Political Rights, Art. 2(2) of the International Covenant on Economic, Social and Cultural Rights, Art. 1 and Art. 14 of the European Convention on Human Rights** which requires each State Party to protect from discrimination all persons within its jurisdiction.

According to the UNAIDS regional survey carried out in 2017,[39] approximately one in five people living with HIV reported having been denied health care (including dental care, family planning services or sexual and reproductive health services). The survey showed that 50% of people living with HIV in the RM reported their HIV status having been disclosed by a health care professional without their consent.

**A., PWID/PLHIV:** "...In 2016 I needed dental prostheses. I went to the polyclinic and disclosed my HIV-positive status, which I later regretted. At the beginning the doctor said he needed to prepare special instruments, which weren't there, then I had to wait for a week until the expert that deals with such clients would return from his annual leave; then other reasons came up. In the end, in a private discussion, the doctor recommended to go to another clinic, because no one wants to work with me willingly, and if the management would make them working with such a client, they would not do the work appropriately. I had to look for another clinic, but I did not tell anything about my diagnosis..."

According to the HIV Law (Art. 14(2)d), the result of the HIV test is confidential and can be provided only to the medical personnel involved in the treatment and/or medical and epidemiological supervision of the tested persons, respecting the safeguards of confidentiality and security of personal medical data. We consider that such formulation is too vague and way too general, given that it regulates the transmission of such sensitive data as the HIV test result. Also, the patient's involvement in his/her health data processing is not provided for, the patient's consent is not required; moreover, the patient is not even informed about the recipients of his/her personal data (see Art. 12 of the Law on personal data protection[40]).

Opinions and perceptions of interviewees from key affected populations highlight stigmatization by the society, medical personnel, social assistants, as well as law enforcement staff:

**A., SW:** "...my friend worked abroad and when she got pregnant, she returned to the village to deliver the baby. She had her tests done and found out that she was HIV-positive. She learned about her infection at the medical office and the nurse told someone. Immediately the whole village found out and the normal life ended there. She could not freely walk on the streets, could not enter the shop, the post office, etc. Everyone chased her away, called her a drug addict and a prostitute. She understood she had no future in the village, that she could never ever get a job,

39 UNAIDS, Confronting discrimination: Overcoming HIV-related stigma and discrimination in healthcare settings and beyond, 2017, http://www.unaids.org/sites/default/files/media_asset/confronting-discrimination_en.pdf

40 https://www.legis.md/cautare/getResults?doc_id=122546&lang=ro#

enrol her child to the kindergarten and arrange her personal life. She moved to Chisinau; now she takes care of a relative and lives there with her child. I believe that the nurse had no right to disclose the diagnosis, because our society is not ready yet to accept these people...".

## CASE STUDY

Case of N.B., the Decision of the Council for Preventing and Eliminating Discrimination and Ensuring Equality (Equality Council) of 21 January 2014 on the case no. 028/2013[41] initiated based on the complaint of Ms. N.B. against the Municipal Department for Child Rights Protection on gender-based discrimination and perceived homosexual orientation in the exercise of parental rights. The facts described in the complaint represent instigation to discrimination based on perceived homosexual orientation on behalf of S.B., in line with art. 1, 2 of the Law no. 121/2012 on Ensuring Equality.

Decision: N.B. has equal opportunities to participate in raising and educating her minor child.

## CONCLUSIONS

1. Although the legal framework does not impose restrictions on social freedoms of persons belonging to key affected populations and PLHIV, they continue facing high levels of stigma, discrimination and marginalization in the society.

## RECOMMENDATIONS

1. To amend the HIV Law to strengthen the prevention of discrimination and exclude ambiguous interpretation of legal provisions.
2. To amend the applicable normative acts to exclude the unjustified transmission to third parties of medical data about the HIV-positive status.
3. To revise the provisions of the 'informed consent' agreement on the transmission of medical data so that the consequences of the refusal/consent of the PLHIV to disclose their status while requesting healthcare services are explicitly mentioned.

# RESPECT FOR PRIVATE AND FAMILY LIFE. SEXUAL AND REPRODUCTIVE HEALTH

## FUNDAMENTAL PRINCIPLES

People living with HIV must enjoy full equality in family life and the right to the highest attainable level of sexual and reproductive health. The state is responsible for preventing vertical transmission of HIV.[42]

41 http://egalitate.md/wp-content/uploads/2016/04/3-decizie_conf_cauza_nr_028_2013_bn_3543907_eng_7692859.pdf
42 UNDP, Legal environment assessment for HIV: An operational guide to conducting national legal, regulatory and policy assessments for HIV, 2014, https://www.undp.org/publications/practical-manual-legal-environment-assessment-hiv-operational-guide-conducting-national-legal-regulatory-and-policy-assessments-hiv

## Tab. 3. Right to family, reproductive and sexual health: international standards

### Committee on the Elimination of Discrimination against Women, Concluding observations on the sixth periodic report of the Republic of Moldova (2020)[43]

35. The Committee recalls its previous recommendations (CEDAW/C/MDA/CO/4-5, para. 32) and recommends that the State party:

...

(b) Ensure that women and girls belonging to disadvantaged groups have access to adequate and accessible health services, including sexual and reproductive health services, and health insurance, in particular in rural areas;

...

(e) Introduce age-appropriate comprehensive education on sexual and reproductive health and rights for girls and boys in school curricula at all levels, including on responsible sexual behaviour and family planning;

(f) Eliminate discrimination and stigma against women living with HIV/AIDS through awareness raising and extend the program on HIV/AIDS prevention and control to women belonging to disadvantaged groups, particularly transgender women.

### International Covenant on Civil and Political Rights (1966)[44]

- **Article 9**
  1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.
- **Article 17**
  1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.
- **Article 23**
  2. The right of men and women of marriageable age to marry and to found a family shall be recognized.

### International Covenant on Economic, Social and Cultural Rights (1966)[45]

- **Article 12**

1. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

### European Convention for the Protection of Human Rights and Fundamental Freedoms (1950)[46]

- **Article 8.** Right to respect for private and family life

(1) Everyone has the right to respect for his private and family life, his home and his correspondence.

43 https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW/C/MDA/CO/6&Lang=en&fbclid=IwAR0CwLxMepLW2ykzw3YbowSx5ERy26WZWfldxiPbqltYKQcRlBwcCg0xaTM

44 https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights

45 https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights

46 https://www.echr.coe.int/documents/convention_eng.pdf

### International Guidelines on HIV/AIDS and Human Rights, Consolidated Version (2006)[47]

- Guideline 5, paragraph 22 (f): Anti-discrimination and protective laws should be enacted to reduce human rights violations against women in the context of HIV, so as to reduce vulnerability of women to infection by HIV and to the impact of HIV and AIDS.

### UN General Assembly, Declaration of Commitment on HIV/AIDS (2001)[48]

- Implement measures to increase capacities of women and adolescent girls to protect themselves from the risk of HIV infection, principally through the provision of health care and health services, including for sexual and reproductive health, and through prevention education that promotes gender equality within a culturally and gender-sensitive framework.

### UN General Assembly, Political Declaration on HIV and AIDS: On the Fast Track to Accelerating the Fight against HIV and to Ending the AIDS Epidemic by 2030 (2016)[49]

- 14. Emphasize the continued importance..., of a more integrated and systemic approach to addressing people's access to quality, people-centred health-care services in a more holistic manner, in the context of promoting the right to the enjoyment of the highest attainable standard of physical and mental health and wellbeing, universal access to sexual and reproductive health and reproductive rights in accordance with the Programme of Action of the International Conference on Population and Development and the Beijing Platform for Action and the outcome documents of their review conferences, universal health coverage...

Family law in the Republic of Moldova regulates personal and patrimonial relations which result from marriage, lineage, adoption. The status of the family is guaranteed by the Constitution. A number of normative acts define the principles of the family law, as well as the correlation with other branches of law. People living with HIV fall within the above-mentioned legal norms (Tab. 4).

## Tab. 4. Right to family, reproductive and sexual health: national legislation

### Family Code (Law no. 1316/2000)[50]

- **Article 2. Basic principles of the family legislation**
  (1) Family and family relations in the Republic of Moldova are protected by the state.
- **Article 7. Protection of family rights**
  (1) Family rights are protected by the law, except for the cases when they are realized contrary to the purpose or contrary to the legal provisions.
  (2) Family rights are protected by the competent public administration authorities, and in certain cases by mediators and courts of justice.

### Law no. 5/2006 on ensuring equal opportunities for women and men[51]

- **Article 1. Scope of law**
  The purpose of this Law is to ensure the exercise by women and men of their equal rights in the political, economic, social, cultural and other spheres of life, of the rights guaranteed

47 https://www.ohchr.org/sites/default/files/Documents/Publications/HIVAIDSGuidelinesen.pdf
48 https://data.unaids.org/publications/irc-pub03/aidsdeclaration_en.pdf
49 https://www.unaids.org/sites/default/files/media_asset/2016-political-declaration-HIV-AIDS_en.pdf
50 https://www.legis.md/cautare/getResults?doc_id=122974&lang=ro#
51 https://www.legis.md/cautare/getResults?doc_id=107179&lang=ro

by the Constitution of the Republic of Moldova, with a view to prevent and eliminate all forms of discrimination on the ground of sex.

### Law no. 185/2001 on the protection of reproductive health and family planning[52]

- Preamble: This law recognizes, regulates and guarantees the rights of persons to reproduction, which are an integral part of human rights. The provisions of this law derive from the constitutional right to the respect and protection of intimate life, family and private life and ensures the non-interference of the state in family planning matters.

### Law no. 138/2012 on reproductive health[53]

- **Article 4. The rights in the area of reproductive health**

  (3) Any person has the right to the correct sexual education, to the use of and refusal from contraception methods, to the diagnosis and treatment of sexually transmitted infections and of HIV/AIDS infection, to the regulation of fertility and the safe termination of pregnancy, to the qualified antenatal assistance, to the early diagnosis and treatment of genital and breast cancer, to the infertility treatment and to the medically assisted human reproduction, to the assistance during menopause/andropause.

### Government Decision no. 618/2018 on the approval of the National program on sexual and reproductive health and rights for 2018-2022[54]

The purpose of this Program is to ensure a satisfactory sexual and reproductive health at all stages of life for the entire population of the Republic of Moldova, regardless of gender, age, ethnicity, place of residence, religious affiliation, socioeconomic status, state of health and any other criterion.

### Law no. 23/2007 on the prevention of HIV/AIDS infection[55]

- **Article 21. Prevention of mother-to-child transmission of HIV/AIDS infection**

  (1) All pregnant women have access to free of charge counselling and testing for HIV markers.

  (2) Access to free of charge ARV treatment is guaranteed for pregnant HIV-positive women and their new-borns.

  (3) New-borns of HIV-positive mothers are provided with free of charge artificial feeding.

### Government Decision no. 1164/2016 on the National program on the prevention and control of HIV/AIDS infection and sexually transmitted infections for 2016-2020[56]

- **Objective 2. To ensure universal access to treatment, care and support for people infected with HIV and sexually transmitted infections**

  This objective focuses on the impact reduction of HIV infection, offering access to antiretroviral treatment, treatment of opportunistic infections and co-infections, care and support for people living with HIV and members of their families, as well as on the prevention of HIV mother-to-child transmission and on post-exposure prophylaxis.

### Order of the Ministry of Health no. 1018/2016 on the organisation of measures for the prevention of mother-to-child transmission of HIV[57]

52 https://www.legis.md/cautare/getResults?doc_id=108285&lang=ro
53 https://www.legis.md/cautare/getResults?doc_id=106297&lang=ro#
54 https://www.legis.md/cautare/getResults?doc_id=108813&lang=ro
55 https://www.legis.md/cautare/getResults?doc_id=110180&lang=ro
56 https://www.legis.md/cautare/getResults?doc_id=111740&lang=ro
57 https://msmps.gov.md/sites/default/files/legislatie/ordin_gravide_hiv.pdf

# ANALYSIS

### Family planning

According to Art. 13(1) of the **Family Code**, persons who wish to get married may take a free of charge medical examination, upon their request and with their informed consent, for detecting diseases or pathogens which could be transmitted to children. Therefore, starting with 2012 preventive investigations are made individually if the couple wishes so, the confidentiality within the medical procedures being ensured. However, the **MoH Order no. 396/1995 on the organization of medical examination for young people before marriage**[58] had not been amended with regards to cancelling the compulsory medical examination, which also includes blood test for AIDS, these norms becoming obsolete.

### Reproductive and sexual health education and services

Gender equality, as well as access to reproductive and sexual health education and services are the guiding principles in the domestic policies. At the same time, the basic principles of realizing the reproductive rights of a person include exercising these rights according to the will and interest of the person, without infringing upon the rights, legitimate interests and freedoms of other persons, as well as ensuring the guaranteed volume of services on the protection of reproductive health and family planning, their quality and accessibility (Tab. 3). Sexual and reproductive health services are provided in both public and private sectors within primary healthcare facilities (healthcare centres/offices, general practitioner centres/offices, reproduction health offices, youth-friendly health centres), specialised outpatient health care and inpatient medical assistance. Although the **HIV Law** provides in Art. 6(5) that HIV-positive women shall benefit from free of charge contraception, available data[59] highlight the persistence of limited access to reproductive health services, including contraception, and especially for women from vulnerable groups, due to the lack of access to information, lack of financial resources, etc. Furthermore, the law provides for the access of women living with HIV to voluntary sterilization based on informed consent subsequent to thorough counselling. Such a provision, that aims at promoting voluntary sterilization, puts the women living with HIV under the risk of discrimination.

The **MoH Order no. 149/2017** regulates the provision of medically assisted reproductive services.[60] According to the Regulation on the organization of medically assisted reproductive services under the mandatory health insurance (Annex 2)[61], in order to benefit from in vitro fertilization services the insured couple shall submit a negative 'blood test results for HIV/AIDS infection serological markers through enzyme-linked immunosorbent assay ELISA method with the issuance of F.AIDS no.27/e certificate 'Medical certificate on the examination to serological markers of human immunodeficiency virus (HIV)' and to enclose this result to the referral to the Insured Couples' Evaluation Commission (Fig. 5).

58 https://www.legis.md/cautare/getResults?doc_id=81438&lang=ro
59 National Bureau of Statistics, UNDP, UN Women, Profile of Women Living with HIV, 2016, https://statistica.gov.md/public/files/Cooperare_internationala/PNUD/10_tablouri_femei_RM/prof_5_HIV_en.pdf
60 https://msmps.gov.md/sites/default/files/legislatie/ordin_149_din_23.02.2017.pdf, https://msmps.gov.md/sites/default/files/legislatie/regulament_reproducere_umana_anexa_1.pdf
61 http://www.ms.gov.md/sites/default/files/legislatie/anexa_nr._2.pdf

**Fig. 5. Excerpts from the Referral to the Insured Couples' Evaluation Commission**

| No.* | **Description of investigation** | **Test Result** |
|---|---|---|
| 72*** | Blood test results for HIV/AIDS infection serological markers through enzyme-linked immunosorbent assay ELISA method' with the issuance of F.SIDA no. 27/e certificate 'Medical certificate on the examination to serological markers of human immunodeficiency virus (HIV)' | Negative |

Moreover, the **MoH Order no. 242/2017** introduced certain measures to facilitate the implementation of the Order no. 149/2017 "aiming at increasing the access of couples to medically assisted reproductive services". So, head of a healthcare facility, which provides primary healthcare services within the framework of mandatory healthcare insurance, should organize, within 15 days from the initiation of the check-up, the referral of the couple by the family physician to the obstetrician-gynaecologist for consultation, issuing a filled in Referral (points 1, 2, 3, 4, 10, 11) and attaching the tests results. Also, if the couple has met one of the primary health criteria and all complementary health criteria, mentioned in the Referral form, then the managers of district level hospitals and of the territorial medical associations, within 30 days from the date of request, should issue the Referral to the Insured Couples Evaluation Commission, attaching all test results. The Referral should be signed by the head of the outpatient division of the district level hospital or the deputy-head of the territorial medical association and stamped by the healthcare facility.

In this context, there are legal gaps with reference to ensuring the confidentiality of personal data when the information on the HIV test result is disclosed (to the health staff). This regulation neither stipulates how the results are to be transmitted (the part of the file which needs to be submitted to the Evaluation Commission) nor how the HIV test will be made, which contradicts the provisions of the HIV Law, Art. 14(1): *The right to confidentiality of the person requesting testing for HIV or those diagnosed with HIV is guaranteed*. At the same time, there is a different treatment based on the HIV test result: human rights and equality are violated when the test result is positive. There are no norms which would prohibit HIV-positive women to get pregnant. In the same way, the provisions of the MoH Orders no.149/2017 and no. 242/2017 refer and apply only to holders of a mandatory health insurance policy.

Mandatory health insurance policy is a document that grants free access of the insured person to the health and pharmaceutical assistance and services (compensated medicines), included in the Unified Mandatory Health Insurance Programme. The insured person will pay an insurance premium calculated as a per cent from salary or as a lump sum. Citizens of the RM, foreign citizens or stateless persons who live in the Republic of Moldova enjoy same rights and obligations related to mandatory health insurance. Insurance for some categories of persons (e.g., children under the age of 18, persons with disabilities, pregnant women or pensioners) is covered by the state.[62]

**I., PLHIV:** A woman, former prisoner, went to a health care facility with an application for in vitro fertilization. Her request was denied because of her HIV status, and she was explained that there were no separate recipients for storing the embryos.

**Maternal and foetal health care assistance**

According to health policies, any pregnant woman, including women living with HIV, must equally benefit from the right to childbirth medical assistance. Art. 41 of the **Law no. 411/1995 on**

62 Law no. 1585/1998 on the Mandatory Health Insurance, https://www.legis.md/cautare/getResults?doc_id=122495&lang=ro#

**healthcare**[63] reads that "persons infected with HIV and ill with AIDS are provided with medical and social assistance, according to the effective legislation". Thus, provision of maternal-foetal medical assistance, which includes childbirth medical assistance, is a core obligation in assuring the right to health and is provided regardless of whether the pregnant woman is included into the mandatory health care insurance system. However, the access of women living with HIV to maternal health care, especially to childbirth medical assistance, is not always realized under the same conditions as in case of women with an HIV-negative status (see Case study below).

According to the **MoH Order no. 100/2004 on the prevention of mother-to-child transmission of HIV and the organization of targeted prevention,** specialized centers of childbirth assistance for women living with HIV have been determined. Hence, pregnant women who live with HIV had to give birth only in some determined institutions. This treatment was qualified as discriminatory by the Council for Preventing and Eliminating Discrimination and Ensuring Equality (Equality Council) and confirmed by the national courts of law.[64] Following this decision the **MoH Order no. 1018/2016 on the organisation of measures for the prevention of mother-to-child transmission of HIV**[65] was approved. It repealed the MoH Order no. 100/2004 thus removing provisions that segregated HIV-positive pregnant women. The new regulations have introduced the unconditional hospitalization and provision of childbirth assistance to pregnant women living with HIV in all health care facilities. Despite these changes, the practice of referring the HIV-positive pregnant women for childbirth to certain hospitals has not been fully discontinued.

In many cases, differences between urban and rural areas are quite significant, representing a factor of increased vulnerability, especially as regards gender-based violence, gender-related norms, negotiation of intimate relations, access to means of protection and information on HIV and STI prevention. During recent years, there were several cases when new-born babies were infected with HIV because the pregnant woman had not been diagnosed correctly due to errors in the diagnostic process. One such case was taken to court, and the health care facility had to pay damages amounting to MDL 600,000 (approximately USD 34,000). The introduction of rapid testing performed at the time of taking on medical registration of pregnant women, regardless of the period of gestation, has reduced the risk of such errors.[66]

## CASE STUDY

There had been cases when territorial hospitals refused to provide HIV-positive women with childbirth assistance and referred them for childbirth to a republican level hospital (Institute of Mother and Child) one week before childbirth. The Equality Council decided that the Order of the Ministry of Health no. 100/2004 on the prevention of mother-to-child transmission of HIV and the organization of targeted prevention is discriminatory towards HIV-positive pregnant women and must be repealed.[67]

63 https://www.legis.md/cautare/getResults?doc_id=128014&lang=ro#
64 Supreme Court of Justice, Case no. 3ra-1120/17, http://jurisprudenta.csj.md/search_col_civil.php?id=39985; http://www.sanatateinfo.md/News/Item/5260
65 http://www.ms.gov.md/sites/default/files/legislatie/ordin_gravide_hiv.pdf
66 National Clinical Protocol "Prevention of mother-to-child transmission of HIV" (PCN-316), https://msmps.gov.md/wp-content/uploads/2020/07/15662-PCN-31620Prevenirea20transmiterii20materno20fetale20a20infectiei20HIV.pdf
67 Decision of the Council for Preventing and Eliminating Discrimination and Ensuring Equality (CPEDAE) of 27.12.2013 on the case no. 021/2013, http://egalitate.md/wp-content/uploads/2016/04/decizie_2conf_din_27_12_2013_in_cauza_021_2013_t_r_3861503.pdf

## CONCLUSIONS

1. There are legal barriers for women living with HIV to access reproductive health services, including in-vitro fertilization. Free of charge contraception and voluntary sterilization are promoted as guaranteed services. To access reproductive health services, medical certificates are requested, which are attached to patient's file and which involves disclosure of HIV status. Thus, being afraid of violation of their confidentiality, PLHIV are reluctant to request and accept the available reproductive health services.
2. National regulations concerning prevention of mother-to-child transmission of HIV provide for a one-time testing of pregnant women when the monitoring of pregnancy starts. HIV testing of pregnant women can be performed more than once, i.e. "as needed", however the practical application of this possibility is uneven due to the ambiguity and subjective interpretation of the words "as needed".
3. Although the legal framework on the segregation of HIV-positive pregnant women was repealed, there are still practices of referring them to tertiary level health care institutions for childbirth. There is a lack of operational research on the attitudes and practices of medical staff towards pregnant women living with HIV as well as on the measures to remove barriers to the unconditional childbirth assistance in medical institutions at all levels.
4. Normative acts create confusion on premarital medical examination; not all normative acts have been amended to exclude the compulsory medical examination.

## RECOMMENDATIONS

1. To repeal the discriminatory provisions restricting the access of women living with HIV to reproductive health services, including in-vitro fertilization, as well as provisions that promote voluntary sterilization of women living with HIV.
2. To improve the testing mechanism of pregnant women, established by the MoH Order no. 1018/2016 on the organisation of measures for the prevention of mother-to-child transmission of HIV, by defining clear situations and eligibility criteria for repeated HIV testing of pregnant women in order to ensure the correct and uniform interpretation by all involved parties of measures for the prevention of mother-to-child transmission of HIV.
3. To carry out an operational study on the practices regarding pregnant women with HIV-positive or negative status in order to inform on measures required to ensure unconditional hospitalization and provision of childbirth assistance in health care facilities of all levels.
4. To align MoH Order no. 396/1995 on the organization of medical examination for young people before marriage with existing legal provisions which exclude an obligation to undergo a medical examination.

# THE RIGHT OF PEOPLE LIVING WITH HIV TO ADOPT AND TAKE UNDER CUSTODY/GUARDIANSHIP CHILDREN LEFT WITHOUT PARENTAL CARE

The right of people living with HIV to become adoptive parents, foster carers or custodians for children left without parental care is part of the human right to family. Denying people living with HIV of this right on the basis of their HIV-positive status may amount to discrimination.

## Tab. 5. The right to adopt and take under custody/guardianship children left without parental care: international standards

### Convention on the Rights of the Child (1989)[68]

- **Article 2**
  (1) States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.

### Convention on Protection of Children and Cooperation in Respect of Inter-country Adoption (1993)[69]

- **Article 5**
  An adoption within the scope of the Convention shall take place only if the competent authorities of the receiving State:
  a) have determined that the prospective adoptive parents are eligible and suited to adopt;
  b) have ensured that the prospective adoptive parents have been counselled as may be necessary; and
  c) have determined that the child is or will be authorised to enter and reside permanently in that State.

### International Guidelines on HIV/AIDS and Human Rights, Consolidated Version (2006)[70]

- **Guideline 5. Anti-discrimination and protective laws**
  f) The HIV status of a parent or child should not be treated any differently from any other analogous medical condition in making decisions regarding custody, fostering or adoption.

## Tab. 6. The right to adopt and take under custody/guardianship children left without parental care: national legislation

### Law no. 99/2010 on the legal regime of adoption[71]

- **Article 15. Documents annexed to the adoption application**
  (1) g) the medical certificate regarding the health status of the adopter, issued according to the rules approved by the Ministry of Health, Labour and Social Protection, in which it is indicated an aptitude to adopt from a medical point of view.
- **Article 16. Assessment of the adopter's capacity to adopt**
  (2) The assessment report must include:
  a) information and data about the personality, state of health, economic situation of the adopter, family life, social environment, living conditions, capacities to care about and educate a child, opinion of other members of the family about the eventual adoption.

68 https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child
69 https://www.hcch.net/en/instruments/conventions/full-text/?cid=69
70 https://www.ohchr.org/sites/default/files/Documents/Publications/HIVAIDSGuidelinesen.pdf
71 https://www.legis.md/cautare/getResults?doc_id=123104&lang=ro

**Law no. 23/2007 on the prevention of HIV/AIDS infection**[72]

- **Article 26[1]. Prohibition of any form of discrimination**
  Any form of discrimination on the ground of HIV-positive status is prohibited.

## ANALYSIS

According to the **Law no. 99/2010 on the legal regime of adoption**, adoption file must include health certificate of the adopter confirming their medical eligibility to adopt. During the adoption process, a report shall be drafted, which should include information on the adopter's state of health. Although the **Government Decision no. 512/2003**[73] **on the approval of the List of medical contraindications for persons who intend to adopt children** (which also included HIV/AIDS as a contraindication) had been repealed,[74] the previous practices remained largely unchanged. The forms currently used for health check-up still indicate HIV/AIDS diagnosis as a contraindication for adoption.

In this context, the Ministry of Labour, Social Protection and Family approved **Order no. 2851/2011**[75] **on the approval of the Grid and Assessment Form of the adopter's file for conducting the matching with the adoptive child** (Annex 2).[76] One of the assessment criteria prescribed by this Order looks at the willingness of the adopter to adopt children, whose parents suffered from mental and inherited diseases with a high degree of hereditary transmission (schizophrenia, manic-depressive psychosis, degenerative diseases, family oligophrenia, leprosy, chronic alcohol addiction, drug addiction, syphilis, **HIV/AIDS** in both parents or one parent).

It is noteworthy that in their Concluding Observations on the Republic of Moldova's second periodic report, the Committee on Economic, Social and Cultural Rights (CESCR) expressed its concern that arbitrary restrictions may be imposed on prospective adoptive parents or children such as those related to health condition, and recommended that: 1) any conditions set for prospective adoptive parents shall conform with the requirements of the Covenant and related international law (Tab. 5), and that, in particular, no arbitrary health or disability criteria be maintained; 2) assessments of the eligibility of prospective adoptive parents must be undertaken on an individual basis, without any form of discrimination.[77]

Consequently, at present, there is neither a clear norm, nor a uniform practice on the right of PLHIV to adopt and take under custody/guardianship children left without parental care. Prospective adopters are subject to an HIV test, which serves as a ground to refuse the adoption or custody/guardianship. At the same time, children who are raised by HIV-positive biological parents are neither taken away from families nor monitored by the authorities because of this status, recognizing thus that there are no risks for the children.

Following the discussions within the **focus groups** on the topic of child adoption by PLHIV, it was found that the refusal of child adoption by PLHIV is a common discriminatory phenomenon, while the HIV status should not be a barrier for adoption; HIV does not pose any threat to life, being a latent chronic infection, especially when ART is being followed.

72 https://www.legis.md/cautare/getResults?doc_id=110180&lang=ro
73 https://www.legis.md/cautare/getResults?doc_id=14573&lang=ro#
74 https://www.legis.md/cautare/getResults?doc_id=4009&lang=ro
75 http://www.old.mmpsf.gov.md/file/documente%20interne/Ordin_285.1.pdf
76 https://msmps.gov.md/sites/default/files/document/attachments/fisa-de-evaluare-a-adoptatorului.pdf
77 https://undocs.org/E/C.12/MDA/CO/2

Some of the interview participants mentioned impediments, which they faced when trying to adopt a child:

**A., PLHIV** "...in Balti where I come from, there is a family, excellent people, religious, they do not hide their diagnosis, they take treatment, help people. They decided to adopt an HIV-positive child, whose parents passed away. Adoption had not been approved, only custody. The father began preparing donation documentation for the apartment on the name of his adoptive son. He believes that anything could happen to anyone at any point, a car accident, for example, or anything else, and HIV has no connection, while the child may be left without anything, because custody does not grant the right to inheritance, and he thinks about this just in case, so that the child does not end up in the street, because he is 15 years old already, nobody would offer him housing if something happens..."

**E., PWID/PLHIV**, "...For three years I lived with a woman who had a child. We decided to get married, I wanted to adopt her child, I went for a consultation and I was told it made no sense to prepare the application as I would not be allowed to adopt the child, because I have HIV-positive status..."

**D., woman living with HIV:** "...In our family we have a biological son, who is HIV-positive. For medical reasons I can have no more children and we decided to adopt another HIV-positive child, so that children grow and support each other, so that the son knows that he is not the only one with such a diagnosis in the world. I called on the Department to assist me in preparing the documents for adoption. From the very beginning I had been told that adoption is out of question, and it was not known whether they would grant me guardianship, because I am HIV-positive, but I decided to take it to the end. At the orphanage I picked a girl, the preparation of documents had been very long and while the documents were being prepared the girl had been adopted in the US, now I often think of her, wondering how she is doing there... I haven't given up the idea, I've resumed the preparation of documents and N. came to our family, she grows up and everything is well. But soon she would ask why she has a different name. I take a lot of care about my and my husband's health, so that we do not get sick, so that they do not take her away from us. I don't understand why the people who take ART are not allowed to adopt children. We got tired from the visits paid by the social protection service. Soon, these "aunties" would ask her questions about how she lives. It will be a trauma..."

## CONCLUSIONS

1. After the List of medical contraindications for persons who intend to adopt children (including HIV) had been repealed, the practice with regard to the medical contraindications is very controversial and uneven. National norms in this area are not clear enough, which leads to adoption applications from PLHIV being rejected.
2. There are cases when PLHIV are refused the status of adoptive parents. Current forms for medical examinations contain contraindications related to HIV/AIDS diagnosis.

## RECOMMENDATIONS

1. To harmonize bylaws with the national laws and international recommendations by explicitly prohibiting the use of HIV-positive status as a contraindication for adoption, custody/guardianship of children, and to define a clear list of medical contraindications for persons who intend to adopt children or to take them under custody/guardianship.

# RIGHT TO EDUCATION

## FUNDAMENTAL PRINCIPLES

People living with HIV enjoy the right to equal educational opportunities. Where appropriate, special measures are employed to provide reasonable accommodation for PLHIV and increase their representation in educational institutions.[78]

## Tab. 7. Right to education: international standards

### International Covenant on Economic, Social and Cultural Rights (1966)[79]

- **Article 13**

  1. The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.

### Convention on the Rights of the Child (1989)[80]

- **Article 28**

  1. States Parties recognize the right of the child to education...

### UNESCO Convention against Discrimination in Education (1960)[81]

- **Articles 1 and 3 recommend the states to protect the right to education, without discrimination.**

### Protocol (1952)[82] to the European Convention for the Protection of Human Rights and Fundamental Freedoms (1950)

- **Article 2. Right to education**

  No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions.

The right to education is guaranteed by the Constitution of the Republic of Moldova (art. 35. *Right to education*). This right is further protected by the Education Code, which sets out the legal framework for the educational system design, organization, functioning and development. Thus, considering the fact that the right to education extends to all persons, this right also applies to people living with HIV (Tab. 8).

78 UNDP, Legal environment assessment for HIV: An operational guide to conducting national legal, regulatory and policy assessments for HIV, 2014, http://www.undp.org/content/undp/en/home/librarypage/hiv-aids/practical-manual--legal-environment-assessment-for-hiv--an-opera.html
79 https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights
80 https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child
81 http://portal.unesco.org/en/ev.php-URL_ID=12949&URL_DO=DO_TOPIC&URL_SECTION=201.html
82 https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168006377c

## Tab. 8. Right to education: national legislation

### Education Code (Law no. 152/2014)[83]

- **Article 7. Fundamental principles of education**
  Education is based on the following fundamental principles:
  a) the principle of equity – based on which the access to learning is realised without discrimination;
  …
  h) the principle of ensuring equality;
- **Article 9. Conditions of access**
  (1) The citizens of the Republic of Moldova have equal rights of access to education, initial and continuing professional training through the national education system, according to the conditions of this Code.

### Law no. 23/2007 on prevention of HIV/AIDS infection[84]

- **Article 5. Education on HIV/AIDS infection prevention**
  (1) The State is responsible, at national level, for the elaboration and implementation of educational programmes aimed at informing and educating children starting from the age of 12, adolescents and young people on the responsible and harmless behaviours.
- **Article 15. Prohibition of mandatory testing for HIV markers**
  (1) It is prohibited to test for HIV markers as a precondition for employment, travel, access to medical services, admission to an educational institution or for the conclusion of marriage. All forms of hidden testing are prohibited.
- **Article 23. Prohibition of discrimination in preschool and educational institutions**
  (1) Preschool and educational institution do not have a right to refuse admission, to segregate or limit person's participation in certain activities, including sports, access to services or benefits, or to expel respective persons on the ground of HIV-positive status.
  2) It is prohibited to discriminate against relatives of partners of HIV-positive people.

## ANALYSIS

The right to education must be reviewed from two angles: (i) obstacles which PLHIV face in the process of realizing this right, and (ii) the quality of education and knowledge on HIV/AIDS. The second element is relevant not only for the prevention component among the general population, but also for reducing HIV-associated stigma. Regarding the access to education, PLHIV face certain direct and indirect obstacles stemming from the existing education system in the Republic of Moldova.

**The MoH Order no. 828/2011 on the approval of primary health care record forms**[85] establishes mechanisms that limit access of people living with HIV to education. So, form 086-e: Medical certificate (submitted as part of application for admission to educational institutions) asks the physicians to specify if the person is under clinical monitoring (which includes HIV), his/her health condition at the moment of the medical examination, diagnosis of the person, without specifying any exceptions. As HIV continues to be a stigmatized condition, PLHIV risk facing stigma and discrimination, which may affect their and their caretakers' decision on seeking or continuing education.

83 https://www.legis.md/cautare/getResults?doc_id=130514&lang=ro#
84 https://www.legis.md/cautare/getResults?doc_id=110180&lang=ro
85 https://msmps.gov.md/sites/default/files/legislatie/ordinul_nr._828_din_31.10.2011.pdf

**N., woman living with HIV:** "...I don't care anymore, in our village everyone knows that I am HIV-positive "thanks" to the family physician, there had been many problems... I was asked by the school for a certificate that my daughter was healthy, and at the beginning when the rumours about me started she did not even want to go there. Only due to my character I managed to bring everyone to normal..."

**C., woman living with HIV:** "...my family physician's nurse had called, for some reason, the manager of the kindergarten, where I took my child, and told about my diagnosis. When I asked her why she had done that, she told me she thought it would be better, that the child would be looked after more carefully. Subsequently, there was this situation there, it's a long story, I took my child from there, he no longer goes to the kindergarten. I take care of him at home and I think I should be looking for a private school. I wanted to complain to the police, but a relative of mine works at the police and I am afraid that the entire suburb will learn about my and my child's diagnosis and we shall have to flee from there, although the rumours from the kindergarten had spread anyway..."

The data of the **Comparative Study on the Phenomenon of Discrimination (2015)**[86] shows that 55% of respondents believe that children living with HIV should learn in separate classes. This prejudice registered no significant changes over the time. A similar study, conducted in 2011, showed that two thirds of people considered the segregation of children living with HIV necessary.[87]

**Focus group discussions:** The context of the right to education was discussed with the representatives of key affected populations within the focus groups. They confirmed having little chance to self-fulfilment or to support themselves, in spite of having a higher level of education. Some of them mentioned, however, that they knew that education institutions required medical certificates (including the HIV test result) and believed it was necessary to monitor educational institutions in order to thus eliminate discriminatory attitudes because of the HIV status. At the same time, a majority of participants agreed that stigma and discrimination can limit access of children to education. Others mentioned that it would be beneficial to have the possibility to obtain secondary specialized education when they register at the employment office, in order to have a chance to find a job.

## CASE STUDY

X., PLHIV: There are many problems at the moment for children living with HIV. They are subject to severe discrimination because their diagnosis is disclosed by the medical staff, they suffer from discrimination in the health care facilities. When their status is disclosed, discrimination increases from the part of neighbours and in schools. Conditions are created for children to drop from school. My child had to change the school twice when the status of the family became known. Now, because of the rumours from his former classmates, my son had to switch to correspondence education at the university.

86 Institute for Public Policy, The Phenomenon of Discrimination in Moldova: A Comparative Study, 2015.
87 Soros Foundation-Moldova, Perceptions of the population of the Republic of Moldova on the phenomenon of discrimination: sociological survey, 2011.

## CONCLUSIONS

1. PLHIV face direct and indirect obstacles in their access to education, which are caused by existing regulations and practices in the healthcare and education systems of the Republic of Moldova.
2. PLHIV, their children – both HIV-positive and HIV-negative – and HIV-positive children of HIV-negative parents are exposed to an imminent risk of discrimination and stigmatization, their access to education being limited, while social pressure being a determining factor in this regard.

## RECOMMENDATIONS

1. To conduct strategic litigation for the development of effective legal protection mechanisms for children living with HIV or affected by HIV to ensure that they enjoy equal treatment and protection of private life in all educational institutions.
2. To review the MoH Order no. 828/2011 to modify some primary medical record forms in health care facilities in order to exclude disclosure of medical data upon admission to educational institutions.

# RIGHT TO WORK

## FUNDAMENTAL PRINCIPLES

People leaving with HIV have the right to a fair job, including safe conditions of work and, if necessary, reasonable accommodation measures shall be taken.[88]

## Tab. 9. Right to work: international standards

### International Covenant on Economic, Social and Cultural Rights (1966)[89]

- **Article 6**
  1.The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts and will take appropriate steps to safeguard this right.
- **Article 7**
  The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work…
- **Article 8**
  1. The States Parties to the present Covenant undertake to ensure:
  (a) The right of everyone to form trade unions and join the trade union of his choice, subject only to the rules of the organization concerned, for the promotion and protection of his economic and social interests…
  (d) The right to strike, provided that it is exercised in conformity with the laws of the particular country.

88 UNDP, Legal environment assessment for HIV: An operational guide to conducting national legal, regulatory and policy assessments for HIV, 2014; http://www.undp.org/content/undp/en/home/librarypage/hiv-aids/practical-manual--legal-environment-assessment-for-hiv--an-opera.html

89 https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights

### International Covenant on Civil and Political Rights (1966)[90]

- **Article 17**
  1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.

### International Labour Organization (ILO), Convention concerning Discrimination in Respect of Employment and Occupation (no. 111) (1958)[91]

- The Convention prescribes to the states to approve legislation which would prohibit any discrimination and exclusion on any basis, including race or colour, sex, religion, political opinion, national extraction or social origin and repeals the legislation which is not based on equal opportunities.

### ILO, Social Security (Minimum Standards) Convention (no. 102) (1952)[92]

- It sets the minimum standards of social security where each Member to the Convention shall secure to the persons protected the provision of various types of benefits: benefit in respect of a condition requiring medical care of a preventive or curative nature, sickness benefit, unemployment benefit, old-age benefit, employment injury benefit, family benefit, maternity benefit, invalidity benefit, survivors' benefit.

### ILO, Right to Organize and Collective Bargaining Convention (no. 98) (1949)[93]

- This Convention has a range of provisions on the rights to conduct collective bargaining.

### ILO, HIV and AIDS Recommendation (R200) (2010)[94]

- The standard establishes key human rights principles to guide HIV responses in formal and informal work settings. These principles include non-discrimination and gender equality, particularly non-discriminatory access to HIV-related prevention, treatment, care and support services for all workers. The recommendation calls for governments to take measures to provide for effective protections against HIV-related discrimination and provide for their effective and transparent implementation.

### European Convention for the Protection of Human Rights and Fundamental Freedoms (1950)[95]

- **Article 8.** Right to respect for private and family life
  1. Everyone has the right to respect for his private and family life, his home and his correspondence.

### European Social Charter (Revised) (1996)[96]

- **Article 1.** The right to work
- **Article 2.** The right to just conditions of work
- **Article 3.** The right to safe and healthy working conditions
- **Article 4.** The right to a fair remuneration
- **Article E.** Non-discrimination

90 https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights
91 https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C111
92 https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:312247
93 https://www.ilo.org/dyn/normlex/en/f?p=1000:12100:0::no::P12100_Ilo_Code:C098
94 https://www.ilo.org/dyn/normlex/en/f?p=1000:12100:::NO:12100:P12100_INSTRUMENT_ID:2551501
95 https://www.echr.coe.int/documents/convention_eng.pdf
96 https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/163

In the Republic of Moldova, the core principles which are regulating employment relations result from the norms of the international law and the Constitution (Tab. 10). According to the national law, any discrimination of employees, either direct or indirect, based on sex, religion, age, race, colour, political option, HIV status and other criteria is prohibited.

## Tab. 10. Right to work: national legislation

### Constitution of the Republic of Moldova (1994)[97]

- **Article 43.** Right to work and labour protection
  (1) Every person has the right to work, to freely choice of work, to equitable and satisfactory working conditions, as well as to the protection against unemployment.

### Labour Code (Law no. 154/2003)[98]

- **Article 8.** Prohibition of discrimination in the sphere of work
  (1) Within the framework of labour relations acts the principle of equal rights of all employees. Any direct or indirect form of discrimination of the employee on the ground of sex, age, race, colour of skin, ethnicity, religion, political choice, social origin, place of residence, disability, HIV/AIDS infection, memberships in or activity within a trade union, as well as other criteria which are not related to the professional qualities of the worker, is prohibited.

### Law no. 23/2007 on prevention of HIV/AIDS infection[99]

- **Article 15.** Prohibition of mandatory testing for HIV markers
  (1) It is prohibited to test for HIV markers as a precondition for employment, travel, access to medical services, admission to an educational institution or for the conclusion of marriage. All forms of hidden testing are prohibited.
- **Article 22.** Prohibition of discrimination at the workplace
  (1) Any form of discrimination based on HIV-positive status is prohibited at all stages of employment, promotion or assignment of duties, both in private or public field, in the election or appointment in public positions.
  (2) HIV-positive persons employed in any public or private sector enjoy the same rights, guarantees and opportunities as other employees.
  (3) Dismissal on the grounds of HIV-positive status is not allowed.
  (6) Depending on the stage of infection, people infected with HIV or people ill with AIDS benefit from professional orientation or reorientation services, in accordance with the law.

### Law no. 186/2008 on occupational safety and health[100]

- **Article 2.** Scope of regulation
  (1) This law regulates legal relations which refer to the establishment of measures to ensure the safety and health of employees at their workplace.
  (2) This law sets out general principles on occupational risk prevention, protection of employees at their workplaces, elimination of risk and injury factors, information, consultation,

97 https://www.legis.md/cautare/getResults?doc_id=128016&lang=ro
98 https://www.legis.md/cautare/getResults?doc_id=131266&lang=ro#
99 https://www.legis.md/cautare/getResults?doc_id=110180&lang=ro
100 https://www.legis.md/cautare/getResults?doc_id=110580&lang=ro

balanced participation, training of employees and their representatives, as well as general guidelines on the application of the above-mentioned principles.

### Law no. 121/2012 on ensuring equality[101]

- **Article 7.** Prohibition of discrimination in employment
  (1) Any distinction, exclusion, restriction or preference on the grounds of criteria established by this law, which have the effect of limiting or undermining equality of opportunity or treatment in employment or dismissal, within direct activity and in professional development, is prohibited. Prohibition of discrimination on the grounds of sexual orientation will apply in the field of employment and occupation.
  (2) The following actions of the employer are considered as discriminatory: a) placing employment announcements indicating the conditions and criteria which exclude or favour certain persons; b) ungrounded refusal to employ the person; c) ungrounded refusal to admit certain persons to professional development training courses; d) unequal remuneration for the same type and/or volume of work; e) differentiated and ungrounded distribution of work tasks, which results from granting a less favourable status to certain persons; f) harassment; g) any other action that contravenes the legal provisions.
  (3) The refusal of employment, of admission to the professional development training courses or of promotion of persons is considered ungrounded if: a) the presentation of additional documents, in addition to the ones stipulated by law, is requested; b) it is claimed that the person does not meet certain requirements, which have nothing in common with the professional qualification required for the exercise of the profession or it is required to comply with any other illegal requirements with similar consequences.
  (5) Any difference, exclusion, restriction or preference in respect of a particular job does not constitute discrimination if, due to the specific nature of the respective activity or the conditions under which that activity is carried out, there are certain essential and decisive professional requirements, provided that the purpose is legitimate and the requirements are proportional.

## ANALYSIS

Analysis of the legal framework in the Republic of Moldova did not identify legal barriers in relation to the right to work of PLHIV (Tab. 9; Tab. 10). The labour legislation in force prohibits any form of discrimination on the grounds of HIV-positive status at all stages of employment, promotion or assignment of service responsibilities in any public or private area, in the election or appointment to public office. Access to the employment must be equal and free, including for PLHIV. However, focused interviews highlighted a practice, which is contrary to the legal provisions.

**Key affected populations** (SW, PWID, former prisoners) noted a high level of unemployment among PLHIV and PWID. The majority declared that in many cases the employers ask for medical certificates upon employment (from drug dependence treatment institutions, and sometimes on the HIV status).

Labour legislation provides for certain cases (employment of minors or employment in the area of health care, public catering, education, transportation and other areas defined by the legislation) when a person can be employed only on the basis of a medical certificate, which proves that

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

he or she is able to carry out the respective work. It should be noted that the **HIV Law** prohibits mandatory HIV testing as a precondition for employment.

Nevertheless, in human resources management there is a practice of referring candidates for a medical examination before recruitment.

**A., PLHIV:** "...some of my acquaintances told me that a colleague of theirs wanted to get employed as a dough moulder in a bakery. He does not know how, but the management found out about his HIV status and he was refused the job, and afterwards, his mother and younger brother were fired without any explanation..."

Medical certificate F086/e, approved by the **MoH Order no. 828/2011**,[102] which has to be provided upon employment (in the above-mentioned cases) does not expressly provide for the need for HIV testing. Therefore, the employer's request of a medical certificate from a drug addiction treatment institution or an HIV certificate is contrary to the legal provisions. At the same time, HIV related information could be specified in the section "Data on the record, the state of health at the moment of medical examination, the diagnosis" which must be filled out by the **family physician**. It is possible that HIV-positive status may result in the PLHIV not being employed because of the health status. The obligation to inform the family physician about the HIV status is provided for by the **Order no. 198/2015**[103], which envisages that after the receipt of the laboratory confirmation of a new case of HIV-1 infection (SIDA 8/e Form), an infectious disease physician shall send, within 10 days, a copy of the report on laboratory confirmation **to a family physician** at the person's place of residence. It should be noted that this procedure is contrary to **Art. 12 of the Law no. 133/2011 on personal data protection**,[104] which reads that in case data are collected from the subject, the operator must supply information about a) the recipients or categories of recipients of the personal data; b) the existence of the rights to access the data, intervention on data and of opposition, as well as conditions under which these rights can be exercised. At the same time, this transmission of data is contrary to the provisions of **Art. 17 of the International Covenant on Civil and Political Rights** and **Art. 8 of the European Convention on Human Rights**, which protect the right to respect for private and family life, which also includes confidentiality of health-related information.

Some of the interviewed **participants** mentioned that although HIV testing is voluntary, in some cases, it becomes mandatory, for instance when getting employed, especially in private companies, while knowing the HIV test result often becomes a reason for dismissal or refusal of employment.

The employers' practice of requesting an HIV test result upon employment goes back to old regulations,[105] which provided for a list of persons with epidemiological indications, who had to go through a provider-initiated HIV test, such as drivers at transport companies, train conductors travelling abroad, etc. Although the **MoH Order no. 790/2012**[106] introduced new regulations for the medical examination and supervision for the detection of HIV infection, the practice of requesting HIV testing upon employment continued and even extended onto other categories of employees. It should be noted that this Order prohibits to perform a mandatory HIV test as a precondition for employment. Also, all forms of hidden testing are prohibited.

102 https://msmps.gov.md/sites/default/files/legislatie/ordinul_nr._828_din_31.10.2011.pdf
103 https://msmps.gov.md/sites/default/files/legislatie/ordinul_198_din_16.03.2015.pdf
104 https://www.legis.md/cautare/getResults?doc_id=122546&lang=ro#
105 MoH Order no. 314/2007 on the Rules of medical examination and supervision for the detection of infection with the human immunodeficiency virus (AIDS disease) – repealed, not available online.
106 https://www.legis.md/cautare/getResults?doc_id=13499&lang=ro

**Interview participants** mentioned that in some cases, PLHIV were forced to disclose their HIV status or this had been done by a third party (usually medical personnel), who disclosed their HIV status without having the PLHIV's consent.

**B., PLHIV/PWID:** "...last year I got into hospital, because I had a liver pain. At that time, I was working in constructions and my boss came to visit me. The nurse in the ward told him about my status. I don't know how she learned about it, but later, occasionally, I saw it written in my medical record, maybe the nurses told her. Why does one have to write these things...? Upon discharge from the hospital, I was fired. Then, via the employment office I got a job referral as a porter, but the boss turned me down, he asked for a certificate from the drug addiction treatment dispensary and an HIV certificate, maybe the rumours about my diagnosis got to him or he did not like my appearance..., maybe he understood I use drugs, or someone had told him, our town is small..."

**N., PWID/PLHIV:** "...I worked as a kitchen worker at a canteen next to a polyclinic. I used to be friends with a nurse from the polyclinic, then we had a fight, she told the head of the canteen about my diagnosis. She called me and said that people like me should have nothing to do with the public catering and told me if I would not quit on my own initiative, she would find a reason to fire me and then I would not be able to find a job. I had to leave; I had some hard times till I found another job. I don't understand why the data are communicated to the doctors from the polyclinic at the place of residence, nobody wants to take care of us there..."

**A., PLHIV:** "...an acquaintance of mine used to work in a canteen, she was on ART. A colleague saw the pills in her bag, remembered their name and found out what are these for. As a result, my acquaintance was sacked: the colleague told the head of the canteen, who then told her to leave, because, in her opinion, she had no right to work with food products..."

In this context, **HIV-positive study participants** suggested ideas concerning: the need to supplement the Labour Code with additional regulations on the protection of the rights of the PLHIV; to revise the procedure for preparing documentation for employment; to complete the Contraventions Code with an article, which would provide for the liability of employers in case employment is refused on discriminatory grounds, as well as to prohibit requesting additional documents upon employment (a certificate issued by a drug dependence treatment institution and/or HIV test result).

## CONCLUSIONS

1. While the law prohibits discrimination in the enjoyment of the right to work by PLHIV, discriminatory bylaws and practices do exist.
2. The right to work is violated when a candidate or an employee is either asked, in a mandatory and unjustified manner, to take an HIV test, or is refused employment or dismissed because of the HIV-positive status. The right of PLHIV to work is also infringed in the Republic of Moldova through departmental/internal provisions on access to certain professions, which require the candidates or employees to make an HIV test.

## RECOMMENDATIONS

1. To adjust the labour regulatory framework in line with the ILO's HIV and AIDS Recommendation (R200), to protect workers, in particular jobseekers and job applicants, against discrimination or stigmatization on the grounds of real or perceived HIV status or belonging to groups more vulnerable to HIV infection.

2. To amend the Contravention Code in order to sanction employers for requesting during recruitment of additional documents which are not provided for by the law.
3. To harmonise departmental bylaws with the provisions of the national legislation in order to ensure confidentiality and non-discrimination on the grounds of HIV status in the employment process.
4. To develop and disseminate a "Code of conduct" for employers, which would prohibit discrimination and stigmatization of employees living with HIV and would ensure confidentiality and privacy.
5. To promote HIV prevention measures at the workplace as part of the national HIV-related policies, which should include provisions regarding labour, education, social security and health care.

# SOCIAL PROTECTION

## FUNDAMENTAL PRINCIPLES

People living with HIV have the right to an adequate standard of living, including equal access to social protection (security) and other forms of material assistance, especially in the event of unemployment, sickness or disability.[107]

## Tab. 11. Social protection: international standards

### International Covenant on Economic, Social and Cultural Rights (1966)[108]

- **Article 9**
  The States Parties to the present Covenant recognize the right of everyone to social security, including social insurance.
- **Article 10**
  The States Parties to the present Covenant recognize that:
  1. The widest possible protection and assistance should be accorded to the family… Marriage must be entered into with the free consent of the intending spouses.
  2. Special protection should be accorded to mothers during a reasonable period before and after childbirth. During such period working mothers should be accorded paid leave or leave with adequate social security benefits.
  3. Special measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination for reasons of parentage or other conditions. …States should also set age limits below which the paid employment of child labour should be prohibited and punishable by law.
- **Article 11**
  1. The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions.

107 UNDP, Legal environment assessment for HIV: An operational guide to conducting national legal, regulatory and policy assessments for HIV, 2014; http://www.undp.org/content/undp/en/home/librarypage/hiv-aids/practical-manual--legal-environment-assessment-for-hiv--an-opera.html

108 https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights

### International Labour Organization, Social Security (Minimum Standards) Convention (no. 102) (1952)[109]

- It sets the minimum standards of social security where each Member to the Convention shall secure to the persons protected the provision of various types of benefits: benefit in respect of a condition requiring medical care of a preventive or curative nature, sickness benefit, unemployment benefit, old-age benefit, employment injury benefit, family benefit, maternity benefit, invalidity benefit, survivors' benefit.

### International Labour Organization, Social Protection Floors Recommendation (R202) (2012)[110]

- Recommendation provides guidance to Members to (a) establish and maintain, as applicable, social protection floors as a fundamental element of their national social security systems; and (b) implement social protection floors within strategies for the extension of social security that progressively ensure higher levels of social security to as many people as possible, guided by ILO social security standards.
- For the purpose of this Recommendation, social protection floors are nationally defined sets of basic social security guarantees which secure protection aimed at preventing or alleviating poverty, vulnerability and social exclusion.

### UN Convention on the Rights of Persons with Disabilities (2006)[111]

- The Convention promotes, protects and ensures the rights and fundamental and complete freedoms of all persons with disabilities in order to support the respect of their inherent dignity.

### United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) (2015)[112]

- **Rule 24**

  2. Health-care services should be organized in close relationship to the general public health administration and in a way that ensures continuity of treatment and care, including for HIV, tuberculosis and other infectious diseases, as well as for drug dependence.

### UNAIDS 2016-2021 Strategy[113] is a bold urge to action to intensify actions and include also those persons left behind. This strategy refers to radical reduction of new infections and assuring access to HIV prevention and treatment.

The Constitution of the Republic of Moldova guarantees the right to social protection. **Art. 47 of the Constitution** stipulates the right of the person to social assistance and protection and the obligation of the state to undertake optimal measures, which would guarantee to every person "*a decent standard of living that would ensure health and well-being for him/her and his/her family,*

109 https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:312247
110 https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:R202
111 http://www.un.org/disabilities/documents/convention/convoptprot-e.pdf
112 https://www.ohchr.org/sites/default/files/Documents/ProfessionalInterest/NelsonMandelaRules.pdf
113 http://www.unaids.org/sites/default/files/media_asset/20151027_UNAIDS_PCB37_15_18_EN_rev1.pdf

*including food, clothing, housing, care, as well as necessary social services".* The article also lists social risks (unemployment, sickness, disability, widowhood, old age, the loss of the means of subsistence, as a result of the circumstances beyond one's control), which constitute the grounds for the provision of social protection. **Articles 49-51** list subjects (family, mothers, children, orphan children, persons with disabilities, etc.) who are entitled to social benefits and/or social services.

## Tab. 12. Social protection: national legislation

### Law no. 547/2003 on social assistance[114]

- **Article 2.** Purpose of the law
  The purpose of this law is to determine principles and objectives of social assistance, to establish the right to social assistance, social assistance benefits and services, their beneficiaries, as well as the requirements to the personnel in the social assistance system.

### Law no. 289/2004 on allowances for temporary incapacity for work and other social security benefits[115]

- **Article 4.** Funding sources of social security benefits
  (3) Payment of the allowance for temporary incapacity for work caused by tuberculosis, AIDS, cancer of any type or the risk of interruption of pregnancy, as well as the payment of allowance for temporary incapacity for work to pregnant women who are registered with the health care facilities, is made entirely from the state social insurance budget, starting with the first calendar day of temporary incapacity for work.

### Law no. 23/2007 on prevention of HIV/AIDS infection[116]

- **Article 1.** The scope of regulation and the objectives of the law
  (2) The present law has the following objectives:
  e): to ensure guaranteed access to medical and social care for people living with HIV/AIDS, including treatment, care and support.

### Government Decision no. 1010/2016 on the approval of the Framework regulation on the organization and operation of the Regional social centre for the assistance for persons infected with HIV/AIDS and members of their families and of the minimum quality standards[117]

- 10. The objectives of the Centre are: 1) to support and mobilize the community to eliminate stigmatization and discrimination of persons infected with HIV/AIDS and members of their families, who are in a difficult situation, within the social security system by providing specialized services; 2) to maintain adherence to ARV treatment of persons infected with HIV/AIDS, motivating behaviour change and reducing the risk of HIV infection spreading; 3) to ensure the socialization of beneficiaries, the development of relations with the community and the access to resources and services existing in the community.

114 https://www.legis.md/cautare/getResults?doc_id=129339&lang=ro#
115 https://www.legis.md/cautare/getResults?doc_id=95080&lang=ro
116 https://www.legis.md/cautare/getResults?doc_id=110180&lang=ro
117 https://www.legis.md/cautare/getResults?doc_id=100662&lang=ro

**Government Decision no. 1164/2016 on the National program on the prevention and control of HIV/AIDS infection and sexually transmitted infections for the years 2016-2020**[118]

- **Objective 1:** To ensure universal access to treatment, care and support for people infected with HIV and sexually transmitted infections
- Actions: 6) By 2020, at least 80% of people infected with HIV will benefit from psycho-social services provided by the regional social centres and non-governmental organizations are active in this area.

## ANALYSIS

**The Law on social assistance** defines the principles of provision of social services, which are meant to protect a person or a family in difficulty against social risks, which may cause marginalization or social exclusion. Therefore, the provisions also cover some people living with HIV. In this sense, it shall be mentioned that there is no social assistance (allowances or social services) particularly envisaged for this population. HIV-positive persons can benefit from certain social security measures only if they meet the vulnerability standards regulated by the state and not necessarily because they have HIV. The only exceptions are provided for in the **HIV Law** and the **Law on allowances for temporary incapacity for work and other social security benefits.**

The HIV Law defines basic guarantees on the provision of social services for people with HIV/AIDS. These include medical recommendations for treatment, prevention and medical assistance, as well as social support services and social protection. Art. 33 of the HIV Law reads that the citizens of the Republic of Moldova, who have been infected with HIV as a result of blood transfusions and medical interventions, are guaranteed a pension in accordance with the legislation.

Focus group participants complained that the social security system is not sensitive to HIV. Community stigma and discrimination also continue to be a serious challenge for genuine integration of the PLHIV into the social life and social protection.

**A., PLHIV/PWID:** "...I am a person with disabilities, in a wheelchair, I receive a very small pension, I get whatever help from whoever; for instance, Gheorghe, who has his own business, often helps me, but when I went to apply for additional compensation, I was rejected, because, as I was told, if there is anyone helping me, I don't get anything else..."

**N., PLHIV:** "...I've decided to document my disability status, I know it is possible. My family physician began to convince me not to do that, that the immunity of 600 cells is not yet an indicator, that I needed to have a series of additional diagnosis and bad test results. I've tried to explain that these 600 cells are my effort and the effect of the therapy, I am far from being a healthy person. Then he opened the map of the village, found my house on the map and said I had a big garden, I will have an abundant crop and that I should return in half a year in autumn, maybe I would have additional diseases after working in the garden. I certainly understood that he was hinting at a bribe..."

118 https://www.legis.md/cautare/getResults?doc_id=111740&lang=ro

**O., parent of a child living with HIV:** "...Me and my husband are healthy, we have two healthy children, but my 9-year-old son was found to have HIV. Doctors in Chisinau blamed me that I allowed my baby to be breastfed by another mother in the maternity ward, later it was found that she had HIV; I, obviously, do not believe this, my child could not have contracted HIV from several times of breastfeeding, I want to investigate this situation further. We have a difficult living, my husband is permanently abroad, working, I called upon the local authorities for compensations for coal, they began blaming me for not working, even though they know I have a child with disability and I am often at home with him. They came, looked around, saw I had a TV set and a refrigerator, they told me that I could not receive anything, they also laughed that my husband could earn for coal and not only for coal..."

The HIV/AIDS disease with emphasized or severe functional failures is included in the List of disabilities which irreversibly affect the health condition of children, the health condition and operation and work ability of adults, which serves as a basis for establishing permanent disability for adults and children (**Joint Order of the MoH and MoLSPF no. 64/317 of 30.04.2015**).[119]

In line with the **Law on social inclusion of persons with disabilities**,[120] criteria for determining disability in adults are approved by an order of the Ministry of Health, Labour and Social Protection (**Order no. 12/70 of 28.01.2013**[121]), while in children under 18 years old – by a joint order of the Ministry of Health, Labour and Social Protection and the Ministry of Education, Culture and Research (**Order no. 13/71/41 of 28.01.2013**[122]). According to the provisions of the latter Order, children living with HIV are granted the status of children with accentuated degree of disability, while those whose health was affected strongly by the disease – severe degree of disability.

The **Government Decision no. 357/2018 on determination of disability**[123] categorizes disability groups in accordance with ability to work, in percents, with a 5-point percentage range: 1) **severe** disability: 0-20%; 2) **accentuated** disability: 25-40%; 3) **moderate** disability: 45-60%. Furthermore, para. 27 specifies that persons with mild functional failures caused by diseases, deficiencies, traumas or those who have maintained their work ability at 65-100% are considered able to work and therefore ineligible to receiving a disability status.

At the same time, the Order no. 12/70 of 28.01.2013 states as follows: 1) mild functional-structural deficiencies between 5% and 35% cannot serve as basis for granting a disability degree; 2) moderate functional-structural deficiencies between 40% and 55% serve as grounds for granting the **moderate** degree of disability; 3) accentuated functional-structural deficiencies between 60% and 75% serve as grounds for an **accentuated** degree of disability; 4) severe/absolutely functional-structural deficiencies between 80% and 100% serve as grounds for **severe** degree of disability. Although Government Decisions are superior to ministerial orders, it should be noted that the above-mentioned Order no.12/70 had not been repealed and had not been amended following the approval of the Government Decision no. 357/2018. At the same time, this situation can create confusion taking that Annex 2 classifies the percentage (%) of basic

119 https://msmps.gov.md/sites/default/files/ordin_mmpsf_si_ms_nr._64-317_din_30.04.2015_lista_dizabilitate_fara_termen1.pdf
120 https://www.legis.md/cautare/getResults?doc_id=110494&lang=ro#
121 https://msmps.gov.md/sites/default/files/legislatie/fdd.pdf
122 https://msmps.gov.md/sites/default/files/legislatie/ordinul_nr._13_71_41_din_28.01.2013.pdf
123 https://www.legis.md/cautare/getResults?doc_id=119169&lang=ro

work abilities in relation to the percentage (%) of functional and structural deficiencies by diseases (including HIV), according to the old model.

Interview participants have specified they knew about the social benefits, pensions and/or disability allowances which they can get for health reasons, but they face difficulties in accessing health care services and consider it appropriate to adjust and simplify the application procedures. Those who do not have a health care insurance policy, usually, do not have money to pay for health care services. The participants also mentioned that the financial allowances are quite small, because the populations in question usually do not have substantial employment record, which affects the amount of the allowances.

**Focus group discussions:** "...PLHIV are entitled to disability allowance, but socially vulnerable beneficiaries, who do not have a health care insurance policy, find it difficult to get money for a medical check-up to determine the disability degree; others, because of good immunity, are refused a disability degree; others do not even want to take the effort to get the disability degree, because they do not have a substantial employment record and the respective payments are very small..."

**E., parent of a child living with HIV:** "...I have an HIV-positive child, I went through hell with her, at our polyclinic we had been both insulted and humiliated, we no longer go there. I got to the intensive care unit with my child, then it was found out she had only three [CD4] cells. In order not to bear responsibility for us, we were referred to Chisinau, to the Mother and Child Health Centre. There, they did not want to accept us, kept us on the hallways, only thanks to the charity organization we were hospitalized in a room. From there, they referred us to the infectious diseases' hospital, where we were told there were suspicions for tuberculosis, but these were not confirmed, Then they prescribed an exam at the psychiatric hospital, I don't know why. Nobody explained anything. Now she is on HIV treatment, I want to get her the disability degree, but it is delayed for ever. I come, take the referral form for specialized doctors, I begin the check-up, then the physician goes on leave. I return - the test results are no longer valid and so on many times... Our infectious diseases physician, in general, it seems to me, is sick, I wonder how he is still in this position – he believes that HIV is from the Satan, that we need to go to church and repent of our sins. Is he truly a doctor?"

**P., PLHIV:** "...Some PLHIV drop ART on purpose, so that their immunity worsens, and they receive a disability degree..."

## CASE STUDY

Decision of the Equality Council of 19 May 2017 on the case no. 22/17.[124]

In December 2016 the petitioner became homeless and went to the Social Centre "Viata cu Speranta" for them to find him shelter. The social assistant referred him to the Centre of Hosting and Social Adaptation of Homeless People "Reintoarcere" (hereinafter the Centre) from Balti.

124 http://egalitate.md/wp-content/uploads/2016/04/Draft_Decizie_22_2017_constatare_votat_expediat-depers..pdf

On 12 December 2016 he went to the Centre, where he got two referrals for TB and HIV testing. As regards TB testing, the petitioner had no objections, but he considered illegal the HIV testing. The staff of the Centre informed him that if he refuses the HIV testing, he could not stay at the facility. Equality Council adopted a decision finding direct discrimination on the grounds of HIV status and decided that discriminatory provisions in relation to HIV-positive people must be excluded from the Regulation on the Centre's organization and operation. As a result, Balti Municipal Council, by its decision no. 9/6 of 28 September 2017, removed the discriminatory provisions from the Regulation of the Centre.

## CONCLUSIONS

1. The standard of living and social problems are a significant challenge PLHIV face in the Republic of Moldova. The financial situation of these people contributes essentially to the vulnerability and social exclusion of PLHIV, which is based on a multitude of factors: discrimination, stigmatization, low standard of living, lack of coping strategies, etc.
2. Refusing employment and dismissal because of HIV status remains a barrier for the material and social well-being of people living with HIV.
3. In practice, direct and indirect discrimination are often found in the area of social protection. In general, laws and policies in various areas do not always consider the interests of people living with HIV and do not protect them sufficiently from discrimination and various stressful situations.
4. There are major barriers to accessing social protection. These include shortage of knowledge about the available services, complicated (and sometimes useless) administrative procedures which make the access to the services more difficult, endemic corruption, as well as stigmatization and discrimination by the employers and healthcare staff.

## RECOMMENDATIONS

1. To adopt legal provisions which would provide equal opportunities of and positive measures for the employment of PLHIV and other vulnerable groups, to ensure a standard of living, which would not endanger their lives, considering the special needs of these persons.
2. To introduce regulations that will ensure non-discrimination of PLHIV and key affected populations in the field of employment, pensions and other areas of social-economic life.
3. To develop programs which would raise awareness of people living with HIV and those belonging to key affected populations about the fundamental social, economic and cultural rights.
4. To improve the social protection system from the Republic of Moldova by addressing systemic weaknesses affecting people living with HIV (low amounts of allowances, their dependence on work experience, unnecessary check-ups, corruption, etc.)

# CRIMINALIZATION

## FUNDAMENTAL PRINCIPLES

Exposure to HIV and unintentional transmission should not be criminalized.[125]

The trend to criminalize the transmission of HIV started in mid-1980's, when more and more countries began to enact criminal legislation against those who had transmitted the virus as a mean to limit the spreading of infection,[126] although, globally, the judicial practice[127] in the area had shown that the rate of criminal prosecution does not affect HIV incidence among the population, and the criminalization of the transmission does not contribute to the reduction of the number of people infected with HIV.[128]

Despite remarkable progress in HIV treatment and prevention, criminalization of HIV reflects misconceptions and fears about HIV, contrary to up-to-date scientific data. Unfortunately, laws and criminal charges are not always guided by the best available scientific and medical evidence; some people have been prosecuted even where they have had little or no chance of transmitting HIV.[129]

This raises a variety of concerns that the excessive use of criminal sanctions undermines effective public health and human rights efforts, for example by contributing to HIV stigma and misinformation, creating additional barriers to HIV testing and involvement in care services, undermining the relationship between patients and health care providers and providers of other services, unnecessary breaches of confidentiality, aggravating gender inequality, while providing little protection against HIV, and resulting in discrimination in criminal prosecution and disproportionate convictions.

## Tab. 13. HIV criminalization: international standards

### International Covenant on Civil and Political Rights (1966)[130]

- **Article 17**

  1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.

### European Convention for the Protection of Human Rights and Fundamental Freedoms (1950)[131]

- **Article 8.** Right to respect for private and family life

  1. Everyone has the right to respect for his private and family life, his home and his correspondence.

125 UNDP, Practical manual: Legal environment assessment for HIV: An operational guide to conducting national legal, regulatory and policy assessments for HIV, 2014; http://www.undp.org/content/undp/en/home/librarypage/hiv-aids/practical-manual--legal-environment-assessment-for-hiv--an-opera.html
126 Open Society Institute, Ten Reasons to Oppose the Criminalization of HIV Exposure or Transmission, 2008, https://www.opensocietyfoundations.org/publications/ten-reasons-oppose-criminalization-hiv-exposure-or-transmission
127 UNAIDS welcomes the decision of the Constitutional Court of Colombia to strike down the section of the Criminal Code criminalizing HIV transmission, 13 June 2019, https://www.unaids.org/en/resources/presscentre/pressreleaseandstatementarchive/2019/june/20190613_colombia
128 Zita Lazzarini, Carol L. Galletly, Eric Mykhalovskiy, Dini Harsono, Elaine O'Keefe, Merrill Singer, Robert J. Levine, Criminalization of HIV Transmission and Exposure: Research and Policy Agenda, August 2013, https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3966663/
129 The Lancet HIV, HIV criminalisation is bad policy based on bad science, September 2018, https://www.thelancet.com/journals/lanhiv/article/PIIS2352-3018(18)30219-4/fulltext
130 https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights
131 https://www.echr.coe.int/documents/convention_eng.pdf

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

### International Guidelines on HIV/AIDS and Human Rights, Consolidated Version (2006)[132]

- **Guideline 4**, paragraph 21 (a). Criminal and/or public health legislation should not include specific offences against the deliberate and intentional transmission of HIV but rather should apply general criminal offences to these exceptional cases. Such application should ensure that the elements of foreseeability, intent, causality and consent are clearly and legally established to support a guilty verdict and/or harsher penalties.

### Report of the UN Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health (A/HRC/14/20) (2010)[133]

- 76. The Special Rapporteur calls upon States:
  (c) To immediately repeal laws criminalizing the unintentional transmission of or exposure to HIV, and to reconsider the use of specific laws criminalizing intentional transmission of HIV, as domestic laws of the majority of States already contain provisions which allow for prosecution of these exceptional cases.

### UNDP and UNAIDS Policy Brief on Criminalization of HIV Transmission (2008)[134]

- The UNDP and UNAIDS have developed a policy brief on criminalization of HIV transmission, which urges governments to limit HIV criminalization to cases of intentional transmission (i.e. where a person knows his or her HIV positive status, acts with the intention to transmit HIV, and does in fact transmit it) and apply general criminal law instead of introducing HIV-specific laws. They also plead for non-application of criminal legislation in cases when there is no significant risk of transmission and further explain in which cases the criminal legislation should not be applied.
- The policy brief describes negative impact of criminalization of unintentional HIV transmission on access to prevention and treatment and draws the conclusion that "... available data show no difference in behaviour between places where laws criminalizing HIV transmission exist and where they do not".

### UNAIDS Guidance Note *Ending Overly Broad Criminalization of HIV Non-Disclosure, Exposure and Transmission: Critical Scientific, Medical and Legal Considerations* (2013)[135]

- This document builds on the UNDP/UNAIDS Policy Brief on Criminalization of HIV Transmission and provides critical considerations and recommendations regarding the latest

132 https://www.ohchr.org/sites/default/files/Documents/Publications/HIVAIDSGuidelinesen.pdf
133 https://undocs.org/A/HRC/14/20
134 http://www.unaids.org/sites/default/files/media_asset/jc1601_policy_brief_criminalization_long_en.pdf; http://www.undp.org/content/undp/en/home/librarypage/hiv-aids/undp-and-unaids-policy-brief-on-criminalization-of-hiv-transmission.html
135 https://www.unaids.org/sites/default/files/media_asset/20130530_Guidance_Ending_Criminalisation_0.pdf

scientific and medical facts and developments relating to HIV, and important legal principles that are essential to assessing: what level of harm, if any, has been caused to another person as a result of HIV non-disclosure, exposure and transmission; whether the nature/level of risk of HIV transmission from particular sexual acts warrants criminal liability; what elements should be recognized as defences to charges of HIV nondisclosure, exposure and transmission; and the merits and limitations of methods of proof used in the context of HIV non-disclosure, exposure and transmission.

### Global Commission on HIV and the Law, 2012 Report HIV and the Law: Risks, Rights and Health[136] and 2018 Supplement[137]

- The report presents public health, human rights and legal analysis and makes recommendations for law and policy makers, civil society, development partners and private sector actors involved in crafting a sustainable global response to HIV. This document calls the countries to outlaw discrimination against people living with HIV, to repeal punitive laws and to adopt protective laws to promote public health and human rights for efficient HIV responses.
- This document states that fear of prosecution isolates the people infected with HIV and discourages them from getting tested, participating in prevention or treatment programs or disclosing their status to partners.

### Expert Consensus Statement on the Science of HIV in the Context of Criminal Law (2018)[138]

- The application of up-to-date scientific evidence in criminal cases has the potential to limit unjust prosecutions and convictions. The experts recommend strongly that more caution be exercised when considering criminal prosecution, including careful appraisal of current scientific evidence on HIV risk and harms, and encourage governments and those working in legal and judicial systems to pay close attention to the significant advances in HIV science that have occurred over the last three decades to ensure current scientific knowledge informs application of the law in cases related to HIV.
- Based on a detailed analysis of the best available scientific evidence on HIV transmission and treatment effectiveness, the statement notes that there is no possibility of HIV transmission through saliva as a result of biting or spitting, even where saliva contains small quantities of blood. In addition, effective antiretroviral therapy, low viral load, the use of pre-exposure prophylaxis (antiretroviral drugs taken by an HIV-negative person before a possible exposure), or post-exposure prophylaxis (antiretroviral medicines taken after a possible exposure) all significantly reduce the possibility of HIV transmission.

### Oslo Declaration on HIV Criminalization (2012)[139]

- A growing body of evidence suggests that the criminalization of HIV non-disclosure, potential exposure and non-intentional transmission is doing more harm than good in terms of its impact on public health and human rights.
- A better alternative to the use of the criminal law are measures that create an environment that enables people to seek testing, support and timely treatment, and to safely disclose their HIV status.

136 https://hivlawcommission.org/report/
137 https://hivlawcommission.org/supplement/
138 https://onlinelibrary.wiley.com/doi/full/10.1002/jia2.25161
139 https://www.hivlawandpolicy.org/sites/default/files/Oslo_declaration.pdf

In the Republic of Moldova, besides the legal norms and policies adopted to protect the rights of people living with HIV, there are legal provisions which criminalize HIV exposure and transmission. The criminalization of acts related to HIV is incompatible with the contemporary medical knowledge on HIV transmission, international human rights standards and public health objectives. The HIV-specific criminal laws do not reach the intended objective of reducing unsafe behaviours that may spread HIV and in fact hamper HIV prevention efforts, reinforce hard-set stigma surrounding HIV and AIDS, and perpetuate perception of PLWH as dangerous criminals that hold sole responsibility for safeguarding the public from HIV infection.[140] HIV-specific criminal provisions also mean that anyone convicted under these provisions will face a high risk of violation of their right to privacy as information about their criminal record, containing HIV-specific charges, will become available to a wide range of persons. Such disclosure is not "necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others", as stipulated in **Art. 8 of the European Convention on Human Rights**.

The Republic of Moldova is among the countries which have a special criminal provision for punishing the HIV transmission (Tab. 14). At the same time, such states as Estonia, Lithuania, Hungary, Norway, Switzerland, France, Italy, United Kingdom (England and Wales, Scotland), Germany, and Sweden do not have such a special norm for criminal prosecution, these cases being reviewed based on the general norms of the Criminal Code.

## Tab. 14. HIV criminalization: national legislation

### Criminal Code (Law no. 985/2002)[141]

- **Article 165.** Trafficking in human beings
  a[1]) involving a infection with a venereal disease or AIDS disease
- **Article 171.** Rape
  (3) c) involving deliberate infection with AIDS disease
- **Article 172.** Violent actions of a sexual character
  (3) b) that cause deliberate infection with AIDS disease
- **Article 206.** Trafficking in children
  (3) d[1]) involving child infection with a venereal disease or AIDS disease
- **Article 212.** Infection with AIDS disease
  (1) Deliberate exposure of another person to the danger of infection with AIDS disease shall be punished by imprisonment for up to 1 year.
  (2) Infection with AIDS disease by a person who knew he/she was suffering from this disease shall be punished by imprisonment for 1 to 5 years.
  (4) Infection with AIDS disease resulting from non-performance or inadequate performance of a medical employee of his/her professional duties shall be punished by imprisonment for up to 5 years with the deprivation of the right to hold certain positions or to practice certain activities for up to 3 years.

140 Amy Jong Chen, HIV-Specific Criminal Law: A Global Review; Intersect Vol 9, No 3 (2016); http://ojs.stanford.edu/ojs/index.php/intersect/article/download/829/843
141 https://www.legis.md/cautare/getResults?doc_id=131599&lang=ro#

(5) A person who commits the actions set forth in par. (1) or (2) shall not be subject to criminal liability provided that he/she informed in advance the person exposed to the danger of being infected, that he/she suffers from AIDS, or that the person exposed to the danger of being infected knew about the existence of this disease but voluntarily committed actions that created the danger of infection.

### Law no. 23/2007 on prevention of HIV/AIDS infection[142]

- **Article 14.** Confidentiality
  (3) People with determined HIV-positive status should be informed in written form by the health care institutions on the need to follow the measures to prevent the spread of HIV/AIDS, as well as on the criminal liability for deliberate exposure of another person to the danger of infection or for deliberate infection of another person.
  (4) Any HIV-positive person shall communicate his/her status to his/her spouse or sexual partner.
- **Article 29.** The responsibility of persons with HIV positive status
  (1) Persons with HIV-positive status shall behave responsibly and harmlessly to protect their own health and prevent HIV infection transmission.
  (2) A person aware of his/her HIV status and deliberately expose another person to the danger of infection is criminally liable in accordance with the legislation in force.

### MoH Order no. 790/2012 on the Rules of medical examination and supervision for the detection of infection with the human immunodeficiency virus (AIDS disease)[143]

- Par. 8.3. People with determined HIV-positive status are notified in writing by the health care institutions when their diagnosis is being established, of the need to respect measures meant to prevent the spread of HIV/AIDS, according to the legislation in force, with a note in the epidemiological investigation record.

## ANALYSIS

Existing international standards and recommendations on the criminalization of HIV[144] indicate that criminal prosecution in relation to HIV may be justified when a person (i) acts with an intent to infect another person, and (ii) HIV is actually transmitted. Having HIV-specific criminal provisions also goes against international human rights standards.

The analysis of legal discrepancies reveals that some aspects or elements of the criminalization of HIV transmission are included in special laws and bylaws, such as the **HIV Law** or the **MoH Order no. 790/2012 on the Rules of medical examination and supervision for the detection of infection with the human immunodeficiency virus (AIDS disease)** (Tab. 13).

From the content of the Art. 212 (Infection with AIDS disease) of the Criminal Code we notice that the lawmaker provided for a special subject, meaning that **only a person living with HIV can be**

142 https://www.legis.md/cautare/getResults?doc_id=110180&lang=ro
143 https://www.legis.md/cautare/getResults?doc_id=13499&lang=ro
144 E.g., UNAIDS & UNDP, Policy Brief: Criminalisation of HIV Transmission (2008); Report of the UN Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, UN Doc. A/HRC/14/20 (2010); Global Commission on HIV and the Law, HIV and the Law: Risks, Rights and Health (July 2012); UNAIDS, Ending overly broad criminalisation of HIV non-disclosure, exposure and transmission: critical scientific, medical and legal considerations (2013),

**charged with committing this crime** (par. (2)). The only exception is made regarding medical staff, who have transmitted the virus as a result of their inappropriate fulfilment of duties (par. (4)) (Tab. 13). At the same time, criminal liability for HIV transmission is excluded if the PTHIV informed in advance the person exposed to the danger of being infected, that he/she suffers from AIDS, or that the person exposed to the danger of being infected knew about the existence of this disease but voluntarily committed actions that created the danger of infection.

At the same time, we would like to draw attention to the fact that AIDS is, in fact, a syndrome, which refers to a range of diseases related to the infection with HIV, meaning that it represents a clinical and biological expression of an advanced stage of the disease. Thus, a person may have HIV and may transmit and infect another healthy person, but what is transmitted is the HIV virus and not AIDS, as the Criminal Code of the Republic of Moldova says (Art. 165, 171, 172, 206, 212) (Tab. 13). Taking this into consideration, the provisions of the Criminal Code, where the words "infecting ... with AIDS" are used, are not formulated correctly.

HIV criminalization puts legal responsibility for HIV prevention exclusively on people living with HIV, although this should be a public health matter, and all people, including sexual partners, should be responsible and have a safe and protected behaviour, including from the sexual point of view.

Establishing special norms focused only on HIV create reluctance among the population, which no longer wishes to test voluntary because of the risk of criminal prosecution. As a result, criminalization is a reason why people living with HIV are afraid and, therefore, are not prepared to find out their status with all the negative consequences which follow.

Also, criminalization disproportionately affects the vulnerable women and girls (because of fear of being accused of becoming infected with HIV and of their inability to ensure safe sexual relations with a partner), which may discourage the access of HIV testing and, accordingly, the pre-natal preventive treatment, which would result in the growth of maternal mortality, as well as in mother-to-child transmission of HIV.

In this context, it is appropriate to limit criminalization only to cases of intentional transmission of HIV, and unintentional transmission should not be criminalized.

The International Guidelines on HIV/AIDS and Human Rights (2006) state explicitly that criminal law should not include specific offenses against the deliberate HIV transmission and that general criminal offenses should be applied to these exceptional cases. Such application should ensure that the elements of foreseeability, intent, causality and consent are clearly and legally established to support a guilty verdict and/or harsher penalties. If someone, knowing that he or she is HIV positive, acts with the intent to transmit HIV, and does transmit HIV, that person's state of mind, behaviour, and the resulting harm justifies punishment. This, however, should be done by applying general criminal provisions on intentional harm to health (such as Art. 152 "Inflicting of deliberate bodily injury of medium severity or other harm to health of medium severity").

In other instances, the application of criminal law should be rejected by legislators, prosecutors and judges. In particular, criminal law should not be applied to cases where there is no significant risk of transmission or where the person

- Did not know that s/he was HIV positive;
- Did not understand how HIV is transmitted;
- Disclosed his or her HIV-positive status to the person at risk (or honestly believed the other person was aware of his/her status through some other means);

- Did not disclose his or her HIV-positive status because of fear of violence or other serious negative consequences;
- Took reasonable measures to reduce risk of transmission, such as practicing safer sex through using a condom or other precautions to avoid higher risk acts; or
- Previously agreed on a level of mutually acceptable risk with the other person.[145]

Therefore, the legislation of the Republic of Moldova on HIV criminalization is not only incompatible with the international standards but is also counterproductive and contradictory in the domestic legislative environment. A discriminatory effect for persons from discordant couples is noted because the partner living with HIV could bear criminal liability even if the virus is not transmitted. Such ambiguous legal situation increases the risk of HIV transmission, because serodiscordant couples would avoid accessing prevention services, because of the fear of criminal prosecution.

**A., PLHIV:** "...for instance, I get married to a person who is HIV negative, I will be careful, but anything can happen; why should I live in permanent fear that my wife or her relatives might file charges against me?!"

As a result, criminalization of HIV exposure, in some cases, can cause even a bigger risk of illegal criminal convictions because of the wrong understanding of how the virus is transmitted. For instance, in some states, HIV positive persons were subject to criminal prosecution because they bit, spitted, urinated on non-infected persons, although these actions or these liquids contain an insufficient quantity of the virus to cause a real risk of infection.

Criminal liability for unintentional transmission of HIV creates severe structural and interpersonal barriers for persons on ART. Fear of criminal prosecution leads to the fear of PLHIV to access medical services (HIV testing) or to disclose the status to their partners. Also, stigmatization of and discrimination against PLHIV grows, which may become an obstacle for the access to treatment and care services.

Ensuring universal access to commodities, services and information for prevention, diagnosis and treatment of HIV (and other STIs) contributes significantly to halting the spread of new infections, and to improving the health of PLHIV.

Public health policies and programs that ensure that people can safely know their HIV status and that they have access to and are able to use HIV prevention tools are the most effective responses to HIV. Therefore, we believe there is no reason to impose special criminal norms, while the punishment would be made based on the general norms applicable for causing deliberate damages to health.

## CONCLUSIONS

1. The current national criminal policy of the Republic of Moldova regarding the unintentional transmission of HIV is punitive, which, according to international studies, could negatively affect the access of people living with HIV to prevention and treatment programs. These provisions do not respect the recommendations, specified in international guidelines on HIV/AIDS and human rights. The articles in the Criminal Code do not produce the expected preventive effect but discriminate against and disclose the status of people living with HIV and do not define ways of HIV transmission.

145 UNDP, UNAIDS, Policy Brief on Criminalization of HIV Transmission, 2008, https://www.unaids.org/sites/default/files/media_asset/jc1601_policy_brief_criminalization_long_en.pdf

2. Criminalization of HIV transmission in some cases can serve as revenge measure used by an alleged victim; it could contribute to the worsening of the health condition of HIV-positive persons; it may contribute to initiating a disproportionate criminal prosecution in relation to men and women; it directly discriminates against HIV-positive people, who are, in fact, the only subject of the crime. Furthermore, criminalization disproportionately affects the most vulnerable women and girls, which may discourage their access of prenatal treatment, which, in turn, can result in the increase of maternal mortality, as well as in mother-to-child transmission of HIV.
3. The public interest should be the main objective of the criminalization policy. Any response at the level of legislation or policies should consider the fact that prevention of HIV spreading is the major objective. This does not mean that all other aspects should be neglected or disregarded; however, such punitive measures should be thoroughly analysed, so that they do not result in adverse effects.

## RECOMMENDATIONS

1. To modernize the HIV-related legislation by excluding specific criminal provisions which criminalize HIV and applying general criminal law provisions regarding the infliction of intentional harm to health in the case of intentional HIV transmission. To this end, Art. 212 (Infection with AIDS) of the Criminal Code of the Republic of Moldova should be repealed to exclude stigmatization of PLHIV and protect their right to privacy; instead, general provisions on inflicting harm to health (such as Art. 152) should be applied.
2. To harmonize the language in the criminal legislation and national laws in accordance with the terminology recommended at the international level.[146]

146 UNAIDS Terminology Guidelines, 2015, https://www.unaids.org/sites/default/files/media_asset/2015_terminology_guidelines_en.pdf; UNESCO Guidelines on language and content in HIV and AIDS-related materials, 2006, https://unesdoc.unesco.org/ark:/48223/pf0000144725

# CHAPTER 2. KEY AFFECTED POPULATIONS AND GROUPS VULNERABLE TO HIV

Key populations are defined groups who due to specific higher-risk behaviours (e.g., people who use drugs, sex workers, men who have sex with men, incarcerated people) are at increased risk of HIV irrespective of the epidemic type or local context. Also, these groups often have legal and social issues related to their behaviours that increase their vulnerability to HIV. Key populations are important to the dynamics of HIV transmission and are essential partners in an effective response to the epidemic. Vulnerable populations are groups of people who are particularly vulnerable to HIV infection in certain situations or contexts, such as children/adolescents or migrant workers. These populations are not affected by HIV uniformly across all countries and epidemics.[147]

While HIV epidemic continues to be considered concentrated within the key populations and its proportions vary in the towns of the Republic of Moldova, the majority of cases of HIV transmission are detected within the general population. 922 new cases of HIV were reported in 2019, while the majority (88,5%) were attributed to heterosexual transmission, 5.1% to injected drug use and 3,7% to homosexual transmission.

## PEOPLE WHO USE DRUGS

### FUNDAMENTAL PRINCIPLES

National authorities must undertake every appropriate measure to reduce HIV specific vulnerabilities of people who use drugs, eliminate HIV-related discrimination against them and provide them with equitable and sustainable access to HIV-related services.[148]

147 WHO, Consolidated Guidelines on HIV Prevention, Diagnosis, Treatment, and Care for Key Populations, 2016, https://www.who.int/hiv/pub/guidelines/keypopulations-2016/en/

148 UNDP, Legal environment assessment for HIV: An operational guide to conducting national legal, regulatory and policy assessments for HIV, 2014. http://www.undp.org/content/undp/en/home/librarypage/hiv-aids/practical-manual--legal-environment-assessment-for-hiv--an-opera.html

## Tab. 15. People who use drugs: international standards

### Single Convention on Narcotic Drugs (1961) as amended by the 1972 Protocol[149]

- **Article 38.** Measures against the abuse of drugs
  1. The Parties shall give special attention to and take all practicable measures for the prevention of abuse of drugs and for the early identification, treatment, education, after-care, rehabilitation and social reintegration of the persons involved and shall co-ordinate their efforts to these ends.
  2. The Parties shall as far as possible promote the training of personnel in the treatment, after-care, rehabilitation and social reintegration of abusers of drugs.

### Convention on Psychotropic Substances (1971)[150]

- **Article 20.** Measures against the abuse of psychotropic substances
  1. The Parties shall take all practicable measures for the prevention of abuse of psychotropic substances and for the early identification, treatment, education, after-care, rehabilitation and social reintegration of the persons involved, and shall co-ordinate their efforts to these ends.
  2. The Parties shall as far as possible promote the training of personnel in the treatment, after-care, rehabilitation and social reintegration of abusers of psychotropic substances.
- **Article 22.** Penal provisions
  1. (b) Notwithstanding the preceding sub-paragraph, when abusers of psychotropic substances have committed such offences, the Parties may provide, either as an alternative to conviction or punishment or in addition to punishment, that such abusers undergo measures of treatment, education, aftercare, rehabilitation and social reintegration in conformity with paragraph 1 of article 20.

### UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988)[151]

- **Article 3.** Offences and sanctions
  4. (b) The Parties may provide, in addition to conviction or punishment, for an offence established in accordance with paragraph 1 of this article, that the offender shall undergo measures such as treatment, education, aftercare, rehabilitation or social reintegration.
  (c) Notwithstanding the preceding subparagraphs, in appropriate cases of a minor nature, the Parties may provide, as alternatives to conviction or punishment, measures such as education, rehabilitation or social reintegration, as well as, when the offender is a drug abuser, treatment and aftercare.
  (d) The Parties may provide, either as an alternative to conviction or punishment, or in addition to conviction or punishment of an offence established in accordance with paragraph 2 of this article, measures for the treatment, education, aftercare, rehabilitation or social reintegration of the offender.

149 https://www.unodc.org/documents/commissions/CND/Int_Drug_Control_Conventions/Ebook/The_International_Drug_Control_Conventions_E.pdf
150 Ibid.
151 Ibid.

### The UN Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (Bangkok Rules, 2010)[152]

- **Rule 15:** Prison health services shall provide or facilitate specialized treatment programmes designed for women substance abusers, taking into account prior victimization, the special needs of pregnant women and women with children, as well as their diverse cultural backgrounds.

### EU Drugs Strategy 2013-2020[153]

- The member state must ensure alternatives to imprisonment for persons who suffer from drug dependence.

### International Guidelines on HIV/AIDS and Human Rights, Consolidated Version (2006)[154]

- **Guideline 4,** paragraph 21 (d): Criminal law should not be an impediment to measures taken by States to reduce the risk of HIV transmission among injecting drug users and to provide HIV-related care and treatment for injecting drug users. Criminal law should be reviewed to consider: (i) the authorization or legalization and promotion of needle and syringe exchange programmes; (ii) the repeal of laws criminalizing the possession, distribution and dispensing of needles and syringes.

### International Guidelines on Human Rights and Drug Policy (2019)[155]

- **Guideline II.**1 Right to the highest attainable standard of health
  States may: Utilise the available flexibilities in the UN drug control conventions to decriminalise the possession, purchase, or cultivation of controlled substances for personal consumption.

### Report of the UN Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health (A/65/255) (2010)[156]

- 5. The present report of the Special Rapporteur considers demand-side measures related to drug control – those primarily concerned with use and possession of drugs – and their various impacts on the enjoyment of the right to health. It discusses the need for an increased focus on human rights within drug control, instead of pursuing overly punitive approaches that result in more health-related harms than those they seek to prevent.
- 6. …Additionally, Member States should ensure that harm-reduction measures and drug-dependence treatment services are available to people who use drugs, especially focusing on incarcerated populations. They also should reform domestic laws to decriminalize or de-penalize possession and use of drugs, and increase access to controlled essential medicines.

152 https://www.unodc.org/documents/justice-and-prison-reform/Bangkok_Rules_ENG_22032015.pdf
153 https://www.consilium.europa.eu/en/documents-publications/publications/european-union-drugs-strategy-2013-2020/#
154 https://www.ohchr.org/sites/default/files/Documents/Publications/HIVAIDSGuidelinesen.pdf
155 https://www.humanrights-drugpolicy.org/site/assets/files/1640/hrdp_guidelines_2020_english.pdf
156 https://www.ohchr.org/en/documents/reports/report-special-rapporteur-right-everyone-enjoyment-highest-attainable-standard-drug-control

- 76. Member States should:
  - Ensure that all harm-reduction measures (as itemized by UNAIDS) and drug-dependence treatment services, particularly opioid substitution therapy, are available to people who use drugs, in particular those among incarcerated populations.
  - Decriminalize or de-penalize possession and use of drugs.
  - Repeal or substantially reform laws and policies inhibiting the delivery of essential health services to drug users, and review law enforcement initiatives around drug control to ensure compliance with human rights obligation.
  - Amend laws, regulations and policies to increase access to controlled essential medicine.

### WHO, UNODC, UNAIDS Technical guide for countries to set targets for universal access to HIV prevention, treatment and care for injecting drug users (2012)[157]

- This document provide a comprehensive package of interventions for people who use drugs, including: needle and syringe exchange programs; opioid substitution therapy and other drug dependence treatment; HIV testing and counselling; antiretroviral therapy; prevention and treatment of STIs; condom programmes for people who inject drugs and their sexual partners; information, education and communication for people who inject drugs and their sexual partners; prevention, vaccination, diagnosis and treatment for viral hepatitis; prevention, diagnosis and treatment of tuberculosis.

### UNAIDS Strategy for 2016-2021[158]

- Countries are further encouraged to remove punitive laws, policies and practices that block an effective AIDS response, including travel restrictions and mandatory testing, and those related to HIV transmission, same-sex sexual relations, sex work and drug use.

As a national response, the Republic of Moldova has transposed into the domestic legislation some of international legal documents, which provide for a different approach towards the issue of drug use. However, to align to the Drug Control Conventions of 1961, 1971, 1988 and to the international recommendations of the UNODC, WHO and UNDAIS, it is necessary for the programs designed for the PWID to include the following nine components:

1. Syringes distribution and exchange programs;
2. Methadone substitution therapy and/or other forms of drug dependence treatment;
3. Voluntary HIV testing and counselling;
4. HIV/STI prevention and treatment;
5. HIV/AIDS prevention and treatment;
6. Condom distribution programmes for PWID and their sexual partners;
7. Specific information, education and communication for people who use drugs and their sexual partners;
8. Prevention, vaccination, diagnosis and treatment for viral hepatitis;
9. Prevention, diagnosis and treatment of tuberculosis.

157 https://apps.who.int/iris/handle/10665/77969
158 http://www.unaids.org/sites/default/files/media_asset/20151027_UNAIDS_PCB37_15_18_EN_rev1.pdf

## Tab. 16. People who use drugs: national legislation

### Law no. 411/1995 on healthcare[159]

- **Article 43.** Drug dependence treatment assistance to people suffering from chronic alcohol dependence, drug dependence or substance abuse
  (1) Treatment of people suffering from chronic alcohol dependence, drug dependence or substance abuse is usually made voluntarily, in inpatient or outpatient care, in health care centres (anonymously, if so desired).
  (2) Patients who avoid voluntary treatment shall be treated according to the law.

### Law no. 263/2005 on the rights and responsibilities of the patient[160]

- **Article 12.** Ensuring patient's right to confidentiality of information related to medical secrecy
  (1) All data on patient's identity and condition, the results of investigations, diagnosis, prognosis, treatment, as well as personal data are confidential and shall be protected including after the patient's death.
  (2) Confidentiality of information regarding the request for medical assistance, examination and treatment, including other information constituting medical secrecy, is ensured by the treating doctor and specialists involved in the provision of health care services or in biomedical research (clinical study), as well as by other persons whom this information became known due to the exercise of their professional and service duties.

### Criminal Code (Law no. 985/2002)[161]

- **Article 217.** Illegal circulation of narcotics, ethnobotanical products or analogues thereof not for the purpose of alienation
  (1) The illegal sowing or cultivation of plants containing narcotic or ethnobotanical substances, the processing or use of such plants, committed on a large scale not for the purpose of alienation, shall be punished by a fine in the amount of 200 to 400 conventional units or with community service of up to 100 hours, whereas a legal entity shall be punished by a fine in the amount of 3000 to 5000 conventional units with the deprivation of the right to practice certain activities or with the liquidation of the legal entity.
  (2) The production, preparation, experimentation, extraction, processing, transformation, purchase, storage, dispatch, transport of narcotics, ethnobotanical products or analogues thereof, committed on a large scale not for the purpose of alienation shall be punished by a fine in the amount of 400 to 700 conventional units, or with community service of up to 150 hours or by imprisonment for up to 1 year, whereas a legal entity shall be punished by a fine in the amount of 5000 to 7000 conventional units with the deprivation of the right to practice certain activities or with the liquidation of the legal entity.

### Contravention Code (Law no. 218/2008)[162]

- **Art. 85.** Illegally procuring or keeping narcotics, precursors, ethnobotanical products or analogues thereof in small amounts or consuming narcotic substances without a doctor's prescription

159 https://www.legis.md/cautare/getResults?doc_id=128014&lang=ro#
160 https://www.legis.md/cautare/getResults?doc_id=129085&lang=ro#
161 https://www.legis.md/cautare/getResults?doc_id=131599&lang=ro#
162 https://www.legis.md/cautare/getResults?doc_id=131603&lang=ro#

(1) Illegally procuring or keeping, without the purpose of alienation, of narcotics, precursors, ethnobotanical products and analogues thereof in small amounts, as well as consuming narcotics without a doctor's prescription shall be sanctioned by a fine from 30 to 60 conventional units or with community service of up to 72 hours.
(2) The person who had voluntarily turned in the illegally held narcotics, precursors, ethnobotanical products or analogues thereof, or who had voluntarily requested or accepted to voluntarily request a medical institution for the necessary assistance in connection with the illegal consumption of these substances, shall be exempted from the contravention liability for acts stipulated in this article.

### Government Decision no. 1164/2016 on the National program on the prevention and control of HIV/AIDS infection and sexually transmitted infections for the years 2016-2020[163]

- **Objective 1:** To prevent transmission of HIV and sexually transmitted infections, especially in key populations.
  **By 2020:**
  1) at least 60% of people who inject drugs are covered with prevention services under the risk reduction programs;
  2) methadone substitution treatment provided in 11 administrative territories for at least 4.2% of the estimated number of people who inject opioid drugs;
  3) 20% of the estimated number of people who inject drugs are covered with psychosocial support and rehabilitation services for timely access to the diagnosis for HIV, tuberculosis and sexually transmitted infections, as well as for timely access to treatment and adherence to treatment; …
  6) at least 60% of the people who inject drugs … tested for HIV and know the result.

### Government Decision no. 233/2020 on the approval of the National Anti-Drug Strategy for the years 2020-2027 and of the National Anti-Drug Action Plan for the years 2020-2021[164]

- Reduction of potential risks associated with all types of drugs, decrease of the economic, health, social, criminal and security impact of their use on individuals and the society, contribution to stopping the growth trend and reduction of illegal injecting drug use.

### MoH Order no. 551/2011 on the approval of Standards for the reduction of risks associated with the injecting drug use and for the psychosocial assistance to drug users[165]

- Development and early implementation of prevention activities among drug users on the basis of quality standards, when the incidence of HIV infection is still low.

163 https://www.legis.md/cautare/getResults?doc_id=111740&lang=ro
164 https://www.legis.md/cautare/getResults?doc_id=121214&lang=ro
165 http://msmps.gov.md/legislatie/ghiduri-protocoale-standarde/standarde-de-reducere-a-riscurilor-asociate-consumului-de-droguri-injectabile-si-de-asistenta-psihosociala-consumatorilor-de-droguri/

## ANALYSIS

922 new HIV cases were reported in 2019 in the Republic of Moldova, and 5.1% were attributed to the transmission as a result of injecting drug use. In 2020, the estimated number of PWID in the country was 27,500 people, including 22,780 people and HIV prevalence among PWID of 10.3% on the right bank and 4,720 people and HIV prevalence among PWID of 20% on the left bank of Nistru river.[166]

The **participants in the focus group mentioned:** people who use drugs are the most vulnerable category in the context of HIV; existing laws, that sanction drug use and HIV transmission limit their possibilities to seek testing, prevention and treatment services, which contributes to the spread of the epidemic.

### Prevention activities

Prevention of HIV transmission among people who inject drugs is essential for reducing the spread of HIV. National HIV/AIDS/STI Program for the years 2016-2020 recognizes people who inject drugs as a key population and prioritises prevention among them.

Harm reduction programs include syringe exchange. The total number of syringes distributed in 2019 was 2,279,009 (2,902,391 in 2018).[167] With estimated size of PWID population of 27,500 people, the number of syringes distributed in 2019 was on average 83 syringes per person. It is estimated that in order to support harm reduction efforts and to positively influence HIV associated behaviours among PWID, over 200 syringes per person per year should be available.[168] In this context, the reference indicator is not achieved, being situated at the lower limit (of up to 100 syringes per person). Therefore, effectiveness of the programme remains limited.

**V., PLHIV/PWID:** "...I receive syringes at the organization, but my relatives believe that it only helps me in using drugs..."

As regards the sustainability of the harm reduction programs, it should be mentioned that in 2017, for the first time in the Republic of Moldova, two NGOs were selected to provide harm reduction services to populations exposed to a higher risk of infection, which are funded by the National Health Insurance Company (NHIC) from the Prevention Measures Fund. In mid-2018, one more NGO was contracted. Thus, about 2,500 persons were covered with HIV prevention interventions, financed with NHIC resources. Nevertheless, harm reduction programs are largely dependent on the external funding.

### Methadone substitution treatment[169]

The study ***"Opioid substitution treatment services assessment in Moldova"*** (2016)[170] mentions that less than 3% of the estimated number of people who inject drugs use methadone substitution treatment, therefore, these efforts have a limited impact on the prevalence of injecting drug use. Prescription of methadone treatment requires narcological registration, which triggers

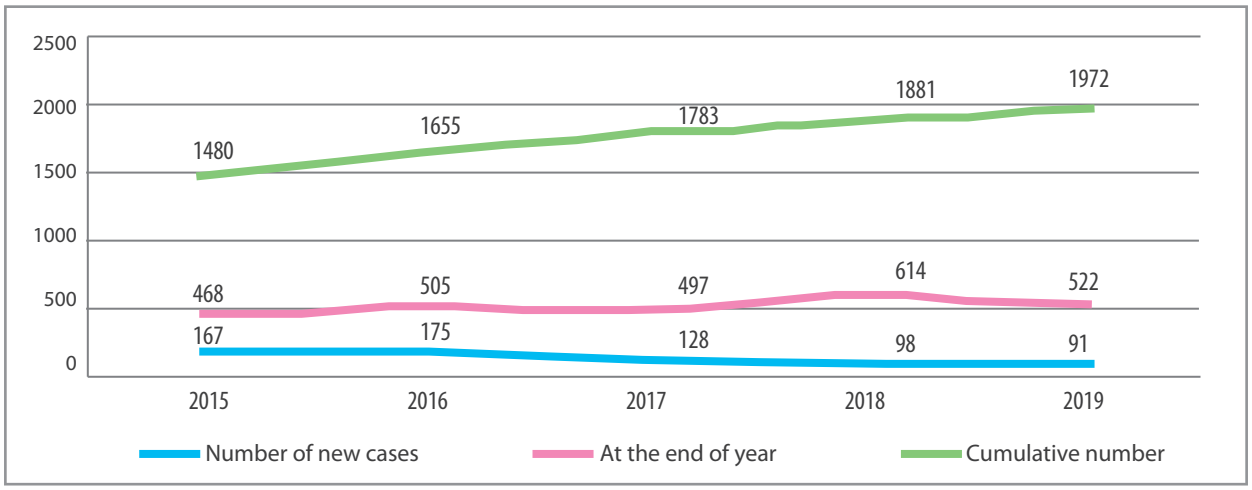
166 Dermatology and Communicable Diseases Hospital, Monitoring the HIV infection in the Republic of Moldova in 2019, https://sdmc.md/wp-content/uploads/2021/02/MD_Raport_anual_HIV_RO_2019_FINAL_DB-modificat.pdf
167 National Agency for Public Health, Illicit consumption and traffic of drugs. Annual report for 2019, https://msmps.gov.md/wp-content/uploads/2020/12/Raport_anual_2019_OND.docx
168 Indicator Registry, Needles and syringes distributed per person who injects drugs, http://www.indicatorregistry.org/indicator/people-who-inject-drugs-prevention-programmes
169 The term used by the national clinic protocol is "methadone pharmacotherapy"
170 David Otiashvili, Opioid substitution treatment services assessment in Moldova, 2016, http://www.pas.md/en/PAS/Studies/Details/75

other restrictions (e.g., for obtaining the driving license or authorization to possess weapons). The registration, coupled with impossibility of anonymous treatment, is a major barrier in attracting patients into the OST.

**C., PWID/PLHIV:** "...People are afraid to seek prevention services to avoid being registered for the drug dependence treatment, because this information is submitted to the police, to family physicians, this is causing serious issues in personal life and it is not helping people in any way. This year I will complete my methadone program, I will need to wait for three more years to be erased from the register. I am dreaming of taking my driver's license..."

Rehabilitation of people who use drugs is a health problem and should not be regarded in a different framework. Nevertheless, when PWID seek narcological treatment, their medical data are included in several databases, which could be subsequently used for limiting the rights of the PWID.

**Fig. 6. Total number of new and cumulative beneficiaries using the opioid substitution treatment (Right Bank of Nistru River), 2015-2019**




*Source: National Public Health Agency*

The narcological registration system is a major barrier that impedes those suffering from substance use problems to seek help and drug dependence treatment services, including methadone pharmacotherapy. Potential program beneficiaries do not want to be registered in the system in order to avoid the resulting consequences: deprivation of certain rights, risk of disclosure of health data, risk of losing job, etc. The narcological registration system requires fundamental redesign or even to be discontinued. An obsolete legacy of the soviet regime, the system was initially designed to control a large group of population and is not an effective public health intervention. There is no evidence that narcological registration is beneficial to the persons whom it is supposed to help (registered persons) or to the wider public.

**A., PWID/PLHIV:** "...I suggested to an acquaintance of mine, who uses drugs, to ask for methadone, but he does not want to, because so far, he had not been within the attention of the police and is not registered at the [narcological] dispensary. He believes that if he asks for assistance, his life will become extremely complicated, he would be registered, the police will keep him under control and will only wait for a pretext to put him in jail and to attribute to him as many crimes as possible. It is true, I personally have lived such "joys". The police can summon you without any reason, they begin asking questions without any reason. ...Now they can put you in jail even for two pills of Tazepam, if they find them with you, without explanations or prescription for them..."

In this context, it should be noted that the principles of providing medical and social support to PWID, – which mean that throughout the treatment, medical personnel must follow professional bioethics, including confidentiality and non-disclosure of personal data, while complying with the provisions of the Law on the Rights and Responsibilities of the Patient, – are not respected.

**Focus group discussion:** There is access to methadone, but as group participants have mentioned and according to the community data, people who use drugs do not really tend to join the program, because they do not want to be registered and make information about them known to the police and the polyclinic. Anonymous treatment programs do not exist.

**Criminalization of people who use drugs**

According to the international standards and recommendations, the national criminal legislation shall not undermine the states' implementation of HIV transmission risk reduction measures and the provision of care and treatment services to the PWID. The National Anti-Drug Strategy defines interventions for reducing the supply of and demand for illicit substances and for balancing the governmental response between punitive measures (e.g., enforcement of laws on drug trafficking) and compassionate policies for substance users. The fight against illegal circulation of narcotic substances in the contemporary society has led to criminalization of drug use and to approaching this problem as a legal issue rather than a medical one.

In the light of the correct regulation of illegal public consumption of drugs, the international instruments in this field (the Convention on Psychotropic Substances (1971) and the UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988)) provide for the need to apply treatment, education, aftercare, rehabilitation and social reintegration measures for persons who abuse drugs, instead of convicting them or applying other punishments.

People who use drugs must be seen as persons who need medical care and treatment and psychological support, and not as offenders, subjects of criminal liability, because criminal sanctions neither contribute to the decrease in the number of people who use drugs, nor motivate them to give up drug use.

Thus, ingrained stereotypes about people who use drugs today are amounting to anti-human acts, discrimination and violation of fundamental rights of these persons, such as the right to health, information, private life, equality before the law, freedom, etc. As a result, this group of people, being afraid of stigmatization and discrimination, goes underground, which significantly complicates their access to medical services, thus worsening their health condition.

According to the **Criminal Code**, personal use of narcotic and psychotropic substances is not criminally punished, except for the use in public or for organizing illegal use (Art. $217^5$ of the Criminal Code). According to the Art. 85 of the **Contravention Code**, the use of narcotics is a contravention. Nevertheless, the users are prosecuted for possessing narcotic drugs, according to the regulated quantities, even if this possession is strictly for personal use. This problem is there because the quantities for personal use in relation to the minimal and maximal quantities, provided for in the **Government Decision no. 79/2006 on the approval of the List of narcotic and psychotropic substances and plants containing such substances detected in illicit trafficking, as well as their quantities,**[171] neither reflect individual needs of every person who uses drugs, nor recognize that a person may possess more than a single dose without necessarily planning to sell it.

171 https://www.legis.md/cautare/getResults?doc_id=103676&lang=ro

Comparing the small and large quantities of narcotic substances regulated in the Republic of Moldova with the similar quantities from other states (Austria, Spain, Portugal), one can observe that what in Moldova is classified as large quantity in other states is qualified as small quantity and the possession for personal consumption is not sanctioned.[172]

**Fig. 7. Comparing the small and large quantities of narcotic substances regulated in the Republic of Moldova with the similar quantities from other states (Austria, Spain, Portugal)**

| No | Substance | Moldova | | Austria | | Spain | | Portugal | |
|---|---|---|---|---|---|---|---|---|---|
| | | **Small quantity, g** | **Large quantity, g** | **Small quantity, g (possession allowed up to >)** | **Large quantity, g** | **Small quantity, g (possession allowed up to >)** | **Large quantity, g** | **Small quantity, g (possession allowed up to >)** | **Large quantity, g** |
| 1. | Cocaine | 0-0,15 | 0,15-5,0 | >15 | 15-225 | >7.5 | 750 | >1,5 | 30 |
| **2.** | **Heroine** | **0-0,01** | **0,01-2,5** | **>3** | **3-45** | **>3** | **300** | **>1** | **15** |
| 3. | Cannabis (Marijuana) | 0-2,0 | 2,0 - 500 | >20 | 20-300 | >25 | 2.5 kg | >10 | 1 kg |
| **4.** | **Ecstasy** | **0-0,05** | **0,05-5,0** | **>30** | **30-450** | **>2.4** | **240** | **>10 tablets** | **300 tablets** |

A legal norm is clear and predictable only when it is formulated with sufficient precision to enable any person to regulate his or her conduct and be able, with appropriate advice, to foresee, to a degree that it is reasonable, the consequences which a given action may entail.[173] Given the current situation, there is no clarity as regards the punishment which may arise in case of drug use. The criminal norm, which is aimed against drug dealers, through the provisions of the Government Decision no. 79/2006, is in fact used against people who use drugs. Drug use should not be criminalised and prosecuted. In this connection, it should be reiterated that drug dependence is a disease, which is underlined in the standards of psychological assistance of people who use drugs, approved by the **MoH Order no. 551/2011**, as well as according to the International Classification of Diseases.[174]

According to the **Law on healthcare**, people with drug dependence have the right to benefit from information about the nature of their disease, the purpose and length of recommended drug dependence care, prescribed treatment procedures and methods, expected outcomes, possible side effects, as well as about alternative treatment methods. Therefore, the treatment of persons suffering from chronic alcoholism, drug dependence or substance abuse is usually conducted on a voluntary basis in outpatient or inpatient care facilities, in care-prophylactic institutions (anonymously if wished so), while the patients who evade voluntary treatment, shall be treated according to the law.

PWID suffer from unfair access to justice because of discrimination on the grounds of health condition. According to the **Criminal Code (e.g., Art. 264, para. (2))**, the state of intoxication (caused by drugs or alcohol) when committing an offense is an aggravating circumstance, which implies a more severe punishment (even if it does not increase the damage caused by the offense). If a person is charged with a minor or less severe offense, pleads guilty, does not pose any social threat and can be rehabilitated without imposing a punishment, criminal prosecution can be conditionally suspended, except for persons with an alcohol or drug dependence **(Art. 510,**

172 The European Monitoring Centre for Drugs and Drug Addiction (EMCDDA) http://www.emcdda.europa.eu/html.cfm//index99321EN.html

173 European Court of Human Rights, Silver and Ohers v. the United Kingdom, 25 March 1983, http://hudoc.echr.coe.int/eng?i=001-57577

174 WHO, 10th revision; the code of the disease: (CIM 10): F11.0 - F11.9. https://icd.who.int/browse10/2019/en

**para. (2), pct. 2) of Criminal Procedure Code**[175]**).** These provisions are discriminatory since health condition (drug or alcohol dependence) is a ground for denying an opportunity to avoid criminal prosecution, which is afforded to people without such a condition.

**Focus group participants** believe that criminalization of drug use limits the possibilities to benefit from drug dependence treatment and prevention programs. As group participants have mentioned, resorting to methadone pharmacotherapy would be accompanied with a compulsory narcological registration and transmission of data to the police and family physicians, which creates serious problems for the patients' personal life. At the same time, the punitive approach of the criminal law towards PWID only worsens their situation, contributes to the spread of the epidemic and creates space for corruption. There is a need to amend the legislation and to repeal the provisions on criminal prosecution for possession of drugs for personal use.

**C., PLHIV/PWID:** "...I have not been using drugs for already 4 years, because I joined the methadone program. But I am regularly summoned to the police, they want to know if I didn't resume using drugs. They ask me about my friends who use drugs, so that they could, I believe, blackmail them and ask for a bribe, in order not to put them in jail... Here, in general, we have no protection for people who use drugs and methadone program clients. Once, when we were waiting at the gate for the medical office to open, a passer-by, knowing probably what kind of facility this is, began to humiliate us and when we revolted, he simply kicked me..."

## CASE STUDY

P.N. is charged with committing an offense under Art. 217(2) of the Criminal Code of the Republic of Moldova ("Illegal circulation of narcotics, ethnobotanical products or analogues thereof without an intent to sell"). On 12 June 2017, P.N. was found carrying 0.015 g of phyto-cannabinoid MDMB, provided for at the point 193 of the List of narcotic and psychotropic substances and plants containing such substances detected in illicit trafficking, as well as their quantities, approved by Government Decision no. 79/2006. According to this Government Decision, 0.015 g is deemed a large quantity of narcotic substance.

P.N. is under the supervision of the Republican Drug Addiction Treatment Dispensary with the diagnosis of "drug addiction".

According to the information issued by the NGO Union for HIV Prevention and Harm Reduction (UORN),[176] the quantity of 0.015 g of the synthetic cannabinoid MDMB (N) does not exceed the quantity for a single personal use by a person who uses drugs.

The case was under examination by the Chisinau Court in 2019.

## CONCLUSIONS

1. The existing narcological registration is a form of control over people who use drugs and not an effective public health intervention.
2. Drug use for non-medical purposes and possession of drugs for personal use can be prosecuted. International conventions and standards recommend excluding the punishment for

175 https://www.legis.md/cautare/getResults?doc_id=130985&lang=ro#
176 http://uorn.md/

the possession of drugs for personal use and dismissing minor and non-violent offences committed by PWID. There are neither alternative punishments to imprisonment nor referrals to programs for rehabilitation and treatment of drug dependence.

3. The currently available services for people who use drugs are neither gender specific, nor sensitive to the needs of women in case of treatment, childcare process, etc. Women who use drugs may lose custody over children, if social assistance service is informed of their addiction; also, there are no services which would intervene in critical situations, in which women who use drugs suffer from domestic violence.
4. The National Anti-Drug Strategy has no distinct budget, while the National Anti-Drug Commission has an advisory role and it has no permanent secretariat.

## RECOMMENDATIONS

1. To ensure coordination of health and law enforcement policies, with the emphasis on preventing harmful effects of drug use.
2. To review and adjust the criminal and contravention legal framework in accordance with the international recommendations on decriminalization and/or depenalization of the use of drugs for non-medical purposes and the purchase and the possession of drugs for personal use, unless it is proven that they were purchased or possessed with an intent to sell.
3. To amend the Government Decision no. 79/2006 in order to adjust the quantities of narcotic substances held by persons who use drugs for personal use, considering also the possession of multiple doses for personal use. The same provisions should apply to persons in detention.
4. To amend the Criminal Code by providing for drug dependence treatment as an alternative to deprivation of liberty or instead of a complementary punishment and to include an option of suspended conditional sentencing for persons who voluntarily accept drug dependence treatment.
5. To evaluate the narcological registration system with a view to reforming or disbanding it should the evaluation reveal lack of effectiveness or a negative impact on public health and human rights.
6. To integrate psycho-social and health care services provided for people who use drugs.
7. To ensure adequate funding from the national and local budgets for the implementation of HIV prevention programs for PWID.
8. To establish a protection mechanism for the implementation of harm reduction programs for providers and beneficiaries.
9. To introduce alternative measures to detention by creating referral mechanism to rehabilitation, treatment and re-socialization programs for drug dependence.
10. To create a permanent secretariat of the National Anti-Drug Commission.

# SEX WORKERS (ADULTS)

## FUNDAMENTAL PRINCIPLES

Reducing specific HIV vulnerability of adult sex workers, including eliminating HIV-related discrimination and providing them with equitable and sustainable access to comprehensive HIV-related services are basic measures in HIV epidemics prevention and control.[177]

## Tab. 17. Sex workers: international standards

### UN Convention on Eliminating All Forms of Discrimination against Women (1979)[178]

- **Article 6**
  States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.

### Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (2000)[179]

### Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (2007)[180]

- **Article 19.** Offences concerning child prostitution

### International Guidelines on HIV/AIDS and Human Rights, Consolidated Version (2006)[181]

- **Principle 4, para. 21:**
  (b) Criminal law prohibiting sexual acts (including adultery, sodomy, fornication and commercial sexual encounters) between consenting adults in private should be reviewed, with the aim of repeal. In any event, they should not be allowed to impede provision of HIV prevention and care services.
  (c) With regard to adult sex work that involves no victimization, criminal law should be reviewed with the aim of decriminalizing, then legally regulating occupational health and safety conditions to protect sex workers and their clients ... Criminal law should not impede provision of HIV prevention and care services to sex workers and their clients. Criminal law should ensure that children and adult sex workers who have been trafficked or otherwise coerced into sex work are protected from participation in the sex industry and are not prosecuted for such participation but rather are removed from sex work and provided with medical and psycho-social support services, including those related to HIV.

177 UNDP, Legal environment assessment for HIV: An operational guide to conducting national legal, regulatory and policy assessments for HIV, 2104, http://www.undp.org/content/undp/en/home/librarypage/hiv-aids/practical-manual--legal-environment-assessment-for-hiv--an-opera.html
178 https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-elimination-all-forms-discrimination-against-women
179 https://www.ohchr.org/en/instruments-mechanisms/instruments/optional-protocol-convention-rights-child-sale-children-child
180 https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/201
181 https://www.ohchr.org/sites/default/files/Documents/Publications/HIVAIDSGuidelinesen.pdf

### Report of the UN Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health (A/HRC/14/20) (2010)[182]

- **76. The Special Rapporteur calls upon States:**
  (b) To repeal all laws criminalizing sex work and practices around it, and to establish appropriate regulatory frameworks within which sex workers can enjoy the safe working conditions to which they are entitled. He recommends that States implement programmes and educational initiatives to allow sex workers access to appropriate, quality health services;
  (d) To introduce monitoring and accountability mechanisms so as to ensure their obligations to safeguard the enjoyment of the right to health through legislative, judicial and administrative mechanisms, including policies and practices to protect against violations;
  (e) To provide human rights education for health professionals, and to create an environment conducive to collective action and participation.

### WHO Consolidated guidelines on HIV prevention, diagnosis, treatment and care for key populations (2016 Update)[183]

- These guidelines recommend countries to take measures to eliminate the police practice of using the possession of condoms as evidence of sex work and grounds to arrest sex workers, as well as the wide latitude of the police to arrest and detain sex workers without cause, including police extortion. It also recommends and focuses more on ensuring sex workers' access to contraception.

### UNAIDS Strategy for 2016-2021[184]

- 90-90-90 objectives support efficient HIV prevention and treatment services, including the use of improved methods of HIV detection, HIV treatments and techniques to maintain patients' adherence to treatment. This strategy may be successful only if the needs and interests of interested populations, such as the SW, are met.

The Republic of Moldova is party to a number of conventions related to sex work and prostitution and pimping: Convention on eliminating all forms of discrimination against women (1979); Optional protocol to the Convention on the rights of the child on the sale of children, child prostitution and child pornography (2000); Council of Europe Convention on the protection of children against sexual exploitation and sexual abuse (2007). To transpose the international commitments taken by the Republic of Moldova, legal measures were taken through the provisions of the Criminal Code and the Contravention Code aimed at preventing and counteracting against prostitution and its permanent satellite – pimping. Thus, Art. 89 of the Contravention Code punishes the practice of prostitution, while involving others in sex work or getting income from others' engagement in sex work is punishable under Art. 220 of the Criminal Code.

182 https://undocs.org/A/HRC/14/20
183 https://www.who.int/hiv/pub/guidelines/keypopulations-2016/en/
184 http://www.unaids.org/sites/default/files/media_asset/20151027_UNAIDS_PCB37_15_18_EN_rev1.pdf

## Tab. 18. Sex workers: national legislation

### Criminal Code (Law no. 985/2002)[185]

- **Article 220.** Pimping
  (1) Encouraging or inducing a person to practice prostitution or facilitating prostitution or gaining benefits from practicing prostitution by another person, if the deed does not meet the elements of the trafficking in human beings, shall be punished by a fine in the amount of 650 to 1350 conventional units or by imprisonment for 2 to 5 years.

### Contravention Code (Law no. 218/2008)[186]

- **Art. 89.** Practice of prostitution
  (1) Practice of prostitution, meaning satisfying a person's sexual desire through any method and/or means, against payment, including through information technologies or electronic communications, shall be sanctioned with a fine of 36 to 48 conventional units or with community service of 40 to 60 hours.

### Government Decision no. 1164/2016 on the National program on the prevention and control of HIV/AIDS infection and sexually transmitted infections for the years 2016-2020[187]

- **Objective 1:** To prevent transmission of HIV and sexually transmitted infections, especially in key populations.
  **By 2020:**
  4) at least 60% of the female commercial sex workers are covered with prevention services within HIV prevention programs and services among female commercial sex workers in 10 administrative territories; …
  6) at least 60% of … female commercial sex workers … tested for HIV and know their result.

## ANALYSIS

HIV epidemic continues to be concentrated among the groups with a higher risk of infection, including sex workers (women and men). In 2020, the estimated number of SW was 15,800 with an average HIV prevalence of 2.7%.[188] Female SW are considered to be a key population vulnerable to HIV, first of all because they bear a larger infection burden compared to the general population and because most of the times female SW have unprotected sex with more partners with unknown status.

SW are a vulnerable group as regards the HIV transmission and they often do not have access to prevention, treatment, care and counselling services. Therefore, the laws should focus on their protection against exploitation and abuse and provide a safe environment. Criminalization only pushes sex work to the illegal market, where there is little room for safety and respect of human rights, such as the right to health and protection.

SW are stigmatized and discriminated against in the society and face harassment, violence and abuse. Besides, criminalization of sex work creates barriers for SW to access health services to

185 https://www.legis.md/cautare/getResults?doc_id=131599&lang=ro#
186 https://www.legis.md/cautare/getResults?doc_id=131603&lang=ro#
187 https://www.legis.md/cautare/getResults?doc_id=111740&lang=ro
188 Dermatology and Communicable Diseases Hospital, Monitoring the HIV infection in the Republic of Moldova in 2019, https://sdmc.md/wp-content/uploads/2021/02/MD_Raport_anual_HIV_RO_2019_FINAL_DB-modificat.pdf

prevent the spread of HIV and other STI. The fear of being reported and punished impedes the access of SW to healthcare services and undermines HIV policies and prevention strategies, which are based on mobilization of key populations to seek prevention and early treatment.

From the human rights perspective, criminalization of sex work implies several human rights violations, including the violation of the right to equality, to health, to self-determination, to human dignity, and to privacy. It also puts an additional burden on female SW, who are disproportionately affected by the legislation on sex work.

Regional social centres for assisting persons infected with HIV/AIDS and their family members, which operate based on the **Government Decision no. 1010/2016,**[189] provide psycho-social assistance only to HIV-positive persons and members of the family where one or more persons have HIV. In this context, a SW can benefit from psycho-social services only if he/she is a person living with HIV or is a family member of a person living with HIV. In this regard, it would be appropriate to expand the services provided by the above-mentioned centres to cover SW or, as another solution, to provide this assistance to sex workers within the Centres of assistance and protection of victims of trafficking in human beings, established on the basis of the **Law no. 241/2005 on the prevention and combating trafficking in human-beings**.[190] At the same time, it should be taken into account the fact that SW are a closed and less responsive group.

**Focus group discussion:** Access to specialized health services is limited due to the lack of health insurance policy. For example, as women sex workers from the Southern region of the country mentioned, free access to the gynaecologist is possible for them only in the clinic "Virginia" (Cahul Municipality). The manager of the Centre made personal arrangements on this, but the service is not very demanded, because in order to access it, the beneficiary must inform that she belongs to the vulnerable group. All of them are afraid to use it, because they believe that the information will get to the police and the beneficiaries will face problems. The participants welcomed the possibility to do the HIV testing at the Centre of assistance and protection of victims of trafficking in human beings.

## CONCLUSIONS

1. Sex workers are a marginalized group with a higher risk of HIV.
2. The legislation of the Republic of Moldova had not adopted comprehensive policies for regulating sex work, the issue of decriminalizing the provision of sex services continues to be debated, which is a sign of low level of awareness and understanding of the rights of SW among law enforcement bodies, judiciary and other relevant stakeholders.
3. There are no programs that reduce stigmatization and discrimination of SW, nor are there mechanisms to protect this group.
4. There is a gap between the planning of quantitative objectives in the National HIV/AIDS/STI Program for covering HIV prevention among SW and financial coverage for their implementation (currently, this depends on funding from international organizations).

189 https://www.legis.md/cautare/getResults?doc_id=100662&lang=ro#
190 https://www.legis.md/cautare/getResults?doc_id=107319&lang=ro#

## RECOMMENDATIONS

1. To decriminalize sex work. According to the International Guidelines on HIV/AIDS and Human Rights, laws related to adult sex work should be reviewed with the aim of decriminalizing, then legally regulating occupational health and safety conditions to protect sex workers and their clients, including support for safe sex during sex work.
2. To develop and introduce an administrative mechanism for monitoring the enforcement of legislation on the rights of patients and compulsory reporting (registration) of cases of SW discrimination when they seek health care or prevention services.
3. To develop and implement discrimination reduction programs by involving all relevant stakeholders in order to protect the rights of SW; to take a systematic approach towards assistance for planning anti-discrimination activities considered as an integral part of health service provision.
4. To carry out awareness raising campaigns to reduce stigma, discrimination and harassment of SW by service providers (including health service providers).
5. To develop integrated programs for sex workers and to add them as a target group of social centres for PLHIV/PWID, where they could be provided with psychological, material and medical assistance, including treatment for alcohol and drug dependence, as well as support in finding a place of work and in the process of social inclusion.
6. To conduct a survey among SW on the impact of risk reduction programmes, including in the regions, aiming at developing recommendations for their adaptation and improvement.

# LGBT PERSONS

## FUNDAMENTAL PRINCIPLES

The state must undertake all appropriate measures to identify and reduce the factors of HIV infection risks, which affect MSM and transgender people, eliminate HIV-related discrimination against them, and provide them with equitable and sustainable access to HIV prevention and treatment services.[191]

## Tab. 19. LGBT persons: international standards

### International Covenant on Civil and Political Rights (1966)[192]

- **Article 2**
  (1) Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

191 UNDP, Legal environment assessment for HIV: An operational guide to conducting national legal, regulatory and policy assessments for HIV, 2014, http://www.undp.org/content/undp/en/home/librarypage/hiv-aids/practical-manual--legal-environment-assessment-for-hiv--an-opera.html

192 https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights

### International Covenant on Economic, Social and Cultural (1966)[193]

- **Article 2**
  (2) The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

### Committee on Economic, Social and Cultural Rights, General Comment no. 20: Non-discrimination in economic, social and cultural rights (art. 2, para. 2 of the International Covenant on Economic, Social and Cultural Rights) (E/C.12/GC/20)[194]

- Sexual orientation and gender identity
  32. "Other status" as recognized in article 2, paragraph 2, includes sexual orientation. States parties should ensure that a person's sexual orientation is not a barrier to realizing Covenant rights, for example, in accessing survivor's pension rights. In addition, gender identity is recognized as among the prohibited grounds of discrimination; for example, persons who are transgender, transsexual or intersex often face serious human rights violations, such as harassment in schools or in the workplace.

### European Convention for the Protection of Human Rights and Fundamental Freedoms (1950)[195]

- **Article 14.** Prohibition of discrimination
  The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

### Protocol No. 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms (2000)[196]

- **Article 1** – General prohibition of discrimination
  1. The enjoyment of any right set forth by law shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.
  2. No one shall be discriminated against by any public authority on any ground such as those mentioned in paragraph 1.

### Report of the UN High Commissioner for Human Rights, Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity (A/HRC/19/41) (2011)[197]

- This document includes recommendations which refer to the rights of the LGBT community globally, including to: "repeal laws used to criminalize individuals on grounds of homosexuality for engaging in consensual same-sex sexual conduct".

193 https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights
194 https://undocs.org/en/E/C.12/GC/20
195 https://www.echr.coe.int/documents/convention_eng.pdf
196 https://www.coe.int/en/web/conventions/full-list?module=treaty-detail&treatynum=177
197 https://undocs.org/A/HRC/19/41

- The report highlights large scale discrimination and violence, that LGBT people face throughout the world and urge the states to enact the international legal framework to end these human rights violations.

### International Guidelines on HIV/AIDS and Human Rights, Consolidated (2006)[198]

- **Principle 4,** para. 21:
  (b) Criminal law prohibiting sexual acts (including adultery, sodomy, fornication and commercial sexual encounters) between consenting adults in private should be reviewed with the aim of repeal. In any event, they should not be allowed to impede provision of HIV prevention and care services.

### WHO Consolidated guidelines on HIV prevention, diagnosis, treatment and care for key populations (2016 Update)[199]

- This document identifies HIV risk factors which affect both the MSM, as well as transgender persons, as well as offers a range of interventions and treatment recommendations.

## Tab. 20. LGBT persons: national legislation

### Law no. 121/2012 on ensuring equality[200]

- **Article 1.** Purpose and scope of the law
  (1) The purpose of this law is to prevent and combat discrimination and ensure equality of all persons on the territory of the Republic of Moldova in the political, economic, social, cultural and other spheres of life, regardless of race, colour, nationality, ethnic origin, language, religion or belief, sex, age, disability, opinion, political affiliation or any other similar criteria.

### Government Decision no. 1164/2016 on the National program on the prevention and control of HIV/AIDS infection and sexually transmitted infections for the years 2016-2020[201]

- **Objective 1:** To prevent transmission of HIV and sexually transmitted infections among key populations
  **By 2020:**
  5) At least 40% of men who practice sex with men are covered with HIV prevention services.
  6) … at least 40% of men who practice sex with men are tested for HIV and know their result.

## ANALYSIS

Although **Law no. 121/2012 on ensuring equality** provides for prevention and combating discrimination, as well as for ensuring equality of all persons on the territory of the Republic of Moldova based on various grounds, still there are no express provisions on gender identity, sexual orientation and sexual practices as protected grounds, which concerns MSM and transgender persons. The Equality Council's **General Report on Preventing and Combating Discrimination in the Republic of Moldova (2015)**[202] points to the fact that, although the criterion of sexual

198 https://www.ohchr.org/sites/default/files/Documents/Publications/HIVAIDSGuidelinesen.pdf
199 https://www.who.int/hiv/pub/guidelines/keypopulations-2016/en/
200 https://www.legis.md/cautare/getResults?doc_id=106454&lang=ro
201 https://www.legis.md/cautare/getResults?doc_id=111740&lang=ro
202 http://egalitate.md/wp-content/uploads/2016/04/Raport-general-2015-2.pdf

orientation is not provided for expressly in the list of protected criteria, specified in Art. 1 of the Law, it is covered by the phrase "other similar criteria", being also deducted from the ECtHR caselaw. As a result, discrimination based on sexual orientation in any sphere of life is prohibited. Nevertheless, high community stigma affects the enforcement of legal mechanisms for defending constitutional rights of LGBT persons and contributes to the discrimination and harassment against them.

The National HIV/AIDS/STI Program sets out guidelines and recommendations regarding the HIV prevention among MSM, but it lacks such provisions for other sexual minorities or for flexible gender identity groups (for instance, transgender people). Therefore, due to these limitations, the HIV programs targeting LGBT people are adapted exclusively for MSM and their sexual partners.

Another problem is the fact that cases of ill-treatment and discrimination against this group are often not recognized as such by the public authorities. In particular, the causal link between the alleged ill-treatment and belonging of the victims to certain groups (e.g., women, persons with disabilities, LGBT people or other vulnerable categories) is not recognized. But even when such link is ascertained, besides the lack of experience and understanding, related to the respective cases, there is also lack of knowledge by prosecutors of the legislation applicable in such cases and inappropriate training of investigation officers, their inability to build the strongest case possible to support the victims. The failure to comprehensively understand these types of cases is an impediment in trying to ensure an adequate legal remedy for the victims. In general, it is clear that the task of preventing discriminatory ill-treatment in the society becomes more difficult as the phenomenon remains unrecognized or not understood by the authorities. The lack of a formal legal status of same-sex couples may impede, directly or indirectly, LGBT persons and their partners from benefiting from HIV prevention and treatment services.[203] According to publicly available data,[204] in 2020, the size of MSM population in Moldova was estimated to be 14,600 people (including 12,965 on the right bank and 1,635 on the left bank of Nistru River), with an HIV prevalence of 11.4% on the right bank.

**Legal issues affecting transgender people**. Among discriminatory practices affecting transgender people are limited access to gender reassignment surgeries and bureaucratic barriers that restrict the gender reassignment in official papers. The legislation of the Republic of Moldova does not provide for a mechanism of applying for and performing a gender reassignment procedure.

## CASE STUDY

In 2015, the Equality Council has examined the case of discrimination in the access to public services and goods (case 329/15)[205] and established discrimination on the grounds of sexual orientation. The Council concluded that the petitioners were treated less favourably in the fulfilment of their right to participate in leisure activities. The Council could not uphold as objective and reasonable the justification of the respondent that the restriction of the petitioners' access to the place of entertainment would be determined by requests of heterosexual clients, who

203 Promo-LEX, Discrimination-based ill-treatment in Moldova, 2012, https://promolex.md/wp-content/uploads/2017/03/Raport_rele-tratamente_2012.pdf
204 Dermatology and Communicable Diseases Hospital, Monitoring the HIV infection in the Republic of Moldova in 2019, https://sdmc.md/wp-content/uploads/2021/02/MD_Raport_anual_HIV_RO_2019_FINAL_DB-modificat.pdf
205 http://egalitate.md/wp-content/uploads/2016/04/decizie_329_15_depersonalizat_8041531.pdf

represent a majority of visitors of the place. Moreover, the Council also noted that the defendant while providing public services has an obligation to ensure access of all beneficiaries without discrimination.

## FINDINGS

1. LGBT people continue to suffer from high levels of discrimination, violence and other violations of human rights. Discriminatory legislation complicates their access to HIV prevention, health care and other social services.
2. Although all forms of discrimination are illegal, the existing legislation does not provide specific mechanisms to ensure adequate legal protection of LGBT people. These practices perpetuate the marginalization of LGBT people and impede their access to essential HIV prevention and treatment services.

## RECOMMENDATIONS

1. To review the Law no. 121/2012 on ensuring equality and include "sexual orientation" and "gender identity" into the list of protected grounds.
2. To develop and adopt procedures and regulations on replacing/updating all official documentation (e.g., birth certificate, passport/ID, diplomas, identification codes, etc.), so that transgender people can officially change their sexual identity, thus ensuring the respect for their dignity and privacy.
3. To revise healthcare assistance provision training curricula to include modules on the health of vulnerable groups, including LGBT persons.
4. To undertake measures to ensure adequate investigation of cases of violence against LGBT persons, such as training for law enforcement staff, drafting investigation guidelines and recommendations.
5. To strengthen the involvement of LGBT community, including by adjusting HIV response coordination mechanisms to include representatives of all sexual minorities and to be better adapted to the specific health and other needs of LGBT persons.

# WOMEN

## FUNDAMENTAL PRINCIPLES

Women are particularly vulnerable to and disproportionately affected by HIV due to biological, social, economic, legal and cultural factors, highlighting gender roles, unbalanced power relations and the acceptance of violence against women by society.[206] The state bears the responsibility to take all necessary measures to improve health of women: to reduce specific HIV vulnerabilities, to eliminate HIV-related discrimination and stigmatization, to provide them with equitable and sustainable access to comprehensive HIV-related services.[207]

206 UNAIDS, Agenda for accelerated country action for women, girls, gender equality and HIV - Operational plan for the UNAIDS action framework: addressing women, girls, gender equality and HIV, 2010, https://www.unaids.org/en/resources/documents/2010/20100723_20100226_jc1794_agenda_for_accelerated_country_action_en.pdf

207 UNDP, Legal environment assessment for HIV: An operational guide to conducting national legal, regulatory and policy assessments for HIV, 2104, http://www.undp.org/content/undp/en/home/librarypage/hiv-aids/practical-manual--le-

## Tab. 21. Women: international standards

### Convention on the Elimination of All Forms of Discrimination against Women (1979)[208]

- **Article 1**
  For the purposes of the present Convention, the term "discrimination against women" shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

### Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention, 2011)[209]

- **Article 2.** Scope of the Convention
  1. This Convention shall apply to all forms of violence against women, including domestic violence, which affects women disproportionately.
- **Article 4** – Fundamental rights, equality and non-discrimination
  1. Parties shall take the necessary legislative and other measures to promote and protect the right for everyone, particularly women, to live free from violence in both the public and the private sphere.
  2. Parties condemn all forms of discrimination against women and take, without delay, the necessary legislative and other measures to prevent it, in particular by:
  – embodying in their national constitutions or other appropriate legislation the principle of equality between women and men and ensuring the practical realisation of this principle;
  – prohibiting discrimination against women, including through the use of sanctions, where appropriate;
  – abolishing laws and practices which discriminate against women.
  3. The implementation of the provisions of this Convention by the Parties, in particular measures to protect the rights of victims, shall be secured without discrimination on any ground such as sex, gender, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth, sexual orientation, gender identity, age, state of health, disability, marital status, migrant or refugee status, or other status.
  4. Special measures that are necessary to prevent and protect women from gender-based violence shall not be considered discrimination under the terms of this Convention.

### The UN Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (Bangkok Rules, 2010)[210]

- **Rule 14:** In developing responses to HIV/AIDS in penal institutions, programmes and services shall be responsive to the specific needs of women, including prevention of mother-to-child transmission. In this context, prison authorities shall encourage and support the develop-

gal-environment-assessment-for-hiv--an-opera.html

208 https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-elimination-all-forms-discrimination-against-women

209 https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/210

210 https://www.unodc.org/documents/justice-and-prison-reform/Bangkok_Rules_ENG_22032015.pdf

ment of initiatives on HIV prevention, treatment and care, such as peer-based education.

### Beijing Declaration and Platform for Action (1995)[211]

- To promote a set of principles concerning equality between women and men, a Women empowerment action platform had been set in place. It is based on evidence which confirm that women and girls rights are an integral and indivisible component of the universal human rights.
- Strategic objective C.3.
  Undertake gender-sensitive initiatives that address sexually transmitted diseases, HIV/AIDS, and sexual and reproductive health issues.

### 2030 Agenda for Sustainable Development and Sustainable Development Goals (2015)[212]

- The Sustainable Development Goals are the blueprint to achieve a better and more sustainable future for all. They address the global challenges we face, including poverty, inequality, climate change, environmental degradation, peace and justice.
- **Goal 3.** Ensure healthy lives and promote well-being for all at all ages
  Target 3.3: By 2030, end the epidemics of AIDS, tuberculosis, malaria and neglected tropical diseases and combat hepatitis, water-borne diseases and other communicable diseases
  National Target: 3.3.1 By 2030, reduce transmission of HIV and sexually transmitted infections, especially in key populations and mortality associated with HIV.
- **Goal 5.** Achieve gender equality and empower all women and girls
  **Targets:**
  5.1 End all forms of discrimination against all women and girls everywhere.
  5.2 Eliminate all forms of violence against all women and girls in the public and private spheres, including trafficking and sexual and other types of exploitation.
  5.6 Ensure universal access to sexual and reproductive health and reproductive rights as agreed in accordance with the Programme of Action of the International Conference on Population and Development and the Beijing Platform for Action and the outcome documents of their review conferences.
  **National Targets:**
  5.1 End all forms of discrimination against all women and girls.
  5.2 Prevention and elimination of violence against girls and women, including trafficking.
  5.6 Ensure universal access to sexual and reproductive health-care services, including for family planning and to sexual and reproductive information and education.

## Tab. 22. Women: national legislation

### Constitution of the Republic of Moldova (1994)[213]

- **Article 16.** Equality
  (1) The respect and protection of the person shall constitute the foremost duty of the State.
  (2) All citizens of the Republic of Moldova are equal before the law and public authorities, regardless of the race, nationality, ethnic origin, language, religion, sex, opinion, political

211 http://www.un.org/womenwatch/daw/beijing/pdf/BDPfA%20E.pdf
212 https://www.un.org/sustainabledevelopment/sustainable-development-goals/
213 https://www.legis.md/cautare/getResults?doc_id=128016&lang=ro

affiliation, property or social origin.

### Law no. 23/2007 on prevention of HIV/AIDS infection[214]

- **Article 6.** Family, children, youth, women and HIV/AIDS infection
  (5) HIV-positive women benefit from free of charge contraception, including voluntary sterilization based on appropriate counselling.
  (6) To reduce women vulnerability to HIV infection, education and equality of sexes promotion measures will be implemented via national and territorial programs.

### Law no. 5/2006 on ensuring equal opportunities for women and men[215]

- **Article 5.** Prohibition of discrimination on the criterion of sex
  (1) In the Republic of Moldova women and men enjoy equal rights and freedoms, being guaranteed equal opportunities for their exercise.

### Government Decision no. 1164/2016 on the National program on the prevention and control of HIV/AIDS infection and sexually transmitted infections for the years 2016-2020[216]

- **Objective 2.** To ensure universal access to treatment, care and support for people infected with HIV and sexually transmitted infections
  This objective focuses on the impact reduction of HIV infection, offering access to antiretroviral treatment, treatment of opportunistic infections and co-infections, care and support for people living with HIV and members of their families, as well as on the prevention of HIV mother-to-child transmission and on post-exposure prophylaxis.

### MoH Order no. 1018/2016 on the organisation of measures for the prevention of mother-to-child transmission of HIV[217]

## ANALYSIS

In 2019, 41% of new HIV cases were registered in women.[218] In recent years, HIV epidemic became more complex, being conditioned by a relatively high number of women who inject drugs, who are more vulnerable to the transmission of the infection and to the epidemic. Thus, women tend to contract the disease at a younger age and are more likely to become infected through heterosexual intercourse than men.

A number of research studies carried out at the global level highlight that women are subject to a higher risk of becoming infected with HIV through intimate partner violence, sex work and drug use. Most often, intimate partner violence is explained by the fact that women must rely on the health of their male sexual partners for their contraceptive and reproductive health (HIV and other STI). Another aspect refers to the fact that HIV-positive women who inject drugs tend to be dependent on male suppliers (dealers or sexual partners) for protection and are forced to share the same injection devices. Also, women who inject drugs have limited access to preven-

214 https://www.legis.md/cautare/getResults?doc_id=110180&lang=ro
215 https://www.legis.md/cautare/getResults?doc_id=107179&lang=ro
216 https://www.legis.md/cautare/getResults?doc_id=111740&lang=ro
217 https://msmps.gov.md/sites/default/files/legislatie/ordin_gravide_hiv.pdf
218 Dermatology and Communicable Diseases Hospital, Monitoring the HIV infection in the Republic of Moldova in 2019, https://sdmc.md/wp-content/uploads/2021/02/MD_Raport_anual_HIV_RO_2019_FINAL_DB-modificat.pdf

tion, care and assistance services. All the above highlight different interpersonal, social and structural barriers faced by women and evidence for the essential need of specific HIV prevention and treatment programs.[219]

The domestic legal framework on gender equality is advanced and tends to be in line with the international commitments. The Republic of Moldova has made international and national commitments to promote gender equality and women empowerment, in particular through the ratification of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and a series of conventions of the International Labour Organization. Since the adoption of the Law on ensuring equal opportunities for women and men, a range of strategies and national action plans promoting gender equality have been approved and implemented. Nevertheless, women are still facing discrimination and inequality in social, economic and political life, and are lacking effective opportunities of participation in decision-making in the public and private sector. It is important to point out that women tend to experience multiple forms of discrimination as may be the case of women with disabilities or/and women belonging to ethnic minorities, Roma, or women living with HIV, to name a few. And the situation is not different when they become victims of gender-based violence. Gender-based violence is still widely spread in the country, and there are neither effective mechanisms of combating and preventing domestic violence nor efficient victim support systems. Six out of ten women in Moldova suffered from a certain type of violence (psychological, socio-economic, verbal, physical or sexual) from their spouse/partner over lifetime.[220]

In October 2021, the Republic of Moldova has ratified the **Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention, 2011)**, which is a core international instrument for the protection of women, including women living with HIV, against all forms of violence and discriminatory treatment. In addition, the Istanbul Convention requires positive actions to ensure that any preventive measures address and take into account the needs of vulnerable women, like pregnant women and women with young children, women with disabilities, women who use substances, female sex workers, lesbian, bisexual and transgender women, as well as HIV-positive women. It is less likely that vulnerable women will be able to defend themselves or seek prosecution of the perpetrator and other forms of reparation, because of their situation.[221]

Thus, women living with HIV remain vulnerable. It is more likely that HIV-positive women are more stigmatized and discriminated against and face violence compared to HIV-positive men. Gender-related policies do not cover the change in the mindset of the population, that would address stereotypes/behaviours on issues related to HIV. Legal framework in this area is inadequately enforced, which denotes that it is quite difficult to combat violence because of limited functionality or even absence of mechanisms for the implementation of legal framework.

Also, despite legislative changes removing the requirement for people living with HIV to be served in specialized medical centres, there are still cases of refusal to provide medical care to pregnant women living with HIV and their referral to certain maternity hospitals. It limits access of HIV-positive pregnant women to adequate medical services thus increasing the risk of mother-

219 Legal Environment Assessment for HIV in Ukraine, 2017, http://knowledge.org.ua/wp-content/uploads/2017/08/Deloite_HIV-Legal-Assessment-2017_ENGL_web.pdf

220 Violence against women in the family in the Republic of Moldova, 2011, https://www.md.undp.org/content/moldova/en/home/library/inclusive_growth/violence-against-women-in-the-family-in-the-republic-of-moldova-.html

221 Explanatory Report to the Council of Europe Convention on preventing and combating violence against women and domestic violence, 2011, https://www.coe.int/en/web/istanbul-convention/basic-texts

to-child transmission of HIV.

To eliminate discrimination against women, special HIV prevention and treatment programs for girls and women should be developed and widely implemented, which would promote women's health throughout their lives. Such programs should include the provision of access to a full range of high-quality, affordable health care, including sexual and reproductive health. One of the main goals should be to reduce women's health risks, in particular to reduce maternal mortality, as well as to protect women against domestic violence.

### CONCLUSIONS

1. Women are subject to an increased risk of HIV infection through violence they face, sex work and drug use.
2. Contrary to the existing legal framework, women living with HIV continue to be discriminated in health care facilities.
3. The HIV Law provides for voluntary sterilization and free of charge contraception for HIV-positive women. However, there are no clear guidelines or instruction on how these should be applied to ensure a non-discriminatory approach in delivering these services.

### RECOMMENDATIONS

1. To revise the legislation on the prevention of domestic violence to introduce measures sensitive to the intersectional vulnerability of women living with HIV, female sex workers and women who use drugs due to their criminalized behaviour.
2. To amend national legislation to ensure full compliance with the provisions of the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention).
3. To scale up the implementation of HIV prevention and treatment programs for girls and women, including the revision of the HIV Law in terms of gender specific aspects (e.g., providing for girls' and women's access to hygiene products, psychological counselling, reproductive health services).

## CHILDREN, ADOLESCENTS AND YOUTH

### FUNDAMENTAL PRINCIPLES

The state should take all appropriate measures to reduce specific HIV vulnerabilities of children and youth, eliminate HIV related discrimination and inequality, as well as provide them with equitable and sustainable access to comprehensive HIV-related services.[222]

222 UNDP, Legal environment assessment for HIV: An operational guide to conducting national legal, regulatory and policy assessments for HIV, 2014, http://www.undp.org/content/undp/en/home/librarypage/hiv-aids/practical-manual--legal-environment-assessment-for-hiv--an-opera.html

## Tab. 23. Children, adolescents and youth: international standards

### Convention on the Rights of the Child (1989)[223]

- This international document ensures the fact that children are provided with the full range of fundamental rights – including civil, cultural, economic, political and social rights – so that they can fully develop. The Convention also recognizes that persons under 18 years old often need special care and protection, that is not necessary for adults.
- Article 2 ensures that all rights apply to all children irrespective of the child's, or his or her parents or legal guardian's social, religious, national or other status, disability or poverty.
- Article 3 includes the provision that the "best interests of the child" shall be a primary consideration in all matters concerning children, including actions undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies.
- Article 16 concerns a child's right to protection from arbitrary or unlawful interference with his or her privacy, and unlawful attacks on his/her reputation, including stigma due to HIV, poverty or disability.
- Article 19 concerns the State's responsibility to take all legislative, administrative, social and educational measures to protect children from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation.
- Article 24 recognizes the right of children to the highest standard of health and access to health services.

### UN Committee on the Rights of the Child, General Comment no. 3: HIV/AIDS and the Rights of the Child (2003)[224]

- 5. The issue of children and HIV/AIDS is perceived as mainly a medical or health problem, although in reality it involves a much wider range of issues. In this regard, the right to health (article 24 of the Convention) is, however, central. But HIV/AIDS impacts so heavily on the lives of all children that it affects all their rights – civil, political, economic, social and cultural. The rights embodied in the general principles of the Convention – the right to non-discrimination (art. 2), the right of the child to have his/her interest as a primary consideration (art. 3), the right to life, survival and development (art. 6) and the right to have his/her views respected (art. 12) – should therefore be the guiding themes in the consideration of HIV/AIDS at all levels of prevention, treatment, care and support.
- 7. Discrimination is responsible for heightening the vulnerability of children to HIV and AIDS, as well as seriously impacting the lives of children who are affected by HIV/AIDS, or are themselves HIV infected. Girls and boys of parents living with HIV/AIDS are often victims of stigma and discrimination as they too are often assumed to be infected. … At its extreme, discrimination against HIV-infected children has resulted in their abandonment by their family, community and/or society. Discrimination also fuels the epidemic by making children in particular those belonging to certain groups like children living in remote or rural areas where services are less accessible, more vulnerable to infection. These children are thus doubly victimized.

223 https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child
224 https://undocs.org/CRC/GC/2003/3

- 8. Of particular concern is gender-based discrimination combined with taboos or negative or judgemental attitudes to sexual activity of girls, often limiting their access to preventive measures and other services. Of concern also is discrimination based on sexual orientation. … States parties should, in particular, recognize that discrimination in the context of HIV/AIDS often impacts girls more severely than boys.
- 24. States parties must protect the confidentiality of HIV test results, consistent with the obligation to protect the right to privacy of children (art. 16), including within health and social welfare settings, and information on the HIV status of children may not be disclosed to third parties, including parents, without the child's consent.

## International Guidelines on HIV/AIDS and Human Rights, Consolidated Version (2006)[225]

- **Guideline 8,** para. 60:
  (g) States should ensure the access of children and adolescents to adequate health information and education, including information related to HIV prevention and care, inside and outside school, which is tailored appropriately to age level and capacity and enables them to deal positively and responsibly with their sexuality. Such information should take into account the rights of the child to access to information, privacy, confidentiality, respect and informed consent and means of prevention, as well as the responsibilities, rights and duties of parents. Efforts to educate children about their rights should include the rights of persons, including children, living with HIV.
  (h) States should ensure that children and adolescents have adequate access to confidential sexual and reproductive health services, including HIV information, counselling, testing and prevention measures such as condoms, and to social support services if affected by HIV. The provision of these services to children/adolescents should reflect the appropriate balance between the rights of the child/ adolescent to be involved in decision-making according to his or her evolving capabilities and the rights and duties of parents/guardians for the health and well-being of the child.

## The Framework for the Protection, Care and Support of Orphans and Vulnerable Children living in a world with HIV and AIDS (UNICEF, UNAIDS, and other partners) (2004)[226]

- The framework provides guidance on how best to address the multiple vulnerabilities faced by children living in a world with HIV and AIDS. The document describes five key strategies: 1) strengthen the capacities of families to protect and care of orphans and other children who became vulnerable due to HIV and AIDS; 2) mobilize and strengthen community-based responses; 3) ensure access for orphan and vulnerable children to essential services, including education, healthcare and birth registration; 4) ensure that governments protect the most vulnerable children through improved policies and legislation and by channelling resources to families and communities; 5) raise awareness through advocacy and social mobilization to create a supportive environment for children and families affected by HIV and AIDS.

225 https://www.ohchr.org/sites/default/files/Documents/Publications/HIVAIDSGuidelinesen.pdf
226 http://www.hsrc.ac.za/uploads/pageContent/1670/theframeworkforprotectioncareandsupportoforphans.pdf

## Tab. 24. Children, adolescents and youth: national legislation

### Constitution of the Republic of Moldova (1994)[227]

- **Article 50.** Protection of the mother, children and young people
  (2) Children and young people shall enjoy a special form of assistance in the pursuit of their rights.
  (3) The State shall grant allowances necessary for the children and aids required for the care of sick children or children with disabilities. Other forms of social assistance for children and young people shall be provided by the law.

### Law no. 338/1994 on the rights of the child[228]

- **Article 2.** Bodies for the protection of the rights and interests of the child
  (1) The state guarantees to every child the right to a standard of living adequate for the physical, intellectual, spiritual and social development of the child. The state undertakes actions with a view of assistance provision to parents, as well as other persons responsible for the education and development of children.

### Law no. 411/1995 on healthcare[229]

- **Article 23.** Consent for medical services
  (1) The patient's consent is required for any proposed medical service (prophylactic, diagnostic, therapeutic, recovery).
  (2) In the absence of a clear opposition, the consent is presumed for any service that does not present significant risks for the patient or is not likely to harm his/her privacy.
  (3) The consent of the patient in respect of whom a measure of judicial protection is instituted is given by the person in charge of the protection; in his/her absence – by the closest relative.
  (4) The consent of the patient in respect of whom a measure of judicial protection is instituted is presumed in case of danger of imminent death or serious threat to his/her health.
  (5) The provisions of para. (1), (2), (3), (4) apply to patients who have reached the age of 16 years.
  (6) If the patient is less than 16 years old, the consent is given by his/her legal representative. In case of danger of imminent death or serious threat to health, the medical service may be performed without the consent of the legal representative.

### Law no. 23/2007 on prophylaxis of HIV/AIDS infection[230]

- **Article 5.** Education on HIV/AIDS infection prevention
  (1) The State is responsible, at national level, for the elaboration and implementation of educational programmes aimed at informing and educating children starting from the age of 12, adolescents and young people on the responsible and harmless behaviours.
  (3) Training and promotion activities of responsible and harmless behaviours regarding the prevention of HIV/AIDS infection, ensuring out-of-school children with informational materials are carried out in the centres for young people, in those for children and in other social institutions.

227 https://www.legis.md/cautare/getResults?doc_id=128016&lang=ro
228 https://www.legis.md/cautare/getResults?doc_id=94939&lang=ro#
229 https://www.legis.md/cautare/getResults?doc_id=128014&lang=ro#
230 https://www.legis.md/cautare/getResults?doc_id=110180&lang=ro

- **Article 6.** Family, children, young people, women and HIV/AIDS infection
  (1) Children benefit from counselling adapted to their specific needs. All confidentiality principles applicable to adults will be respected.
  (2) Children and young people affected by HIV/AIDS have equal rights with their peers, benefit from their access to educational and HIV/AIDS prevention programs, social and legal assistance, as well as care and treatment which they need by virtue of their status.
  (3) Children and young people affected by HIV/AIDS who are in medical, social, education and detention institutions may not be subjected to discriminatory practices based on their status.
- **Article 13.** Consent for HIV markers testing
  (2) In the case of a minor, the written voluntary consent for HIV markers testing shall be expressed both by the minor and by his/her legal representative. If it is impossible to obtain the consent of the minor's legal representative and if the testing is necessary for the minor, the written voluntary consent of the latter is sufficient.

### Law no. 263/2005 on the rights and responsibilities of the patient[231]

- **Article 13.** Consent and manner of completing the informed consent or voluntary refusal of medical intervention
  (2) The patient's consent to the medical intervention can be oral or written and is completed by registering it in patient's health record and being obligatory signed by the patient or his/her legal representative (close relative) and the attending physician. For high risk medical interventions (invasive or surgical character) the written consent is drafted mandatory by filling in a special form in the medical documentation titled informed consent.

### National Clinical Protocol "HIV infection in adults and adolescents" (PCN-211) (2018)[232] has provisions related to minors.

## ANALYSIS

In the Republic of Moldova, the share of children (0-14 years old) and youth (15-24 years old) is accounted for 1.9% and, respectively, 8.5% of all new HIV cases registered in 2019. The HIV incidence in the 15-24 age segment is 20.61 per 100,000 population. As for the vertical (mother-to-child) transmission, despite all the efforts, the rate of mother-to-child transmission of HIV reached 4.8% in 2019, which is twice more than the target set.[233]

Art. 53(2) of **the Family Code** envisages that the protection of the rights and legitimate interests of the child is ensured by parents or other legal representatives, while in cases provided for by the law – by the prosecutor, the custody authority or other competent bodies. At the same time, Art. 62(2) stipulates that parents' rights cannot be exercised against the interests of their child. Parents may not harm physical and mental health of their child.

231 https://www.legis.md/cautare/getResults?doc_id=129085&lang=ro#
232 https://msmps.gov.md/legislatie/ghiduri-protocoale-standarde/hiv-sida/
233 Draft National Programme on the prevention and control of HIV/AIDS and STIs for 2021-2025, https://sdmc.md/wp-content/uploads/2020/12/Proiect-HG_PN_HIV_SIDA_ITS_05.11.2020-2.pdf

Very few measures have been undertaken to combat discrimination, stigmatization and isolation towards children affected by HIV/AIDS. For example, a 2015 study[234] showed that 55% of respondents believed that children living with HIV should study in separate classes. Thus, stigma and discrimination can discourage children and young people living with HIV to disclose their status to their caregivers and sexual partners, further limiting their access to prevention, treatment, care and assistance services.

Although HIV and AIDS affect more and more young people every year, they are not well informed about this infection. According to UNICEF Moldova,[235] only 36% of girls and 28% of boys aged 15-24 know how HIV is transmitted and how to protect themselves from getting infected. This puts adolescents and young people at high risk of injuries, addiction, unwanted pregnancies, and sexually transmitted infections, including HIV.

According to the **Healthcare Law**, starting with the age of 16, any patient can independently consent to any proposed medical service (prophylactic, diagnostic, therapeutic, recovery). Nevertheless, the HIV Law is more restrictive in terms of expressing consent and establishes that for any person under the age of 18, the consent for HIV testing must be also given by his/her legal representative. Only if it is impossible to obtain the consent of the legal representative, the consent of the minor to get HIV testing is sufficient.

The **MoH Order no. 790/2012 on the Rules of medical examination and supervision for the detection of infection with the human immunodeficiency virus (AIDS disease)** has similar provisions which provides for the duplication of the minor's consent to HIV testing with the consent of his/her legal representative. However, neither the HIV Law, nor the above-mentioned Order stipulate the circumstances of "impossibility", which will make the minor's consent sufficient. These provisions do not meet the criteria of clarity and predictability of the law and may create obstacles for HIV testing of children.

Often adolescents do not want to share with their parents all aspects of their private live, which may include risk of HIV infection, such as starting intimate relationships (according to national research,[236] about 85% of adolescents have the first sexual intercourse between the age of 14-16 years), understanding their sexual identity, drug use, etc.

Early HIV counselling and testing have ultimate importance. However, the need to obtain a consent of the minor's legal representative (parent, guardian) to perform an HIV test may put the adolescent in a difficult situation, in which he/she may decide to avoid testing and risk having serious health consequences. Although general limitations of minor's capacity aim at protecting them, in terms of HIV testing, the effect is opposite. Removing the requirement of obtaining the legal representative's consent is a key prerequisite for increasing the number of adolescents counselled and tested for HIV.

The UN Committee on the Rights of the Child has recommended[237] that all HIV/AIDS programmes and policies should explicitly acknowledge children, in accordance with their evolving capacities, as active participants in taking decisions that affect their lives.

234 Institute for Public Policy, The Phenomenon of Discrimination in Moldova: A Comparative Study, 2015.
235 UNICEF, Adolescent health and development, https://www.unicef.org/moldova/en/what-we-do/adolescent-health-and-development
236 Galina Lesco, Behavioral and social determinants of adolescent health. Summary report of the health behaviors in school-aged children study in the Republic of Moldova, 2015, https://www.neovita.md/studii-si-cercetari/hbsc-moldova-summary-report-2014-2015/
237 UN Committee on the Rights of the Child, General Comment no. 3: HIV/AIDS and the Rights of the Child (2003), https://undocs.org/CRC/GC/2003/3

In this context, HIV counselling and testing services have a level of complexity that would allow lowering the threshold of mandatory consent of parents for voluntary and confidential counselling and testing below the age of 18, so that the minor could assume responsibility and decide independently on testing.[238]

By analogy, both in civil and criminal law, the age of 14 is considered in the Republic of Moldova as a threshold from which the minor is aware of the nature of his/her actions and the consequences that may arise. Considering that 85% of adolescents have their first sexual intercourse between the age of 14-16 years, being exposed to the risk of HIV infection, the same 14-year threshold can be applied for independent, unconditional, anonymous (if chosen) and confidential access to HIV counselling and testing services.

The point of view mentioned above is also supported by the practice of some countries. So, in Slovenia, children as young as 13 years old can access all medical services independently, including abortion. In Ukraine, the HIV test can be performed independently from the age of 14.

## CONCLUSIONS

1. The national legal framework limits the right of children and young people living with, affected by and exposed to HIV to access friendly and confidential services.
2. HIV testing of minors below the age of 18 is done only with the consent of parents or legal representatives, which limits the access to testing thus delaying diagnosis and enrolment in ART and worsening health outcomes.

## RECOMMENDATIONS

1. To continue the improvement, development and implementation of strategic HIV prevention actions for children and adolescents at risk.
2. To adopt and implement a minimum package of services for children living with HIV in order to ensure adequate and non-discriminatory access to prevention, treatment, rehabilitation and social integration services, as well as to provide the necessary funding.
3. To amend the legal framework by reducing to the age of 14 the threshold for mandatory consent of legal representatives for voluntary and confidential HIV counselling and testing of minors.
4. To amend the legal framework to ensure the confidentiality of the minor's HIV test and non-disclosure of the test results to third parties, including legal representatives, without the minor's consent.

238 Stefan Gheorghita, Silvia Stratulat, Andrei Lungu, Assessment of legal framework on voluntary counseling and testing of youth and adolescents in the Republic Moldova, 2013, https://tdvbalti.files.wordpress.com/2013/01/raport-limite-si-barieire-acces-tineri-ctv_final.pdf

# MIGRANTS AND REFUGEES

## FUNDAMENTAL PRINCIPLES

The State should not impose restrictions on the entry, stay or residency status of PLHIV based on HIV status. This includes not returning PLHIV to countries where they face persecution, torture or other forms of cruel, inhuman or degrading treatment. Migrants and mobile populations should have equitable and sustainable access to HIV-related services.[239]

## Tab. 25. Migrants and refugees: international standards

### International Covenant on Civil and Political Rights (1966)[240]

- **Article 2**
  (1) Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

### International Covenant on Economic, Social and Cultural Rights (1966)[241]

- **Article 2**
  (2) The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

### Convention relating to the Status of Refugees (1951)[242]

- **Article 33.** Prohibition of expulsion or return ("refoulement")
  1. No Contracting State shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.
  2. The benefit of the present provision may not, however, be claimed by a refugee whom there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who, having been convicted by a final judgement of a particularly serious crime, constitutes a danger to the community of that country.

### International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990)[243]

- **Article 28**
  Migrant workers and members of their families shall have the right to receive any medical care that is urgently required for the preservation of their life or the avoidance of irrepa-

239 UNDP, Legal environment assessment for HIV: An operational guide to conducting national legal, regulatory and policy assessments for HIV, 2014, http://www.undp.org/content/undp/en/home/librarypage/hiv-aids/practical-manual--legal-environment-assessment-for-hiv--an-opera.html
240 https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights
241 https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights
242 https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-relating-status-refugees
243 https://www.ohchr.org/en/instruments-mechanisms/instruments/international-convention-protection-rights-all-migrant-workers

rable harm to their health on the basis of equality of treatment with nationals of the State concerned. Such emergency medical care shall not be refused them by reason of any irregularity with regard to stay or employment.

### UN Committee for Economic, Social and Cultural Rights, General Comment no. 14 (2000) – The right to the highest attainable standard of health (Art. 12 of the International Covenant on Economic, Social and Cultural Rights) (E/C.12/2000/4)[244]

- 34. In particular, States are under the obligation to respect the right to health by, inter alia, refraining from denying or limiting equal access for all persons, including prisoners or detainees, minorities, asylum seekers and illegal immigrants, to preventive, curative and palliative health services; abstaining from enforcing discriminatory practices as a State policy…

### UN Political Declaration on HIV/AIDS: On the Fast Track to Accelerating the Fight against HIV and to Ending the AIDS Epidemic by 2030 (2016)[245]

- 63 (g). Encourage Member States to address the vulnerabilities to HIV and the specific health-care needs experienced by migrant and mobile populations, as well as refugees and crisis-affected populations, and to take steps to reduce stigma, discrimination and violence, as well as to review policies related to restrictions of entry based on HIV status with a view to eliminating such restrictions and the return of people on the basis of their HIV status, and to support their access to HIV prevention, treatment, care and support.

### International Guidelines on HIV/AIDS and Human Rights, Consolidated Version (2006)[246]

- **Guideline 8,** para. 60:
  (j) States should support the implementation of specially designed and targeted HIV prevention and care programmes for those who have less access to mainstream programmes due to language, poverty, social or legal or physical marginalization, e.g. minorities, migrants, indigenous peoples, refugees and internally displaced persons, people with disabilities, prisoners, sex workers, men having sex with men and injecting drug users.
- 129. Everyone has the right to seek and enjoy asylum from persecution in other countries. Under the 1951 Convention relating to the Status of Refugees and under customary international law, States cannot, in accordance with the principle of non-refoulement, return a refugee to a country where she or he faces persecution. Thus, States may not return a refugee to persecution on the basis of his or her HIV status. Furthermore, where the treatment of people living with HIV can be said to amount to persecution, it can provide a basis for qualifying for refugee status.

### ILO, HIV and AIDS Recommendation (R200) (2010)[247]

- 25. HIV testing or other forms of screening for HIV should not be required of workers, including migrant workers, jobseekers and job applicants.
- 27. Workers, including migrant workers, jobseekers and job applicants, should not be required by countries of origin, of transit or of destination to disclose HIV-related information about themselves or others.

244 https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2f2000%2f4&Lang=en
245 https://www.unaids.org/sites/default/files/media_asset/2016-political-declaration-HIV-AIDS_en.pdf
246 https://www.ohchr.org/sites/default/files/Documents/Publications/HIVAIDSGuidelinesen.pdf
247 https://www.ilo.org/dyn/normlex/en/f?p=1000:12100:::NO:12100:P12100_INSTRUMENT_ID:2551501

- 28. Migrant workers, or those seeking to migrate for employment, should not be excluded from migration by the countries of origin, of transit or of destination on the basis of their real or perceived HIV status.
- 47. Measures to ensure access to HIV prevention, treatment, care and support services for migrant workers should be taken by countries of origin, of transit and of destination, and agreements should be concluded among the countries concerned, whenever appropriate.

## Tab. 26. Migrants and refugees: national legislation

### Constitution of the Republic of Moldova (1994)[248]

- **Article 19.** Legal Status of Foreign Citizens and Stateless Persons
  (1) Foreign citizens and stateless persons shall enjoy similar rights and duties as the citizens of the Republic of Moldova, with the exceptions provided by the law.
  (3) The right to asylum shall be granted and withdrawn under the law and in compliance with the international treaties to which the Republic of Moldova is a party.

### Law no. 270/2008 on asylum in the Republic of Moldova[249]

- **Article 30.** Access to healthcare
  (2) Asylum seekers shall be guaranteed the right to free (including anonymous) medical examination for the purpose of early detection of HIV and AIDS.
  (3) HIV testing shall be carried out in accordance with the legislation in force.

### Law no. 23/2007 on prevention of HIV/AIDS infection[250]

- **Article 10.** HIV/AIDS prevention among immigrants, migrants, refugees and asylum seekers
  (2) The Ministry of Health, Labour and Social Protection, together with other ministries and central administrative authorities, organizes HIV/AIDS prevention, social and material assistance activities for immigrants, migrants, refugees and asylum seekers.
  (3) Immigrants, migrants, refugees and asylum seekers benefit from ARV treatment and treatment of opportunistic diseases, according to the law.

### Law no. 263/2005 on the rights and responsibilities of the patient[251]

- **Article 4.** Limitation of patients' rights
  (1) Patients may only be subject to those limitations that are compatible with human rights instruments.
  (2) Patient's rights may be limited in case of:
  c) mandatory preliminary medical examinations for the detection of socially dangerous diseases during employment and mandatory periodic medical examinations of workers in certain professions, immigrants and migrants, the list of which is approved by the Ministry of Health, Labour and Social Protection.

### Government Decision no. 493/2011 on the approval of the Regulation of the Temporary Placement Center for Foreigners[252]

183. Upon placement in the Centre, foreigners are subject to mandatory medical examination, including chest X-rays, laboratory tests to exclude infectious and parasitic diseases

248 https://www.legis.md/cautare/getResults?doc_id=128016&lang=ro
249 https://www.legis.md/cautare/getResults?doc_id=123117&lang=ro#
250 https://www.legis.md/cautare/getResults?doc_id=110180&lang=ro
251 https://www.legis.md/cautare/getResults?doc_id=129085&lang=ro#
252 https://www.legis.md/cautare/getResults?doc_id=120569&lang=ro#

(including communicable) (if necessary). Outpatient medical care must ensure confidentiality and must not violate the dignity of the foreigner, and must be carried out in the presence of the nurse and the interpreter of the same sex as the foreigner (in the event of a language barrier).

**National Clinical Protocol "HIV infection in adults and adolescents" (PCN-211) (2018)[253] includes the migrant workers as one of the groups vulnerable to HIV infection.**

## ANALYSIS

According to a WHO survey,[254] migrants' risk of contracting communicable and non-communicable diseases increases following their arrival to the country of destination. This is explained by the fact that they do not have sufficient access to medical and prevention services and information, they often live in unsanitary conditions, are engaged in activities and work with high risk of transmission of communicable diseases, including HIV.

The research assessed the situation in 53 countries of the WHO European Region and found that migrants face more severe health problems and are at higher risk of developing ill-health than local population. These problems occur mostly after arrival. Thus, the survey shows that migrants themselves are a vulnerable group because of poverty and other factors.

HIV-positive status is not a barrier for entering the Republic of Moldova. However, according to current regulations, migrants have limited access to ART. To be eligible for treatment, the person must hold a personal identification code (IDNP), which is assigned to migrants after they obtain a stay permit, which may take several months. During this period they cannot receive treatment. The same applies to persons who, for various reasons, face difficulties in getting their residence documentation done or for migrants who entered and/or stay in the country illegally.

Foreigners declared undesirable or against whom the measure of return or expulsion has been ordered and who have been taken into public custody on the basis of a court decision, are temporarily accommodated in the Temporary Placement Centre for Foreigners (managed by the Bureau for Migration and Asylum of MIA) until the execution of the measures of expulsion, readmission or return from the territory of the Republic of Moldova. The foreigner against whom the return measure has been ordered may be held in public custody for up to 6 months, and in the case of a foreigner who has been declared undesirable, the maximum period may not exceed 12 months. After the expiry of these periods, persons are released from public custody.[255]

During their stay in the Placement Centre, foreigners are entitled to outpatient or hospital care. Persons placed in the Centre benefit from medical examinations and laboratory tests in line with the physician's prescriptions and their health condition. If treatment is needed, medicines are issued free of charge by the institution.

253 https://msmps.gov.md/legislatie/ghiduri-protocoale-standarde/hiv-sida/
254 WHO, Report on the health of refugees and migrants in the WHO European Region, 2018, https://apps.who.int/iris/handle/10665/311347
255 Art. 64-65 of the Law no. 200/2010 on the status of foreigners in the Republic of Moldova, https://www.legis.md/cautare/getResults?doc_id=132059&lang=ro#

The Regulation of the Temporary Placement Centre for Foreigners provides for a mandatory primary medical examination at the time of placement in the Centre to exclude infectious and parasitic diseases (including communicable diseases), with their registration in the patient's outpatient record and subsequent medical supervision. The medical care provided must ensure confidentiality and must not violate human dignity.

The **UN Basic Principles for the Treatment of Prisoners**[256] stipulate that prisoners must have access to the health services available in the country without discrimination on the grounds of their legal situation, while health services from prisons must respect professional, ethic and technical standards, equivalent to those applicable to public health services in the community. Thus, international recommendations expressly provide for the access of prisoners to voluntary testing for HIV, viral hepatitis and sexually transmitted infections at any time of detention. Respectively, the compulsory nature of the control for detecting communicable diseases in places of detention refers more to the engagement of administration and enforcement of standard operational procedures, but without limiting the rights of the patient.[257]

It should also be mentioned that the Republic of Moldova has not yet ratified the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990). Hundreds of thousands of Moldovan citizens are working abroad and their remittances are providing strong support for Moldovan economy. At the same time, Moldovan migrant workers are also facing health issues while working abroad. Ratification of the Convention would strengthen the international positioning of the Republic of Moldova in protecting the right to the highest attainable standard of health of its citizens working abroad.

## CONCLUSIONS

1. An insufficiently studied problem refers to the impact of legal and illegal migration into/from the Republic of Moldova in the context of HIV epidemic.
2. There are discrepancies between HIV related legal provisions, applied within the health care institutions belonging to MoH and departmental health institutions, subordinated to the MIA.
3. The persons held in the Temporary Placement Centre for Foreigners are tested for HIV in a mandatory manner, but, at the same time, there are no mechanisms of ensuring ART before they receive their stay permit.

## RECOMMENDATIONS

1. To amend the legal framework to ensure access to treatment and support services for all migrants, including those who have violated the legal provisions on migration or are in the process of being documented.
2. To align departmental orders on health care in the Temporary Placement Centre for Foreigners to the HIV Law, including in terms of requirements for HIV testing, counselling and confidentiality.
3. To include HIV issues among migrants into the agenda of international and regional relations (within the UN, CoE, CIS, EU, OSCE, etc.), as well as of bilateral and multilateral interstate rela-

256 https://www.ohchr.org/EN/ProfessionalInterest/Pages/BasicPrinciplesTreatmentOfPrisoners.aspx
257 Council for the Prevention of Torture, Annual activity report for 2018, http://ombudsman.md/wp-content/uploads/2019/07/Raport-anual-de-activitate-CpPT-2018_Engleza.pdf

tions, especially with the countries (e.g., the Russian Federation requires foreigners to be tested for HIV in cases of their long-term stay) with a large number of migrant workers from the Republic of Moldova, in order to remove legal barriers in these countries with regard to HIV testing, information, prevention, ART and related services, non-discrimination, non-expulsion and ensuring of human rights, including the right to work in the country of destination.

4. To ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

# PERSONS DEPRIVED OF THEIR LIBERTY

## FUNDAMENTAL PRINCIPLES

According to the international guidelines, approved by UNODC, WHO and UNAIDS, persons deprived of their liberty should have access to medical treatment and prevention measures without discrimination on the grounds of their legal situation. The right of persons deprived of their liberty to health is guaranteed by international law, and it includes the right to benefit from prevention and treatment, as well as to health care standards at least equivalent to those available in the community. Access to health services in prisons should be in line with medical ethics, national standards, guidelines and control mechanisms. Similarly, prison staff need a safe workplace and are entitled to adequate protection and health services at the workplace.

The state should take all necessary measures to reduce the vulnerability to HIV of persons deprived of their liberty, eliminate HIV-related discrimination and provide equitable and sustainable access to comprehensive HIV services.[258]

Therefore, the state's positive obligations in case of persons deprived of their liberty are relevant in the context of the rights of persons living with HIV through two perspectives: (1) protection of persons deprived of their liberty living with HIV, and (2) protection of all persons deprived of their liberty from HIV exposure and transmission.

### Tab. 27. Persons deprived of their liberty: international standards

**International Covenant on Civil and Political Rights (1966)[259]**

- **Article 10**
  1. All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.

**UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (1984)[260]**

- **Article 2**
  1. Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.

258 UNDP, Legal environment assessment for HIV: An operational guide to conducting national legal, regulatory and policy assessments for HIV, 2014. http://www.undp.org/content/undp/en/home/librarypage/hiv-aids/practical-manual--legal-environment-assessment-for-hiv--an-opera.html

259 https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights

260 https://www.ohchr.org/en/professionalinterest/pages/cat.aspx

### UN Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) (2015)[261]

- **Rule 24**

  1. The provision of health care for prisoners is a State responsibility. Prisoners should enjoy the same standards of health care that are available in the community, and should have access to necessary health-care services free of charge without discrimination on the grounds of their legal status.

  2. Health-care services should be organized in close relationship to the general public health administration and in a way that ensures continuity of treatment and care, including for HIV, tuberculosis and other infectious diseases, as well as for drug dependence.

### Council of Europe, Recommendation Rec(2006)2-rev of the Committee of Ministers to member States on the European Prison Rules (2006, revised 2020)[262]

- 39. Prison authorities shall safeguard the health of all prisoners in their care.
- 40.3 Prisoners shall have access to the health services available in the country without discrimination on the grounds of their legal situation.
- 40.4 Medical services in prison shall seek to detect and treat physical or mental illnesses or defects from which prisoners may suffer.
- 40.5 All necessary medical, surgical and psychiatric services, including those available in the community, shall be provided to the prisoner for that purpose.
- 42.3 When examining a prisoner, the medical practitioner or a qualified nurse reporting to such a medical practitioner shall pay particular attention to:
  a. observing the normal rules of medical confidentiality;
  b. diagnosing physical or mental illness and taking all measures necessary for its treatment and for the continuation of existing medical treatment;
  d. dealing with withdrawal symptoms resulting from the use of drugs, medication or alcohol;
  f. isolating prisoners suspected of infectious or contagious conditions for the period of infection and providing them with proper treatment;
  g. ensuring that prisoners carrying the HIV virus are not isolated for that reason alone.

### WHO Guidelines on HIV Infection and AIDS in Prisons (1993)[263]

- The Guidelines provide standards – from a public health perspective – which prison authorities should strive to achieve in their efforts to prevent HIV transmission in prisons and to provide care to those affected by HIV/AIDS. It refers to a number of related matters, including: the right to receive health care, equivalent to that available in the community without discrimination, voluntary and anonymous testing for HIV (compulsory testing of prisoners for HIV is unethical and ineffective, and should be prohibited); preventive measures: (i) education and information, (ii) sexual transmission, (iii) transmission by injection, (iv) use of other substances that may increase the likelihood of HIV transmission; management of HIV-infected prisoners (non-segregation); confidentiality in relation to HIV/AIDS; care and support of HIV-infected prisoners; tuberculosis in relation to HIV infection; women prisoners; prisoners in juvenile detention centres; foreign prisoners; semi-liberty and release; early release; contacts with the community and monitoring; resources; evaluation and research.

261 https://www.ohchr.org/sites/default/files/Documents/ProfessionalInterest/NelsonMandelaRules.pdf
262 https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016809ee581
263 https://apps.who.int/iris/handle/10665/58902

### International Guidelines on HIV/AIDS and Human Rights, Consolidated Version (2006)[264]

- **Guideline 4, para.21**
  (e) Prison authorities should take all necessary measures, including adequate staffing, effective surveillance and appropriate disciplinary measures, to protect prisoners from rape, sexual violence and coercion. Prison authorities should also provide prisoners (and prison staff, as appropriate), with access to HIV-related prevention information, education, voluntary testing and counselling, means of prevention (condoms, bleach and clean injection equipment), treatment and care and voluntary participation in HIV-related clinical trials, as well as ensure confidentiality, and should prohibit mandatory testing, segregation and denial of access to prison facilities, privileges and release programmes for HIV-positive prisoners. Compassionate early release of prisoners living with AIDS should be considered.

### UNODC, ILO, UNDP, WHO, UNAIDS Policy Brief: HIV prevention, treatment and care in prisons and other closed settings – a comprehensive package of interventions (2013)[265]

- Recommends 15 key interventions that are essential for effective HIV prevention, testing, treatment and care in prisons and other closed settings

Globally, prisons are characterized by relatively high prevalence of HIV, hepatitis B and C virus and tuberculosis, as well as elevated risks of contracting such diseases and diminished access to health services. HIV transmission in prison often occurs through sharing injecting equipment by people who use drugs; unsafe consensual or coerced sex; unsafe skin piercing and tattooing practices; sharing shaving razors, and the improper sterilization or reuse of medical or dental instruments.[266]

For the prison system, the comprehensive package of HIV prevention services consists of 15 key interventions:

1. Information, education and communication;
2. HIV testing and counselling;
3. HIV treatment, care and support;
4. Prevention, diagnosis and treatment of tuberculosis;
5. Prevention of mother-to-child transmission of HIV;
6. Condom programmes;
7. Prevention and treatment of sexually transmitted infections;
8. Prevention of sexual violence;
9. Drug dependence treatment, including opioid substitution therapy;
10. Needle and syringe programmes;
11. Vaccination, diagnosis and treatment of viral hepatitis;
12. Post-exposure prophylaxis;
13. Prevention of HIV transmission through medical or dental services;
14. Prevention of transmission through tattooing, piercing and other forms of skin penetration;
15. Protecting staff from occupational hazards.

264 https://www.ohchr.org/sites/default/files/Documents/Publications/HIVAIDSGuidelinesen.pdf
265 https://www.unodc.org/documents/hiv-aids/HIV_comprehensive_package_prison_2013_eBook.pdf
266 https://www.unodc.org/unodc/en/hiv-aids/new/prison_settings_HIV.html

Currently, the prison system of the Republic of Moldova implements 13 of these recommended interventions.

## Tab 28. Persons deprived of their liberty: national legislation

### Criminal Code (Law no. 985/2002)[267]

- **Article 6.** Principle of the personal character of criminal liability
  (1) A person shall be subject to criminal liability and criminal punishment only for acts committed with culpability.
  (2) Only the person who commits by intention or imprudence an act set forth in criminal law shall be subject to criminal liability and criminal punishment.
- **Article 103** imposes forced treatment of drug and alcohol addiction.
- **Article 217.** Illegal circulation of narcotics, ethnobotanical products or analogues thereof not for the purpose of alienation
  (3) Actions set forth in para. (1) or (2), committed...
  e) on the territory of educational institutions, social rehabilitation institutions, penitentiaries, military units, recreation centres, at places where the actions of education and training of minors and young people take place, other cultural or sports events take place, or in immediate proximity thereto, shall be punished by imprisonment for up to 4 years, with the deprivation of the right to hold certain positions or to practice certain activities for 2 to 5 years, whereas a legal entity shall be punished by a fine in the amount of 6000 to 8000 conventional units, with the deprivation of the right to practice certain activities or by the liquidation of the legal entity.
- **Article 217⁵.** Illegal public consumption or the organization of illegal consumption of narcotic or ethnobotanical products or analogues thereof
  (1) The illegal consumption of narcotic or ethnobotanical products or analogues thereof, committed publicly or on the territory of educational institutions, social rehabilitation institutions, penitentiaries, military units, recreation centres, at places where the actions of education and training of minors and young people take place, other cultural or sports events take place, or in immediate proximity thereto, shall be punished by a fine in the amount of 750 to 1050 conventional units or with community service of 180 to 240 hours.

### Enforcement Code (Law no. 443/2004)[268]

- **Article 167².** Prohibition of discrimination in serving sentences
  While serving the sentences any form of discrimination based on the criteria provided in art. 3 of this Code, as well as on the grounds of age, disability, chronic communicable or non-communicable disease, HIV/AIDS infection, is prohibited.
- **Article 174.** Institutions and bodies in charge of ensuring the enforcement of safety measures
  (1) The enforcement of coercive measures of medical nature shall be ensured by the specialized curative institutions.
  (2) Enforcement of court decisions on the application of coercive measures of medical nature to convicted alcohol and drug addicts sentenced to prison terms or serving a life sentence shall be ensured by penitentiaries. If it is necessary to continue the forced medical

267 https://www.legis.md/cautare/getResults?doc_id=131599&lang=ro#
268 https://www.legis.md/cautare/getResults?doc_id=122067&lang=ro#

treatment after the release from detention, the enforcement of the decision is ensured by the specialised medical institutions.

### Government Decision no. 1164/2016 on the National program on the prevention and control of HIV/AIDS infection and sexually transmitted infections for the years 2016-2020[269]

- **Objective 1:** To prevent transmission of HIV and sexually transmitted infections, in particular among key populations (prisoners).
  6) By 2020, at least 60% … of the prisoners … tested for HIV and know their test result.

### MoJ Order no. 478/2006 on the approval of the Rules on the provision of health care assistance to people held in prisons[270]

- 3. Medical assistance to persons held in prisons shall be provided whenever necessary or upon request, by qualified personnel, free of charge, in accordance with the legislation in force. Persons held in prisons shall receive free of charge medical treatment and medicines in a volume similar to that provided for under the Unified Mandatory Health Insurance Program.

### MoJ Order no. 331/2006 on the approval of the Regulation on the release of severely ill convicts from serving the punishment[271]

- **Annex 2** contains the List of somatic illnesses, which are the grounds for the representation of severely ill convicts for release from serving the punishment (point 13 – AIDS)

### DPI Order no. 143/2013 on the approval of the Instruction on the assistance during detention and transfer of HIV-positive prisoners into the civilian sector

- Provides for the procedure of the identification prisoners at risk of HIV, testing, treatment and support, including in case of release from penitentiary. Also, it appoints persons responsible at the level of institutions for record keeping, documenting and reporting on HIV.

### DPI Order no. 237/2014 on the approval of the Manual of procedures in the implementation of the Methadone Pharmacotherapy Program in the penitentiary system

- Provides for the procedures of implementing the methadone pharmacotherapy among detainees, including the interaction with non-medical services and non-governmental organizations.

### DPI Order no. 244/2014 on the approval of the Operational manual "The Manual of procedures in the implementation of the Program of syringes exchange, distribution of condoms and disinfectants in the penitentiary system of the Republic of Moldova"[272]

269 https://www.legis.md/cautare/getResults?doc_id=111740&lang=ro
270 https://www.legis.md/cautare/getResults?doc_id=63829&lang=ro
271 https://www.legis.md/cautare/getResults?doc_id=38904&lang=ro
272 http://www.leahn.org/wp-content/uploads/2014/05/Manual-schimb-de-seringi-NSEP-spre-tipar-23.02.2015.pdf

## ANALYSIS

According to the data of the Medical Division of the National Administration of Prisons, 67.2% of prisoners on the right bank had been tested for HIV in 2019. This is almost a two-fold increase of inmates tested for HIV compared to 2018.[273] After a period of decrease in number of HIV tests performed in prisons (from 83% in 2007 to 8% in 2015), which is explained by the introduction in 2007 of the system of voluntary counselling and testing and the assignment of duties on mandatory counselling to prison doctors without allocation of additional staff for this purpose, the trend went up again. Since 2013, NGOs are performing rapid test in penitentiary system and they are providing counselling also.

During 2019, 29 HIV-positive people (2 women and 27 men) were identified in the prisons located on the right bank of the Nistru river. A total of 154 people living with HIV are held in the penitentiary system on the right bank. The incidence of new cases was 0.43%, and the prevalence of HIV among prisoners was 2.29% by the end of 2019.[274]

Currently, the penitentiary system has HIV tests, which are provided through the National HIV/AIDS/STI Program (which, in its turn, depends on external funding, especially provided by the Global Fund to Fight AIDS, Tuberculosis and Malaria) and are used in routine HIV testing, which raises concerns about the voluntary testing and counselling. This fact had been mentioned during the focus group discussions with former prisoners who also drew attention to *"some cases of compulsory HIV testing in prisons"*

There are no regulations on voluntary HIV testing for minors in detention. The **HIV Law** stipulates the general rule that the consent of the legal representative is also required for HIV testing of a minor. If it is not possible to obtain the consent of the legal representative, only the consent of the minor is sufficient. In this respect, the law does not provide whether the detention of a minor can be qualified as a situation of impossibility, which would justify the application of this rule in the situation when HIV testing of the minor is necessary.

Within focus group discussions, ex-prisoners reported that the confidentiality of medical diagnosis or HIV status is not ensured in prisons, resulting in stigma and discrimination.

**S., PLHIV (former prisoner):** "I was serving my sentence in Cricova prison. One of my fellow villagers was in the same prison that time. He knew I was HIV-positive, because in prisons the secrecy of the diagnosis is not kept. My fellow villager was released before me and told my relatives and my friends about my status, in spite of the fact that I'd asked him not to tell anyone about my diagnosis. When I returned home, my relatives and friends have changed their attitude towards me. I've tried to get a job, but it wasn't just that I hadn't been accepted anywhere, but they did not even want to share a table with me".

**I., PLHIV (former prisoner):** "...in prison, there is a rather bad attitude towards HIV-positive persons. They are often humiliated, insulted and beaten by other inmates..., medical staff is indifferent..."

It should be highlighted that although the legislation in force prohibits torture and inhuman treatment of prisoners, these provisions are not always respected. As of 30 June 2020, the Euro-

273 Dermatology and Communicable Diseases Hospital, Monitoring the HIV infection in the Republic of Moldova in 2019, https://sdmc.md/wp-content/uploads/2021/02/MD_Raport_anual_HIV_RO_2019_FINAL_DB-modificat.pdf

274 Ibid.

pean Court of Human Rights found 142 violations of Art. 3 (Prohibition of torture) of the European Convention on Human Rights in cases against Moldova. The most frequent types of violations found by the Court are ill treatment and improper investigation thereof, detention in poor conditions, and failure to provide proper medical assistance to prisoners.[275]

The UN Human Rights Committee states that health issues in detention should be addressed in accordance with the provisions on the respect of the right to life and the right to be treated with humanity set forth in the International Covenant on Civil and Political Rights. This requires that State Parties to the Covenant protect the life and well-being of persons deprived of their liberty, emphasizing the responsibilities of the government to guarantee medical assistance in places of detention.

In the context of HIV, the right to health and the right to life of the persons deprived of their liberty include ensuring access to information, education and prevention related to HIV, voluntary HIV testing and counselling, confidentiality, and treatment. In its report *Rights, Risks and Health*, the Global Commission on HIV and the Law supports these recommendations, underlining the need to provide the necessary health care in prisons, including HIV prevention and care services, regardless of laws criminalizing same-sex acts or harm reduction, including provision of condoms, voluntary and evidence-based treatment for drug dependence and ART. Any treatment offered must satisfy international standards of quality of care in detention settings. Health care services, including those specifically related to drug use and HIV, must be evidence-based, made voluntary and offered only where clinically indicated.[276]

International recommendations also points out that the State's duty of care within the penitentiary system also comprises a duty to combat prison rape and other forms of sexual victimization, which may result, *inter alia*, in HIV transmission.[277] However, daily statistics do not cover data on sexual violence (including rape) in the penitentiary system because of criminalization and denial of the phenomenon, which also leads to HIV transmission. Still, new cases of HIV are registered in prisons, which is a sign that infection is transmitted in the prison environment. The statistics do not specify whether these cases were identified upon transfer into prison or during routine HIV testing, nor do they mention the route of HIV transmission or whether the transmission had taken place during the period of imprisonment.

The **National HIV/AIDS/STI Program** identifies prisoners as a vulnerable population, and legal framework (Enforcement Code, HIV Law, MoJ Order no. 478/2006, etc.) regulates provision of care to them. Yet, the right of prisoners to benefit from general health care is not always safeguarded.

Prevention services offered within the penitentiary system include information, education, communication about HIV, HIV testing, training of peer-to-peer educators. In 2018, the Ministry of Health, Labour and Social Protection approved the **National Clinical Protocols on the HIV Pre-Exposure Prophylaxis**[278] **and HIV Post-Exposure Prophylaxis**[279] which describe the strategies for preventing exposure to HIV. However, they do not consider the specifics of the peniten-

275 Legal Resources Centre from Moldova (LRCM), Moldova at the European Court of Human Rights: over 600 violations in 23 years (12 September 1997-30 June 2020), https://crjm.org/moldova-la-curtea-europeana-a-drepturilor-omului-peste-600-de-violari-in-23-de-ani/
276 https://hivlawcommission.org/wp-content/uploads/2017/06/FinalReport-RisksRightsHealth-EN.pdf
277 International Guidelines on HIV/AIDS and Human Rights. See Tab. 25.
278 National Clinical Protocol "Pre-exposure prophylaxis of HIV" (PCN-313), https://msmps.gov.md/legislatie/ghiduri-protocoale-standarde/hiv-sida/
279 National Clinical Protocol "Post-exposure prophylaxis of HIV" (PCN-314), https://msmps.gov.md/legislatie/ghiduri-protocoale-standarde/hiv-sida/

tiary system, referring entirely to the general (community) health care system. The responsibility regarding the implementation of PrEP and PEP in the penitentiary system is the exclusive competence of the Medical Division of the NAP.

Syringe exchange programs and OST are available in Moldova prisons. At the end of 2019, 69 detainees were on opioid substitution treatment.[280] Nevertheless, the full use of these services is hampered by a number of legal, administrative and social factors specific for the prison environment. In practice, the therapy is interrupted upon transfer into the penitentiary. Independence of prison doctors, who should only abide by medical ethics, is questionable. Penitentiary medical staff are subordinated to the Ministry of Justice and not the Ministry of Health, Labour and Social Protection, and decisions of prison administration may influence medical decisions to the detriment of the patients' interests.[281]

According to study participants, there are instances when prison administration uses enrolment in syringe exchange programs or methadone substitution therapy to request court orders for compulsory treatment for drug addiction and extension of prison term for drug use.

**I., PLHIV/PWID (former prisoner):** "...prison is full of drugs, many of the prisoners get into the methadone program, the only thing is that... they continue using drugs... of course, everyone knows this... I have never taken syringes, because the administration makes such a "trick" that if they catch you, they invoke more persons as involved into organized crime... and they can add a term..."

Prison subculture and specific relations between the inmates are also affecting the full use of services available in penitentiaries for PLHIV and persons who use drugs.

**S., PWID/PLHIV (former prisoner):** "...It is not clear at all what is happening in prisons. People who use drugs are given syringes, but at the same time, if they are caught using them then a term is added to their sentence and they can be also sent for compulsory treatment. So what these syringes are given to them for?... those with authority (interlope leaders) intimidate those who want to get methadone, because this is clearly affecting their own drug businesses and, probably, all this is known to the administration..."

Furthermore, the current wording of Article 217[5] of the **Criminal Code** ("Illegal consumption of narcotic or ethnobotanical products or analogues thereof, committed … on the territory of … penitentiaries") restricts the right of the prisoners who use drugs to health protection, drug dependence treatment and assistance, their access to a range of health services being limited.

ARV treatment is provided through the National HIV/AIDS/STI Program, being offered free of charge to persons deprived of their liberty. 284 HIV-positive people (141 people in prisons on the right bank of the Nistru river and 143 people in prisons on the left bank of Nistru river) held in detention at the end of 2019 were on ART.[282]

**Focus group discussions:** It is possible to get ART in penitentiaries.

International recommendations stand for early release of prisoners in case of terminal illness, including AIDS, as well as for the need to provide them with adequate treatment outside of the

280 Dermatology and Communicable Diseases Hospital, Monitoring the HIV infection in the Republic of Moldova in 2019, https://sdmc.md/wp-content/uploads/2021/02/MD_Raport_anual_HIV_RO_2019_FINAL_DB-modificat.pdf

281 Council for the Prevention of Torture, Annual activity report for 2018, http://ombudsman.md/wp-content/uploads/2019/07/Raport-anual-de-activitate-CpPT-2018_Engleza.pdf

282 Dermatology and Communicable Diseases Hospital, Monitoring the HIV infection in the Republic of Moldova in 2019, https://sdmc.md/wp-content/uploads/2021/02/MD_Raport_anual_HIV_RO_2019_FINAL_DB-modificat.pdf

penitentiary system after their release. In this regard, the **Regulation on the release of severely ill convicts from serving the punishment (MoJ Order no. 331/2006)**[283] indicates AIDS, according to the WHO clinical classification (with association of coinfections), as a ground for early release. At the same time, practical enforcement of these legal provisions in relation to PLHIV deprived of their liberty is limited because of the cumbersome administrative procedure.

Another problem identified within the study is lack of adequate legal framework on the continuity of treatment in pre-trial detention facilities of the General Police Inspectorate, which lacks internal procedures of ensuring continuity of treatment of different pathologies for persons under police custody.[284] The responsibility to provide necessary medicines (e.g., for apprehended persons who suffer from diabetes or those on ART) is frequently put on the relatives. There are situations when persons in custody who needed to ensure the continuity of methadone substitution therapy were not provided with medicines (ART and methadone), contrary to the **Methodological Instruction on Police intervention in HIV prevention and control among high-risk groups, approved by the Order of the General Police Inspectorate no. 54/2015**.[285] In addition, the confidentiality of medical information is not ensured under police custody.[286] Thus, the fear that the person's HIV status or his/her belonging to a key population (SW, MSM or PWID) would become known to non-medical staff discourages disclosure and results in treatment interruptions.

## CONCLUSIONS

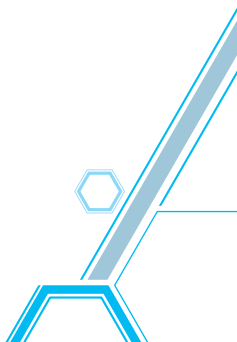
1. Although people deprived of liberty are considered a key affected population, there are gaps in the approach to multi-sectoral and consensus-based policy on HIV prevention and treatment in places of detention.
2. People deprived of liberty have the right to a health care standard equivalent to that available outside of the penitentiary system, and the prison administration has a duty to offer care and protect the rights to health and life of all inmates. The European Court of Human Rights consistently supports the rights to health and life of all people deprived of liberty, including adequate access to HIV prevention and health services.
3. Drug use in prisons, which are considered as public spaces, is criminalized, resulting in criminal punishment and, respectively, in the limitation of access to HIV testing and reluctance to request prevention and methadone substitution therapy.
4. Punitive measures (criminalization of drug use) only worsen the situation of persons deprived of their liberty and are not helpful in the recovery process; they do not consider the provisions of the Law no. 411/1995 on healthcare and make it possible for inmates who use drugs to be subject to compulsory treatment.
5. Article $217^5$ of the Criminal Code undermines the right of prisoners to the highest attainable standard of physical and mental health. This right is guaranteed both by the national legislation, as well as by international standards.

283 https://www.legis.md/cautare/getResults?doc_id=38904&lang=ro
284 Council for the Prevention of Torture, Annual activity report for 2018, http://ombudsman.md/wp-content/uploads/2019/07/Raport-anual-de-activitate-CpPT-2018_Engleza.pdf
285 http://www.leahn.org/wp-content/uploads/2014/05/Manual-on-police-and-HIV.pdf
286 Council for the Prevention of Torture, Annual activity report for 2018, http://ombudsman.md/wp-content/uploads/2019/07/Raport-anual-de-activitate-CpPT-2018_Engleza.pdf

6. There is no medical or public security justification for compulsory testing of prisoners for HIV and neither for limiting the prisoners living with HIV from their access to services available within the penitentiary system.
7. Forced treatment is not applied in practice in prisons. However, applications for release on parole are refused because the court requests a confirmation of the treatment. Therefore, if there is no such a confirmation, the application for the release is not accepted.
8. Existing national legal norms regulate provision of comprehensive HIV prevention, care and treatment services in the penitentiary system. However, these are not entirely implemented, because of the peculiar environment existing in prisons, life in which is regulated by unwritten prison rules.
9. Confidentiality of the HIV status in detention continues to be a problem. At the same time, the dependence of the medical staff upon the administration of the detention institutions, subordinated to the MoJ or MIA, continues to be a systemic problem.
10. The number of HIV tests among detainees is fluctuating due to non-observance by the prison staff (including medical staff) of the principles of voluntary testing and counselling and of confidentiality of HIV status of the person in detention. There are no regulations on voluntary HIV testing of minors in detention.

## RECOMMENDATIONS

1. To amend the legislation in order to exclude compulsory/forced treatment of drug dependence.
2. To amend Art. 217[5] of the Criminal Code to decriminalize drug use in prisons in order to eliminate barriers in access to treatment.
3. To adopt measures to ensure the observance of human rights of PLHIV in detention, including the prohibition of mandatory HIV testing and keeping the confidentiality of the diagnosis.
4. To undertake legislative, institutional and administrative measures that would ensure the continuity and the unhampered access of people who use drugs to syringe distribution and exchange programs, drug dependence treatment (including OST) or other harm reduction programs in prisons.
5. To extend the number of recommended HIV prevention interventions in prisons, as well as their full geographic coverage.
6. To evaluate policies and programs on the prevention and addressing of rape and other forms of sexual violence in prisons and collection of relevant data. The penitentiary systems should draft and enact multi-pronged strategies to enhance detection, prevention and reduction of all forms of sexual violence in prisons and to ensure criminal prosecution of offenders. Victims of sexual abuse in prisons must have access to HIV post-exposure prophylaxis.
7. To ensure that policies address services for people deprived of their liberty to ensure connection with testing, prevention and continuation of treatment after their release.
8. To amend the legal framework in order to ensure the independence and confidentiality of the medical act and respect of detainees' right to health, including for the achievement of the 90/90/90 targets by transferring medical services from the subordination of the NAP and GPI to the MHLSP.



# CHAPTER 3. ACCESS TO SERVICES

### Right to health

According to the principles of the World Health Organization, an important function of the health care system is to respond to people's expectations and needs, that shall be addressed in a just and fair manner in the context of universal human rights to life and health.

The legislation of the Republic of Moldova reflects the right to health through a rather comprehensive legislative framework, taking the form of a series of distinct rights, such as: right to health protection set forth in Art. 36 of the **Constitution of the Republic of Moldova**; right to health care set out in Art. 20 of the **Law no. 411/1995 on healthcare**; right to free medical assistance as provided for by the legislation, set out in Art. 5 of the **Law no. 263/2005 on the rights and responsibilities of the patient**. The latter aims at strengthening the fundamental human rights in the system of health services, ensuring the respect of patient's dignity and integrity and enhancing the participation of persons in taking health-related decisions. **Law no. 10/2009 on state's public health supervision**[287] governs the organization of the public health supervision by the state, establishing overall public health requirements, rights and obligations of individuals and legal entities. Other related rights set out in the **Law on healthcare** are: right to health insurance (art. 17); right to sanitary education of population (Art. 18); right to reparations for health damages (Art. 19); right to sick leaves (Art. 22); right to free choice of a physician and of a form of medical assistance (Art. 25); right to information about health condition (Art. 27); right of the patient to challenge the actions of the medical personnel for damages caused to health (Art. 36); right of the family to health protection and social security (Art. 46).

Rights of PLHIV are further enshrined in Art. 41 (Health and social assistance for persons infected with the human immunodeficiency virus and sick with AIDS) of the **Law on healthcare**, and, explicitly or implicitly, in the **HIV Law**: right to confidentiality (Art. 14); prohibition of discrimination (Art. 22-27); right to benefit from medical assistance, according to the legislation in force (Art. 19); right of children living with HIV or affected by AIDS to benefit from the adapted counselling (Art. 6); right of women living with HIV to benefit from free contraception (Art. 6). Access to treatment, care and other related health services is one of the fundamental rights of PLHIV and people with AIDS and which is directly linked to the right to life.

287 https://www.legis.md/cautare/getResults?doc_id=106570&lang=ro

# HIV PREVENTION PROGRAMS

## FUNDAMENTAL PRINCIPLES

Every person must benefit from equitable and sustainable access to a wide range of effective, human rights-based and evidence-informed measures aimed at preventing HIV transmission. The state implements and supports HIV-related awareness raising, stigma reduction, training and information exchange programs and ensures that HIV research adheres to the highest ethical standards.[288]

## Tab. 29. HIV prevention: international standards

### International Covenant on Economic, Social and Cultural Rights (1966)[289]

- **Article 12**
  1. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.
  2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:
  (c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases.

### UN Committee for Economic, Social and Cultural Rights, General Comment no. 14 (2000) – The right to the highest attainable standard of health (Art. 12 of the International Covenant on Economic, Social and Cultural Rights) (E/C.12/2000/4)[290]

- **Article 12.2 (c).** The right to prevention, treatment and control of diseases
  16. "The prevention, treatment and control of epidemic, endemic, occupational and other diseases" (art. 12.2 (c)) requires the establishment of prevention and education programmes for behaviour-related health concerns such as sexually transmitted diseases, in particular HIV/AIDS, and those adversely affecting sexual and reproductive health, and the promotion of social determinants of good health, such as environmental safety, education, economic development and gender equity.

### WHO Consolidated guidelines on HIV prevention, diagnosis, treatment and care for key populations (2016 Update)[291]

- This document has recommendations on implementing HIV prevention programs among populations with major risk.

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288 UNDP, Legal environment assessment for HIV: An operational guide to conducting national legal, regulatory and policy assessments for HIV, 2014, http://www.undp.org/content/undp/en/home/librarypage/hiv-aids/practical-manual--legal-environment-assessment-for-hiv--an-opera.html

289 https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights

290 https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2f2000%2f4&Lang=en

291 https://www.who.int/publications/i/item/9789241511124

### WHO Consolidated guidelines on the use of antiretroviral drugs for treating and preventing HIV infection (2016)[292]

- These guidelines provide guidance on the diagnosis of HIV infection, the use of ARV drugs for treating and preventing HIV infection and the care of people living with HIV. They are structured along the continuum of HIV testing, prevention, treatment and care.

### UNAIDS, HIV prevention among adolescent girls and young women (2016)[293]

- This guidance refers to HIV reduction programs among adolescent girls and young women from countries and places where HIV incidence is high among this population.

### UN General Assembly, Declaration of Commitment on HIV/AIDS, para. 52 (2001)[294] and Political Declaration on HIV/AIDS, para. 22 (2006)[295]

- Reaffirm that the prevention of HIV infection must be the mainstay of national, regional and international responses to the pandemic, and therefore commit ourselves to intensifying efforts to ensure that a wide range of prevention programmes that take account of local circumstances, ethics and cultural values is available in all countries, particularly the most affected countries, including information, education and communication, in languages most understood by communities and respectful of cultures, aimed at reducing risk-taking behaviours and encouraging responsible sexual behaviour, including abstinence and fidelity; expanded access to essential commodities, including male and female condoms and sterile injecting equipment; harm-reduction efforts related to drug use; expanded access to voluntary and confidential counselling and testing; safe blood supplies; and early and effective treatment of sexually transmitted infections.

### UN Political Declaration on HIV/AIDS: On the Fast Track to Accelerating the Fight against HIV and to Ending the AIDS Epidemic by 2030 (2016)[296]

- 62 (a). Recognize that the AIDS response can be fast-tracked only by protecting and promoting access to appropriate, high-quality, evidence-based HIV information, education and services without stigma and discrimination and with full respect for the rights to privacy, confidentiality and informed consent, and reaffirm that comprehensive HIV prevention programmes, treatment, care and support must be the cornerstone of national, regional and international responses to the HIV epidemic;
- 62 (e). Promote the development of and access to tailored comprehensive HIV prevention services for all women and adolescent girls, migrants and key populations;

### International Guidelines on HIV/AIDS and Human Rights, Consolidated Version (2006)[297]

- **Guideline 6** (Access to Prevention, Treatment, Care and Support)
  23. States should enact legislation to provide for the regulation of HIV-related goods, services and information, so as to ensure widespread availability of quality prevention measures and services, adequate HIV prevention and care information, and safe and effective medication at an affordable price.

292 https://www.who.int/hiv/pub/arv/arv-2016/en/
293 http://www.unaids.org/sites/default/files/media_asset/UNAIDS_HIV_prevention_among_adolescent_girls_and_young_women.pdf
294 https://data.unaids.org/publications/irc-pub03/aidsdeclaration_en.pdf
295 https://www.unaids.org/sites/default/files/sub_landing/files/20060615_hlm_politicaldeclaration_ares60262_en_0.pdf
296 https://www.unaids.org/sites/default/files/media_asset/2016-political-declaration-HIV-AIDS_en.pdf
297 https://www.ohchr.org/sites/default/files/Documents/Publications/HIVAIDSGuidelinesen.pdf

24. States should also take measures necessary to ensure for all persons, on a sustained and equal basis, the availability and accessibility of quality goods, services and information for HIV/AIDS prevention, treatment, care and support, including antiretroviral and other safe and effective medicines, diagnostics and related technologies for preventive, curative and palliative care of HIV and related opportunistic infections and conditions.

### ILO's HIV and AIDS Recommendation (2010)[298]

- 3. The following general principles should apply to all action involved in the national response to HIV and AIDS in the world of work:
  (a) the response to HIV and AIDS should be recognized as contributing to the realization of human rights and fundamental freedoms and gender equality for all, including workers, their families and their dependants; …
  (d) prevention of all means of HIV transmission should be a fundamental priority;
- 15. Prevention strategies should be adapted to national conditions and the type of workplace, and should take into account gender, cultural, social and economic concerns.

HIV prevention is one of the priority areas of the National HIV/AIDS/STI Program for the years 2016-2020 and is the core component of the HIV Law (Tab. 28).

## Tab. 30. HIV prevention: national legislation

### Law no. 23/2007 on prophylaxis of HIV/AIDS infection[299]

- Chapter II. Prevention Framework
- Chapter III. Prevention activities among vulnerable groups
- Chapter VIII. Prevention of nosocomial infection

### Government Decision no. 1164/2016 on the National program on the prevention and control of HIV/AIDS infection and sexually transmitted infections for the years 2016-2020[300]

- **Objective 1:** To prevent transmission of HIV and sexually transmitted infections, in particular among key populations
  By 2020, at least 60% of people who inject drugs; at least 60% of female sex workers (in 10 available territories); at least 40% of men who practice sex with men are covered with prevention services within the risk reduction programs.

### National clinical protocols (2018): Pre-exposure prophylaxis of HIV (PCN-313);[301] Post-exposure prophylaxis of HIV (PCN-314)[302]

- Provide an overview of the information relevant for the medical services providers, including physicians, nurses and medical personnel which provide PrEP in clinical conditions, measures to enhance the quality of diagnosis of the accidental exposure to HIV, to prevent HIV transmission during accidental exposure, and to ensure the timely initiation of post-exposure prophylaxis.

298 https://www.ilo.org/dyn/normlex/en/f?p=1000:12100:::NO:12100:P12100_INSTRUMENT_ID:2551501
299 https://www.legis.md/cautare/getResults?doc_id=110180&lang=ro
300 https://www.legis.md/cautare/getResults?doc_id=111740&lang=ro
301 https://msmps.gov.md/legislatie/ghiduri-protocoale-standarde/hiv-sida/
302 Idem.

### The quality standard of HIV prevention services for the key populations on the basis of the Risk Reduction strategy (MoH Order no. 996/2015)[303]

- This is a single standard for governmental and non-governmental institutions, which implement risk reduction programmes for PWID, SW, MSM.

### Standard for organising and providing HIV prevention services to key population including young people in these groups (Order of MHLSP no. 278/2020)[304]

- The standard is based on the recommendations developed by WHO, UNAIDS, UNFPA and other international organisations, as well as on a number of guidelines and standard operational procedures that regulate services aiming at reducing the risks of HIV infection in key population, including young people in these groups.
- The standard is intended for:
  - Medical workers and public health specialists who are working on HIV prevention among key population, including young people in these groups;
  - Non-Governmental Organisations/public associations working in the area of HIV/AIDS and STIs prevention.

### GPI Order no. 54/2015 on the approval of the Methodological Instruction on Police intervention in HIV prevention and control among high-risk groups[305]

- Defines the purpose, tasks and actions of the police officers in the implementation of activities to prevent HIV infection/AIDS in high-risk groups, but also the mode of personal protection of the police officers in their operations, including in the groups with high risk of infection.

## ANALYSIS

Prevention interventions include HIV testing, training of peer-to-peer educators, education for risk reduction among key and vulnerable populations, harm reduction programs (access to condoms, syringes exchange, etc.), use of rapid HIV tests, mobile teams, media campaigns, etc. Nevertheless, low level of knowledge about HIV among vulnerable groups, especially among those under 25 years old,[306] highlights gaps in the development and implementation of prevention interventions, including awareness raising, communication and education strategies implemented by public authorities.

National PrEP and PEP clinical protocols were drafted based on WHO's *Consolidated guidelines on the use of antiretroviral drugs for treating and preventing HIV infection*.[307] During 2017, the standard on epidemiological supervision of HIV infection[308] was adjusted.

HIV prevention programs targeting key and vulnerable populations are predominantly implemented and supported by NGOs, financed by foreign donors. Dependence on external financing is still one of the main impediments in the prevention efforts. At the same time, criminalization of

303 http://msmps.gov.md/wp-content/uploads/2020/06/15168-1110001.pdf
304 https://moldova.unfpa.org/sites/default/files/pub-pdf/standardul_de_organizare_si_functionare_a_serviciilor_de_prevenire_hiv_in_mediul_populatiilor-cheie_inclusiv_a_tinerilor_din_aceste_grupuri.pdf
305 http://www.leahn.org/wp-content/uploads/2014/05/Manual-on-police-and-HIV.pdf
306 Centre for Health Policies and Studies (PAS Centre), The integrated bio-behavioural survey among groups with high risk of HIV infection in the Republic of Moldova, 2016; http://www.pas.md/ro/PAS/Studies/Details/72
307 https://www.who.int/publications/i/item/9789241549684
308 https://msmps.gov.md/legislatie/ghiduri-protocoale-standarde/standard-supravegherea-epidemiologica-a-infectiei-cu-hiv/

sex work, HIV exposure and transmission, drug use continues to create significant barriers in accessing prevention services.

**C., PWID/PLHIV:** "...if someone regularly takes anti-HIV treatment, this person simply cannot transmit the virus to another person. I have tried to convince my friend of this, I've asked her to take the test, because she had partnered with a person who uses drugs and I was afraid for her, because I had a feeling she had HIV, but she refused, because she was afraid that her partner would blame her if the diagnosis would be confirmed, as he said before that if she had HIV and she "gifted" the disease to him, he would put her into jail, as there is such a law. I haven't seen her for a long time, and I don't know what happened to her..."

Stigma and discrimination within the health system are resulting in sub-optimal coverage of the key populations.

According to health policies, pregnant women are a category of women for whom HIV control services are organized and provided. The rationale is that their surveillance is necessary to minimize mother-to-child transmission of HIV and to ensure a better control of the infection. According to the provisions of the national laws, all pregnant women are tested for HIV. Prevention of mother-to-child transmission of HIV is ensured through the provision of HIV-positive pregnant women with prophylactic treatment, while babies born by HIV-positive mothers are benefiting from specific prevention interventions. There are significant results in reducing the rates of mother-to-child transmission of HIV from 17.91% in 2004 to 4,81% in 2019, and the coverage with preventive treatment is at 95,7%.[309]

**S., woman living with HIV:** "...I was tested for HIV during pregnancy. Now I am happy about this, I received prophylactic treatment and my child is healthy..."

## CONCLUSIONS

1. HIV prevention is one of the priorities of the national policy. Nevertheless, key challenges in achieving the policy objectives are closely linked with the access of key populations to information and essential health services and to under-financing from the national budget of the HIV prevention programs. Most HIV prevention programs are financed by donors and therefore they are less sustainable.
2. An essential obstacle for the HIV prevention is stigmatization and discrimination of PLHIV.
3. National regulations are mostly drafted on the bases of international guidelines and recommendations. No significant discrepancies between the national legal acts had been noticed. However, the results measured through surveys (regarding the knowledge, but also the risky practices among high-risk groups) suggest these programs need to be extended.

## RECOMMENDATIONS

1. To adopt national policies and regulations on financing HIV prevention in all key affected populations from national and local budgets thus reducing the dependence on donor funding.
2. To develop and implement communication strategies in order to enhance the level of knowledge about HIV among the general population. To develop and implement specific prevention programs for adolescents involved in HIV-related risk behaviours.

309 Dermatology and Communicable Diseases Hospital, Monitoring the HIV infection in the Republic of Moldova in 2019, https://sdmc.md/wp-content/uploads/2021/02/MD_Raport_anual_HIV_RO_2019_FINAL_DB-modificat.pdf

# TESTING, COUNSELLING, REFERRAL, CONFIDENTIALITY

## FUNDAMENTAL PRINCIPLES

Every person should have unrestricted access to confidential and anonymous testing services and voluntary counselling. Mandatory HIV testing is prohibited. Referral to other services should be ensured, if appropriate.[310]

## Tab. 31. Testing, counselling, referral, confidentiality: international standards

### International Covenant on Economic, Social and Cultural Rights (1966)[311]

- **Article 12**
  1. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.
  2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:
  (c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases.

### UN Committee for Economic, Social and Cultural Rights, General Comment no. 14 (2000) – The right to the highest attainable standard of health (Art. 12 of the International Covenant on Economic, Social and Cultural Rights) (E/C.12/2000/4)[312]

- **Paragraph 12,** letters (b) and (c) with explanations on ensuring confidentiality in relation to essential elements of the right to health: availability, accessibility (non-discrimination, physical accessibility, economic accessibility, information accessibility), acceptability and quality of health facilities, goods and services;
- **Paragraph 16** with the explanations of the contents of Art. 12.2 (c) of the International Covenant, including on HIV/AIDS prevention programs;
- **Paragraph 36** with explanations of the content of the obligation to fulfil the right to health, including by offering counselling.

### UN Political Declaration on HIV/AIDS: On the Fast Track to Accelerating the Fight against HIV and to Ending the AIDS Epidemic by 2030 (2016)[313]

- **60 (b).** Commit to using multiple strategies and modalities, including, when possible, voluntary, confidential, fully informed and safe community-based testing, according to national context, to reaching the millions of people who do not know their status, including those living with HIV, and to providing pre-test information, counselling, post-test referrals and follow-up to facilitate linkages to care, support and treatment services, including viral load monitoring, and to addressing socioeconomic barriers to testing and treat-

310 UNDP, Legal environment assessment for HIV: An operational guide to conducting national legal, regulatory and policy assessments for HIV, 2014, http://www.undp.org/content/undp/en/home/librarypage/hiv-aids/practical-manual--legal-environment-assessment-for-hiv--an-opera.html
311 https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights
312 https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2f2000%2f4&Lang=en
313 https://www.unaids.org/sites/default/files/media_asset/2016-political-declaration-HIV-AIDS_en.pdf

ment, including legal, regulatory barriers to community testing, and commit to expanding and promoting voluntary and confidential HIV testing and counselling, including provider-initiated HIV testing and counselling, and to intensifying national testing promotion campaigns for HIV and other sexually transmitted infections.

### WHO Consolidated guidelines on HIV testing services (2019)[314]

- The consolidated guidelines bring together existing and new guidance on HIV testing services (HTS) across different settings and populations.

The right to confidentiality, informed consent, voluntary testing and counselling in an environment free from stigma and discrimination are stipulated in the HIV/AIDS policies of the Republic of Moldova (Tab. 30).

## Tab. 32. Testing, counselling, referral, confidentiality: national legislation

### Law no. 23/2007 on prevention of HIV/AIDS infection[315]

- **Chapter IV.** Voluntary counselling and testing

### Government Decision no. 1164/2016 on the National program on the prevention and control of HIV/AIDS infection and sexually transmitted infections for the years 2016-2020[316]

- **Objective 1:** To prevent transmission of HIV and sexually transmitted infections, in particular among key population

### MoH Order no. 344/2007 on the establishment of the Voluntary Counselling and Testing Service[317]

- The Order approves the Concept on voluntary counselling and testing services for HIV infection and viral hepatitis B and C, the Standard regulation of the voluntary counselling and testing office, and the Templates of record keeping, monitoring and statistical reporting in voluntary counselling and testing.

### MoH Order no. 790/2012 on the Rules of medical examination and supervision for the detection of infection with the human immunodeficiency virus (AIDS disease)[318]

- The rules establish the list of clinical and epidemiological indications for which the examination for HIV markers is recommended, the order of counselling and testing, the issuing of the test results and informing the tested persons.

### MHLSP Order no. 409/2018 on the approval of the National Guidelines on the laboratory diagnosis of HIV infection[319]

- The guidelines aim at updating and optimizing the laboratory diagnosis of HIV infection.

314 https://www.who.int/publications/i/item/978-92-4-155058-1
315 https://www.legis.md/cautare/getResults?doc_id=110180&lang=ro
316 https://www.legis.md/cautare/getResults?doc_id=111740&lang=ro
317 https://msmps.gov.md/sites/default/files/legislatie/ordin_nr._344_din_15.09.2007.pdf
318 https://www.legis.md/cautare/getResults?doc_id=13499&lang=ro
319 http://msmps.gov.md/wp-content/uploads/2020/06/15682-Ghid-national-de-diagnostic-de-aborator_HIV_FINAL.pdf

## ANALYSIS

As a rule, the HIV testing is done only based on the written voluntary and informed consent of the person. However, the testing is mandatory in certain cases prescribed by law. According to the **HIV Law**, the HIV testing is mandatory a) upon donating blood, liquids, tissues and organs, and b) based on a court decision, in cases of rape and intentional exposure of another person to the risk of infection, when the accused does not give the consent for testing after the appropriate counselling.

The **MoH Order no. 790/2012**, which provides for the procedure of HIV testing, specifies that examination for HIV1/2 markers is a mandatory component for ensuring the security of blood transfusions, transplantation of organs, tissues, artificial fertilization, and stipulates that the testing for HIV1/2 markers is mandatory at every donation of blood, biologic liquids, tissues and organs.

The **MoH Order no. 31/2016**[320] introduces the Standards for the observation of pregnant women, which requires HIV testing (twice during pregnancy) for ensuring an efficient supervision of the progression of pregnancy. Nevertheless, the Order neither regulates the procedure for testing nor sets forth any principles (such as voluntary and confidential testing, with counselling before and after the test; transmission of the result).

**Interviewed participants** find it necessary and appropriate to make two tests during pregnancy, with pre- and post-testing counselling.

The **HIV Law** requires for a written consent for HIV testing. The same provision is included in the Standard regulation of the voluntary counselling and testing office (Annex 2 to the **MoH Order no. 344/2007**) which requires "*to get the written informed consent of the counselled person for rapid HIV test or for collecting a blood sample to make HIV (ELISA) and/or viral hepatitis B and C tests*", as well as in the **MoH Order no. 790/2012** which stipulates that client-initiated HIV test should be performed only after pre-test counselling, based on written, voluntary and informed consent, in line with the requirements of the **MoH Order no. 344/2007**.

## CASE STUDY

Taking into account the ECtHR caselaw (Z vs. Finland[321] and I vs. Finland[322]), transferring HIV test results to a large circle of health care institutions, when there are no adequate data protection measures and no pressing need to inform family physicians, constitutes a disproportionate interference, which contradicts to public interests as it undermines public trust in healthcare system.

320 https://msmps.gov.md/sites/default/files/legislatie/ord._mr._31_din_27.01.1016_standardele_noi_gravide_in_conditii_de_ambulator_1.pdf
321 Application no. 22009/93, http://hudoc.echr.coe.int/eng?i=001-58033
322 Application no. 20511/03, http://hudoc.echr.coe.int/eng?i=001-87510

## Protection of private life and confidentiality

## Tab. 33. Right to confidentiality and private life: international standards

### International Covenant on Civil and Political Rights (1966)[323]

- **Article 17**
  1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.
  2. Everyone has the right to the protection of the law against such interference or attacks.

### European Convention for the Protection of Human Rights and Fundamental Freedoms (1950)[324]

- **Art. 8.** Right to respect for private and family life.
  1. Everyone has the right to respect for his private and family life, his home and his correspondence.
  2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

### World Medical Association (WMA), Declaration of Lisbon on the rights of the patient (1981)[325]

- **8.** Right to confidentiality
  a. All identifiable information about a patient's health status, medical condition, diagnosis, prognosis and treatment and all other information of a personal kind must be kept confidential, even after death. Exceptionally, descendants may have a right of access to information that would inform them of their health risks.
  b. Confidential information can only be disclosed if the patient gives explicit consent or if expressly provided for in the law. Information can be disclosed to other health care providers only on a strictly "need to know" basis unless the patient has given explicit consent.

### UN Political Declaration on HIV/AIDS (2006)[326]

- **25.** Pledge to promote, at the international, regional, national and local levels, access to HIV/AIDS education, information, voluntary counselling and testing and related services, with full protection of confidentiality and informed consent, and to promote a social and legal environment that is supportive of and safe for voluntary disclosure of HIV status.

323 https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights
324 https://www.echr.coe.int/documents/convention_eng.pdf
325 https://www.wma.net/policies-post/wma-declaration-of-lisbon-on-the-rights-of-the-patient/
326 https://www.unaids.org/sites/default/files/sub_landing/files/20060615_hlm_politicaldeclaration_ares60262_en_0.pdf

### UNAIDS, Interim Guidelines on Protecting the Confidentiality and Security of HIV Information (2007)[327]

- The goal of these guidelines is to identify strategies that ensure the safety and privacy of HIV/AIDS-related health information during and following treatment, including: collection, transfer, storage, use, dissemination, and disposal of health information. This document primarily serves as a guide for low- and middle-income countries in securing health information as patient services are scaled up.

Guaranteeing the confidentiality and the protection of personal data are reflected in general regulatory and other acts related to this issue (Tab. 32).

## Tab. 34. Right to confidentiality and private life: national legislation

### Law no. 133/2011 on personal data protection[328]

- **Article 12.** Informing the personal data subject
  (1) Where the personal data are collected directly from the data subject, the operator or the person authorised by the operator must provide the data subject with the following information, except where the data subject holds that information already:
  3) additional information, such as:
  a) recipients or categories of recipients of personal data;
  b) existence of the rights of access to data, the right of intervention upon data and of opposition, as well as conditions under which such rights may be exercised.

### Law no. 264/2005 on the exercise of the medical profession[329]

- **Article 13.** Professional secrecy
  (1) The doctor is obliged to keep the professional secrecy.
  (2) Information about the request for medical assistance, about the state of health, diagnostic and other data obtained by the doctor in the examination and treatment of the patient constitutes personal data and professional secrecy of the doctor may not be disclosed.
  (3) With the consent of the patient or his/her legal representative, it is allowed to transfer the information which constitutes professional secrecy to other persons in the interest of patient's examination and treatment, of conducting scientific investigations, using these data in studies and for other purposes.
  (4) Presentation of information which constitutes professional secrecy to other persons without the consent of the patient or his/her legal representative shall be allowed in the following cases:
  a) For the purpose of examination and treatment of a patient who is unable, due to his/her health condition, to express his/her consent;
  b) In case of the possibility of spreading some contagious diseases, intoxications and other diseases that represent a mass danger;
  c) Upon the request of criminal investigation bodies, of the prosecutor's office and of the court in connection with the conduction of criminal investigation or judicial investigation;

327 https://www.hivlawandpolicy.org/resources/guidelines-protecting-confidentiality-and-security-hiv-information-proceedings-workshop
328 https://www.legis.md/cautare/getResults?doc_id=122546&lang=ro#
329 https://www.legis.md/cautare/getResults?doc_id=110649&lang=ro#

c[1]. Upon the request of People's Advocate or, as the case may be, of the People's Advocate for the Rights of the Child, in order to ensure the protection of persons against torture and other cruel, inhuman or degrading treatment or punishment;

c[2]) Upon the request of members of the Council for the Prevention of Torture, during their visits and within the limits necessary for conducting the visits;

d) In case of provision of medical assistance to a minor or to a person in whose respect the measure of judicial protection was instituted in the form of custody, who is incapable to inform the parents or his/her legal representatives;

e) In case of circumstances, based on which it can be assumed that the damage caused to the person's health represents the consequence of an illegal action.

(5) The persons to whom the information constituting professional secrecy has been transmitted shall be liable for the disclosure of the information transmitted to them, in accordance with the law.

(6) The professional secrecy cannot be disclosed even after the finalisation of the treatment or the death of the patient.

## Law no. 23/2007 on prevention of HIV/AIDS infection[330]

- **Article 14.** Confidentiality

  (1) The right to confidentiality of the person requesting testing for HIV markers or those diagnosed with HIV is guaranteed.

  (6) Medical personnel and institutions who, by virtue of their duties, hold information on the results of medical examinations in relation to HIV (AIDS disease) are obliged to provide guarantees of confidentiality and security of the personal medical data. These guarantees shall contain a minimum set of instructions to ensure the confidentiality and safety of information held by the institutions, which must include the following:

  a) Justification of the need to hold the information;

  b) Mandatory training of employees on the issue of ensuring the confidentiality of personal medical information and signed non-disclosure declarations;

  c) Documentation regarding the access of employees to personal data;

  d) Person responsible for confidentiality and information security policy;

  e) Ensuring the notification of the institutions to which the personal data are subsequently reported, both in hard copies and by automatic processing, on the obligation to keep the medical secrecy.

## MoH Order no. 198/2015 on amending and completing the Order no. 1227/2012 on the approval of the Regulation on the transmission of personal medical information about the HIV infected patients[331]

- **16.** After the receipt of the "Report on laboratory confirmation of a new case of infection with HIV-1 virus" (SIDA 8/e Form) through Western blot reaction, the infectious disease physician at the place of residence within 10 days shall:

  3) Send to the family physician at the place of residence a copy of the "Report on laboratory confirmation of new case of infection with HIV-1 virus" (SIDA 8/e Form).

330 https://www.legis.md/cautare/getResults?doc_id=110180&lang=ro

331 https://msmps.gov.md/sites/default/files/legislatie/ordinul_198_din_16.03.2015.pdf

## ANALYSIS

According to **Art. 75 of the Contravention Code**,[332] disclosure of confidential information about an HIV test is prohibited and punishable under the contravention legislation. However, contravention cases are considered by Administrative Commission – a body operating under local public administration and consisting of a chairperson, deputy chairperson, secretary and 4-7 more members. So, the review of such cases entails disclosure of the person's HIV status to the commission, which may consist of 7-10 persons. One the one hand, this can discourage people from filing complaints under Art. 75 of the Contravention Code, and on the other it can result in violation of **Art. 17 of the International Covenant on Civil and Political Rights** and **Art. 8 of the European Convention for Human Rights**, which provide for the protection of the right to private life, including the positive obligation of the state to discourage data disclosure and to create an effective rather than pro forma remedies.

**H., PWID/PLHIV:** "...I don't understand why the data is communicated to the family physicians at the polyclinic at the place of residence, anyway, as nobody wants to deal with us there..."

Also, according to the **MoH Order no. 198/2015 on amending and completing the Regulation on the transmission of personal medical information about HIV infected patients**, an infectious disease physician at the place of residence sends, within 10 days, to a family physician at the place of residence a copy of the report on laboratory confirmation of a new HIV case.

Changes introduced by the Order no. 198/2015 undermine the confidence in the healthcare system, because the person is excluded from the decision-making process regarding the processing of his or her medical data. This practice also contradicts the Law on personal data protection, which sets forth that when personal data are collected, the operator must provide the information on: a) the recipients or categories of recipients of personal data; b) the existence of the rights of access to the data, of interventions in the data and of opposition, as well as terms under which these rights can be exercised.

**Focus group participant: "**...HIV status is often disclosed without the person's consent. The principle of confidentiality is violated. Medical personnel is the main source of data disclosure. The information on HIV diagnosis and drug dependence is transmitted to family physicians, thus, the right to personal data protection and the secret of the diagnosis is violated. Most of the group participants have faced the disclosure of diagnosis in health care facilities, in one form or another..."

The health care system still does not have adequate protection of medical data. In this connection, currently it is next to impossible to establish the list of persons and the period when the medical data had been accessed, including in case of such sensitive information as HIV status.

**Interview participants** concluded that the process of submitting documents to local authorities for getting social allowances must include the obligation of the staff who receive the information to respect confidentiality and protect personal data and must exclude the demands to submit detailed medical documentation. Fear of stigmatization following disclosure of the diagnosis prevents them from exercising their rights to social security and is a violation of the right to social protection.

332 https://www.legis.md/cautare/getResults?doc_id=130831&lang=ro#

In the Concluding Observations to the Republic of Moldova (2011),[333] the UN Committee on Economic, Social and Cultural Rights expressed its concern about the practice of disclosure of patient's HIV status by doctors and nurses to other medical personnel and third parties and has recommended that the State ensure the confidentiality of a patient's HIV status, including through reforming the HIV Law. Similar recommendations about ensuring the confidentiality regarding people living with HIV were also mentioned by the Committee in 2017.[334]

Also, according to the last UNAIDS report on discrimination faced in health care facilities, the Republic of Moldova ranks the first as regards disclosure of the HIV status at least once without the patient's consent. 50% of PLHIV from the Republic of Moldova have noted that the medical personnel had ever disclosed their HIV status without their consent.[335]

**The MHLSP Order no. 1497/2018**[336] and the **MHLSP Order no. 1498/2018**[337] regulate the unification of record keeping and safeguarding of complete information on the operation of medical services providers, the optimization and automation of primary health care record keeping forms. These regulations also provide access of a large number of medical personnel to the data on HIV status, which, together with the high rate of information disclosure by the medical personnel (about 50% of PLHIV in Moldova had such an experience), may lead to the decrease of requests for medical services because of stigma and discrimination associated with the disclosure of the HIV status.

## CONCLUSIONS

1. The consent given by persons who are subjected to HIV testing is usually a formal one, and the requirement of a consent is violated by a number of bylaws, thus creating conditions for arbitrary interference into the private life of PLHIV.
2. The healthcare and social security systems do not provide adequate protection of medical and/or social data.
3. The unification of information record keeping, which reflect the activity of the medical services providers, optimization and automation of primary health care forms through an automated information system may undermine healthcare seeking behaviour because of stigma and discrimination associated with disclosure of HIV status.

## RECOMMENDATIONS

1. To amend Art. 398 of the Contravention Code in order to exclude the competence of the Administrative Commission to resolve cases, provided for in Art. 75 "Disclosure of confidential information regarding HIV tests".

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333 UN Committee on Economic, Social and Cultural Rights, Concluding Observations on the second periodic report of the Republic of Moldova (E/C.12/MDA/CO/2, 2011), https://undocs.org/E/C.12/MDA/CO/2

334 UN Committee on Economic, Social and Cultural Rights, Concluding Observations on the third periodic report of the Republic of Moldova (E/C.12/MDA/CO/3, 2017), https://undocs.org/en/E/C.12/MDA/CO/3

335 UNAIDS, Confronting discrimination: Overcoming HIV-related stigma and discrimination in health care settings and beyond, 2017, https://www.unaids.org/en/resources/documents/2017/confronting-discrimination

336 MHLSP Order no. 1497/2018 on the approval of the personal data security policy in the automated information system, https://msmps.gov.md/sites/default/files/legislatie/ordin_nr._1497_din_14.12.18-_politici_de_securitate_a_datelor_cu_caracter_personal_in_cadrul_sia_0.pdf

337 MHLSP Order no. 1498/2018 on the approval of primary medical record keeping forms, line statistical reports, statistical reports generated by the Primary Health Care Automated Information System (PHC AIS), https://msmps.gov.md/sites/default/files/legislatie/1.ordin_nr._1498_din_14.12.18-_aprobarea_formularelor_de_evidenta_medicala_primara_rapoartelor_statistice_sia_amp.pdf

2. To introduce disciplinary, contravention or criminal liability for violation of the rules on pre- and post-testing counselling, disclosure of HIV status at any level (health care, social, law enforcement bodies, employers, civil servants, etc.).
3. To ensure adequate protection of medical and/or social data at the system level; to bring the MoH Order no. 198/2015 in line with the provisions of the Law no. 133/2011 on personal data protection.
4. To revise the HIV Law in order to improve protection of patients' data confidentiality.
5. To revise PHC AIS implementation policy from the point of view of HIV status personal data protection (MHLSP Order no. 1497/2018, MHLSP Order no. 1498/2018).

# OCCUPATIONAL HEALTH AND SAFETY OF MEDICAL PERSONNEL

## FUNDAMENTAL PRINCIPLES

An effective safety and health system requires joint commitment between the competent authority, employers, workers and their representatives. While the overall responsibility for providing a safe and healthy working environment rests with the employer, who should demonstrate commitment to occupational safety and health by putting in place a documented programme that addresses the principles of prevention, hazard identification, information and training, risk assessment and control, workers have a duty to cooperate with the employer in implementing this occupational safety and health programme, and in applying procedures designed to protect them and others present at the workplace from exposure to occupational hazards.[338]

## Tab. 35. Occupational health and safety of medical personnel: international standards

### International Covenant on Economic, Social and Cultural Rights (1966)[339]

- **Article 12**

  1. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

  2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:

  (c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases.

### ILO, Occupational Safety and Health Convention (1981)[340]

- **Article 4**

  1. Each Member shall, in the light of national conditions and practice, and in consultation with the most representative organisations of employers and workers, formulate, imple-

338 Joint ILO/WHO guidelines on health services and HIV/AIDS, 2005, https://www.ilo.org/beirut/publications/WCMS_116240/lang--en/index.htm
339 https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights
340 https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C155

ment and periodically review a coherent national policy on occupational safety, occupational health and the working environment.

2. The aim of the policy shall be to prevent accidents and injury to health arising out of, linked with or occurring in the course of work, by minimising, so far as is reasonably practicable, the causes of hazards inherent in the working environment.

## UN Committee for Economic, Social and Cultural Rights, General Comment no. 14 (2000) – The right to the highest attainable standard of health (Art. 12 of the International Covenant on Economic, Social and Cultural Rights) (E/C.12/2000/4)[341]

- 36. States are also required to adopt measures against environmental and occupational health hazards and against any other threat as demonstrated by epidemiological data… Furthermore, States parties are required to formulate, implement and periodically review a coherent national policy to minimize the risk of occupational accidents and diseases, as well as to provide a coherent national policy on occupational safety and health services.
- 49. Violations of the right to health can also occur through the omission or failure of States to take necessary measures arising from legal obligations. Violations through acts of omission include the failure to take appropriate steps towards the full realization of everyone's right to the enjoyment of the highest attainable standard of physical and mental health, the failure to have a national policy on occupational safety and health as well as occupational health services, and the failure to enforce relevant laws.

## International Guidelines on HIV/AIDS and Human Rights, Consolidated Version (2006)[342]

- **Guideline 5** (Antidiscrimination and protective laws)

  22. (d) Laws, regulations and collective agreements should be enacted or reached so as to guarantee the following workplace rights:

  (xii) Appropriate inclusion in workers' compensation legislation of the occupational transmission of HIV (e.g. needle stick injuries), addressing such matters as the long latency period of infection, testing, counselling and confidentiality.

  150. As part of favourable conditions of work, all employees have the right to safe and healthy working conditions. "In the vast majority of occupations and occupational settings, work does not involve a risk of acquiring or transmitting HIV between workers, from worker to client, or from client to worker." However, where a possibility of transmission does exist in the workplace, such as in health-care settings, States should take measures to minimize the risk of transmission. In particular, workers in the health sector must be properly trained in universal precautions for the avoidance of transmission of infection and be supplied with the means to implement such procedures.

## Joint ILO/WHO Guidelines on Health Services and HIV/AIDS[343]

- The purpose of these guidelines is to promote the sound management of HIV/AIDS in health services, including the prevention of occupational exposure.

341 https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2f2000%2f4&Lang=en
342 https://www.ohchr.org/sites/default/files/Documents/Publications/HIVAIDSGuidelinesen.pdf
343 https://www.ilo.org/beirut/publications/WCMS_116240/lang--en/index.htm

## Tab. 36. Occupational health and safety of medical personnel: national legislation

### Law no. 186/2008 on occupational safety and health[344]

- **Article 2** Regulatory area
  (2) This Law lays down the general principles concerning the prevention of occupational risks, the protection of workers at work, the elimination of risk and injury factors, information, consultation, balanced participation, training of workers and their representatives, and the general guidelines for the application of these principles.

### Government Decision no. 1223/2004 on approving the List of occupations and duties with harmful working conditions, which are entitled to additional paid annual leave and reduced working day for health-care workers[345]

- Healthcare workers providing diagnosis, treatment, care, including anti-epidemic measures in outbreaks of AIDS and HIV infection, as well as workers in institutions dealing with AIDS and HIV-infected material are entitled to 14 additional days of paid annual leave.

### Government Decision no. 1282/2016 on approving the Health Regulation on how to investigate and diagnose an occupational disease (poisoning)[346]

- The Regulation lays down requirements for reporting, investigating suspected cases of occupational diseases (poisonings), declaring, registering and reporting occupational morbidity for the purpose of applying treatment measures and preventing the action of occupational risk factors (chemical, physical, physico-chemical, biological and other factors caused by the work process) on the health of individuals.

### National clinical protocols (2018): Pre-exposure prophylaxis of HIV (PCN-313);[347] Post-exposure prophylaxis of HIV (PCN-314)[348]

- Provide an overview of the information relevant for the medical services providers, including physicians, nurses and medical personnel which provide PrEP in clinical conditions, measures to enhance the quality of diagnosis of the accidental exposure to HIV, to prevent HIV transmission during accidental exposure, and to ensure the timely initiation of post-exposure prophylaxis.

## ANALYSIS

Interventions in health services to improve occupational health and safety of health care workers may reduce stigma and discrimination. Within health services, stigmatization and discrimination may be reduced considerably by taking such actions as the provision of an adequate number of personnel and greater involvement of medical personnel in the increase of compliance with the universal precautions.[349]

344 https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights
345 https://www.legis.md/cautare/getResults?doc_id=28150&lang=ro#
346 https://www.legis.md/cautare/getResults?doc_id=102609&lang=ro
347 https://msmps.gov.md/legislatie/ghiduri-protocoale-standarde/hiv-sida/
348 Idem.
349 Joint ILO/WHO guidelines on health services and HIV/AIDS, 2005, https://www.ilo.org/beirut/publications/WCMS_116240/lang--en/index.htm

Also, at the moment there is no law or any other normative act which would expressly regulate medical malpractice. The legislation of the Republic of Moldova does not regulate the notion and essence of medical malpractice. Medical malpractice is a problem which is discussed and framed in the normative framework of the majority of developed countries, but not in the Republic of Moldova.

A detailed legal framework is necessary which would clearly stipulate who and how establishes the damage, its limits, the creation of a special fund for malpractice insurance, the contribution of the health care institution and how the responsible personnel is held accountable. Existing mechanisms of extra-judiciary protection of patient rights are ineffective.[350]

### CONCLUSIONS

1. The legislation of the Republic of Moldova does not regulate the notion and essence of the medical malpractice.
2. There is no legal framework defining who and how determines the damage, its limits, the creation of a special fund for malpractice insurance, the contribution of the health care institution and how the responsible personnel is held accountable.

### RECOMMENDATIONS

1. To adopt the Law on medical malpractice.
2. To establish, through the employment contract, the individual liability of medical staff for cases of discrimination and to adopt the respective policies at the level of health care institutions.

## TREATMENT AND CARE

### FUNDAMENTAL PRINCIPLES

PLHIV are entitled to the right to the highest attainable standard of physical and mental health, including equitable and sustainable access to health care. The state must take concrete measures to progressively realize universal access to HIV-related treatment and care.[351]

In this connection, ARV treatment consists of medicines which combat the infection by slowing down the replication of HIV in the body to maintain it at a low level as long as possible in order to slow down the progression to AIDS. Currently available ARV medicines allow people living with HIV have similar life expectancy as HIV-negative people and significantly improve the quality of life of a person living with HIV, providing they are diagnosed in good time, have good access to medical care, and are able to adhere to their HIV treatment.[352]

350 IDOM, Evaluation of national policies on medical malpractice, 2017, https://idom.md/wp-content/uploads/2019/05/STUDIUL-MALPRAXIS-MEDICAL-1.pdf

351 UNDP, Legal environment assessment for HIV: An operational guide to conducting national legal, regulatory and policy assessments for HIV, 2014, http://www.undp.org/content/undp/en/home/librarypage/hiv-aids/practical-manual--legal-environment-assessment-for-hiv--an-opera.html

352 Rosalie Hayes, Life expectancy for people living with HIV, NAM AIDSmap, https://www.aidsmap.com/about-hiv/life-expectancy-people-living-hiv

## Tab. 37. Treatment and care: international standards

### International Covenant on Economic, Social and Cultural Rights (1966)[353]

- **Article 12**

  1. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

  2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:

  (c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases;

  (d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness.

### UN Committee for Economic, Social and Cultural Rights, General Comment no. 14 (2000) – The right to the highest attainable standard of health (Art. 12 of the International Covenant on Economic, Social and Cultural Rights) (E/C.12/2000/4)[354]

- **Paragraph 16** with the explanations of the contents of Art. 12.2 (c) of the International Covenant, including the right to treatment;
- **Paragraph 17** with the explanations of the contents of Art. 12.2. (d), that includes the provision of equal and timely access to health services and appropriate treatment of prevalent diseases, as well as the provision of essential drugs;
- **Paragraph 36** with explanations of the content of the obligation to fulfil the right to health, including by ensuring the provision of health care.

### European Parliament Resolution on the EU's response to HIV/AIDS, Tuberculosis and Hepatitis C (2017/2576 (RSP))[355]

- **4.** Calls on the Commission and the Council to play a strong political role in dialogue with neighbouring countries in Eastern Europe and Central Asia, ensuring that plans for sustainable transitions to domestic funding are in place so that HIV, viral hepatitis and TB programmes are effective, sustained and scaled up after the withdrawal of international donors' support.

### UN Political Declaration on HIV/AIDS: On the Fast Track to Accelerating the Fight against HIV and to Ending the AIDS Epidemic by 2030 (2016)[356]

- **60 a.** Commit to the 90-90-90 treatment targets and to ensuring that 30 million people living with HIV access treatment by 2020, with special emphasis on providing 1.6 million children (0-14 years of age) with antiretroviral therapy by 2018, and that children, adolescents and adults living with HIV know their status and are immediately offered and sustained on affordable and accessible quality treatment to ensure viral load suppression, and underscore in this regard the urgency of closing the testing gap;

353 https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights

354 https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2f2000%2f4&Lang=en

355 https://eur-lex.europa.eu/legal-content/RO/TXT/?uri=uriserv:OJ.C_.2018.334.01.0106.01.RON&toc=OJ:C:2018:334:TOC

356 https://www.unaids.org/sites/default/files/media_asset/2016-political-declaration-HIV-AIDS_en.pdf

- **60 e.** Work towards achieving universal health coverage that comprises equitable and universal access to quality health-care services, including sexual and reproductive health, and social protection, and includes financial risk protection and access to safe, effective, quality and affordable essential medicines and vaccines for all, including the development of new service delivery models to improve efficiency, lower costs and ensure the delivery of more integrated services for HIV, tuberculosis, viral hepatitis, sexually transmitted infections, non-communicable diseases, including cervical cancer, drug dependence…

### International Guidelines on HIV/AIDS and Human Rights, Consolidated Version (2006)[357]

- **Guideline 6** (Access to Prevention, Treatment, Care and Support)
  23. States should enact legislation to provide for the regulation of HIV-related goods, services and information, so as to ensure widespread availability of quality prevention measures and services, adequate HIV prevention and care information, and safe and effective medication at an affordable price.
  24. States should also take measures necessary to ensure for all persons, on a sustained and equal basis, the availability and accessibility of quality goods, services and information for HIV/AIDS prevention, treatment, care and support, including antiretroviral and other safe and effective medicines, diagnostics and related technologies for preventive, curative and palliative care of HIV and related opportunistic infections and conditions.

### UNAIDS 2016-2021: On the Fast-Track to End AIDS[358]

- It is a call to reach the 90–90–90 treatment targets, to close the testing gap and to protect the health of the 22 million people living with HIV who are still not accessing treatment.
- It is a call to redress the deplorably low treatment coverage for children living with HIV.

### WHO, Global health sector strategy on HIV, 2016-2021[359]

- Testing and treatment:
  - Ensure that 90% of people living with HIV know their status;
  - Ensure that 90% of persons diagnosed with HIV receive antiretroviral therapy;
  - Ensure that 90% of people living with HIV, and who are on treatment, achieve viral load suppression.

In the Republic of Moldova, the right and access to ART is regulated by the HIV Law and the National HIV/AIDS/STIs Program for the years 2016-2020 (Tab. 34).

## Tab. 38. Treatment and care: national legislation

### Law no. 23/2007 on prevention of HIV/AIDS infection[360]

- **Article 1.** The scope of regulation and the objectives of the law
  (2) The present law has the following objectives:
  e): to ensure guaranteed access to medical and social care for people with HIV/AIDS, including treatment, care and support.

357 https://www.ohchr.org/sites/default/files/Documents/Publications/HIVAIDSGuidelinesen.pdf
358 https://www.unaids.org/sites/default/files/media_asset/20151027_UNAIDS_PCB37_15_18_EN_rev1.pdf
359 https://www.who.int/publications/i/item/WHO-HIV-2016.05
360 https://www.legis.md/cautare/getResults?doc_id=110180&lang=ro

- **Article 6.** Family, children, young people, women and HIV/AIDS infection
  (2) Children and young people affected by HIV/AIDS have equal rights with their peers, benefit from … care and treatment which they need by virtue of their status;
- **Article 9.** HIV/AIDS prevention activities in penitentiary institutions
  The Ministry of Justice ensures:
  c) access to the free of charge ARV and opportunistic infections treatment;
- **Article 19.** Access to ARV treatment and other forms of treatment
  (1) ...the state ensures free of charge access of HIV positive people to the ARV and opportunistic infections treatment according to the clinical and immunological indications.

### Law no. 1456/1993 on pharmaceutical activity[361]

- **Article 11[5].** Data protection and protection of the market introduction of pharmaceutical products
  (1) By derogating from the legislation on trade secret and access to information and without prejudice to the legislation on the protection of industrial property, the holders of an original medicine for which a market introduction authorization is sought, shall benefit from five years of protection of data on pre-clinical testing and clinical trials, starting with the date of authorization, and additional two years of protection for the introduction to the market of the concerned medicine.
  (2) The two-year protection period of market introduction mentioned in para. (1), may be extended up to the maximum of three years, if during the protection period of data on testing and trials, the holder of the medicine market registration certificate obtains an authorization for one or several new therapeutic indications of the medicine, which, following a scientific evaluation prior to the authorization of the medicine, it is considered that brings significant clinical benefits compared to the existing therapies, provided that significant pre-clinical tests and clinic trials are performed and presented with regards to the new indication(s).
  (3) Within the period of original medicine testing data protection, no other manufacturer shall make reference to the pre-clinical and clinical documentation contained in the medicine registration file for the purpose of submitting an application to obtain a market introduction authorization for a generic medicine, unless the holder of the data on original medicine testing provides its consent. Upon the expiry of the original medicine testing data protection period, it will be possible to make reference to the pre-clinical and clinical documentation, contained in the registration file of the respective medicine, without the consent of the holder of these data. Should a registration certificate for a generic medicine be obtained on the territory of the Republic of Moldova prior to an application for such an authorization from the holder of the original medicine, the rights granted under this article may not be invoked in respect of the generic medicine.

### Law no. 112/2014 for the ratification of the Association Agreement between the Republic of Moldova, of the one part, and the European Union and European Atomic Energy Community and their Member States, of the other part[362]

- **Article 315.** Protection of data submitted to obtain an authorisation to put a medicinal product on the market

361 https://www.legis.md/cautare/getResults?doc_id=124906&lang=ro#
362 https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:22014A0830(01)&from=EN

1. Each Party shall implement a comprehensive system to guarantee the confidentiality, non-disclosure and non-reliance of data submitted for the purpose of obtaining an authorisation to put a medicinal product on the market.
2. Each Party shall ensure that any required information that is submitted to obtain an authorisation to put a medicinal product on the market remains undisclosed to third parties and benefits from protection against unfair commercial use.
To that end,
(a) during a period of at least five years, starting from the date of the grant of a marketing authorisation in the Party concerned, no person or entity, whether public or private, other than the person or entity who submitted such undisclosed data, shall be allowed to rely directly or indirectly on such data, without the explicit consent of the person or entity who submitted that data, in support of an application for the authorisation to put a medicinal product on the market;
(b) during a period of at least seven years, starting from the date of the grant of a marketing authorisation in the Party concerned, a marketing authorisation for any subsequent application shall not be granted, unless the subsequent applicant submits his/her own data, or data used with authorisation of the holder of the first authorisation, meeting the same requirements as in the case of the first authorisation. Products registered without submission of such data shall be removed from the market until the requirements are met.
3. The seven-year period referred to in paragraph 2(b) shall be extended to a maximum of eight years if, during the first five years after obtaining the initial authorisation, the holder obtains an authorisation for one or more new therapeutic indications considered to be of significant clinical benefit in comparison with existing therapies.

### Government Decision no. 1164/2016 on the National program on the prevention and control of HIV/AIDS infection and sexually transmitted infections for the years 2016-2020[363]

- 4) establishes that the funding for the National program on prevention and control of HIV/AIDS infection and sexually transmitted infections for the years 2016-2020 shall be made from the account and within the limits of the national public budget, as well as from other sources, according to the legislation.
- **Objective 2** sets forth the provision of the universal access to treatment, care and support for people infected with HIV and sexually transmitted infections.

## ANALYSIS

As of the end of 2019, 6,690 (71%) of registered people living with HIV, including 3,497 men and 3,193 women, were on ART. The adherence to ART after 12 months reached 85.2%, after 24 months – 81% and after 60 months – 74.2%.[364]

ART in the Republic of Moldova is free of charge and is available via the National HIV/AIDS/STI Program which is funded from public funds and external resources (especially from the Global

363 https://www.legis.md/cautare/getResults?doc_id=111740&lang=ro
364 Dermatology and Communicable Diseases Hospital, Monitoring the HIV infection in the Republic of Moldova in 2019, https://sdmc.md/wp-content/uploads/2021/02/MD_Raport_anual_HIV_RO_2019_FINAL_DB-modificat.pdf

Fund to Fight AIDS, Tuberculosis and Malaria). ARV medicines started to be procured from the public budget funds in 2014, and in 2018 the government committed to fully procure these medicines from the national budget and from other sources, according to the legislation. Despite this commitment, about 40% of 2019 expenditures on national HIV response were funded from external resources.[365] As long as the dependence on donor funding persists, the sustainability of the national program is questionable.

**Focus group discussions:** "In general, access to ART is not limited..." "Now, the [ARV] therapy is available in Cahul, but as group participants mentioned, some PLHIV refuse to receive medicines in Cahul out of fear of disclosure and they prefer to go to Chisinau instead, even though it is far, they incur travel expenses, have to wait for the waiting time at the doctor..."

This creates certain risks to uninterrupted supply of ARV medicines, such as: 1) under-financing of the health system (including prisons and the Eastern region); 2) fluctuation of medicine prices (on domestic market); 3) delays in the supply of medicines.

## Ensuring access to medicines

The UN Committee on Economic, Social and Cultural Rights stated that the right to health, provided for in Art. 12 of the International Covenant on Economic, Social and Cultural Rights, includes the duty to ensure universal access to essential medicines as the core and priority obligation of the state pertaining to this right.[366] However, the Republic of Moldova is facing challenges related to ensuring the right to health while fulfilling its obligations related to the protection of intellectual property rights.

Access to essential medicines depends on different factors, but one of the most important factors is the price. The cost of medicines, in turn, depends on a number of other factors, among which the protection of intellectual property (IP) rights plays a significant role. The minimum standards for the protection of intellectual property rights are reflected in the Agreement on Trade-Related Aspects of Intellectual Property Rights (the TRIPS Agreement) of the World Trade Organization (WTO).[367] The Agreement requires WTO members to grant patents for "any inventions, whether products or processes, in all fields of technology", which include patents for pharmaceutical products and methods of their preparation. Patent holders can have a monopoly for their medicines for a period of 20 years, which can be further extended by up to five years to compensate for the time required for obtaining necessary market authorization. As a result, competition with generic medicines, which helps bring prices down, is prevented during the period of patent protection, which significantly limits the access to life-saving medicines in low- and middle-income countries.

At the same time, the TRIPS Agreement includes so-called "flexibilities" to ensure access to medicines. These are detailed in the Doha Declaration on the TRIPS Agreement and Public Health, which states that the Agreement can and should be interpreted and implemented in a manner supportive of WTO members' right to protect public health and, in particular, to promote access to medicines for all.[368]

365 Draft National Programme on the prevention and control of HIV/AIDS and STIs for 2021-2025, https://sdmc.md/wp-content/uploads/2020/12/Proiect-HG_PN_HIV_SIDA_ITS_05.11.2020-2.pdf
366 UN Committee for Economic, Social and Cultural Rights, General Comment no. 14 (2000) – The right to the highest attainable standard of health (Art. 12 of the International Covenant on Economic, Social and Cultural Rights) (E/C.12/2000/4), https://undocs.org/E/C.12/2000/4
367 https://www.wto.org/English/docs_e/legal_e/27-trips.pdf
368 Declaration on the TRIPS Agreement and Public Health (the Doha Declaration), 2001, https://www.wto.org/english/thewto_e/minist_e/min01_e/mindecl_trips_e.htm

As a WTO member state, the Republic of Moldova has to align its national legal framework with the TRIPS Agreement and regulate the use of TRIPS flexibilities, including clearer regulation of compulsory licenses, more restrictive regulation of patentability criteria, introduction of the Bolar provision, regulation of the notions of public interest, state of emergency or other emergency situations and procedures when public authorities have the right to use compulsory licenses or to authorize imports of unregistered medicines, etc.

It should be noted that vague patentability criteria and lack of strict regulation on inadmissibility of granting patents for products and processes that lack novelty and inventive step, represent a risk of low-quality patents and pose a risk of patent evergreening, when companies artificially extend monopoly by seeking protection for substances and products that do not represent novelty or inventive step. As an example, pharmaceutical companies often seek patent protection for new salts or other compounds of an existing substance, fixed dose combinations of existing medicines and new manufacturing technologies, thus blocking competition for another 20+ years. These can and should be challenged in order to ensure high quality of patents and to avoid unjustified monopoly in the pharmaceutical market and therefore high prices for medicines, including ARVs.[369]

The interest of the companies, engaged in the production of medicines, is to hold exclusive rights, monopolizing the market through their patenting or protection of trial data. Thus, in the first case, they would not allow other manufacturers to enter the market, where they have protection for a period of maximum 25 years, provided that they had applied for the supplementary protection certificate and maintain the protection by paying annual fees. In the second case, data exclusivity limits the access of other manufacturers to the information, necessary for the authorisation of a medicine on the market, for a period of maximum 8 years (5+2+1 years, calculated from the date the first authorization for introducing the medicine on the market had been issued, according to the provisions set forth in the Association Agreement between the Republic of Moldova and the European Union).[370] It should be noted that data exclusivity is not envisaged by the TRIPS Agreement, which makes it a "TRIPS-plus" provision. Besides, the data exclusivity period for the Republic of Moldova is longer than that envisaged in the Association Agreements with Ukraine (5 years)[371] or Georgia (6+1 years)[372].

The introduction of provisions on data exclusivity in the legislation of the Republic of Moldova can favour the increase in the price of ARV medicines in the following years. Data exclusivity is a way to maintain high prices through a monopoly, which in turn leads to limiting access to medicines for people living in the Republic of Moldova. Cutting these costs would enhance the access of patients to ART, generating, at the same time, savings which could be used by the authorities to cover other needs of the health system.

The main factors which affect the cost of the ARV medicines in the Republic of Moldova are: (i) procurement mechanisms applied in the country; (ii) type of product (originator or generic); (iii) global prices for medicines; (iv) legislative mechanisms in the area of intellectual property protection (policy on patents, approval of TRIPS-plus provisions). It should be mentioned that some ARV medicines are not registered with the State Nomenclature of Medicines of the Republic of

369 See: UNDP, Guidelines for the Examination of Patent Applications relating to Pharmaceuticals, 2016, https://www.undp.org/publications/guidelines-examination-patent-applications-relating-pharmaceuticals
370 https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3AOJ.L_.2014.260.01.0004.01.ENG
371 https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:22014A0529(01)&from=EN
372 https://eur-lex.europa.eu/legal-content/en/TXT/PDF/?uri=CELEX:22014A0830(02)

Moldova, in spite of being recommended by the World Health Organization for the treatment of PLHIV. Agreements with the EU and corresponding amendments to the Moldovan legislation on the protection of intellectual property can contribute to further increase of prices for ARV medicines in the upcoming years.

It should be highlighted that the **European Parliament Resolution of 5 July 2017 on the EU's response to HIV/AIDS, Tuberculosis and Hepatitis C** calls on the EU Commission and the EU Council to play a strong political role in dialogue with neighbouring countries in Eastern Europe and Central Asia, **ensuring that plans for sustainable transitions** to domestic funding are in place so that HIV, viral hepatitis and TB programmes are effective, sustained and scaled up after the withdrawal of international donors' support. In this regard, the National HIV/AIDS/STI Program contains the estimated budget for the needs of ART during the five years of the Program, while a proportion is mentioned as deficit for "ensuring ARV treatment". The attempt to develop a sustainability plan on the Government's commitment to ensure the implementation of the program entirely remained on paper only – formal decision in this regard has not been taken yet.

Another barrier worth mentioning is the separate procurement of medicines for the penitentiary system of Moldova. Since the NAP has to organize the procurement of ARV medicines, there is (i) a risk of non-bidding for all treatment regimens and (ii) very high prices given the small quantities of the required medicines.

## CONCLUSIONS

1. With regard to the problems with access to treatment and health care for PLHIV, it should be noted that there is the risk of lack of sustainable funding to ensure with ARV medicines. The funding of the ART for PLHIV is systematically done by adopting the National HIV/AIDS/STI Program.
2. Stigma, discrimination, criminalization of drug use and HIV transmission, but also the violation of confidentiality, impede effective access to the ART.
3. Agreements with the EU and amendments made to the legislation of the Republic of Moldova on the protection of intellectual property, as well as lack of clear mechanisms for applying TRIPS flexibilities, may result in higher prices for ARV medicines in the upcoming years.
4. Lack of strict regulation of patentability may result in low-quality patents that prevent competition in the pharmaceutical market and lead to higher prices for medicines.
5. Some ARV medicines are not registered with the State Nomenclature of Medicines of the Republic of Moldova, in spite of being recommended by the WHO for the treatment of PLHIV.

## RECOMMENDATIONS

1. To include specific provisions on the integration of human-centred services into the normative acts related to the implementation of National programs on HIV and tuberculosis and to ensure uninterrupted supply of ARV medicines and MPHT.
2. To ensure the implementation of the HIV resistance monitoring system.

3. To maintain strategies promoting adherence to ART; to train medical personnel in order to ensure that ART is provided in a stigma and discrimination free environment.
4. To revise the Law on the Protection of Inventions in order to regulate higher/stricter standards regarding the patentability criteria, in order to promote the patenting of inventions that represent novelty, inventive step and non-obviousness.
5. To define the terms "public interest", "state of emergency", as well as to complete the legal framework with principles, following the example of art. 7 and 8 of TRIPS Agreement, which would guide the interpretation of the law in the field of protection of inventions.
6. To introduce more precise provisions on conditions/criteria for compulsory licensing, examining the appropriateness of separate regulation of compulsory licenses and licenses for (governmental) non-commercial use.
7. To introduce legislation regarding Bolar provision.
8. To exclude from patentability the diagnostic, therapeutic and surgical methods for the treatment of humans.
9. To mitigate the effects of data exclusivity rules on the public health system and potential adverse effects on the access to medicines by limiting the duration and/or scope of these rules (for new chemical entities only) and allowing the use of safety and efficacy data of the reference manufacturer (original) in case of compulsory licenses.

# INTEGRATION OF HEALTH SERVICES

## Access to medicines for opportunistic infections and other related diseases

As regards the access to medicines for the treatment of opportunistic infections and other related diseases, the **HIV Law** guarantees access to treatment, care and support for people living with HIV. **The National HIV/AIDS/STI Program** aligns itself to the global recommendations on opportunistic infections. With its **Order no. 163/2018**[373] and **Order no. 165/2018**,[374] the Ministry of Health, Labour and Social Protection approved the National Clinical Protocols, which describes administration of ART together with the treatment of opportunistic infections in adults (NCP-211)[375] and children (NCP-315).[376] Although the National HIV/AIDS/STI Program specifies the provision of the treatment of opportunistic infections, it also reads that the treatment will be further ensured in line with the provisions of the Unified Mandatory Health Insurance Program. As a result, the list of medicines included in the Unified Mandatory Health Insurance Program is revised annually, which does not guarantee the continuous provision of necessary medicines. At the same time, regulations of the MHLSP with regard to the implementation of the National HIV/AIDS/STI Program do not provide for clear mechanisms for the distribution of medicines for opportunistic infections nor reports on their use, which may lead to the errors in estimation of quantities of medicines to be procured at the national level.

373 https://msmps.gov.md/legislatie/ghiduri-protocoale-standarde/hiv-sida/
374 https://msmps.gov.md/legislatie/ghiduri-protocoale-standarde/hiv-sida/
375 National Clinical Protocol "HIV Infection in adult and adolescent" (NCP-211), https://msmps.gov.md/wp-content/uploads/2020/07/15654-PCN-21120Infectia20cu20HIV20adult20si20adolescent.pdf
376 National Clinical Protocol "HIV Infection in child 0-10 years" (NCP-315), https://msmps.gov.md/wp-content/uploads/2020/07/15704-PCN-31520InfecC89Bia20cu20HIV20la20copil.pdf

## HIV and tuberculosis

Tuberculosis is the most prevalent co-infection among PLHIV, including among those who start ART, and the main cause of mortality among HIV patients.[377]

**Fig. 8. Trends in TB/HIV key indicators, 2015-2019**

| | 2015 | 2016 | 2017 | 2018 | 2019 |
|---|---|---|---|---|---|
| **PLHIV screened for TB** | 83% | 68% | 78% | 78% | 85% |
| **Number of PLHIV on TPT** | 0 | 0 | 75 | 812 | 163 |
| **% PLHIV and TB who are on ARVT** | 48.3% | 69.4% | 68.1% | 68.8% | 90% |
| **TB as cause of death in PLHIV** | 54.3% | 52.9% | 54.2% | 40.6% | 35.7% |

*Source: National Coordination Unit, National HIV/AIDS/STI Program data*

Tuberculosis treatment is ensured by the state through the **National Tuberculosis Control Program**,[378] while the risk of interrupting continuous supplies of TB medicines is similar to those in the National HIV/AIDS/STI Program. The **Law no. 411/1995 on healthcare** envisages that people with active form of tuberculosis, who avoid voluntary treatment, do not adhere to the prescribed regime, abuse alcohol or use narcotic substances, are subject to compulsory treatment. The same provision is contained in the **Law no. 153/2008 on the control and prevention of tuberculosis**,[379] which says that people with an infectious form of tuberculosis, who violate sanitary and anti-epidemic rules or who avoid TB testing or treatment, shall be hospitalized, based on a court decision, in a specialized phthisio-pneumological facility for compulsory treatment. According to international standards, involuntary hospitalization or isolation is only permissible as a measure of last resort, in narrowly defined circumstances, for the shortest duration possible, in accordance with Chapter 15 of the World Health Organization's **Ethics Guidance for the Implementation of the End TB Strategy**,[380] when a person, based on accurate medical evidence:

- is known to be contagious, refuses effective treatment, and all reasonable measures to ensure adherence have been attempted and proven unsuccessful, or
- is known to be contagious, has agreed to ambulatory treatment, but lacks the capacity to institute infection control in the home, and refuses inpatient care, or
- is highly likely to be contagious (based on laboratory evidence) but refuses to undergo assessment of his/her infectious status, while every effort is made to work with the person to establish a treatment plan that meets their needs.

The part where Moldovan legislation falls short is ensuring that all reasonable measures to ensure adherence have been attempted and proven unsuccessful, which makes compulsory treatment fail on the "measure of last resort" requirement, thus violating the right to liberty of person.

In this respect, these provisions are also affecting persons with TB-HIV co-infection and people who use drugs which may fall under the incidence of the respective regulations.

377 Country Coordinating Mechanism, Draft 2021-2023 Funding Request on TB/HIV to The Global Fund to Fight AIDS, Tuberculosis and Malaria, http://ccm.md/sites/default/files/inline-files/FG_focusedportfolio_template_MDA_Prefinal_Draft_June_19.docx
378 https://www.legis.md/cautare/getResults?doc_id=111654&lang=ro
379 https://www.legis.md/cautare/getResults?doc_id=110512&lang=ro#
380 WHO, Ethics Guidance for the Implementation of the End TB Strategy, https://apps.who.int/iris/handle/10665/254820

The MoH Order no. 1080/2014[381] (as amended by Order no. 411/2017[382]) and MHLSP Orders no. 1081/2017[383] and 1082/2017[384] on the approval of National clinical protocols "Tuberculosis in adults" (NCP-123)[385] and "Tuberculosis in children" (NCP-55)[386], envisage that people living with HIV are considered to be a group with high risk of tuberculosis and should therefore undergo annual mandatory X-ray examination. It should be noted that the list of persons (from the risk group) for the medical examination is prepared at the level of primary health care, while the above-mentioned orders neither provide for nor refer to any regulations on personal data protection, nor describe the mechanism of conducting examinations of risk groups in this context. At the same time, according to the provisions of the Unified Mandatory Health Insurance Program,[387] X-ray examination of the persons from the groups with the higher risk of getting tuberculosis is free of charge in case of prophylactic services provided by the primary health care via the family physician together with its team.

**F., PWID:** "...It is possible to take a TB examination, but because one does not have a health insurance policy, 160 lei need to be paid. The level of assistance provided is low, there is only one TB doctor in the district..."

**M., SW/PLHIV: "**...to take a free of charge fluorography, I had to tell that my husband is a PWID, this is why I could get the referral, I did not want to tell I was a sex worker..."

## HIV/AIDS and hepatitis

In case of people with hepatitis C, the risk of developing severe hepatic diseases is much higher if they are also infected with HIV. Of the HIV-positive people who initiated primary ART in 2019, about 64% were tested for hepatitis B virus (HBV) and about 60% were tested for hepatitis C virus (HCV). At the country level, HBV was confirmed in about 10.8% of PLHIV, while HCV – in 12.2%.[388]

**The National Program for Combating Viral Hepatitis B, C and D for the years 2017-2021**[389] provides for the provision of antiviral treatment of viral hepatitis B and C for patients with HCV/HIV and HBV/HIV co-infections. However, a number of barriers exist in terms of access to treatment, including the lack of a referral mechanism between infection specialists (the current mechanism provides for the involvement of family doctor, and disclosure of HIV status to the family doctor is still a major barrier), lack of a clinical protocol for the treatment of HCV in people living with HIV, insufficient information of people living with HIV on HCV treatment and fear of side effects.[390]

381 https://msmps.gov.md/sites/default/files/legislatie/ordin_nr._1080_din_13.10.2014_cu_privire_la_masurile_de_eficientizare_a_depistarii_tuberculozei.pdf
382 https://msmps.gov.md/sites/default/files/legislatie/ord._411_din_31.05.2017_modificarea_1080_depistarea_tbc.pdf
383 https://msmps.gov.md/wp-content/uploads/2020/07/15670-Ordin20nr.20108120din2029.12.20172020C27u20privire-20la20aprobarea20Protocolului20clinic20naC5A3ional20E2809ETuberculoza20la20adultE2809D.pdf
384 https://msmps.gov.md/wp-content/uploads/2020/07/15670-Ordin20nr.20108120din2029.12.20172020C27u20privire-20la20aprobarea20Protocolului20clinic20naC5A3ional20E2809ETuberculoza20la20adultE2809D.pdf
385 https://msmps.gov.md/wp-content/uploads/2021/02/PCN-123-Tuberculoza_la_adult.pdf
386 https://msmps.gov.md/wp-content/uploads/2020/07/15669-PCN-5520Tuberculoza20la20copil.pdf
387 Government Decision no. 1387/2007 on the approval of the Single program of mandatory health care insurance, https://www.legis.md/cautare/getResults?doc_id=122818&lang=ro#
388 Dermatology and Communicable Diseases Hospital, Monitoring the HIV infection in the Republic of Moldova in 2019, https://sdmc.md/wp-content/uploads/2021/02/MD_Raport_anual_HIV_RO_2019_FINAL_DB-modificat.pdf
389 Government Decision nr. 342/2017, https://www.legis.md/cautare/getResults?doc_id=101339&lang=ro
390 Country Coordinating Mechanism, Draft 2021-2023 Funding Request on TB/HIV to The Global Fund to Fight AIDS, Tuberculosis and Malaria, http://ccm.md/sites/default/files/inline-files/FG_focusedportfolio_template_MDA_Prefinal_Draft_June_19.docx

**A, PLHIV: "**...I can't get into the hepatitis C treatment program, because I do not have a health insurance policy and I do not have money for additional paid tests. I do not understand why it is mandatory to have a health insurance policy for hepatitis treatment. There is the national program, the policy is not required for HIV and TB, although the tests and treatment are quite expensive..."

**P., PLHIV:** "...Should there be an institution which would provide the maximum range of health care services specific for PWID and PLHIV (including ART and methadone substitution therapy, TB treatment, prevention services, psycho-social support), for a certain group of beneficiaries this would increase the level of use of services in package..."

**Focus group discussion:** The participants agreed that at present there is a very limited coverage and high restrictions for people living with HIV as regards their access to costly procedures. There is no clear interaction between doctors in case of HIV/TB. Not enough time is allocated for consultations with specialized doctors. It would be desirable to offer a health care insurance policy for people diagnosed with HIV. It is possible that offering an insurance policy would increase the level of demand for health care support, which would improve the quality of life, helping to get a disability degree, which, in its turn, would provide the material assistance from the part of the state. It is necessary to secure free of charge health care and social-psychological assistance for people living with HIV.

## CONCLUSIONS

1. ART is free of charge, but the support for the treatment of opportunistic infections or STIs is limited.
2. Access of PLHIV to the treatment of opportunistic diseases, including viral hepatitis, is conditioned by the holding of the health insurance policy.
3. In case of tuberculosis, persons taking the ART and methadone pharmacotherapy must go and get their medicines frequently, as the institutional procedures do not provide for mechanisms of ensuring the continuity of treatment. HIV/TB integrated services in inpatient care facilities are poorly developed.
4. Compulsory treatment for TB does not meet the criteria of being a measure of last resort.

## RECOMMENDATIONS

1. To strengthen the capacities of medical institutions in order to improve services, including prevention, diagnosis, treatment and care for TB, HIV and drug use, as well as their integration with other related services (one stop shop).
2. To develop standard operational procedures (mechanisms) in order to ensure the provision of integrated services focused on the person's needs, including care continuity between different medical institutions (TB, HIV, OST).
3. To develop guidelines on adherence to TB treatment envisaging a wide range of methods of promoting adherence which have to be tried and failed before compulsory hospitalization is sought.