



THE 2018-2019

REPORT ON HUMAN RIGHTS
VIOLATIONS AND LEGAL ADVICE

POZITIF-İZ ASSOCIATION
THE 2018-2019 REPORT ON HUMAN RIGHTS
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VIOLATIONS AND LEGAL ADVICE
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ABOUT

Pozitif-iz Association (Pozitif-iz Derneği) is a non-governmental organization that aims to strengthen people living with HIV (PLWHIV) and their close ones physically, psychologically and socially by providing them with the support and consultancy they need. Besides, Pozitif-iz Association makes contributions by spreading correct and up-to-date information on HIV/AIDS in society to reduce the prejudices against it.

In addition to addressing HIV/AIDS from the perspectives of personal and public health, Pozitif-iz considers HIV/AIDS as an issue of human rights and conducts its activities accordingly.

Pozitif-iz Association's founders have been working in the HIV/AIDS field for 15 years and on a mission to contribute to and add value in the field. Pozitif-iz's members come from diverse professions including doctors and academicians. Pozitif-iz also works in collaboration with other associations, health occupation organizations, public and private sector organizations that are involved in the HIV field.



INTRODUCTION

This report is an output of the work where rights violations have been reported to Pozitif-iz Association in 2018 and 2019 retrospectively and legal advice is provided. Although various data regarding discrimination against PLWHIV has been published in Turkey in different times between 2009 and 2020, human rights violations in the field have not been reported elaborately until late 2019. This report aims to demonstrate the projection of the recent past and today's reality when it comes to human rights violations in the HIV field in Turkey. Another aim of the report is to show what PLWHIV have endured and how Turkey (officials and institutions in Turkey) has responded to HIV/AIDS.

Beneficiaries of this report are activists in the field of HIV, lawyers and human rights advocates working on sexual health, people who are discriminated against because of their HIV status, and non-governmental organizations and bureaucrats that have played prominent roles for addressing HIV in Turkey. The main conclusion of the report is that discrimination and stigmatisation are systemic. The violations are complicated, they are observed in many different social relationships, and in different fields of law. The cases prove that the human rights violations occur on a regular basis.

Throughout the report one can see that human rights violations against PLWHIV are common in every aspect of social arena, from one to one interactions with individuals to more generalised violations by public offices, and legal basis for the violations is not even questioned. Therefore, it would be the best if a discriminated person follows up their violation with a professional lawyer. We clearly encourage PLWHIV facing rights violations to continue judicial process with a lawyer so as to avoid any further discrimination.

The report includes references to treatments and developments related to HIV to project today's reality when providing legal advice. Therefore, we should mention this reality briefly. We would like to start with how HIV infects or passes on unless protection measures are not taken. The following poses risks for HIV transmission:

"Unprotected sex with a person who is not aware of their HIV status or has not reached the Undetectable = Untransmittable level yet; share injection equipment with a person living with HIV without paying attention to disinfection and universal precautions; pregnant women who live with HIV, who are not on treatment, might pass on the virus to baby during pregnancy, childbirth and through breastfeeding; healthcare workers might be infected through needles or other sharp objects with HIV-infected blood; blood transfusion."¹

The following precautions must be taken to prevent HIV transmission:

"Have protected sex, take PrEP (pre-exposure prophylaxis) before sex, get tested for HIV periodically and start HIV treatment², avoid sharing needles, take PEP (post-exposure prophylaxis)³.

We would also like to explain 'Undetectable = Untransmittable' (U=U) which has highly impacted today's facts regarding the developments in the field of HIV and which

1. See for detailed info: (Online) <https://www.pozitifiz.org/bulasi-ve-riskleri> E.T.: 21 August 2020.

2. See for detailed info: (Online) <https://www.pozitifiz.org/tedaviye-baslamak> E.T.: 21 August 2020.

3. See for detailed info: (Online) <https://www.pozitifiz.org/bulasmayi-onleme> E.T.: 21 August 2020.



global health authorities (such as CDC, UNAIDS, WHO) agree on. PLWHIV, who take antiretroviral drugs daily, can live a healthy and long life like everyone else. Daily take of antiretroviral drugs, which suppress HIV, decreases HIV level in the blood cells from detectable to undetectable levels. The treatment aims to maintain the detectable level. Undetectable level of viral load (amount of HIV in the blood) not only keeps the person healthy but also prevents the virus from passing on to another person through unprotected sex. In short, PLWHIV cannot transmit the virus to someone else through unprotected sex. Thanks to U=U, PLWHIV can have babies who are not infected with HIV. Additionally, U=U contributes to public health significantly.⁴

Although our report includes 89 cases, the number of cases reported to Pozitif-iz Association is more than this number. Some cases are not included in the report because they have not led to any violation of rights in practice. This is because some people have not taken action to exercise their rights or benefit from opportunities because they fear further discrimination. For instance, many counselees avoid job interviews as they feel they will be discriminated against because of their HIV status. This report shows the big picture of fear of discrimination and stigmatisation based on HIV, and how discrimination and stigmatisation prevent PLWHIV from exercising their fundamental rights.

METHODOLOGY

This report is composed of human rights violations PLWHIV (counselees) have experienced and reported to Pozitif-iz Association through phone calls, e-mails and social media channels in 2018 and 2019. The association's volunteers took notes, compiled the violations and anonymised the data. As the report provides legal advice on violations experienced in the past, counselees' statements about themselves remain the same. Additionally, we have also tried to keep expressions of Pozitif-iz's volunteers – who have talked to the counselees and took notes of their cases – as original as possible. This method has been selected to draw attention to the fact that every case is also an example of sharing experience and peer support. When a case has included ambiguous terms, the lawyers have tried their best to cover all meanings of the term while providing information and legal advice. For example, when the term "foreigner" is used for someone that does not hold Turkish citizenship and when foreigner's status is not clear from the conversation, the lawyers have provided the legal advice for statuses such as "refugee", "international protection status" etc. to cover all possible situations.

Upon counselees' requests, Pozitif-iz Association's volunteers have directed some cases to the association's volunteer lawyers. However, we have not contacted the counselees and the lawyers when creating this report. Therefore, the report only covers legal advice on cases and the legal actions that could be taken. The counselees' applications are listed chronologically (oldest case is the first). The "legal basis" provides the legislation for legal advice on a case, and "legal reasoning" explains the reason why the case has led to a violation of right(s). Reasoning also includes the information on which legislation protects the person against the violation, and which legislation presents what type of legal action to take when addressing the violation. Final part of the report has "findings" and "recommendations" sections. While the former provides the findings related to healthcare services, professional life, public organizations and legislation activities, the latter presents the recommendations for the findings.

4. See for detailed info: (Online) <https://www.pozitifiz.org/post/b-b-belirlenemeyen-eşittir-bulaşmayan-ne-demek> E.T.: 21 August 2020.

ABBREVIATIONS

AIDS:	Acquired Immune Deficiency Syndrome
Art.:	Article
Biomedicine Convention:	Convention for the protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine
Constitution:	The Constitution of the Republic of Turkey, Act no. 2709
CDC:	Centre for Disease Control and Prevention
ECHR:	European Convention on Human Rights
E.T.:	Access Date
GKY:	Regulation on Temporary Protection
HHY:	Regulation on Patients' Rights
HIV:	Human Immunodeficiency Virus
HMEK:	Code of Medical Ethics
ILO:	International Labour Organization
KMK:	Property Law no. 634
KVKK:	Personal Data Protection Law no. 6698
Labour Law:	Labour Law no. 4857
PLWHIV:	People Living With HIV
TBK:	Turkish Law of Obligations no. 6098
TCK:	Turkish Criminal Code no. 5237
TDN:	Regulation on Medical Deontology
TİHEKK:	The Human Rights and Equality Institution of Turkey's Law no.6701
TMK:	Turkish Civil Code no. 4721
TVK:	Turkish Citizenship Law no. 5901
TVKUIY:	Regulation on the Implementation of the Turkish Citizenship Law
SSGSSK:	Social Insurance and General Health Insurance Law no. 5510
UDHR:	Universal Declaration of Human Rights
UHK:	Public Health Law no. 1593
UNAIDS:	The Joint United Nations Programme on HIV/AIDS
WHO:	World Health Organization
YUKK:	Foreigners and International Protection Law no. 6458
YUKKUIY:	Regulation on the Implementation of Foreigners and International Protection Law
Law no. 1219:	Law on the Execution Ways of Medicine and Medical Sciences
Law no. 3071:	Law on Exercising the Right to Petition
Law no. 6284:	Law on Family Protection and Prevention Violence against Women



LEGAL ADVICE

LEGAL ADVICE FOR CASES IN 2018

CASE NO 1: The counselee shares their HIV status with their partner. The partner harasses the counselee persistently with threats of disclosing their HIV status. The counselee contacts the association to learn the legal actions that can be taken if the ex-partner discloses their HIV status.

LEGAL BASIS: Constitution Art. 20; ECHR Art. 8; UDHR Art. 12; Law no. 6284 Art. 5; TCK Art. 134 and 136.

LEGAL REASONING: The legal actions the counselee can take are different before and after the disclosure of HIV status. The counselee can apply to protective and preventive measures under Law no. 6284 to prevent the disclosure of HIV status. The law regulates the procedures and principles related to the measures taken to protect and prevent violence against women, children, family members who have been subject to violence or are at the risk of being subject to violence, and the victims of persistent stalkers. The law defines the violence as follows: "Any physical, sexual, psychological, verbal or economic attitude and behaviour that occur in social, public and private place. These also include the actions that (might) result in suffering of a person physically, sexually, psychologically or economically as well as the threat, pressure or arbitrary violation of freedom." The counselee can take the legal actions to benefit from preventive measures stated in Law no. 6284. Article 5 provides the preventive measures that are stated under the law and the counselee can request. The counselee can get an order to prevent the following actions of ex-partner who persistently stalks: Attitudes and behaviours that include the threats of violence, insult, humiliation and degradation against the victim of violence; immediate suspension from the shared dwelling and vicinity of the protected person; approach to the protected person's residence, school and workplace; approach protected person's close ones, witnesses, children (personal relationships are allowed) even though none of them has been subject to violence; damage the personal belongings and household goods of the protected person; cause distress to the protected person by means of communication channels or an alternative channel. As can be seen above, the law allows orders to be taken to prevent the stalker from threatening and contacting the protected person and their family and close ones. Injunction orders can be requested from judge of family court or local authorities or law enforcement unit most quickly and easily. No evidence is required for injunction orders, and a petition which clearly explains the events happened is sufficient. Injunction orders are temporary with a limited time period. If the threat of violence continues after the limited time period, the order can be extended by reapplying to court. Injunction order is officially communicated to the both sides. If the perpetrator still violates the order after that, preventive imprisonment is enforced.

As per the relevant provisions of TCK, the counselee can denounce their ex-partner if the counselee's HIV status is disclosed. HIV status is "sensitive personal data" because it is related to health. It requires more strict protection compared to other personal data. Disclosing personal data to third parties is a crime. HIV status is related to private life, and disclosing HIV status violates the right to privacy. For this reason, if the ex-partner discloses the counselee's HIV status, the counselee can denounce them as per Article 134 of TCK (violation of the right to privacy) and Article 136 (disclosing or obtaining data illegally).

CASE NO 2: The counselee lives with HIV and Hepatitis B. Because of the counselee's doctor's negligence, the counselee has had to remind the doctor for several times of having both HIV and Hepatitis B. The counselee learns by themselves that they should not be taking the prescribed HIV drugs if they have also Hepatitis B. The counselee contacts the association to learn the legal actions that can be taken against doctor's negligence and careless attitude.

LEGAL BASIS: Constitution Art. 17; HHY Art. 11 and 14; TDN Art. 14; TCK Art. 257.

LEGAL REASONING: As per the Article 11 of HHY (Regulation on Patients' Rights), patients have the right to be diagnosed, to receive treatment and care in line with medical requirements. As per the Article 14 of the same regulation, healthcare workers have the responsibility of giving the medical care patient's condition requires. The counselee would like to make a complaint about the doctor's careless and negligent behaviour. The counselee can apply to the hospital's patient rights unit to make an official complaint. The counselee can make an official complaint to the Provincial Health Directorate and also call ALO 184 SABİM (Ministry of Health Communication Centre) to make an official complaint. Additionally, this case violates Article 14 of TDN (Regulation on Medical Deontology) which stipulates that doctors must give the medical care patient's condition requires. An official complaint application can be made to the Turkish Medical Association (TMA). If a health condition occurs as a result of drug interactions, the counselee can denounce the doctor for malpractice as per Article 257 of TCK and claim for damages against the hospital which the doctor works at.

CASE NO 3: The counselee, who is transgender, contacts the association to ask about choosing a private hospital to access treatment. The conversation between association's volunteers and the counselee reveals that the counselee has been discriminated and stigmatised because of their gender identity. When we, Pozitif-iz Association, have stated that this is against the law, the counselee has asked about the legal actions that can be taken against the state hospital which discriminates against the counselee.

LEGAL BASIS: Constitution Art. 17 and 20; Biomedicine Convention Art. 10; ECHR Art. 8; HHY Art. 4, 5 and 14; TDN Art. 2; TİHEKK Art. 3 and 5; HMEK Art. 7; TCK Art. 25.

LEGAL REASONING: Article 4 of HHY defines patient rights as "the rights which are protected by the Constitution of the Republic of Turkey, international agreements, legislation and other regulation, and which belong to people who can benefit from healthcare services only because they are humans." Article 5 of the regulation clearly mentions the "prohibition of discrimination" as one of the principles to follow when providing healthcare services: "Race, language, religion and denomination, sex, political opinion, philosophical belief, economic and social conditions and other differences are not taken into account when providing healthcare services. Healthcare services are planned and organized in a way that everyone can access easily." Article 5/c of HHY and Article 2 of TDN also mention the prohibition of discrimination and states as follows: "Doctors and dentists are responsible for giving the maximum care during the examination and treatment regardless of a patient's sex, race, nationality, religion and denomination, moral opinion, character and personality, social level, position and political opinion." Prohibition of discrimination is defined as "Doctors are responsible for exercising their profession regardless of a patients' political view, social status, religion, nationality, ethnic origin, race, sex, gender identity and



sexual orientation, age, social and economic condition and such differences” in Article 7 of the Code of Medical Ethics (HMEK), which clearly prohibits the discrimination based on sexual orientation and gender. As can be seen from legal resources which regulate patient rights and doctors’ occupational principles; discrimination is prohibited. Therefore, the counselee can make an official complaint about the doctor to the hospital’s patient rights unit, the Provincial Health Directorate and the TMA. The counselee can also apply to the Human Rights and Equality Institution of Turkey (TİHEK). The Institution’s aim is explained as follows in TİHEKK (law of TİHEK):

“Protection and promotion of human rights based on human dignity; secure people’s right to equal treatment; prevention of discrimination when benefiting from rights and freedoms; carry out activities in line with these principles; effectively address torture and ill-treatment and establish TİHEK to act as National Preventive Mechanism; regulate principles related to the organization, mission and authorities.” As per paragraph 2 of Article 17 of TİHEKK, an application in writing must be made to the organization (in this case, the hospital) that discriminates against before applying to TİHEK. The counselee can also denounce a crime for malpractice as per Article 257 of TCK.

CASE NO 4: The counselee is an undergraduate student in a small town and has been diagnosed with HIV recently. After blood sample is taken and sent to laboratory, the doctor calls the laboratory and gives the counselee’s name, age and HIV status while there are other people in the room. The counselee wants to learn whether the doctor has the right to share their personal details in such a negligent way and wants to learn the legal actions that can be taken.

LEGAL BASIS: Constitution Art. 20; Biomedicine Convention Art. 10; ECHR Art. 8; HHY Art. 21; TDN Art. 4; TCK Art. 136 and 257.

LEGAL REASONING: Information provided to receive healthcare services cannot be disclosed or shared with others unless required or allowed by law. If a person’s health condition including HIV status is disclosed to third parties without their consent, the person’s right to privacy is violated. Article 21 of HHY states that privacy of patients is respected. The same article also stipulates that medical assessments related to health condition must be made in privacy, and examination, diagnose, treatment and other operations requiring direct contact with patient must be carried out in a reasonably private place. Doctors must keep their patients’ data especially HIV status, which is open to discrimination and stigmatisation most of the time, carefully and share it in line with the relevant principles with the units that need it. The counselee’s case clearly includes a violation of privacy. The counselee can apply to the hospital’s patient rights unit to make an official complaint. The counselee can make an official complaint to the Provincial Health Directorate and also call ALO 184 SABİM to make an official complaint. This situation is against Article 4 of TDN as well. An official complaint can be made to the TMA. In addition, because health status is “sensitive personal data”, the counselee can denounce a crime of providing or obtaining data illegally as per Article 136 of TCK. We should emphasize that because a civil servant commits the crime, this crime is aggravated and this is a reason to increase the punishment. This also gives rise to malpractice as per Article 257 of TCK because the crime has been committed by a civil servant.

CASE NO 5: The counselee is an undergraduate student who has moved to a city and signed a contract

with a private dormitory. The dormitory requests a medical report from the counselee. The medical report includes the counselee's HIV status so the counselee has been refused by the dormitory administration which also threatens the counselee with disclosing HIV status to their family. The counselee wants to learn whether the dormitory administration could share their HIV status with the family, and which legal actions can be taken against the administration in case of disclosing HIV status.

LEGAL BASIS: Constitution Art. 20; ECHR Art. 8; Regulation on Private Housing Services for Higher Education Students Art. 21; Circular Letter on Issuing Medical Reports (Health Status Report from a Single Doctor); KVKK Art. 6, TİHEKK Art. 3 and 5; TCK Art. 112, 134 and 136.

LEGAL REASONING: Regulation on Private Housing Services for Higher Education Students regulates the procedures and principles related to establishing, operating, inspecting private housing facilities established by real persons or legal entities to provide housing services for higher education students. Article 21 of this regulation is titled "Housing Conditions" which stipulates the residing conditions required for students. As per paragraph b of the same article, students who reside here "should not be diagnosed with a mental disease or infectious disease, which causes a problem to live with a group of people." Accordingly, people who reside at private dorms are requested a medical report. Although the Directive on Principles and Procedures regarding Medical Reports does not have any specific provision related to this situation; Appendices of the General Directorate of Health Services under the Ministry of Health state that medical reports requested for school, dormitory or similar institutions are named as "Health Status Report from a Single Doctor". This report has an "ICD Code and Diagnosis" section and also a section titled "Mini Mental Test Result for Mental Health Report." Even if it is detected that the student lives with HIV when issuing a medical report, - for principles of purpose and proportionality - this does not have to be included in the report presented to the dormitory as living with HIV does not mean having an infectious disease which is an obstacle to live with a group of people. In order to request a medical report including a person's health-related data; an organization or institution must be authorized to process health-related data. The dormitory administration requesting a medical report is not authorized to process health-related data as per Article 6 of KVKK. Therefore, regardless of including the counselee's HIV status in the report, the fact that the counselee lives with HIV is not an obstacle to live in a dormitory. This is against the law. The counselee can denounce a crime for being stripped of the right to education by claiming that they are prevented from "entering or residing in buildings or their annexes which are occupied by students" as per Article 112 of TCK. The counselee can also apply to TİHEK because Article 3 of TİHEKK states that discrimination based on health condition is prohibited, and Article 5 states that real persons or legal entities, which provide services as a result of their activities, cannot discriminate against the people who (might) receive services from them. As per paragraph 2 of Article 17 of TİHEKK, an application in writing must be made to the organization that discriminates against before applying to TİHEK. If TİHEK detects that the prohibition of discrimination has been violated after an investigation, the dormitory administration is fined.

Additionally, disclosure of HIV status by the dormitory administration is against the law. For this reason, the student can denounce the dormitory administration for violating Article 134 (the right to privacy) and 136 (illegally disclosing or obtaining data) of TCK.



CASE NO 6: The counselee sees a gynaecologist at the state hospital in her city with the complaint about feeling discomfort, which has been going on for a while, due to the prescribed medications. The counselee shares her HIV status with the doctor. The doctor refuses to examine the counselee and later examines her because the counselee insists on being examined. After leaving the hospital, the counselee is called by the Infectious Diseases Unit and asked to come back to the hospital for an HIV test. Shocked by the phone call, the counselee contacts the gynaecologist to ask why her data has been shared without her consent. The gynaecologist tells the counselee that “I had to clean the clinic because you pose risks for other patients.” The counselee contacts the association to learn whether the doctor could refuse to examine her, and share her personal data with other doctors.

LEGAL BASIS: Constitution Art. 17 and 20; Biomedicine Convention Art. 10; ECHR Art. 8; HHY Art. 6, 11 and 21; HMEK Art. 25; TCK Art. 136 and 257.

LEGAL REASONING: The counselee has been exposed to a violation of rights for more than once at the doctor appointment. We shall look into whether the doctor has the right to refuse to examine a patient due to their HIV status. The TMA’s HMEK’s Article 25 titled ‘refusing or abandoning treatment’ states that a doctor can refuse or abandon a treatment only when the doctor cannot use their medical knowledge as required or when the patient has the chance to see another doctor. The same article also states that the doctor, who abandons treatment, should inform the patient and close ones and assure them that this does not endanger the patient. The doctor should provide information about other medical assistance options and cannot abandon the patient before another doctor is available to treat the patient. The doctor is responsible for sharing all the information with the new doctor.

It is not a sufficient and applicable reason for a doctor to refuse to treat a patient because the patient lives with HIV. This is against HMEK as well as HHY. As per HHY, the patient has the rights to benefit from healthcare services in line with their needs (Article 6), to request a diagnosis which meet the standards of modern medical knowledge and technology, and also to be treated and taken care of (Article 11), and to expect the necessary medical care. As a result, it is against HMEK and HHY for a doctor to refuse to treat a patient only because the patient lives with HIV. In this case, the patient can make an official complaint about the doctor to the Provincial Health Directorate and the TMA.

Even though the patient has been treated because of insisting, refusing to treat a patient without a valid reason is a crime of malpractice as per Article 257 of TCK. The counselee has stated that her HIV status has been disclosed to others without her consent. If a person’s health condition including HIV status is disclosed to third parties without their consent, the person’s right to privacy is violated. Article 21 of HHY states that privacy of patients is respected. The same article also stipulates that medical assessments related to health condition must be made in privacy, and examination, diagnose, treatment and other operations requiring direct contact with patient must be carried out in a reasonably private place. In this case, it is clear that patient’s privacy has been violated. The counselee can apply to the hospital’s patient rights unit to make an official complaint. The counselee can make an official complaint to the Provincial Health Directorate and also call ALO 184 SABİM to make an official complaint. We should remind again that health condition is sensitive personal data and requires strict protection. A person who shares or discloses personal data to others is punished as per Article 136 of TCK.

CASE NO 7: The counselee gets injured as a result of a fight at night and goes to the emergency room of the state hospital in their city. Healthcare workers learn the counselee's HIV status through their system. They refuse to treat the counselee. The counselee goes to the office of the doctor responsible for emergency room and asks whether (s)he has been denied to be treated because of her/his HIV status. The doctor tells another healthcare worker that "treat him (her) and send him (her) away." The counselee states that s(he) has felt uncomfortable with doctor's attitude without making any physical contact and leaves the doctor's office. Although there has been no physical contact, healthcare workers at the emergency room use code white to call the police and security because of the complaint of the counselee who was not physical but only verbal. The counselee is taken to the police station where s(he) has not been admitted to the building due to her/his HIV status. The counselee has had to testify in the police station's garden. The counselee contacts the association to learn what can be done lawfully against attitudes and behaviours of the healthcare workers and the police officers.

LEGAL BASIS: Constitution Art. 10 and 56; HHY Art. 5, 6, 15 and 18; Regulation on Catching, Taking into Custody and Receiving Testimony Art. 23 and 25; TCK Art. 257.

LEGAL REASONING: The counselee has been discriminated against because of their HIV status by both healthcare workers and police force.

Article 5 of HHY clearly stipulates the principles to follow when providing healthcare services. Humane attitude towards patients is one of these principles. As per Article 6 of HHY, patients have the right to benefit from healthcare services including activities promoting a healthy life, and protective health services in line with justice and equity principles. This right includes the responsibility of healthcare provider institutions and personnel working in this field to provide services in line with fairness and equity principles. In this case, the counselee has thought of not being taken care of properly because of discriminatory motives. Therefore, the counselee has the right to receive information from the doctor about this situation. The right to information is regulated under Article 15 and 18 of the said regulation. Patient rights based on HHY have been violated. The counselee can make an official complaint to the hospital's patient rights unit. The counselee can make an official complaint to the Patient Rights Committee (PRC) which operates under the Provincial Health Directorate and also call ALO 184 SABİM to make an official complaint.

The counselee has stated that they have not been admitted to the police station building due to their HIV status and has had to testify in the garden. As per Article 25 of the Regulation on Catching, Taking into Custody and Receiving Testimony; sufficient attention must be paid to receive testimonies in independent places which have internal and external security, technical equipment, and which have been shaped privately. Article 23 of the said regulation states that receiving testimony must be reported in minutes which must include the location where the testimony has been received. Minutes of testimony must state that the testimony has been read and signed by the people who are in the room at the time. In this case, the counselee must add an annotation in the minutes that the testimony has not been received in line with the relevant regulation and the counselee has testified in the police station's garden because of their HIV status. The counselee can denounce the police officers for this attitude as Article 257 of TCK states that this is malpractice.



CASE NO 8: The counselee is an anaesthetist working at a hospital. The counselee contacts the association to receive information if their employment agreement is endangered legally due to their HIV status, and to learn the legal actions that can be taken if their privacy is violated by the colleagues.

LEGAL BASIS: Constitution Art. 20, 48 and 49; ECHR Art. 8; UDHR Art. 12 and 23; Labour Law Art. 17, 18 and Art. 25; KVKK Art. 6; TCK Art. 117, 134 and 136.

LEGAL REASONING: Employer can terminate employee's employment agreement in line with conditions and methods stated in the Labour Law. Employer cannot terminate the employment agreement one-sidedly with valid or applicable reason only because employee lives with HIV. Article 18 of the Labour Law classifies the employees as the ones who have employment security and the ones without employment security. Paragraph 1 of Article 18 of the Labour Law stipulates that employer can terminate the employment agreement of employee, who has employment security, only if the employer has valid reasons related to employee's competence, behaviours, organization, work and workplace. The fact that employee lives with HIV is considered to be similar to the reasons such as "race, skin colour, sex, marital status, family responsibility, pregnancy, birth, religion, political view and similar reasons" stated in the sub-paragraph d of paragraph 3 of the said article and is not a valid reason for termination.

Employer does not have to have a valid reason to terminate employment agreements of the employees who do not have employment security. Paragraph 4 of Article 17 of the Labour Law limits the use of termination right by prohibiting the misuse of termination. Therefore, the fact that employee lives with HIV does not affect employee's employment agreement, and any termination related to HIV status constitutes the misuse of termination right.

Another method for employer to terminate the employment agreement is immediate termination for cause (acceptable reasons) as per Article 25 of the Labour Law. Employers usually try to place HIV status under health-related reasons but HIV status cannot be placed under acceptable reasons for health-related cause mentioned in the said article.

Employers must search for potential solutions before terminating an employee's employment agreement. Terminations, which are not made in line with the principle called 'the last resort for termination', are against the law. Regardless of whether or not employee has employment security, it is against the law if employer terminates employee's employment agreement only because employee lives with HIV. The counselee can exercise the rights related to claiming reinstatement, investigation of invalid termination, and also compensation for damages which are all protected under the law.

The counselee's HIV status is health-related data. KVKK stipulates that health-related data is sensitive personal data which requires strict conditions to be processed. Sharing counselee's HIV status, which is sensitive personal data and related to private life, with their colleagues without consent violates the right to privacy and the right to protect personal data regulated under Article 20 of the Constitution of the Republic of Turkey. The said actions also constitute a crime under TCK. Abovementioned actions constitute a crime under Article 134 of TCK (violation of the right to privacy) and Article 136 (disclosing or obtaining data illegally).

CASE NO 9: The counselee states that they have been infected with HIV as a result of having sex with their partner and contacts the association to learn whether they can denounce their partner.

LEGAL BASIS: Constitution Art. 36; ECHR Art. 6; TCK Art. 86 and 89.

LEGAL REASONING: The counselee can denounce their partner to judicial authorities. The authorities would investigate whether the counselee's claim is related to the crime of injuring. The relationship between partners and whether the person transmitting the virus knows their HIV status must be taken into consideration during judgement process. The person who has been infected with HIV must have allegations which point to one specific person only. When evaluating moral elements, it should be taken into consideration that being infected with HIV is still a probability even through unprotected sex, and that choosing to have unprotected sex is at everyone's own risk.

Contrary to what has been taught and general opinion, AIDS – a stage of HIV – is not something separate that is transmitted. Therefore, the said actions cannot be evaluated under Article 87 of TCK, which stipulates aggravated injury crime, because it would be against material facts. In conclusion, the facts regarding HIV transmission, treatment of HIV, U=U should be taken into consideration and a fair trial should be aimed including the stages of investigation and prosecution.

CASE NO 10: The counselee, who is underage, contacts the association to ask whether being underage is a legal problem for anonymous testing at a Voluntary Counselling and Testing Centre. The counselee also wants to learn whether there is an anonymous testing centre for underage people and, whether they would access treatment without parents' knowledge.

LEGAL BASIS: Law no. 1219 Art. 70; HHY Art. 24.

LEGAL REASONING: Voluntary Counselling and Testing Centres (GDTM) established by the General Directorates of Public Health under the Ministry of Health's HIV/AIDS Control Programme provide anonymous and free services. These centres provide individuals with free and anonymous counselling and testing. These centres are very important to reach sensitive groups for not storing data without consent⁵. Therefore, individuals can get tested for HIV without providing any identifiable data such as name and last name, age, residential address etc. However, if the staff at GDTM realizes that the person is underage and asks about person's age, then they can have the right not to test the person for HIV, which is not against the law. This is because Article 70 of the Law on the Execution Ways of Medicine and Medical Sciences no. 1219 states that doctors and dentists must get parent or guardian's consent before any operation or treatment if the patient is underage or under legal disability. Additionally, HHY defines medical operation as follows: "physical and psychological procedure which is carried by competent medical professionals within the borders of medicine in line with occupational obligations and standards to protect health, to diagnose and treat diseases. Article 24 of the said regulation states that patient's consent is required for medical

5. https://hsgm.saglik.gov.tr/depo/birimler/Bulasici-hastaliklar-db/hastaliklar/HIV-ADS/Tani-Tedavi_Rehberi/HIV_AIDS_Kontrol_Programi.pdf



operations; and if patient is underage or under legal disability, patient's parent or guardian's consent is required. Therefore, consent from a parent or a guardian is a legal obligation before a treatment starts for underage people.

CASE NO 11: The counselee applies to a number of aesthetic surgery centres for rhinoplasty and is refused due to their HIV status. The counselee wants to learn if there is a legal basis for refusal due to HIV status.

LEGAL BASIS: Constitution Art. 17, 20 and 56; ECHR Art. 8; UDHR Art. 25; HHY Art. 6, 8 and 11; TİHEKK Art. 3 and 5; Regulation on Private Hospitals; Regulation on Private Healthcare Institutions which Provide Ambulatory Diagnosis and Treatment.

LEGAL REASONING: The aesthetic surgery centres the counselee has applied for rhinoplasty are private institutions. These private institutions can be established inside a private hospital and also separately as medical centres. Regulation on Private Hospitals regulates the features the private hospitals and the staff working here must have. Regulation on Private Healthcare Institutions which Provide Ambulatory Diagnosis and Treatment regulates the relevant features for medical centres. Both regulations state the conditions for being competent and materials required to carry out medical procedures elaborately and clearly. The institutions, which carry out the procedures, are solely responsible for meeting the competence conditions. Both regulations have conditions for being competent on aesthetic operations but the conditions do not mention anything related to HIV. These centres violate the prohibition of discrimination by refusing to operate a person living with HIV.

As per Article 6 of HHY, the counselee has the right to benefit from healthcare services in line with fairness and equity principles. As per Article 8 of the said regulation, a patient has the right to choose the healthcare institution and receive healthcare services from the chosen institution in line with principles and conditions mentioned in the regulation. As per Article 11 of the said regulation, a patient has the right to demand diagnosis, treatment and care in line with the standard medical requirements. Because the counselee's all three rights mentioned above have been violated, the counselee can make an official complaint to these institutions' patient rights unit which the institutions must establish. The counselee can make an official complaint to the PRC which operates under the Provincial Health Directorate and also call ALO 184 SABİM to make an official complaint. Article 3 of TİHEKK clearly prohibits the discrimination against because of health conditions, and Article 5 states that private entities which provide healthcare services cannot discriminate against because of health conditions while providing health services. Therefore, the counselee can apply to TİHEK. As per paragraph 2 of Article 17 of TİHEKK, an application in writing must be made to the organization that discriminates against before applying to TİHEK. If TİHEK detects that the prohibition of discrimination has been violated after an investigation, the centre is fined.

CASE NO 12: The counselee sees the occupational physician after recruitment process at a company. The occupational physician requests HIV test from the counselee. The counselee wants to receive information whether this is legal.

LEGAL BASIS: Constitution Art. 20, 48 and 49; ECHR Art. 8; UDHR Art. 12 and 23; ILO Code of Practice on HIV/AIDS and the World of Work; HHY Art. 23; KVKK Art. 6; TCK Art. 117, 136 and 137; HMEK Art. 9; Regulation on Occupational Physician and Other Healthcare Personnel's Duty, Authority, Responsibility and Trainings.

LEGAL REASONING: Seeing an occupational physician is a part of recruitment process in Turkey. Occupational physicians' terms of reference are regulated under the Regulation on Occupational Physician and Other Healthcare Personnel's Duty, Authority, Responsibility and Trainings. "Statement of Employment / Periodical Examination Form" attached to the abovementioned regulation does not require HIV test from potential employees. United Nations, of which Turkey is a member, has a specialized agency named International Labour Organization (ILO) that has a "Code of Practice on HIV/AIDS and the World of Work". The code states that "HIV/AIDS examination cannot be demanded from potential or current employees." Therefore, an occupational physician's request of HIV test from a potential employee during recruitment process is against the law. Potential employee, from whom occupational physician demands an HIV test, should assert that this is against the law. In practice, occupational physician may put pressure on the potential employee to get them tested or try to learn potential employee's HIV status through other ways after potential employee objects to getting tested. Upon this type of unlawful attitude, occupational physician might share HIV status, obtained unlawfully, with employer and might prevent potential employee from being hired.

In case potential employee's HIV status, which is health-related data and related to private life, is known by occupational physician and shared with employer, occupational physician should be reminded that this might create an occupational liability because of the doctor - patient relationship between potential employee and occupational physician. Furthermore, occupational physician should be reminded that data obtained must be kept confidential because of provision of healthcare services as per Article 23 of HHY and also occupational physician cannot disclose the secrets learn while exercising a profession as per Article 9 of HMEK published by the TMA.

The occupational physician's actions mentioned above constitute a crime of "disclosing or obtaining data illegally" stated under Article 136 of TCK. Article 137 of TCK states that taking an advantage of convenience through a specific profession is an aggravating circumstance for the crime of "disclosing or obtaining data illegally." Therefore, if occupational physician shares potential employee's HIV status with the third parties, this constitutes a major crime and creates a criminal liability. If potential employee is not recruited because of this situation, this constitutes a crime for violating the freedom of labour and employment under Article 117 of TCK.

CASE NO 13: The counselee's company, at which the counselee worked for four years, terminates the counselee's employment agreement after learning counselee's HIV status. The counselee wants to receive legal advice on the situation.

LEGAL BASIS: Constitution Art. 20, 48 and 49; ECHR Art. 8; UDHR Art. 12 and 23; Labour Law Art. 17; TCK Art. 117, 134 and 136.



LEGAL REASONING: Employer can terminate employee's employment agreement in line with conditions and methods stated in the Labour Law. Employer cannot terminate the employment agreement one-sidedly with valid or applicable reason only because employee lives with HIV. Article 18 of the Labour Law classifies the employees as the ones who have employment security and the ones without employment security. Paragraph 1 of Article 18 of the Labour Law stipulates that employer can terminate the employment agreement of employee, who has employment security, only if the employer has valid reasons related to employee's competence, behaviours, organization, work and workplace. The fact that employee lives with HIV is considered to be similar to the reasons such as "race, skin colour, sex, marital status, family obligation, pregnancy, birth, religion, political view and similar reasons" stated in the sub-paragraph d of paragraph 3 of the said article and is not a valid reason for termination.

Employer does not have to state any reason when terminating employment agreements of employees who do not have employment security. However, Paragraph 4 of Article 17 of the Labour Law limits the use of termination right by prohibiting the misuse of termination. Therefore, the fact that employee lives with HIV does not affect employee's employment agreement. Any termination related to HIV status is considered to be the misuse of termination right.

Another method for employer to terminate the employment agreement is immediate termination for cause (acceptable reasons) as per Article 25 of the Labour Law. Employers usually try to place HIV status under health-related reasons but HIV status cannot be placed under acceptable reasons for health-related cause mentioned in the said article. Because not disclosing HIV status to employer during job interview or providing wrong information on HIV status is not considered as providing misleading statement on important matters as per paragraph 2 of Article 25 of the Labour Law, this situation cannot lead to immediate termination of employment agreement for cause (acceptable reason). In this case, there is not an obstacle to continue professional relationship, and also employer cannot claim any right regarding a misleading statement obtained through their own fault. Because the questions directed to learn employee's HIV status are unlawful – unless they are objectively related to the work carried out –, an employee does not have to answer the questions correctly or answer them at all.

Employers must search for potential solutions before terminating an employee's employment agreement. Terminations, which are not made in line with the principle called 'the last resort for termination', are against the law. Regardless of whether employee has employment security or not, it is against the law if employer terminates employee's employment agreement only because employee lives with HIV. Employee can exercise the rights related to claiming reinstatement, investigation of invalid termination and also compensation for damages which are all protected under the law.

The counselee's HIV status is health-related data. KVKK stipulates that health-related data is sensitive personal data which requires strict conditions to be processed. Learning counselee's HIV status, which is sensitive personal data and related to private life, by employer without consent violates the right to privacy and to protect personal data regulated under Article 20 of the Constitution of the Republic of Turkey. The said actions also constitute a crime under TCK. Abovementioned actions violate privacy thus constituting a crime under Article 134 of TCK. They also constitute a crime of providing or obtaining data illegally as per Article 136 of TCK. If potential employee is discharged because of this situation, this constitutes a crime for violating the freedom of labour and employment under Article 117 of TCK.

CASE NO 14: A former friend of the counselee sees the counselee when the counselee goes to use recreational facility of a residential complex into which the counselee has moved recently. The former friend knows the counselee's HIV status and discloses it to the administration of the residential complex. Upon this, the administration contacts the counselee's landlord/landlady who pressures on the counselee to move out. After refusing to move out, the counselee is told to provide an HIV test with negative result. The counselee wants to receive legal advice on the situation.

LEGAL BASIS: Constitution Art. 20; UDHR Art. 12; ECHR Art. 8; KVKK Art.6; TBK Art. 327 et seq; TCK Art. 123, 134 and Art. 136.

LEGAL REASONING: The counselee's HIV status is health-related data. KVKK stipulates that health-related data is sensitive personal data which requires strict conditions to be processed. Sharing counselee's HIV status, which is sensitive personal data and related to private life, with a former friend and the administration without consent violates the right to privacy and to protect personal data regulated under Article 20 of the Constitution of the Republic of Turkey. The said actions also constitute a crime under TCK. Abovementioned actions violate privacy thus constituting a crime under Article 134 of TCK. They also constitute a crime of providing or obtaining data illegally as per Article 136 of TCK.

The counselee's landlord/landlady's request of HIV test result is not in line with any legal norm. Any situation, which might affect the rental agreement between the counselee and the counselee's landlord/landlady after the disclosure of HIV status, cannot fall within the TBK (Turkish Law of Obligations). The counselee, who is a tenant, can still use the rented apartment as per the signed rental agreement. In addition, repetitive and unwanted calls from landlord/landlady to pressure on the counselee constitute a crime of disturbing one's peace and harmony under Article 123 of TCK.

CASE NO 15: The counselee is a foreigner who lives with HIV and does not have a work permit in Turkey. The counselee wants to learn whether HIV status is a problem for foreigners to obtain a work permit in Turkey.

LEGAL BASIS: Constitution Art. 16, 48 and 49; ECHR Art. 8; UDHR Art. 23; Law on International Labour Force Art. 9, and 21.

LEGAL REASONING: As per Article 48 and 49 of the Constitution of the Republic of Turkey, everyone has the right to work. The right to work has been regulated for foreigners under Article 16 of the Constitution. This regulation offers 2 options; permit for some occupations and prohibition for some occupations. As per the UİK (Law on International Labour Force) and regulations related to the said law; foreigners, who need to obtain work permit, do not have to provide any medical report to obtain the permit. As employee's HIV status is not an obstacle to work, preventing someone from being employed due to HIV status is a discrimination.

Article 9 of the UİK stipulates the valid rejection reasons for work permit applications. Applicants do not have to disclose their HIV status. If the authority learns an applicant's HIV status, this does not lead to rejection of work permit application. The provision about the "foreigners who are considered to be risky to work in Turkey in terms of public health" does not mention HIV when considering transmission and ineffectiveness in



working life. An applicant's HIV status does not require any different evaluation and procedure from other foreigner employees. Any different treatment against an applicant because of their HIV status violates the prohibition of discrimination. If the application is rejected, the applicant can submit their objection to the Ministry of Family, Labour and Social Services within 30 days as per Article 21 of the UİK. If the objection is rejected, the applicant has the right to take the case to court.

CASE NO 16: The counselee would like to use the swimming pool in their residential complex. The administration of the residential complex requests a medical report from the counselee. The counselee would like to learn whether they might be asked to get tested for HIV for the medical report.

LEGAL BASIS: Constitution Art. 20; UDHR Art. 12; ECHR Art. 8; KVKK Art. 6; KMK Art. 4, 16, and 27; Directive on Principles and Procedures regarding Medical Reports.

LEGAL REASONING: The swimming pool in the residential complex is a common area as per Article 4 of KMK. As per Article 16 of the said law, the counselee has the right to benefit from common areas as much as the other property owners. As per Article 27 of the said law, the authority of introducing new regulatory provisions belongs to the board of property owners. However, the provisions introduced by the board must be in line with the law and mandatory rules.

As per the Directive on Principles and Procedures regarding Medical Reports, which has been made by the Ministry of Health to regulate the medical reports that can be requested to use swimming pools, only professional swimmers, who would like to obtain a licence for swimming, must provide a medical report. For this reason, it is not in line with the law to ask for a medical report from the counselee who would like to use the swimming pool. Even if a medical report is requested, living with HIV does not prevent PLWHIV from taking part in any sports activity. As mentioned before, an organization or institution must be authorized to process health-related data in order to request a medical report that includes a person's health-related data. The administration requesting a medical report is not authorized to process health-related data as per Article 6 of KVKK. For this reason, the administration's request violates the right to privacy and to protect personal data as per Article 20 of the Constitution.

CASE NO 17: The counselee works behind the information desk at a private hospital. The counselee's spouse gets tested for HIV while receiving healthcare services for their health problem, and it is found out that the counselee's spouse lives with HIV. The counselee has also been tested for HIV afterwards. Before the counselee learns their HIV test result which has not been confirmed yet, hospital's doctor, who has received the result, shares it with the administration. The hospital staff learns the test result before the counselee does. The counselee, who learns the test result after the administration, has been put on unpaid leave until the confirmation of the test result. The counselee's employment agreement has been terminated after the confirmation of HIV status. The counselee contacts the association to learn whether living with HIV could affect the employment agreement.

LEGAL BASIS: Constitution Art. 20, 48 and 49; ECHR Art. 8; UDHR Art. 12 and 23; Labour Law Art. 17, 18 and 25; HHY Art. 23; HMEK Art. 9; KVKK Art. 6; TCK Art. 117, 134 and 136.

LEGAL REASONING: The counselee's HIV test result is health-related data as it shows counselee's HIV status. KVKK stipulates that health-related data is sensitive personal data which requires strict conditions to be processed. Sharing counselee's HIV status, which is sensitive personal data and related to private life, with the administration by the doctor without counselee's consent and the fact that all the hospital staff learns counselee's HIV status violates the right to privacy and to protect personal data regulated under Article 20 of the Constitution of the Republic of Turkey. Furthermore, the data obtained must be kept confidential because of doctor - patient relationship and because of providing healthcare services as per Article 23 of HHY. The doctors cannot disclose the secrets they learn while exercising a profession as per Article 9 of HMEK published by the TMA. Therefore, disclosure of the counselee's HIV status by the doctor creates an occupational liability. The doctor's actions mentioned above constitute a crime of "disclosing or obtaining data illegally" stated under Article 136 of TCK. Additionally, Article 137 of TCK states that taking an advantage of convenience through a specific profession is an aggravating circumstance for this crime. Together with the doctor's occupational liability, there is also criminal liability.

As for the termination of employment agreement, employer can only terminate employee's employment agreement as per the conditions and methods specified under the Labour Law. Employer cannot terminate the employment agreement one-sidedly with valid or applicable reason only because employee lives with HIV. Article 18 of the Labour Law classifies the employees as the ones who have employment security and the ones without employment security. Paragraph 1 of Article 18 of the Labour Law stipulates that employer can terminate the employment agreement of employee, who has employment security, only if the employer has valid reasons related to employee's competence, behaviours, organization, work and workplace. The fact that employee lives with HIV is considered to be similar to the reasons such as "race, skin colour, sex, marital status, family obligation, pregnancy, birth, religion, political view and similar reasons" stated in the sub-paragraph d of paragraph 3 of the said article and is not a valid reason for termination.

Employer does not have to have a valid reason to terminate employment agreements of the employees who do not have employment security. Paragraph 4 of Article 17 of the Labour Law limits the use of termination right by prohibiting the misuse of termination. Therefore, the fact that employee lives with HIV does not affect employee's employment agreement, and any termination related to HIV status constitutes the misuse of termination right.

Another method for employer to terminate the employment agreement is immediate termination for cause (acceptable reasons) as per Article 25 of the Labour Law. Employers usually try to place HIV status under health-related reasons but HIV status cannot be placed under acceptable reasons for health-related cause mentioned in the said article.

Employers must search for potential solutions before terminating an employee's employment agreement. Terminations, which are not made in line with the principle called 'the last resort for termination', are against the law. Regardless of whether employee has employment security or not, it is against the law if employer terminates employee's employment agreement only because employee lives with HIV. Employee can exercise the rights related to claiming reinstatement, investigation of invalid termination and also compensation for damages which are all protected under the law. Termination of counselee's employment agreement constitutes a crime for violating the freedom of labour and employment under Article 117 of TCK.



CASE NO 18: The counselee applies to work as a flight attendant for a private airline company and completes preliminary interview and necessary trainings successfully. After pre-recruitment procedure is completed, the counselee is told that their HIV test result for the list of required tests are indeterminate and the company waits for the confirmation result. Meanwhile, occupational physician at the company tells the counselee that (s)he would share the result with the employer. Recruitment process is suspended until the confirmation result. The counselee contacts the association to receive legal advice on the situation.

LEGAL BASIS: Constitution Art. 20, 48 and 49; ECHR Art. 8; UDHR Art. 12 and 23; SHT - MED; SHT OPS – SAĞLIK; Circular Letter on Procedures regarding Aviation Medical Examination, Medical Certificate and Medical Examination Report (Circular Letter on Aviation) published by the Directorate General of Civil Aviation; Appendix 4 titled PART-MED of Commission Regulation no. (AB) 1178/2011.

LEGAL REASONING: Recruitment and working life of aircrew personnel have been regulated in a casuistic way both domestically and internationally. The counselee has made an application to be employed as a cabin crew member. Health condition and requirements cabin crew must have and how to evaluate them are regulated elaborately as per the following: Aviation Health Instruction (SHT – MED); Instruction on Principles and Procedures regarding Health Checks of Cabin Crew Members (SHT OPS – SAĞLIK); Circular Letter on Aviation published by the Directorate General of Civil Aviation and its Appendix; Appendix 4 titled PART-MED of Commission Regulation no. (AB) 1178/2011, and also Acceptable Means of Compliance (AMC) and Guidance Material (GM).

Cabin crew's health checks are carried out by AeMC authorised by the Directorate General of Civil Aviation. HIV test is in the list of required tests for medical reports requested from cabin crew as per Circular Letter on Aviation and its Appendix published by the Directorate General of Civil Aviation. The legislation does not state whether or not living with HIV is an obstacle for cabin crew members to work. SHT - MED MED.C.020 states that cabin crew members should not have "active, idiopathic, acute or chronic disease or disorder." Although there is a specific regulation on HIV status for pilots, a similar regulation does not exist for cabin crew members. The most specific regulation on HIV status and cabin crew has been introduced in Appendix 4 titled PART-MED of Commission Regulation no. (AB) 1178/2011, and also AMC 8 MED. C. 025. As per this regulation above; if a cabin crew member living with HIV does not provide an evidence base of clinical diagnosis and is assessed fit for a satisfactory aero-medical assessment, they are considered to be eligible to work. Apart from being considered to be eligible to work, an individual's HIV status is not an obstacle for work when considering transmission of HIV, U=U reality, today's improvements on methods for HIV treatment.

The counselee should remind the authorised AeMC of the evaluation criteria. The counselee should demand a report, which is unbiased, objective and does not deny scientific facts, from the occupational physician. If the report states that the counselee is ineligible to work, the counselee can object to the report within 2 months as per the Circular Letter on Aviation and its Appendix published by the Directorate General of Civil Aviation. In case of objection, cabin crew staff and candidates can apply to the Objection AeMC on the Directorate General's website to request a medical examination for objection in writing. Later, the Directorate General starts the medical examination process. Cabin crew staff and candidates apply to

the Aviation Health Unit for a decision by filling out “Civil Aviation Health Commission Application Form” along with an examination report. The report is supposed to support the reason for objection by referring to relevant articles and provisions mentioned before. Applications which are accepted by the Aviation Health Unit are submitted to the Civil Aviation Health Commission for an opinion. Aviation Health Unit makes a decision by taking the opinion of the Civil Aviation Health Commission into account. If the Aviation Health Unit decides that the report must state ‘eligible to work’, as per Article 115 of SHT - MED an administrative sanction is imposed on AeMC which has prepared the report stating ‘ineligible to work’. Because the Aviation Health Unit makes the final decision, an action for annulment of the Unit’s report stating ‘ineligible’ can be brought before the administrative courts within 30 days.

The counselee’s test result cannot be shared with the employer. All the regulations mentioned above clearly state that medical report procedure must be completed by protecting the privacy of doctor - patient relationship. The counselee’s employer can only access a report stating ‘ineligible’ but cannot know the reason for ineligibility. In practice, authorised occupational physicians can view the reason for ineligibility on applications such as e-nabız or Medula. If occupational physicians disclose the counselee’s HIV status to the employer, both occupational and criminal liability arise.

CASE NO 19: The counselee’s sister learns the counselee’s HIV status and discloses the status to family members and close ones without the counselee’s consent. The counselee has had to resign from their job due to their sister’s repetitive disclosures and pressure. The counselee contacts the association to learn the legal actions that can be taken against their sister.

LEGAL BASIS: Constitution Art .20; ECHR Art. 8; UDHR Art. 12; Law no.6284 Art. 5; TCK Art. 134, Art. 136.

LEGAL REASONING: The counselee can apply to protective and preventive measures under Law no. 6284 to prevent their sister from disclosing their HIV status. The law regulates the procedures and principles related to the measures taken to protect and prevent violence against women, children, family members who have been subject to violence or are at the risk of being subject to violence and the victims of persistent stalkers. The law defines the violence as follows:

“Any physical, sexual, psychological, verbal or economic attitude and behaviour that occur in social, public and private place. These also include the actions that (might) result in suffering of a person physically, sexually, psychologically or economically as well as the threat, pressure or arbitrary violation of freedom.” In consideration of this information, it is clear that the counselee is a victim of one-sided persistent stalking. The counselee can take legal actions to benefit from preventive measures stated in Law no. 6284. Article 5 provides the preventive measures that are stated under the law and the counselee can request. The counselee can get an order to prevent the following actions of sister who persistently stalks: Attitudes and behaviours that include the threats of violence, insult, humiliation and degradation against the victim of violence; immediate suspension from the shared dwelling and vicinity of the protected person; approach to the protected person’s residence, school and workplace; approach protected person’s close ones, witnesses, children (personal relationships are allowed) even though none of them has been subject to violence; damage the personal belongings and household goods of the protected person; cause distress to the protected person



by means of communication channels or an alternative channel. As can be seen above, the law allows orders to be taken to prevent the stalker from threatening and contacting the protected person and their family and close ones. Injunction orders can be requested from judge of family court or local authorities or law enforcement unit most quickly and easily. No evidence is required for injunction orders, and a petition which clearly explains the events happened is sufficient. Injunction orders are temporary with a limited time period. If the threat of violence continues after the limited time period, the order can be extended by reapplying to court. Injunction order is officially communicated to the both sides. If the perpetrator still violates the order after that, preventive imprisonment is enforced.

HIV status is “sensitive personal data” because it is related to health. Lawfully, it requires more strict protection compared to other personal data. Regardless of by whom, disclosing one’s HIV status without consent is a crime. HIV status is related to private life, and disclosing HIV status violates the right to privacy. As per TCK’s Article 134 - violation of the right to privacy, and 136 - illegally disclosing or obtaining data; the counselee can denounce the sister for disclosing the HIV status without consent.

CASE NO 20: The counselee’s postponement period for military service is about to finish. So the counselee hesitates to receive a report exempting them from compulsory military service due to their HIV status. The counselee wants to receive information if he can be exempted from the compulsory military service and also if his employer can learn his HIV status in case of exemption.

LEGAL BASIS: Constitution Art. 20 and 72; Turkish Armed Forces’ Regulation on Health Competence Art. 6, List of Diseases and Disorders in the Same Regulation Art. 52.

LEGAL REASONING: HIV is a definite reason for being exempted from compulsory military service and this does not depend on individuals’ request or consent. Paragraph b of Article 6 of the Turkish Armed Forces Health Competence Regulation states that “those who are ineligible to serve in military: the ones whose diseases fall within (B) or (D) sections of the Diseases and Disorders List.” As per Article 52 of Infectious Diseases Section in the List of Diseases and Disorders, confirmed HIV infection is included in diseases falling within section D. Therefore, it is clear that PLWHIV are exempted - in other words, ineligible - from the compulsory military service.

Exemption document required during recruitment process can be printed out from e-Government system. The printed document states that “the person is ineligible for military service” but does not state the reason why. Therefore, employer cannot know employee candidate’s HIV status from this document. Some employers do question the reason of ineligibility but this is against the candidate’s private life and the protection of personal data. Detailed explanations and legal mechanisms to apply in this situation are separately provided in the cases regarding discrimination during recruitment process.

CASE NO 21: The counselee applies to a multinational company and completes the interviews successfully. During recruitment process, the counselee is given a list of medical tests which include HIV test. After seeing HIV test on the list, the counselee shares their HIV status with consent. After this, the department which has contacted the counselee tells the counselee that they would communicate with other departments and the counselee would hear back from them. After a month, the counselee receives an e-mail

saying that the counselee is not qualified for the vacant position. The counselee replies to the e-mail asking why they would not be hired after the procedure has been completed, and whether this has been related to their HIV status. Nobody from the company contacts back to the counselee. The counselee contacts the association to receive legal advice on this situation.

LEGAL BASIS: Constitution Art. 20, 48 and 49; ECHR Art. 8; UDHR Art. 12 and 13; ILO Code of Practice on HIV/AIDS and the World of Work; Labour Law Art. 5; TİHEKK Art. 3 and 6; Regulation on Principles regarding Establishment, Duty and Working of City and Province's Human Rights Councils Art. 9; TCK Art. 117; Regulation on Occupational Physician and Other Healthcare Personnel's Duty, Authority, Responsibility and Trainings.

LEGAL REASONING: "Statement of Employment / Periodical Examination Form" mentioned on the Regulation on Occupational Physician and Other Healthcare Personnel's Duty, Authority, Responsibility and Trainings does not require an HIV test from applicants. United Nations, of which Turkey is a member, has a specialized agency named International Labour Organization (ILO) that has a "Code of Practice on HIV/AIDS and the World of Work". The code states that "HIV/AIDS examination cannot be demanded from potential or current employees." In light of these provisions, asking for HIV test result from candidates for recruitment is against the law.

The counselee has not been recruited due to their HIV status which they disclosed although they did not have to. Not recruiting a candidate after learning that they live with HIV violates the prohibition of discrimination mentioned in international agreements to which Turkey has been a party and in the domestic law. Employer's unfair treatment does not comply with employer's liability to treat equally as per Article 5 of the Labour Law.

The counselee can apply to TİHEK because of the discrimination against because of HIV status during recruitment as Article 3 of TİHEKK clearly prohibits the discrimination against because of health condition and Article 6 specifically prohibits this type of discrimination during recruitment process. As per paragraph 2 of Article 17 of TİHEKK, an application in writing must be made to the organization that discriminates against before applying to TİHEK. If TİHEK detects that the prohibition of discrimination has been violated after an investigation, the employer is fined.

The counselee who has been discriminated against because of their HIV status can also apply to the Human Rights Councils in their city and province. As per Article 9 of Regulation on Principles regarding Establishment, Duty and Working of City and Province's Human Rights Councils; the councils are responsible for preventing all types of discrimination. In this case, Councils investigate the rights violations reported to them and inform, if necessary, the chief public prosecutor or relevant administrative authorities about the violation. Councils also follow up on the decision.

Employer's unfair and unlawful treatment violates the freedom of labour and employment accepted under the Constitution and international agreements, and also constitutes the crime of violating the freedom of labour and employment as per Article 117 of TCK. The counselee can make an official complaint about the employer based on the mentioned provisions as a result of being discriminated against because of their HIV status.



CASE NO 22: The counselee visits an aesthetic surgery centre to receive information on hair transplantation. At first, the counselee and the centre agree on 3,500.00 TRY. After sharing their HIV status, the counselee is told that the procedure can be carried out for 10,000.00 TRY as the centre would need new equipment. Pozitif-iz Association has provided the counselee with legal advice on different pricing procedure by the centre.

LEGAL BASIS: Constitution Art. 20 and 56; ECHR Art. 8; UDHR Art. 25; HHY Art. 6, 8 and 11; TİHEKK Art. 3 and 5; Regulation on Private Hospitals; Regulation on Private Healthcare Institutions which Provide Ambulatory Diagnosis and Treatment.

LEGAL REASONING: The aesthetic surgery centre the counselee has applied for hair transplantation is a private institution. This type of private institutions can be established inside a private hospital and also separately as medical centres. Regulation on Private Hospitals regulates the features the private hospitals and the staff working here must have. Regulation on Private Healthcare Institutions which Provide Ambulatory Diagnosis and Treatment regulates the relevant features for medical centres. Both regulations state the conditions for being competent and materials required to carry out medical procedures elaborately and clearly. In addition to the mentioned regulations; the institutions, which carry out the procedures, are solely responsible for meeting the conditions for being competent. Both regulations have conditions for being competent on aesthetic operations but the conditions do not mention anything related to HIV. Therefore the centre, which is responsible for having the necessary equipment for the procedure and which increases the price separately and excessively, violates the prohibition of discrimination against because of HIV status. As per Article 6 of HHY, the counselee has the right to benefit from healthcare services in line with fairness and equity principles. As per Article 8 of the said regulation, a patient has the right to choose the healthcare institution and receive healthcare services from the chosen institution in line with principles and conditions mentioned in the regulation. As per Article 11 of the said regulation, a patient has the right to demand diagnosis, treatment and care in line with the standard medical requirements. Because the counselee's all three rights mentioned above have been violated, the counselee can make an official complaint to the centre's patient rights unit which the institutions must establish. The counselee can make an official complaint to the PRC which operates under the Provincial Health Directorate and also call ALO 184 SABİM to make an official complaint.

Article 3 of TİHEKK clearly prohibits the discrimination against because of health condition, and Article 5 states that private entities which provide healthcare services cannot discriminate against because of health condition while providing health services. Therefore, the counselee can apply to TİHEK. If TİHEK detects that the prohibition of discrimination has been violated after an investigation, the centre is fined.

CASE NO 23: The counselee goes to a state hospital after breaking their thumb and finds out that platinum implant must be placed on their thumb. Hospital employee writes HIV in large font on counselee's operation documents. The counselee contacts the association to ask whether this is lawful and which legal actions can be taken.

LEGAL BASIS: Constitution Art. 20; Biomedicine Convention Art. 10; ECHR Art.8; HHY Art. 21.

LEGAL REASONING: The counselee is concerned whether their right to privacy is protected while receiving healthcare services. Article 21 of HHY states that “Respecting privacy of patients is important. Patient can directly request of protection for their privacy. Any medical operation must be carried out by respecting patients’ privacy.” The same article also states that the right to request of respecting privacy includes “Medical assessments related to patient’s health condition must be made in privacy. Examination, diagnose, treatment and other operations requiring direct contact must be carried out in a reasonably private place.” For this reason, it is against the law to write counselee’s HIV status on operation documents in a way that is visible to the whole hospital staff. In such cases, hospital staff should be warned and an official complaint must be made to the patient rights unit and the Ministry of Health immediately if the violation continues.

CASE NO 24: The counselee’s ex-partner discloses the counselee’s HIV status and sexual orientation to the counselee’s workplace. Later, the counselee’s workplace requests an HIV test and the counselee shares their HIV status with the workplace with consent. The workplace puts the counselee on unpaid leave and then discharges the counselee. The counselee contacts the association to receive legal advice on ex-partner’s disclosure and termination of employment agreement.

LEGAL BASIS: Constitution Art. 20, 48 and 49; ECHR Art. 8; UDHR Art. 12 and 23; Labour Law Art. 17, 18 and 25; HHY Art. 23; KVKK Art. 6; TCK Art. 117, 134 and 136.

LEGAL REASONING: The counselee’s HIV status is health-related data. KVKK stipulates that health-related data is sensitive personal data which requires strict conditions to be processed. Sharing counselee’s HIV status, which is sensitive personal data and related to private life, with their workplace without consent violates the right to privacy and to protect personal data regulated under Article 20 of the Constitution of the Republic of Turkey. The said actions also constitute a crime under TCK. Abovementioned actions violate privacy thus constituting a crime under Article 134 of TCK. They also constitute a crime of providing or obtaining data illegally as per Article 136 of TCK.

Employer cannot terminate the employment agreement one-sidedly with valid or applicable reason only because employee lives with HIV. Article 18 of the Labour Law classifies the employees as the ones who have employment security and the ones without employment security. Paragraph 1 of Article 18 of the Labour Law stipulates that employer can terminate the employment agreement of employee, who has employment security, only if the employer has valid reasons related to employee’s competence, behaviours, organization, work and workplace. The fact that employee lives with HIV is considered to be similar to the reasons such as “race, skin colour, sex, marital status, family obligation, pregnancy, birth, religion, political view and similar reasons” stated in the sub-paragraph d of paragraph 3 of the said article and is not a valid reason for termination. Employer does not have to have a valid reason to terminate employment agreements of the employees who do not have employment security. Paragraph 4 of Article 17 of the Labour Law limits the use of termination right by prohibiting the misuse of termination. Therefore, the fact that employee lives with HIV does not affect employee’s employment agreement, and any termination related to HIV status constitutes the misuse of termination right.

Another method for employer to terminate the employment agreement is immediate termination for cause (acceptable reasons) as per Article 25 of the Labour Law. Employers usually try to place HIV status under



health-related reasons but HIV status cannot be placed under acceptable reasons for health-related cause mentioned in the said article. Because not disclosing HIV status to employer during job interview or providing wrong information on HIV status is not considered as providing misleading statement on important matters as per paragraph 2 of Article 25 of the Labour Law this situation cannot lead to immediate termination of employment contract for cause (acceptable reason). In this case, there is not an obstacle to continue work relationship, and also employer cannot claim any right regarding a misleading statement obtained through her/his own fault. Because the questions directed to learn employee's HIV status are unlawful – unless they are objectively related to the work carried out –, an employee does not have to answer the questions correctly or answer them at all.

Employers must search for potential solutions before terminating an employee's employment agreement. Terminations, which are not made in line with the principle called 'the last resort for termination', are against the law. Regardless of whether employee has employment security or not, it is against the law if employer terminates employee's employment agreement only because employee lives with HIV. Employee can exercise the rights related to claiming reinstatement, investigation of invalid termination and also compensation for damages which are all protected under the law. Termination of counselee's employment agreement constitutes a crime for violating the freedom of labour and employment under Article 117 of TCK.

CASE NO 25: The counselee contacts a private hospital for rhinoplasty and agrees on the price and date with the hospital. Later, the counselee shares their HIV status with the hospital administration which states that the hospital cannot carry out this operation. The counselee suggests providing a letter which states "no obstacle for operation" and which is signed by an infectious disease specialist. Despite this, the hospital rejects the counselee. The counselee contacts the association to receive legal advice on the right violation they have experienced.

LEGAL BASIS: Constitution Art. 20 and 56; ECHR Art. 8; UDHR Art. 25; HHY Art. 6, 8 and 11; TİHEKK Art. 3 and 5; Regulation on Private Hospitals; Regulation on Private Healthcare Institutions which Provide Ambulatory Diagnosis and Treatment.

LEGAL REASONING: The private hospital the counselee has applied for rhinoplasty is a private institution. Regulation on Private Hospitals regulates the features the private hospitals and the staff working here must have. Regulation on Private Healthcare Institutions which Provide Ambulatory Diagnosis and Treatment regulates the relevant features for medical centres. Both regulations state the conditions for being competent and materials required to carry out medical procedures elaborately and clearly. In addition to the mentioned regulations; the institutions, which carry out the procedures, are solely responsible for meeting the conditions for being competent. Both regulations have conditions for being competent on aesthetic operations but the conditions do not mention anything related to HIV. These hospitals violate the prohibition of discrimination by first accepting and then refusing to operate PLWHIV without stating any reason. As per Article 6 of HHY, the counselee has the right to benefit from healthcare services in line with fairness and equity principles. As per Article 8 of the said regulation, a patient has the right to choose the healthcare institution and receive healthcare services from the chosen institution in line with principles and conditions mentioned in the regulation. As per Article 11 of the said regulation, a patient has the right to demand diagnosis, treatment and care in line with the standard medical requirements. Because the counselee's all

three rights mentioned above have been violated, the counselee can make an official complaint to the hospital's patient rights unit which the institutions must establish. The counselee can make an official complaint to the PRC which operates under the Provincial Health Directorate and also call ALO 184 SABİM to make an official complaint.

Article 3 of TİHEKK clearly prohibits the discrimination against because of health condition, and Article 5 states that private entities which provide healthcare services cannot discriminate against because of health condition while providing health services. Therefore, the counselee can apply to TİHEK. As per paragraph 2 of Article 17 of TİHEKK, an application in writing must be made to the organization that discriminates against before applying to TİHEK. If TİHEK detects that the prohibition of discrimination has been violated after an investigation, the hospital is fined.

CASE NO 26: The applicant is a transgender woman who lives with HIV and plans to get her breast implants replaced at a hospital. The counselee shares her HIV status with the hospital staff before the operation. Upon sharing this information, the hospital staff tells her that they do not have the equipment required for this operation but she can have the replacement operation done in the private office of the doctor, who also carries out the operation in the hospital. However, the price for the operation has been doubled in this case. Although the counselee talks to the hospital staff again, she has been told that the operation could not be carried out as the hospital does not have any infectious diseases specialist. The counselee contacts the association to receive information whether this is lawful to be denied an operation after sharing HIV status.

LEGAL BASIS: Constitution Art. 17 and 20; Biomedicine Convention Art. 10; ECHR Art. 8; Regulation on Private Hospitals; HHY Art. 6, 8 and 11; TİHEKK Art. 3 and 5.

LEGAL REASONING: The operation the counselee requests from the hospital is technically an aesthetic operation. Regulation on Private Hospitals regulates the features the private hospitals and the staff working here must have. The regulation states the conditions for being competent and the materials required to carry out medical procedures elaborately and clearly. In addition to the mentioned regulations; the institutions, which carry out the procedures, are solely responsible for meeting the conditions for being competent. The regulation has conditions for being competent on aesthetic operations but the conditions do not mention anything related to HIV. The hospital violates the prohibition of discrimination by refusing to operate a person living with HIV. As per Article 6 of HHY, the counselee has the right to benefit from healthcare services in line with fairness and equity principles. As per Article 8 of the said regulation, a patient has the right to choose the healthcare institution and receive healthcare services from the chosen institution in line with principles and conditions mentioned in the regulation. As per Article 11 of the said regulation, a patient has the right to demand diagnosis, treatment and care in line with the standard medical requirements. The counselee can apply in writing to the patient rights unit of the hospital from which she could not receive services. The counselee can make an official complaint to the PRC which operates under the Provincial Health Directorate and also call ALO 184 SABİM to make an official complaint. Article 3 of TİHEKK clearly prohibits the discrimination against because of health condition, and Article 5 states that private entities which provide healthcare services cannot discriminate against because of health condition while providing health services. Therefore, the counselee can apply to TİHEK. As per paragraph



2 of Article 17 of TİHEKK, an application in writing must be made to the organization that discriminates against before applying to TİHEK. If TİHEK detects that the prohibition of discrimination has been violated after an investigation, the hospital is fined.

CASE NO 27: The counselee sees that the tests, which are required to use the swimming pool of the residential complex they have recently moved to, include HIV. The counselee wants to learn whether it is lawful for the residential complex to request information on HIV status.

LEGAL BASIS: Constitution Art. 13 and 20; UDHR Art. 12; ECHR Art. 8; KVKK Art. 6; KMK Art. 4, 16 and 27.

LEGAL REASONING: The swimming pool in the residential complex is a common area as per Article 4 of KMK. As per Article 16 of the said law, the counselee has the right to benefit from common areas as much as the other property owners. As per Article 27 of the said law, the authority of introducing new regulatory provisions belongs to the board of property owners. However, the provisions introduced by the board must be in line with the law and mandatory rules. As per the Directive on Principles and Procedures regarding Medical Reports that has been made by the Ministry of Health to regulate which medical reports can be requested; only sportspeople, who would like to continue their sports activities at professional level or obtain a licence, must provide a medical report. Additionally, HIV test is not related to a medical report requested for sportive activities. For this reason, it is not in line with the law to ask for a medical report from the counselee who would like to use the swimming pool.

As mentioned before, an organization or institution must be authorized to process health-related data in order to request a medical report that includes a person's health-related data. The administration requesting a medical report is not authorized to process health-related data as per Article 6 of KVKK. For this reason, the administration's request violates the right to privacy and to protect personal data as per Article 20 of the Constitution. Even if the residential complex administration can request this test; sharing a swimming pool, towel or a bathroom is not a reason for HIV transmission. Therefore, including HIV status information in the medical report is a disproportionate limit on fundamental rights and freedoms as per the Constitution's Article 13, which regulates the protection of personal data. Therefore, it is against the law to include the status in the report.

CASE NO 28: The counselee works in a branch of an international company which even has grants for and ongoing research on HIV/AIDS. The counselee often takes leave (through medical reports) from work because the counselee's HIV diagnosis is recent. Branch manager learns the counselee's HIV status by bullying the counselee. The counselee shares their HIV status with the hope of getting rid of bullying and specifically requests the branch manager not to disclose it. On the contrary to what the counselee hopes, the branch manager discloses the counselee's HIV status to colleagues by using an inappropriate language and continues bullying the counselee through an inappropriate language. Later, the manager uses the counselee's sexual orientation as a means of bullying and causes the counselee to resign. The counselee contacts to learn the legal actions that can be taken against regular discrimination.

LEGAL BASIS: Constitution Art. 20, 48 and 49; ECHR Art. 8; UDHR Art. 12 and 23; ILO Code of Practice on HIV/AIDS and the World of Work; KVKK Art. 6; TCK Art. 117, 134 and 136; TİHEKK Art. 3 and 6.

LEGAL REASONING: The counselee's HIV status is health-related data and considered to be sensitive data as per Article 6 of KVKK. As per paragraph 2 of the same article, the said data cannot be processed without explicit consent. As per paragraph 3 of the same article, processing health-related data without explicit consent is subject to strict and special conditions. Processing data is defined under Article 3 of KVKK's section titled 'definitions'. Any activity, which includes deleting/destroying/anonymising related to personal data falls within the data processing category. The branch manager, who learns counselee's HIV status through bullying and discloses it to colleagues, has processed the data against the law. Even if the counselee has shared HIV status with the branch manager with consent, this has not been in line with the condition of freewill and has not included any consent for the disclosure to colleagues. Sharing counselee's HIV status, which is sensitive personal data and related to private life, with their colleagues without consent violates the right to privacy and to protect personal data regulated under Article 20 of the Constitution of the Republic of Turkey. The said actions also constitute a crime under TCK. Abovementioned actions violate privacy thus constituting a crime under Article 134 of TCK. They also constitute a crime of providing or obtaining data illegally as per Article 136 of TCK. Branch manager's actions create a criminal liability. The counselee can apply to TİHEK because of the discrimination against because of HIV status and sexual orientation by the branch manager as Article 3 of TİHEKK clearly prohibits the discrimination against because of health conditions. Furthermore, Article 6 specifically prohibits this type of discrimination during recruitment and at workplace. As per paragraph 2 of Article 17 of TİHEKK, an application in writing must be made to the organization that discriminates against before applying to TİHEK. If TİHEK detects that the prohibition of discrimination has been violated after an investigation, the employer is fined.

United Nations, of which Turkey is a member, has a specialized agency named International Labour Organization (ILO) that has a "Code of Practice on HIV/AIDS and the World of Work". The code states that "there cannot be any reason to request personal information regarding HIV status from candidates or employees. Employees do not have to share this type of information with colleagues." In light of these provisions, it is against the law to try to learn the reason for obtaining medical reports and to share the reason with colleagues.

The counselee has not terminated employment agreement at will but due to manager's repetitive bullying. Additionally, the counselee has resigned because of manager's discriminatory and stigmatizing attitude and actions which constitute a crime. The counselee has been forced to terminate employment agreement as a result of the manager's actions and bullying. Therefore, the counselee, who has been forced to terminate employment agreement, can demand the compensation stated under the Labour Law as the counselee has had to terminate employment agreement for acceptable reasons. Forcing the counselee to terminate employment agreement constitutes a crime for violating the freedom of labour and employment under Article 117 of TCK.



LEGAL ADVICE FOR CASES IN 2019

CASE NO 29: The counselee, who does not have Turkish citizenship, has difficulty in accessing medication. The counselee contacts the association to learn whether foreigners can benefit from general health insurance (GSS) and what they can do to benefit from it, if possible.

LEGAL BASIS: Constitution Art. 16 and 56; UDHR Art. 25; YUKK Art. 3 and 89; SSGSSK Art. 60 and 64; GKY Art. 27.

LEGAL REASONING: Foreigner is defined as someone who does not have citizenship relation to the Republic of Turkey as per Article 3 of the Foreigners and International Protection Law (YUKK). For foreigners, legal way of being within and entering, leaving the borders of Turkey is defined as regular migration; illegal way is defined as irregular migration. Being within Turkey through regular migration and through irregular migration assign different statuses to foreigners under the legislation in Turkey. Foreigners who are in Turkey through irregular migration and meet required conditions could have international protection status under YUKK. In addition to international protection status, YUKK also regulates temporary protection status as part of mass migration.

States have different regulations for their citizens and foreigners in line with international and principles. One of the regulatory differences is about health. The right to health is a human right both protected by agreements to which Turkey is a party and by the Constitution. The right to health includes three core rights and extends accordingly. These core rights are generally composed of the rights such as (i) benefiting from preventive and protective healthcare services, (ii) the right to access medical supplies, and (iii) patient rights. The rights protected by the Constitution and international regulations are the same for foreigners and citizens. Article 56 of the Constitution authorises the state to offer GSS to provide healthcare services. This insurance aims that, regardless of their will and economic situation, every individual can benefit from equal, accessible and efficient health service in case of a possible disease.

General Health Insurance has been regulated under Social Insurance and General Health Insurance Law no. 5510 (SSGSSK). Article 60 regulates the conditions for people, who can benefit from GSS. People, who own or have applied for international protection and who are defined as stateless, are considered to be insured. Article 60 states that foreigners, who are in Turkey through irregular migration and have work permit, are considered to be insured when they are not insured in their own country and their legal residence period in Turkey exceeds one year. Healthcare services provided to foreigners, who have temporary protection status, are regulated as per Article 27 of the Regulation on Temporary Protection (GKY). The regulation introduced under Article 64 of SSGSSK cause problems in practice for foreigners who have GSS. With Article 64, healthcare services for chronic diseases of foreigners or their dependent ones are not supported financially under GSS. Chronic diseases are considered as diseases before the start of the insurance. As per Article 89 of YUKK, individuals who have international protection status, their dependent ones, and individuals who have applied for international protection status can benefit from GSS for one year.

When considering HIV treatment, it would be such an economic burden for an individual not to be covered by insurance, and to have a limited insurance period for one year. The real aim is to eliminate protection

applications from people with chronic diseases because refugee process cannot be completed due to health reasons. In practice, PLWHIV have problems with accessing healthcare services as well as other problems that can be considered a valid reason for demanding international protection. Therefore, the reasons related to demanding international protection should be explained to request insurance coverage for them. Individuals, who are not covered by GSS at the end of one year, can be exempt from one-year limitation as per Article 89 of YUKK either by applying to the Provincial Migration Administration Management with documents proving that they have special needs in line with the said law or by applying to be one of those whom Directorate General for Migration Management approves to insure. Applications, which the Directorate General for Migration Management approves to insure, are related to treatment procedures which have an important effect on an individual's health and which is a burden on individuals. When it comes to HIV, Directorate General for Migration Management should use discretionary power to insure the individual. An action for annulment can be brought before the administrative courts if the individual is not insured under GSS.

As a result, the counselee, who is in Turkey either through regular migration or through irregular migration, should have the right to health as per the Constitution and international agreements to which Turkey is a party.

CASE NO 30: The counselee, who visits family doctor for medical dressing, states that family doctor sees the counselee's HIV status on Medula system and discriminates the counselee against because of HIV status. The counselee contacts the association to learn the legal actions that can be taken to have the Medula system deactivated. The counselee also asks how the family doctor can view their medication and HIV status although the counselee's e-Pulse (an application that gives patients and healthcare workers access to health data collected from healthcare institutions in Turkey) is not active.

LEGAL BASIS: Constitution Art. 17 and 20; Biomedicine Convention Art. 10; ECHR Art. 8; HHY Art. 5 and 6; TDN Art. 2; TİHEKK Art. 3 and 5; HMEK Art. 21.

LEGAL REASONING: Medula system is an automation program created and used by the Ministry of Health. Hospitals, doctors, pharmacists and opticians enter and view the records of medical devices and materials, medication and drug information, diagnosis on Medula system which is accessed online. Medula is separate from e-Pulse, and deactivating e-Pulse is not enough to hide data on Medula. Medula system has been criticized for a long time because it is a platform where sensitive personal data is stored, and this system does not have a legal basis. Individuals can apply to the Provincial Health Directorate in their city with a petition to deactivate their Medula system as per Article 7 of KVKK⁶.

Besides, doctors cannot discriminate against, stigmatize and treat badly to patients even if they learn a patient's HIV status through Medula or some other way. Article 5 of HHY clearly stipulates the principles to follow when providing healthcare services. Humane attitude towards patients is one of these principles. As per Article 6 of HHY, patients have the right to benefit from healthcare services including activities promoting a healthy life, and protective health services in line with justice and equity principles. This right includes the responsibility of healthcare provider institutions and personnel working in this field to provide

6. Please contact the Pozitif-iz Association for a template of the petition.



services in line with fairness and equity principles. Article 2 of TDN states that doctors' first priority is to care and respect patients' health, life and individuality. Therefore, the counselee can make an official complaint to Provincial Health Directorate and also call ALO 184 SABİM if the counselee thinks that family doctor's behaviour has been discriminatory and exclusionist after learning counselee's HIV status. This is also against Article 2 of TDN and Article 21 (respecting patient rights) of HMEK. In this case, the family doctor can be reported to the TMA.

CASE NO 31: The counselee visits university hospital for regular treatment. The counselee's HIV status and health-related data are shared with undergraduates at the faculty of medicine for training purposes without the counselee's consent. The counselee contacts the association to learn whether their data could be shared with undergraduates without consent.

LEGAL BASIS: Constitution Art. 17 and 20; Biomedicine Convention Art. 10; ECHR Art.8; HHY Art. 21.

LEGAL REASONING: Article 21 of HHY regulates patients' right to privacy elaborately. Last paragraph of Article 21 is as follows:

At healthcare institutions which provide training; if the personnel who are not directly related to a patient's treatment need to be present, the patient's consent is a must during or before treatment. Therefore, it is clear that privacy must be respected at training and research hospitals. Even if it is a training and research hospital, no one can enter a clinic except for the doctor who treats the patient directly. If someone needs to enter, the patient must be notified beforehand and give consent. The counselee could tell the doctor that the counselee does not consent to share the data with undergraduates and requests them not to enter the clinic. If undergraduates have been involved although the counselee has not consented, the counselee can submit an official complaint to hospital's patient rights unit. The counselee can also report this to Provincial Health Directorate and to ALO 184 SABİM.

CASE NO 32: The counselee has been fined for evading the draft for compulsory military service before he learns that he lives with HIV. The counselee applies to the Ministry of National Defence to do paid military service, and pays the required amount. Later, the counselee learns that he lives with HIV and contacts the association to receive information about the relationship between HIV and compulsory military service, also about the fine and paid military service amount he has paid.

LEGAL BASIS: Constitution Art. 72, Conscription Law Art. 24, Regulation on Conscription Art. 9, Turkish Armed Forces' Health Competence Regulation Art. 6.

LEGAL REASONING: Military service and HIV: As per Article 9 of Regulation on Conscription, before a medical examination, people's statements regarding their health condition are taken and later medical reports and documents (if any) are examined. As a result of a medical examination, a report stating "ineligible to serve in military" is issued for people who have the diseases mentioned in (B) or (D) sections of the Diseases List under Appendix C of the Turkish Armed Forces and Gendarmerie General Command Health Competence Regulation. Paragraph b of Article 6 of the Turkish Armed Forces Health Competence Regulation states that



"those who are ineligible to serve in military: the ones whose diseases fall within (B) or (D) sections of the Diseases and Disorders List." As per Article 52 of Infectious Diseases Section in the List of Diseases and Disorders, confirmed HIV infection is included in diseases falling within section D. Therefore, it is clear that PLWHIV are exempted - in other words, ineligible - from the compulsory military service. HIV is a definite reason for being exempted from compulsory military service and this does not depend on individuals' request or consent.

Paid military service and HIV: People, who change their minds about going to paid military service within application period or before joining the boot camp, are returned their money when they or their legal representative withdraw(s) the application by visiting a recruiting office. Regardless of HIV status, this procedure is the same for everyone. Therefore, the counselee can apply to a recruiting office to withdraw his paid military service application to receive his money back.

Effect of exemption due to HIV status on evading the draft: Article 24 of Conscription Law regulates the administrative fine for evading the draft. Paragraph 2 of this article states that "Administrative fine is not imposed for the days within postponement period for those, who are considered to be ineligible for military service after a medical examination. This also includes those who have the right to be exempted from military service, and who have rights for postponement under the said Law." We have mentioned above that PLWHIV are exempted from compulsory military service. Accordingly, administrative fine imposed for evading the draft is cancelled after the counselee objects to Penal Judgeship of Peace duly and before the deadline, and certifies that he is exempt from compulsory military service.

CASE NO 33: The counselee is a teacher who has been discharged from a school after his HIV status has been disclosed. He later has an interview with another school and completes the process successfully. Upon this, the counselee is requested to provide some documents. After checking the documents, occupational physician persistently asks the counselee the reason for being exempt from compulsory military service. In the end, the counselee shares his HIV status with the physician. As a result, the counselee has been told that he has not been needed for the vacant position and the recruitment process has ceased. The counselee contacts the association to receive legal advice about his case.

LEGAL BASIS: Constitution Art. 20, 48 and 49; ECHR Art. 8; UDHR Art. 12 and 23; Labour Law Art. 17, 18 and 25; HHY Art. 23; KVKK Art. 6; TCK Art. 117; TİHEKK Art. 3 and 6; Regulation on Principles regarding Establishment, Duty and Working of City and Province's Human Rights Councils Art. 9.

LEGAL REASONING: Employer can terminate employee's employment agreement in line with conditions and methods stated in the Labour Law. Employer cannot terminate the employment agreement one-sidedly with valid or applicable reason only because employee lives with HIV. Article 18 of the Labour Law classifies the employees as the ones who have employment security and the ones without employment security. Paragraph 1 of Article 18 of the Labour Law stipulates that employer can terminate the employment agreement of employee, who has employment security, only if the employer has valid reasons related to employee's competence, behaviours, organization, work and workplace. The fact that employee lives with HIV is considered to be similar to the reasons such as "race, skin colour, sex, marital status, family obligation, pregnancy, birth, religion, political view and similar reasons" stated in the sub-paragraph d of paragraph 3 of the said article and is not a valid reason for termination.



Employer does not have to have a valid reason to terminate employment agreements of the employees who do not have employment security. Paragraph 4 of Article 17 of the Labour Law limits the use of termination right by prohibiting the misuse of termination. Therefore, the fact that employee lives with HIV does not affect employee's employment agreement, and any termination related to HIV status constitutes the misuse of termination right.

Another method for employer to terminate the employment agreement is immediate termination for cause (acceptable reasons) as per Article 25 of the Labour Law. Employers usually try to place HIV status under health-related reasons but HIV status cannot be placed under acceptable reasons for health-related cause mentioned in the said article. Because not disclosing HIV status to employer during job interview or providing wrong information on HIV status is not considered as providing misleading statement on important matters as per paragraph 2 of Article 25 of the Labour Law this situation cannot lead to immediate termination of employment contract for cause (acceptable reason). In this case, there is not an obstacle to continue work relationship, and also employer cannot claim any right regarding a misleading statement obtained through her/his own fault. Because the questions directed to learn employee's HIV status are unlawful – unless they are objectively related to the work carried out –, an employee does not have to answer the questions correctly or answer them at all.

Employers must search for potential solutions before terminating an employee's employment agreement. Terminations, which are not made in line with the principle called 'the last resort for termination', are against the law. Regardless of whether employee has employment security or not, it is against the law if employer terminates employee's employment agreement only because employee lives with HIV. Employee can exercise the rights related to claiming reinstatement, investigation of invalid termination and also compensation for damages which are all protected under the law.

Forcing the counselee to state the reason (HIV status) about compulsory military service during recruitment process is a right violation. Job interviews cannot be made under employer's dominance and with employer's subjective judgements. In addition, these interviews are not to satisfy employer's personal interests in unrelated subjects. Questions directed to learn candidate's HIV status are against the law unless there is an objective relation to the job. For this reason, questions directed to the candidate about exemption document are against the law. Candidate, who is asked a question like this, should remind that the question, which is not objectively related to the job, is against the law and also is an interference in personal rights and private life. Candidate, who is asked unlawful questions during job interview, does not have to answer the questions if they do not want to. Candidate's misleading answers to questions about HIV status are not against the good faith as HIV status is not related to and not an obstacle to do the job. Furthermore, it is a part of candidate's private life. In fact, it is the employer who is at fault for asking unlawful questions considering employer is an authority figure.

In this case, the counselee shares his HIV status due to pressure and does not get hired for the job. Not recruiting a candidate after learning that they live with HIV violates the prohibition of discrimination mentioned in international agreements to which Turkey has been a party and in the domestic law. Employer's unfair treatment does not comply with employer's liability to treat equally as per Article 5 of the Labour Law. The counselee can apply to TİHEK because of the discrimination against because of HIV status during recruitment as Article 3 of TİHEKK clearly prohibits the discrimination against because of health condition

and Article 6 specifically prohibits this type of discrimination during recruitment process. If TİHEK detects that the prohibition of discrimination has been violated after an investigation, the employer is fined. The counselee who has been discriminated against because of his HIV status can also apply to the Human Rights Councils in their city and province. As per Article 9 of Regulation on Principles regarding Establishment, Duty and Working of City and Province's Human Rights Councils; the councils are responsible for preventing all types of discrimination. In this case, Councils investigate the rights violations reported to them and inform, if necessary, the chief public prosecutor or relevant administrative authorities about the violation. Councils also follow up on the decision. Employer's unfair and unlawful treatment violates the freedom of labour and employment accepted under the Constitution and international agreements and also constitutes the crime of violating the freedom of labour and employment as per Article 117 of TCK. The counselee can make an official complaint about the employer based on the mentioned provision because of being discriminated against because of their HIV status.

CASE NO 34: The counselee's spouse is a foreigner who lives with HIV. The counselee's spouse has been asked some questions regarding their health during citizenship procedure and the person has not shared their HIV status. The counselee contacts the association to learn whether or not citizenship could be affected if spouse's HIV status is found out.

LEGAL BASIS: Constitution Art. 20 and 66; ECHR Art. 8; UDHR Art. 12; TVK Art. 11 and 16; TVKUIY Art. 17, 27, 28 and 29.

LEGAL REASONING: Being granted or losing Turkish citizenship is regulated under Article 66 of the Constitution. Turkish citizenship could be granted by birth or by other procedures later. As per Article 16 of the Turkish Citizenship Law (TVK), counselee's spouse can be granted citizenship by marrying a Turkish citizen. To be granted citizenship by marriage as per Article 16, there must be a marriage for at least three years. Spouse, who applies for citizenship, cannot have an activity that does not comply with marriage, and should not pose a threat against national security and public order. Documents to prepare and to present for application to citizenship are regulated under Article 26 of Regulation on the Implementation of the Turkish Citizenship Law (TVKUIY). The same article does not state that foreigner applying for citizenship has to present any letter related to health status. Article 27 and 28 of the said regulation state that the Directorate of Provincial Police investigates whether foreigner spouse, who provides all the required documents, has an activity that does not comply with marriage and does not pose a threat against national security and public order and whether spouses live together as a family. After an investigation, as per Article 29, Turkish citizen and foreign spouse applying for citizenship are both interviewed by a commission that tries to understand whether the marriage is real or fake to obtain Turkish citizenship. Later on, all prepared documents are submitted to the Ministry of Interior. The Ministry has the discretionary power to decide whether foreigner spouse can be granted Turkish citizenship after considering the documents, police investigation and commission's feedback on interview.

Law and regulation do not have any provision of sharing any information related to health status during application of obtaining citizenship by marriage. As clearly stated in the regulation, the aim of commission's interviews is to understand if there is a fake marriage to obtain citizenship. Principle of lawfulness is the ruling principle when obtaining citizenship. The documents required for the procedure to obtain citizenship



are clearly stated. The same goes for the limits and authority of police forces and commission members. For this reason, it is not against the law not to share information which is not requested by law.

We should add a note about choosing to obtain citizenship by general way from the ways of obtaining citizenship by competent authority. The condition of not having a disease, which is dangerous for general health, is included in general conditions for obtaining citizenship as per Article 11 of TVK. As per Article 17 of TVKUIY, the applicant should have a medical report whose principles and procedures are determined by the Ministry of Health. The report must state that foreigner does not have a disease which is dangerous for general health.

However, there is no law or regulation specifying the diseases which are dangerous for general health. One of the application conditions is to have lived in Turkey for five years without a cease before application date. Even if diseases which are dangerous for general health are not named, the reason of this condition is disputable especially after the person has lived in Turkey for five years before application date. To determine what a dangerous disease is, we can still use the criterion of being dangerous to neighbourhood and people being in touch with the person who has a disease. When considering HIV transmission, treatment and the right to health protected by the state for anyone regardless of being a citizen or not; putting HIV status in the same category with dangerous diseases does not comply with objectivity and scientific facts. As a result, we should emphasize that there is the discretionary power factor when an application for citizenship is submitted to a competent authority. However, the discretionary power is open to judicial review.

CASE NO 35: The counselee is from Syria and lives in Turkey as a refugee. The counselee learns that they live with HIV in Turkey and starts the treatment. A lawsuit is filed against the counselee because of a crime allegedly committed by the counselee. Public prosecutor's office learns the counselee's HIV status during an investigation regarding the lawsuit. After this, deport procedure has been started with the reason for putting public health at risk. The counselee cannot access to medication in Syria and contacts the association to learn the legal actions that can be taken regarding the deport procedure.

LEGAL BASIS: ECHR Protocol 7 Art. 1, YUKK Art. 52, 53, 54 and 91; YUKKUIY Art. 52.

LEGAL REASONING: Syrian citizens in Turkey have temporary protection status under international legislation and the Foreigners and International Protection Law (YUKK). GKY has been made to regulate the following: (a) the principles and procedures of temporary protection introduced by Article 91 of YUKK, (b) the conditions of accepting, hosting these individuals in Turkey, and their rights and liabilities, and the procedures to follow when they leave Turkey, (c) the precautions to be taken in case of a mass movement, (d) the matters regarding the collaboration with domestic and international organizations.

Articles 52 et seq of YUKK regulate deportation procedure for foreigners. Deportation procedure, which is a huge interference on individual rights and freedoms, must be in line with the principle of lawfulness as set forth under international law. This means that the following must be all regulated by law: reasons of deportation, faults of foreigners, limits of competent authority, competent authority's power to deport. Deportation decision is made by an order from the Directorate General for Migration Management or by governorships. Legal basis for deportation decision regarding HIV status has been based on Article 54,

paragraph 1, sub-paragraph d which mentions “those who are a threat against public health.” Article 52 of YUKK states that medical report is taken into account when deciding whether someone poses a threat against public health. We should emphasize that being a threat against public health, which is a reason for deportation, is a very abstract definition. It is ambiguous which type of circumstances and diseases fall within this category. The ambiguity and abstractness damage the principle of lawfulness for deportation procedure. When making the decision to deport the counselee, HIV status has been evaluated by ignoring improvements and treatments regarding HIV. Results of deportation decision have also been ignored as counselee would have difficulty in accessing to medication and the consequent effects on the counselee’s life. The decision has been made against material facts and without considering objective criteria. As per Article 53 of YUKK, the counselee can object to this decision within seven days after the decision is officially communicated to the counselee. In case of objection, the counselee can remain in the country during objection period and judgement process. Court decision on deportation is final.

CASE NO 36: The counselee has difficulty in treatment process because of their infectious diseases doctor’s discriminatory and rude attitudes. So the counselee thinks about going to a different hospital. The counselee contacts the association to learn the legal actions that can be taken against doctor’s discriminatory attitude.

LEGAL BASIS: Constitution Art. 17 and 20; Biomedicine Convention Art. 10; ECHR Art. 8; HHY Art. 5 and 6; TDN Art. 2; HMEK Art. 21.

LEGAL REASONING: Article 5 of HHY clearly stipulates the principles to follow when providing healthcare services. Human attitude towards patients is one of these principles. As per Article 6 of the regulation, patients have the right to benefit from healthcare services including activities promoting a healthy life, and protective health services in line with justice and equity principles. This right includes the responsibility of healthcare provider institutions and personnel working in this field to provide services in line with fairness and equity principles.

Article 2 of TDN states that doctors’ first priority is to care and respect patients’ health, life and individuality. Article 21 of HMEK clearly states that patients’ rights must be respected. In this case, the counselee has difficulty in accessing to treatment because of their infectious diseases doctor’s discriminatory and rude attitude. The counselee can submit an official complaint to the hospital’s patient rights unit. The counselee can also report about this situation to Provincial Health Directorate and call ALO 184 SABİM to make a complaint. A complaint about the doctor can be made to the TMA as well.

CASE NO 37: The counselee would like to change their hospital where they go for HIV treatment regularly. The counselee goes to another hospital where the infectious diseases doctor has told the counselee to bring previous tests or to give blood to perform tests same as the ones performed when diagnosing HIV for the first time. The counselee goes to the previous hospital to request previous test results. The infectious diseases doctor says (s)he cannot give test results and does not have to do so. The counselee contacts the association to ask what to do about this situation.



LEGAL BASIS: Constitution Art. 17 and 20; ECHR Art. 8; HHY Art. 8 and 16; HMEK Art. 31.

LEGAL REASONING: As per Article 8 of HHY, “a patient has the right to choose the healthcare institution and receive healthcare services from the chosen institution in line with principles and conditions set forth in the regulation. The same regulation’s Article 16 entitled “Reviewing Records” clearly states that patients can view and take a copy of files and records related to their health condition directly or through a legal representative. As per Article 31 of HMEK, a summary of information related to patient’s health, and the copies of their documents are provided upon patient’s request. It is clear that the counselee can receive a copy of their records and test results from the previous hospital. If the counselee’s previous doctor causes a problem about providing the copies of records, the counselee can apply to the hospital’s patient rights unit to make a complaint. The counselee can make an official complaint to the Provincial Health Directorate and also call ALO 184 SABİM to make an official complaint.

CASE NO 38: The counselee works at a bank. The counselee contacts the association to learn whether the counselee’s HIV treatment could be covered by bank’s social support fund. The counselee also wants to know if the fund’s accountant employee can share the counselee’s HIV status with bank managers.

LEGAL BASIS: KVKK, TCK Art. 136.

LEGAL REASONING: The funds, which were established by banks and insurance companies for their employees, used to provide insurance and healthcare services to the members until 1 October 2008. A regulation made to hand over the funds to SGK (Social Security Institution) after 1 October 2008. However, there are still some banks which have not finalized handover process. Employees who have started working at banks, which have not finalized handover process, before 1 October 2008 cannot benefit from the rights provided under SSGSSK as they are not subject to this law. Every bank’s social support fund has a separate legal entity which determines their own systems about bonuses and etc. Providing a clear answer on this question is not possible as we do not know the name of the counselee’s bank. However, we can say that the fund might not cover HIV treatment when considering that private health insurances do not cover HIV treatment.

As per KVKK and Article 136 of TCK, the social support fund’s accountant cannot share counselee’s HIV status with bank managers.

CASE NO 39: The counselee’s ex-spouse discloses counselee’s HIV status to get custody of the common child for ongoing divorce trial. The counselee contacts the association to learn whether HIV status is a legal obstacle to get custody of the common child.

LEGAL BASIS: Constitution Art. 20; ECHR Art. 8; TMK Art. 182.

LEGAL REASONING: In case of a divorce, the most important principle about child custody is the “best interest of child.” Determinant factors for child custody are as follows: child’s age, parties’ attitudes toward child in the past, parent’s qualifications to take care of child, maintain the atmosphere child is used to, keep

siblings together, provide a good family environment to child, look after child's personal relationship with the other party, child's opinion. Custody is given to the party who better protects child's benefits, provides child with healthy life standards, and maintains these standards. To decide on custody in line with child's best interest, all files and evidence must be evaluated, and opinions must be obtained from social care specialists and pedagogues. HIV status alone is not an obstacle to get custody of child. HIV is not a health condition which prevents someone from taking care of a child. If judge is thought to have prejudgements about HIV, scientific articles on HIV could be attached in files presented to judge. As a result, HIV status is not an obstacle to get custody of child, and also does not prevent a parent from having a personal relationship with child in case of losing custody.

CASE NO 40: The counselee's infectious diseases doctor says that the counselee cannot have a baby because of living with HIV. The counselee contacts the association to learn that the counselee can have a baby. Later, the counselee wants to talk about this with the doctor again. The doctor does not agree with the counselee and says "I do not approve this and never support this persistent attitude. I do not think this is okay" in a harsh way. The counselee feels uncomfortable about doctor's attitude and contacts the association to learn what to do about this.

LEGAL BASIS: Constitution Art. 17 and 20; Biomedicine Convention Art. 10; ECHR Art. 8; HHY Art. 5 and 11; HMEK Art. 12.

LEGAL REASONING: Medicine is a science which continues to improve and change all the time. As a result of improvements; new devices, equipment and treatment methods are introduced. Being a doctor requires following ever-changing updates on scientific findings. It is not acceptable especially for a doctor, who works with PLWHIV, not to follow updates on HIV which is a field where constant scientific research is made and improvements are introduced. Article 12 of HMEK states that "a doctor considers scientific and progressive diagnoses, treatment methods and protective medical ethics when exercising his/her profession, and cannot apply unscientific methods for treatment", and clearly points that a doctor must follow scientific and progressive developments and determine treatment methods accordingly.

Although the doctor has misled the counselee, the counselee has learned through their own means that PLWHIV can have babies. Even if the doctor does not know about this information, the doctor should research the information coming from a patient and see whether it is true and should act accordingly. The doctor's disapproval and rejection of this information is a result of prejudice against HIV and discrimination. Article 5 of HHY states that the right to live in a fully well-being state physically, mentally and socially is the most fundamental human right. As per Article 11, a patient has the right to a diagnosis in line with requirements of information and technology provided by modern science, a treatment and a care. The doctor mentioned above could be reported to the hospital's patient rights unit and to the TMA for not abiding by HMEK.

CASE NO 4: The counselee lives with HIV for a long time and learns that their CD4 level is very low according to recent test results. The counselee's doctor suggests that the counselee should be hospitalized. The counselee is worried whether the counselee's workplace can find out the counselee's HIV status after being hospitalized. The counselee contacts the association to learn whether the report given



to workplace states the counselee's HIV status. Additionally, the counselee asks whether it is lawful to write the counselee's HIV status in a medical report.

LEGAL BASIS: Constitution Art. 20 and 56; ECHR Art. 8; UDHR Art. 12 and 25; Biomedicine Convention Art. 10; Directive on Principles and Procedures regarding Medical Reports Art. 6.

LEGAL REASONING: After the counselee is hospitalized, a medical report is prepared for the counselee. This is to receive medical leave. Article 6 of Directive on Principles and Procedures regarding Medical Reports states how medical reports for medical leave are prepared. A template demonstrating how to fill out medical report for medical leave is attached in Appendix-1 of the Directive. There are diagnosis and ICD code sections in the template for this report. ICD code means International Classification of Diseases, which is used to define diseases and/or injuries in detail. If a person is hospitalized for an HIV-related condition, providing this information in diagnosis and ICD code sections is legal. The template, which has been prepared without considering discrimination and right violations against PLWHIV at organizational structures, should be reviewed and renewed in a way to be equal and inclusive for everyone without ignoring material facts.

CASE NO 42: The counselee shares their HIV status with their partner. The counselee's partner threatens the counselee with disclosing HIV status. The counselee wants to receive legal advice about this situation from the association.

LEGAL BASIS: Constitution Art. 20; ECHR Art. 8; UDHR Art. 12; Law no.6284 Art. 5; TCK Art. 134 and 136.

LEGAL REASONING: The counselee can apply to protective and preventive measures under Law no. 6284 to prevent the disclosure of HIV status. The law regulates the procedures and principles related to the measures taken to protect and prevent violence against women, children, family members who have been subject to violence or are at the risk of being subject to violence and the victims of persistent stalkers. The law defines the violence as follows: "Any physical, sexual, psychological, verbal or economic attitude and behaviour that occur in social, public and private place. These also include the actions that (might) result in suffering of a person physically, sexually, psychologically or economically as well as the threat, pressure or arbitrary violation of freedom." In light of the information above, ex-partner's disclosure would harm the counselee, and also repetitive stalking and threats of disclosure clearly fall within the category of violence. The counselee can take legal actions to benefit from preventive measures stated in Law no. 6284. Article 5 provides the preventive measures that are stated under the law and the counselee can request. The counselee can get an order to prevent the following actions of ex-partner who persistently stalks: Attitudes and behaviours that include the threats of violence, insult, humiliation and degradation against the victim of violence; immediate suspension from the shared dwelling and vicinity of the protected person; approach to the protected person's residence, school and workplace; approach protected person's close ones, witnesses, children (personal relationships are allowed) even though none of them has been subject to violence; damage the personal belongings and household goods of the protected person; cause distress to the protected person by means of communication channels or an alternative channel. As can be seen above, the law allows orders to be taken to prevent the stalker from threatening and contacting the protected person and their family and close

ones. Injunction orders can be requested from judge of family court or local authorities or law enforcement unit most quickly and easily. No evidence is required for injunction orders, and a petition which clearly explains the events happened is sufficient. Injunction orders are temporary with a limited time period. If the threat of violence continues after the limited time period, the order can be extended by reapplying to court. Injunction order is officially communicated to the both sides. If the perpetrator still violates the order after that, preventive imprisonment is enforced.

As per the relevant provisions of TCK, the counselee can denounce their ex-partner if the counselee's HIV status is disclosed. HIV status is "sensitive personal data" because it is related to health. It requires more strict protection compared to other personal data. Disclosing personal data to third parties is a crime. HIV status is related to private life, and disclosing HIV status violates the right to privacy. For this reason, if the ex-partner discloses the counselee's HIV status, the counselee can denounce them as per Article 134 of TCK (violation of the right to privacy) and Article 136 (disclosing or obtaining data illegally).

CASE NO 43: The counselee is a foreigner. The counselee would like to know how they can access to medication in Turkey.

LEGAL BASIS: Constitution Art. 16 and 56; UDHR Art. 25; YUKK Art. 3 and 89; SSGSSK Art. 60 and 64; GKY Art. 27.

LEGAL REASONING: Foreigner is defined as someone who does not have citizenship relation to the Republic of Turkey as per Article 3 of the Foreigners and International Protection Law (YUKK). For foreigners, legal way of being within and entering, leaving the borders of Turkey is defined as regular migration; illegal way is defined as irregular migration. Being within Turkey through regular migration and through irregular migration assign different statuses to foreigners under the legislation in Turkey. Foreigners who are in Turkey through irregular migration and meet required conditions could have international protection status under YUKK. In addition to international protection status, YUKK also regulates temporary protection status as part of mass migration.

States have different regulations for their citizens and foreigners in line with international and principles. For this reason, we should know the counselee's status. As per Article 60 of the SSGSSK, the counselee can benefit from GSS under the following conditions: The counselee has international protection application or status and is defined as stateless; the counselee is in Turkey through regular migration and has work permit and is not insured in their own country and their legal residence in Turkey exceeds one year. Healthcare services provided to foreigners, who have temporary protection status, are regulated as per Article 27 of GKY. The regulation introduced under Article 64 of SSGSSK cause problems in practice for foreigners who have GSS. With Article 64, healthcare services for chronic diseases of foreigners or their dependent ones are not supported financially under GSS. Chronic diseases are considered as diseases before the start of the insurance. As per Article 89 of YUKK, individuals who have international protection status, their dependent ones, and individuals who have applied for international protection status can benefit from GSS for one year. When considering HIV treatment, it would be such an economic burden for an individual not to be covered by insurance, and to have a limited insurance period for one year. The real aim is to eliminate protection applications from peo-



ple with chronic diseases because refugee process cannot be completed due to health reasons. In practice, PLWHIV have problems with accessing healthcare services as well as other problems that can be valid reason for demanding international protection. Therefore, the reasons related to demanding international protection should be explained to request insurance coverage for them.

Individuals, who are not covered by GSS at the end of one year, can be exempt from one-year limitation as per Article 89 of YUKK either by applying to the Provincial Migration Administration Management with documents proving that they have special needs in line with the said law or by applying to be one of those whom Directorate General for Migration Management approves to insure. Applications, which the Directorate General for Migration Management approves to insure, are related to treatment procedures which have an important effect on an individual's health and which are financial burden on the individual. When it comes to HIV, the Directorate General for Migration Management should use discretionary power to insure the individual. An action for annulment to exclude the counselee from GSS can be brought before the administrative courts. As a result, regardless of being in Turkey through regular or irregular migration, the counselee should have the right to health as per the Constitution and international agreements to which Turkey is a party.

CASE NO 44: The counselee applies to work as a night watchman. He sees that HIV test is in the list of required medical tests. He contacts the association to ask if this is legal.

LEGAL BASIS: Article 5 of Regulation on Exam for Neighbourhood Night Watchman; Regulation on Health Requirements for General Directorate of Security.

LEGAL REASONING: As per Article 5 of Regulation on Exam for Neighbourhood Night Watchman, someone who would like to work as a night watchman must meet the conditions mentioned in Regulation on Health Requirements for General Directorate of Security. As clearly stated in the regulation, night watchman candidates are tested for HIV before being assigned. Positive test result is an obstacle to be assigned as a neighbourhood night watchman.

CASE NO 45: The counselee contacts the association to ask about legal actions that could be taken against their partner, who has infected the counselee with HIV deliberately and wilfully as the counselee claims.

LEGAL BASIS: Constitution Art. 36; ECHR Art. 6; TCK Art. 86 and 89.

LEGAL REASONING: The counselee can denounce their partner to judicial authorities. The authorities would investigate whether the counselee's claim is related to being injured. Whether the person, who has transmitted the virus, knows their HIV status, and also the relationship between both sides must be taken into consideration during judgement process. The person who has been infected with HIV must have allegations which point to their partner only. When evaluating moral elements, it should be taken into consideration that being infected with HIV is still a probability even through unprotected sex, and that choosing to have unprotected sex is at everyone's own risk.

Contrary to what has been taught and general opinion, AIDS – a stage of HIV – is not something separate that is transmitted. The said actions cannot be evaluated under Article 87 of TCK, which stipulates aggravated injury crime, because it would be against material facts. In conclusion, the facts regarding HIV transmission, treatment of HIV, U=U should be taken into consideration and a fair trial should be aimed including the stages of investigation and prosecution.

CASE NO 46: The counselee sees that their documents state HIV status at the hospital before rhinoplasty operation. The counselee contacts the association to learn whether this is legal.

LEGAL BASIS: Constitution Art. 20; Biomedicine Convention Art. 10; ECHR Art. 8; HHY Art. 21.

LEGAL REASONING: HHY Article 21 titled “the right to privacy” states that the following falls within the category of the right to privacy: “Medical assessments related to patient’s health condition must be made in privacy. Examination, diagnose, treatment and other operations requiring direct contact must be carried out in a reasonably private place.” For this reason, it is against the law to write counselee’s HIV status on documents in a way that is visible to the whole hospital staff. In such cases, hospital staff should be warned and an official complaint must be made to patient rights unit and the Ministry of Health immediately if the violation continues.

CASE NO 47: The counselee is planning to go for a job interview to work as a chef at a cafe. The counselee contacts the association to receive information whether HIV test could be requested during recruitment process. The counselee also wants to know if their HIV status could affect the process.

LEGAL BASIS: Constitution Art. 20, 48 and 49; ECHR Art. 8; UDHR Art. 12 and 23; UHK Art.126 and 127; Regulation on Hygiene Training Art. 2 and 9; TMK Art. 2.

LEGAL REASONING: Article 126 of the Public Health Law (UHK) regulates health conditions of people working at places for food production, sales and collective consumption. As per Article 126, people – including business owners and managers – with infectious diseases (proved with a medical report), skin diseases or open wounds, which would disturb customers receiving services from a workplace, cannot work or be employed at workplaces for food production, sales and collective consumption until they can certify that they have recovered. Article 127 of UHK mentions a regulation on types of the said infectious and skin diseases, recovery process, category lines of business that are affected.

The regulation mentioned under Article 127 is Regulation on Hygiene Training. Article 2 of the regulation regulates relevant lines of business. Article 9 regulates infectious diseases which are mentioned as “diseases that could be a threat against public health when hygiene rules in the Infectious Diseases Surveillance and Control Principles Regulation are not applied”. Additionally, Article 126 of UHK and Regulation on Hygiene Training both state that employees working in lines of business mentioned must inform their employers of their diseases. Article 126 of UHK limits employees’ privacy and labour rights considering public health. This does not cover HIV when taking into account transmission of HIV. Based on this, the counselee’s HIV status is not an obstacle to work as a chef. Good faith principle under Article 2 of the TMK (Turkish Civil Code) specifies the limits of employer’s right to ask questions during job interviews. Questions employer asks to candidate



must be related to job, be reasonable to build a work relationship and serve as an interest worthy of protection for employer. Questions to learn candidate's HIV status are not related to being chef, thus this type of questions are against the law. Candidates are not responsible for answering this type of questions correctly and they do not have to answer the questions at all. Because it is employers' unlawful questions which make candidates give misleading answers.

CASE NO 48: The counselee wants to deactivate their Medula system but hesitates to go to the City Health Directorate because of having acquaintances working at the Directorate. The counselee contacts the association to learn whether the counselee can submit the relevant petition to the Provincial Health Directorate instead.

LEGAL BASIS: Constitution Art. 74, Law no. 3071 Art. 5.

LEGAL REASONING: Law on Exercising the Right to Petition is related to suggestions and complaints to administrative authorities. As per Article 5 of the said law; if a petition is submitted to an irrelevant authority, irrelevant authority redirects the petition to the relevant authority and also petitioner is notified of the procedure. Therefore, submitting the petition to the City or Provincial Health Directorate would not matter.

CASE NO 49: The counselee goes for some rounds of job interviews to work as a flight attendant for an airline company. The counselee learns that a medical report is required. The counselee wonders how their HIV status would affect the recruitment process. The counselee requests legal advice on what to do if they are not hired.

LEGAL BASIS: Constitution Art. 20, 48 and 49; ECHR Art. 8; UDHR Art. 12 and 23; SHT - MED; SHT OPS - SAĞLIK, Circular Letter on Aviation published by the Directorate General of Civil Aviation; Appendix 4 titled PART-MED of Commission Regulation no. (AB) 1178/2011.

LEGAL REASONING: Recruitment process and working life of aircrew personnel have been regulated in a casuistic way both domestically and internationally. The counselee has made an application to be employed as a cabin crew member. Health condition and requirements cabin crew must have and how to evaluate them are regulated elaborately as per the following: SHT - MED; SHT OPS - SAĞLIK; Circular Letter on Aviation and its Appendix published by the Directorate General of Civil Aviation; Appendix 4 titled PART-MED of Commission Regulation no. (AB) 1178/2011, and also AMC and GM.

Cabin crew's health checks are carried out by AeMC authorised by the Directorate General of Civil Aviation. HIV test is in the list of required tests for medical reports requested from cabin crew as per Circular Letter on Aviation and its Appendix published by the Directorate General of Civil Aviation. The legislation does not state whether or not living with HIV is an obstacle for cabin crew members to work. SHT - MED MED.C.020 states that cabin crew members should not have "active, idiopathic, acute or chronic disease or disorder." Although there is a specific regulation on HIV status for pilots, a similar regulation does not exist for cabin crew members. The most specific regulation on HIV status and cabin crew has been introduced in Appendix



4 titled PART-MED of Commission Regulation no. (AB) 1178/2011, and also AMC 8 MED. C. 025. As per this regulation above; if a cabin crew member living with HIV does not provide an evidence base of clinical diagnosis and is assessed fit for a satisfactory aero-medical assessment, they are considered to be eligible to work. Apart from being considered to be eligible to work, an individual's HIV status is not an obstacle for work when considering transmission of HIV, U=U reality, today's improvements on methods for HIV treatment.

The counselee should remind the authorised AeMC of the evaluation criteria. The counselee should demand a report, which is unbiased, objective and does not deny scientific facts, from the occupational physician. If the report states that the counselee is ineligible to work, the counselee can object to the report within 2 months as per SHT OPS - SAĞLIK Article 8 and also the Circular Letter on Aviation and its Appendix published by the Directorate General of Civil Aviation. In case of objection, cabin crew staff and candidates can apply to the Objection AeMC on the Directorate General's website to request a medical examination for objection in writing. Later, the Directorate General starts the medical examination process. Cabin crew staff and candidates apply to Aviation Health Unit for a decision by filling out "Civil Aviation Health Commission Application Form" along with an examination report supporting the reason for objection by referring to relevant articles and provisions mentioned before. Applications which are accepted by the Aviation Health Unit are submitted to the Civil Aviation Health Commission for an opinion. Aviation Health Unit makes a decision by taking the opinion of the Civil Aviation Health Commission into account. If the Aviation Health Unit decides that the report must state 'eligible to work', as per Article 115 of SHT - MED, an administrative sanction is imposed on AeMC which has prepared the report stating 'ineligible to work'. Because the Aviation Health Unit makes the final decision, an action for annulment of the Unit's report stating 'ineligible' can be brought before the administrative courts within 30 days. Unfortunately, final decision on being 'ineligible' is still possible despite scientific facts. If the counselee cannot have a different decision after all claims and remedies are exhausted, the counselee may not get employed.

CASE NO 50: The counselee's HIV status is disclosed on a dating application by an unidentified user. The counselee contacts the association about legal actions that can be taken.

LEGAL BASIS: Constitution Art. 36; ECHR Art. 8; TCK Art. 134 and 136.

LEGAL REASONING: HIV status is "sensitive personal data" because it is related to health. It requires more strict protection compared to other personal data. Disclosing personal data to third parties is a crime. HIV status is related to private life, and disclosing HIV status violates the right to privacy. For this reason, the counselee can denounce the user for violating Article 134 (the right to privacy) and 136 (illegally disclosing or obtaining data) of TCK. The counselee submits a petition to the public prosecutor's office by stating that the counselee does not know the person's ID details. The counselee can request the person's ID details and an investigation about the incident. We should point out that most of dating applications do not have a data centre in Turkey and/or do not share any data as per KVKK. That's why, the public prosecutor's office may not find out the person and their ID details.

CASE NO 51: The counselee is not informed about their treatment process at the hospital where they regularly go. The counselee goes to the hospital to give blood sample but there is not someone the



counselee can talk face to face about test results. The counselee does not want to continue the treatment because of the reason mentioned above. The counselee contacts the association to learn which authorities the counselee can notify of about this situation.

LEGAL BASIS: Constitution Art. 20; Biomedicine Convention Art. 10; ECHR Art. 8; HHY Art. 7 and 39/2.

LEGAL REASONING: As per Article 10 of Biomedicine Convention, "Everyone has the right to have any information related to their health." Article 7 of HHY regulates patients' right to information and states as follows: All healthcare institutions must establish a unit with technical equipment to inform patients under the said law. The institutions must have the staff with skills and qualifications to provide patients with clear and sufficient information. In the building, there must be informative signs and brochures which lead patients to units they need to go. HHY's Article 39/2 titled "Respecting Human Values and Visiting Procedure" states that "Patients must be informed of which operation is done why and how. While doing this, physical and mental conditions of patients must be taken into account. If patients have to wait, the reason why they have to wait must be explained." In this case, the counselee is worried and cannot find anyone to get information. This violates patients' rights. The counselee should apply to the hospital's patient rights unit. If the counselee is not informed properly, the counselee can make an official complaint to the Provincial Health Directorate or can call ALO 184 SABİM.

CASE NO 52: After learning about living with HIV, the counselee shares their HIV status with their partner as the counselee thinks that their partner has passed HIV on to them. Therefore, the counselee would like to know whether they can file a lawsuit against their partner. The counselee works at a beauty centre as a manicurist. The counselee is planning to switch to another workplace which has requested HIV test. The counselee contacts the association about the legal actions that can be taken.

LEGAL BASIS: Constitution Art. 20, 36, 48 and 49; ECHR Art. 6 and 8; UDHR Art. 12 and 23; ILO Code of Practice on HIV/AIDS and the World of Work; Regulation on Occupational Physician and Other Healthcare Personnel's Duty, Authority, Responsibility and Training; TCK Art. 86, 89 and 117.

LEGAL REASONING: The counselee can denounce their partner to judicial authorities. The authorities would investigate whether the counselee's claim is related to being injured. The relationship between partners and whether the person transmitting the virus knows their HIV status must be taken into consideration during judgement process. The person who has been infected with HIV must have allegations which point to one specific person only. The facts that being infected with HIV even through unprotected sex is a probability, and everyone being responsible for choosing to have protected or unprotected sex should be taken into consideration when evaluating moral elements.

Contrary to what has been taught and general opinion, AIDS – a stage of HIV – is not something separate that is transmitted. The said actions cannot be evaluated under Article 87 of TCK, which stipulates aggravated injury crime, because it would be against material facts. In conclusion, the facts regarding HIV transmission, treatment of HIV, U=U should be taken into consideration and a fair trial should be aimed including the stages of investigation and prosecution.



As for the discrimination against the counselee during recruitment process; “Statement of Employment / Periodical Examination Form” mentioned on the Regulation on Occupational Physician and Other Healthcare Personnel’s Duty, Authority, Responsibility and Trainings does not require an HIV test from applicants. United Nations, of which Turkey is a member, has a specialized agency named International Labour Organization (ILO) that has a “Code of Practice on HIV/AIDS and the World of Work”. The code states that “HIV/AIDS examination cannot be demanded from potential or current employees.” In light of these provisions, asking for HIV test result from candidates for recruitment is against the law. Potential employee, from whom an HIV test is requested, should assert that this is against the law. Not being recruited because of HIV status constitutes a crime for violating the freedom of labour and employment under Article 117 of TCK.

CASE NO 53: The counselee and their spouse both live with HIV and have been under pressure from their regular doctor not to have a baby. The couple has been seeing the same doctor for years. After the couple learns about U=U and other scientific developments related to HIV, they both agree on natural pregnancy. Therefore, the counselee’s spouse has got pregnant naturally. After this, the doctor has told them that the spouse cannot give birth to the baby at this hospital. The doctor also tells this would turn the baby’s life upside down by saying (s)he would not follow up their treatment process anymore. The couple is told to go to another hospital. The couple switches to another hospital but contacts the association to ask the legal actions that could be taken against their former doctor.

LEGAL BASIS: Constitution Art. 17 and 20; Biomedicine Convention Art. 10; ECHR Art. 8; HHY Art. 5; TDN Art. 19; HMEK Art. 12 and 25.

LEGAL REASONING: Being a doctor requires following ever-changing updates on scientific findings. Article 12 of HMEK states that “a doctor considers scientific and progressive diagnoses, treatment methods and protective medical ethics when exercising his/her profession, and cannot apply unscientific methods for treatment”, and clearly points that a doctor must follow scientific and progressive developments and determine treatment methods accordingly. Additionally, Article 19 of TDN states that “Doctor and dentist can abandon treatment because of personal or professional reasons. However, patient must be informed in advance so that next doctor can have sufficient time for treatment or operation. If abandoning treatment would put patient’s life at risk or damage patient’s health, current doctor cannot abandon treatment until next doctor is available.” This situation is also mentioned in Article 15 of HMEK: “A doctor can refuse or abandon a treatment only when the doctor cannot use their medical knowledge as required or when the patient has the chance to see another doctor. The doctor, who abandons treatment in line with conditions mentioned above, should inform the patient and close ones and also assure them that this does not endanger the patient. The doctor should provide information about other medical assistance options.” In this case, the counselee has been discriminated by being told that their baby’s life would turn upside down despite meeting required conditions to have a healthy baby. It is not in line with HHY and HMEK to use discriminating expressions against the patient about her private life and not to inform the patient of pregnancy after examining the patient for pregnancy properly. The doctor mentioned above could be reported to the hospital’s patient rights unit and to the TMA for not abiding by HMEK.



CASE NO 54: The counselee is directed to a polyclinic by infectious diseases department for a smear test. Healthcare workers at the polyclinic tell the counselee that they would admit the counselee as the last patient after the clinic is closed. Upon this, the counselee talks to infectious diseases doctor who has told the polyclinic workers that their attitude cannot be explained with any medical reason. The counselee still gets admitted as the last patient to the polyclinic. The counselee contacts the association to learn the legal actions that can be taken against this discriminatory attitude.

LEGAL BASIS: Constitution Art. 17 and 20; Biomedicine Convention Art. 10; ECHR Art. 8; HHY Art. 10; HMEK Art. 21.

LEGAL REASONING: Article 10 of HHY states that “When health service demand is not met because of healthcare institution’s limited or insufficient capacity, patient has the right to request priority based on medical criteria and in an objective way.” In this case, the counselee has had to wait for the polyclinic to be closed to receive the health service. The counselee does not have to wait for this. There is no scientific reason for this procedure. On the contrary, it is clearly a discrimination to admit the counselee as the last patient only because the counselee lives with HIV. The counselee can report the doctor, who must see the counselee, to the hospital’s patient rights unit and to the TMA for not abiding by HMEK. The counselee can make an official complaint to the Provincial Health Directorate and also call ALO 184 SABİM to make an official complaint.

CASE NO 55: The counselee is a Syrian citizen. The pharmacist, from whom the counselee buys medicine, refuses to give the counselee the medication because (s)he gets paid back really late. The counselee is insured by GSS. The counselee contacts the association to learn what the counselee can do about this situation.

LEGAL BASIS: Constitution Art. 56; UDHR Art. 25; YUKK Art. 91; GKY Art. 27; Turkish Pharmacists’ Deontology Charter Art. 2, 3, 8 and 18; the Code of Turkish Pharmacists’ Association Art. 30; TCK Art. 122; TİHEKK Art. 3 and 5.

LEGAL REASONING: Syrian citizens in Turkey have temporary protection status under international legislation and the Foreigners and International Protection Law (YUKK). GKY has been made to regulate the following: (a) the principles and procedures of temporary protection introduced by Article 91 of YUKK, (b) the conditions of accepting, hosting these individuals in Turkey, and their rights and liabilities, and the procedures to follow when they leave Turkey, (c) the precautions to be taken in case of a mass movement, (d) the matters regarding the collaboration with domestic and international organizations. Healthcare services provided to foreigners, who have temporary protection status, are regulated as per Article 27 of GKY. As per the said article, cost of health services provided to the people under temporary protection is covered by Disaster and Emergency Management Authority (AFAD) in line with health practice communiqué determined by the Directorate of Social Security Institution for people covered by GSS.

Deontology rules have been regulated by Turkish Pharmacists’ Deontology Charter. The pharmacists in Turkey must abide by these rules. Article 2 of the charter states that pharmacists must act in line with good morals in their relationships with customers. Article 3 of the charter specifically regulates the prohibition of

discrimination, which applies to everyone and all relationships, by stating “Pharmacist is responsible for paying maximum attention and care when preparing and giving patient’s medication regardless of patient’s sex, language, race, nationality, philosophical belief, religion and denomination, moral opinion, character and personality, position and political opinion without taking into account doctor who writes the prescription, and patient for whom prescription is written, and whoever brings the prescription.” As per Article 8 of the charter, pharmacist cannot prevent a patient from choosing a pharmacy. Legal action can be taken against the pharmacist, who has violated the provisions mentioned above, as per Article 18 of the charter. Article 18 states that legal action is taken based on the Code of Turkish Pharmacists’ Association. Article 30 of the Code states that board of discipline in Istanbul Chamber of Pharmacists imposes disciplinary punishment on the pharmacist mentioned above. Additionally, the fact that the pharmacist tells the counselee that (s)he would not give the counselee medication constitutes the crime of race-oriented Hatred and Discrimination as per Article 122 of TCK. The counselee can also apply to TİHEK because Article 3 of TİHEKK no. 6701 states that discrimination based on health condition and race is prohibited, and Article 5 states that real persons or legal entities, which provide services, cannot discriminate against the people who receive or might receive services from them. If TİHEK detects that the prohibition of discrimination has been violated after an investigation, the pharmacist is fined.

CASE NO 56: The counselee applies to a beauty centre for epilation. The counselee contacts the association to learn what can be done legally after being discriminated at the beauty centre because of their HIV status. The counselee also wants to learn whether HIV status is included in medical report given for a driver’s licence.

LEGAL BASIS: Regulation on Private Healthcare Institutions which Provide Ambulatory Diagnosis and Treatment Temporary Art. 5; TİHEKK Art. 3 and 5; Regulation on Health Conditions and Treatments regarding Drivers and Candidate Drivers Art. 4.

LEGAL REASONING : Beauty centres have been excluded from the status of being private healthcare institutions as per Temporary Article 5 of Regulation on Private Healthcare Institutions which Provide Ambulatory Diagnosis and Treatment. The counselee’s HIV status does not require any different practice for epilation procedure. Article 3 of TİHEKK clearly prohibits the discrimination against because of health condition, and Article 5 states that private entities which provide services cannot discriminate against because of health condition while providing health services. Therefore, the counselee can apply to TİHEK. If TİHEK detects that the prohibition of discrimination has been violated after an investigation, the beauty centre is fined.

As for the counselee’s medical examination for obtaining driver’s licence; Article 4 of Regulation on Health Conditions and Treatments regarding Drivers and Candidate Drivers clearly states the health evaluation procedure during medical examination. There is no evaluation regarding HIV as per Article 4 of the regulation. For this reason, the counselee’s HIV status is not included in the report.

CASE NO 57: The counselee’s partner threatens the counselee with disclosing HIV status to the counselee’s family and workplace if the counselee does not do what (s)he wants or demands. The counselee receives legal advice on the issue from the association.



LEGAL BASIS: Constitution Art. 20; ECHR Art. 8; UDHR Art. 12; Law no.6284 Art. 5; TCK Art. 107.

LEGAL REASONING: Paragraph 2 of Article 107 of TCK regulates blackmailing crime as follows: “If there is a threat of disclosing information of someone to damage one’s honour and respectability to benefit oneself or someone else, punishment is imposed as per Paragraph 1.” In this case, the counselee’s partner demands things and gains advantage for not disclosing HIV status to others. When prejudices against HIV are obvious in Turkey and the world, the disclosure of the counselee’s HIV status to others without consent might damage the counselee’s honour and respectability. Therefore, the counselee can denounce their partner for a crime arising as per TCK 107/2. Also, the counselee can apply to protective and preventive measures under Law no. 6284 to prevent the disclosure of HIV status. The law regulates the procedures and principles related to the measures taken to protect and prevent violence against women, children, family members who have been subject to violence or are at the risk of being subject to violence and the victims of persistent stalkers. The law defines the violence as follows:

“Any physical, sexual, psychological, verbal or economic attitude and behaviour that occur in social, public and private place. These also include the actions that (might) result in suffering of a person physically, sexually, psychologically or economically as well as the threat, pressure or arbitrary violation of freedom.” The counselee can take legal actions to benefit from preventive measures stated in Law no. 6284. Article 5 provides the preventive measures that are stated under the law and the counselee can request. The counselee can get an order to prevent the following actions of ex-partner who persistently stalks: Attitudes and behaviours that include the threats of violence, insult, humiliation and degradation against the victim of violence; immediate suspension from the shared dwelling and vicinity of the protected person; approach to the protected person’s residence, school and workplace; approach protected person’s close ones, witnesses, children (personal relationships are allowed) even though none of them has been subject to violence; damage the personal belongings and household goods of the protected person; cause distress to the protected person by means of communication channels or an alternative channel. As can be seen above, the law allows orders to be taken to prevent the stalker from threatening and contacting the protected person and their family and close ones. Injunction orders can be requested from judge of family court or local authorities or law enforcement unit most quickly and easily. No evidence is required for injunction orders, and a petition which clearly explains the events happened is sufficient. Injunction orders are temporary with a limited time period. If the threat of violence continues after the limited time period, the order can be extended by reapplying to court. Injunction order is officially communicated to the both sides. If the perpetrator still violates the order after that, preventive imprisonment is enforced.

CASE NO 58: The counselee lived in Northern Cyprus for a long time. The counselee learns their HIV status while living in the Northern Cyprus. Due to the possibility of being deported because of HIV status, the counselee leaves the Northern Cyprus. The counselee contacts the association to learn whether they would have been deported from the Northern Cyprus. The counselee also wants to know if they can go back to Northern Cyprus.⁷

7. For legal advice on this case, we thank QUEER CYPRUS ASSOCIATION which has shared their knowledge on legislation and practice in the Turkish Republic of Northern Cyprus.

LEGAL BASIS: Foreigners and Immigration Law Section 105.

LEGAL REASONING: Turkish Republic of Northern Cyprus (TRNC) regulates the conditions for remaining in the country for foreigners through Foreigners and Immigration Law Section 105. The law states that “Anyone, who is a threat against public because of having a contagious or infectious disease with certification by the State” is defined as an illegal immigrant. In practice, this definition includes HIV. If it is found out that a foreigner in TRNC lives with HIV, they are deported. Regardless of being student, residence permit holder, work permit holder, being under international protection; the foreigner is affected by the rule mentioned above. Foreigners living in TRNC cannot obtain citizenship if they live with HIV. This practice has very unsettling and painful effect causing people to avoid testing. After it is found out that they live with HIV, people are deported immediately in conditions which are against human dignity. Foreigner tourists visiting the country are subject to the said regulation. Therefore, if it is understood that a tourist lives with HIV, they might not be admitted to the country. Although an HIV test is not requested when entering country, if a person has medication for HIV they might get deported.

We should also emphasize that TRNC has very poor conditions for its citizens living with HIV. Poor physical and material conditions when accessing treatment, the lack of anonymous testing centres are the most important problems. State’s attitude towards PLWHIV is the source of discrimination and stigmatisation which are experienced in daily life.

As a result; TRNC, which is authorised to make law applicable within the borders, should not forget that PLWHIV have human rights and TRNC is responsible for making regulations in line with human rights.

CASE NO 59: The counselee’s doctor tells them that the counselee cannot have a baby. The counselee, who contacts the association and learns about U=U and other scientific developments, wants to know which legal actions can be taken against the doctor’s attitude.

LEGAL BASIS: Constitution Art. 17 and 20; Biomedicine Convention Art. 10; ECHR Art. 8; HHY Art. 5, 11 and 21; HMEK Art. 5 and 24.

LEGAL REASONING: Being a doctor requires ongoing learning process and following updates on scientific findings. Article 5 of HMEK states that “Doctor’s priority is to protect people’s lives and health by complying with scientific requirements, trying to avoid diseases and treat patients. Protecting human dignity while doing their job is one of the priorities for doctors. Doctors follow up-to-date developments to fulfil these obligations.” It is patients’ right to expect doctors working in the field of HIV – where new scientific findings are collected constantly – to know about recent developments. PLWHIV can have babies through natural ways when specific conditions are provided. Even if a doctor working in this field does not know about this information, the doctor should research the information provided from a patient and inform the patient by avoiding prejudices. Misleading a patient because of prejudices or concerns which are not in line with scientific developments is against HMEK. Because, patients see doctors as specialist so anything doctors say might give hope or disappoint patients. HMEK’s Article 24 titled “Effect on Patients” states that “Doctors cannot use their effect on patients apart from medical purposes.” In addition to the medical ethics, Article 11 of HHY regulates patients’ right to request a diagnosis which meet the standards of modern



medical knowledge and technology, and also to be treated and taken care of. In light of the information above, the counselee can report the doctor to the TMA and to the patient rights unit at the hospital where doctor works considering that doctor a) does not follow developments in his/her field, and b) does not inform his/her patient correctly because of his/her prejudices.

CASE NO 60: The counselee would like to use the recreational facility of the residential complex where they live. The administration of the residential complex requests a medical report from the counselee. The counselee shares their HIV status with the administration. The administration discriminates against the counselee regarding using the recreational facility after learning the counselee's HIV status. The counselee contacts the association to learn the legal actions that can be taken against the administration.

LEGAL BASIS: Constitution Art. 20; UDHR Art. 12; ECHR Art. 8; KVKK Art. 6; KMK Art. 4, 16 and 27; TİHEKK Art. 5 and 17.

LEGAL REASONING: The counselee would like to use the recreational facility of the residential complex where they live. The recreational facility is a common area as per Article 4 of KMK. As per Article 16 of the said law, the counselee has the right to benefit from common areas as much as the other property owners. As per Article 27 of the said law, the authority of introducing new regulatory provisions belongs to the board of property owners. However, the provisions introduced by the board must be in line with the law and mandatory rules.

As per the Directive on Principles and Procedures regarding Medical Reports that has been made by the Ministry of Health to regulate which medical reports can be requested; only professional sportspeople, who would like to obtain a licence must provide a medical report for sports activities at the recreational facility of the residential complex. For this reason, it is not in line with the law to ask for a medical report from the counselee who would like to use the recreational facility. Even if a medical report is requested, living with HIV does not prevent PLWHIV from taking part in any sports activity. As mentioned before, an organization or institution must be authorized to process health-related data in order to request a medical report that includes a person's health-related data. The administration requesting a medical report is not authorized to process health-related data as per Article 6 of KVKK. For this reason, the administration's request violates the right to privacy and to protect personal data as per Article 20 of the Constitution. It is also against the law the way the complex administration discriminates against the counselee for their HIV status although the counselee has shared it with consent. The fact that residential complex's administration knows the counselee's HIV status does not prevent the counselee from using the recreational facility. On the contrary, any type or level of interference regarding HIV status violates the principle of equality and the prohibition of discrimination stated under the Constitution. The administration's discriminatory attitude towards the counselee is related to the prohibition of discrimination under Article 5 of TİHEKK. Therefore, the counselee can apply to TİHEK as per Article 17 of TİHEKK.

CASE NO 61: The counselee's ex-partner distresses and threatens the counselee with disclosing the counselee's HIV status. The counselee requests legal advice on this issue from the association.

LEGAL BASIS: Constitution Art. 20; ECHR Art. 8; UDHR Art. 12; Law no. 6284 Art. 5; TCK Art.134 and 136.

LEGAL REASONING: The counselee can apply to protective and preventive measures under Law no. 6284 to prevent the disclosure of HIV status. The law regulates the procedures and principles related to the measures taken to protect and prevent violence against women, children, family members who have been subject to violence or are at the risk of being subject to violence and the victims of persistent stalkers. The law defines the violence as follows: "Any physical, sexual, psychological, verbal or economic attitude and behaviour that occur in social, public and private place. These also include the actions that (might) result in suffering of a person physically, sexually, psychologically or economically as well as the threat, pressure or arbitrary violation of freedom." In light of the information above, ex-partner's disclosure would harm the counselee, and also repetitive stalking and threats of disclosure clearly fall within the category of violence. The counselee can take legal actions to benefit from preventive measures stated in Law no. 6284. Article 5 provides the preventive measures that are stated under the law and the counselee can request. The counselee can get an order to prevent the following actions of ex-partner who persistently stalks: Attitudes and behaviours that include the threats of violence, insult, humiliation and degradation against the victim of violence; immediate suspension from the shared dwelling and vicinity of the protected person; approach to the protected person's residence, school and workplace; approach protected person's close ones, witnesses, children (personal relationships are allowed) even though none of them has been subject to violence; damage the personal belongings and household goods of the protected person; cause distress to the protected person by means of communication channels or an alternative channel. As can be seen above, the law allows orders to be taken to prevent the stalker from threatening and contacting the protected person and their family and close ones. Injunction orders can be requested from judge of family court or local authorities or law enforcement unit most quickly and easily. No evidence is required for injunction orders, and a petition which clearly explains the events happened is sufficient. Injunction orders are temporary with a limited time period. If the threat of violence continues after the limited time period, the order can be extended by reapplying to court. Injunction order is officially communicated to the both sides. If the perpetrator still violates the order after that, preventive imprisonment is enforced.

As per the relevant provisions of TCK, the counselee can denounce their ex-partner if the counselee's HIV status is disclosed. HIV status is "sensitive personal data" because it is related to health. It requires more strict protection compared to other personal data. Disclosing personal data to third parties is a crime. HIV status is related to private life, and disclosing HIV status violates the right to privacy. For this reason, if the ex-partner discloses the counselee's HIV status, the counselee can denounce them as per Article 134 of TCK (violation of the right to privacy) and Article 136 (disclosing or obtaining data illegally).

CASE NO 62: The counselee, who has been diagnosed with HIV recently, is a military employee. The counselee contacts the association to learn what happens if the Turkish Armed Forces finds out that the counselee lives with HIV.

LEGAL BASIS: Constitution Art. 72; Turkish Armed Forces' Regulation on Health Competence Art. 6, List of Diseases and Disorders in the Same Regulation Art. 52.



LEGAL REASONING : Paragraph b of Article 6 of the Turkish Armed Forces Health Competence Regulation states that “those who are ineligible to serve in military: the ones whose diseases fall within (B) or (D) sections of the Diseases and Disorders List.” As per Article 52 of Infectious Diseases Section in the List of Diseases and Disorders, confirmed HIV infection is included in diseases falling within section D. Therefore, it is clear that PLWHIV are exempted - in other words, ineligible - from the compulsory military service. HIV is a definite reason for being exempted from compulsory military service and this does not depend on individuals’ request or consent.

Because the counselee is a military employee, their employment agreement is terminated when the counselee’s HIV status is found out.

CASE NO 63: When the counselee has been diagnosed with HIV recently, infectious diseases doctor has distressed and discriminated against the counselee by saying “Why did not you use a condom if you know how HIV is transmitted? You’ll live long but you never know.” The counselee contacts the association to learn the legal actions that can be taken against doctor’s attitude.

LEGAL BASIS: Constitution Art. 17 and 20; Biomedicine Convention Art. 10; ECHR Art. 8; HHY Art. 5 and 39; TDN Art. 2; HMEK Art. 21.

LEGAL REASONING: Article 5 of HHY clearly stipulates the principles to follow when providing health-care services. Human attitude towards patients is one of these principles. As per Article 39 of the same regulation, the patient has the right to receive healthcare services in an environment complying with human dignity. All the personnel working in the field of healthcare services must be nice and kind to patients, their close ones and visitors as per the legislation and regulation on healthcare services.

Article 2 of TDN states that doctors’ first priority is to care and respect patients’ health, life and individuality. The counselee can make an official complaint to the hospital’s patient rights unit if the counselee thinks that they have been exposed to doctor’s prejudices and discriminatory attitudes. The counselee can make an official complaint to the Provincial Health Directorate and also call ALO 184 SABİM to make an official complaint. This is also against Article 2 of TDN and Article 21 (respecting patient rights) of HMEK. In this case, the family doctor can be reported to the TMA.

CASE NO 64: The counselee is a foreigner. The counselee has a work permit in Turkey and works as an assistant at someone’s house. The counselee’s sister is lost and the counselee suspects of the sister’s spouse for this. However, the counselee’s sister’s spouse threatens the counselee with disclosing their HIV status to their workplace if the counselee keeps trying to find information about their sister. The counselee contacts the association to ask the legal actions that can be taken.

LEGAL BASIS: Constitution Art. 16, 20, 48 and 49; ECHR Art. 8; UDHR Art. 12 and 23; International Labour Law Art. 9, 15 and 21; KVKK Art. 6; TCK Art. 107, 134 and 136.

LEGAL REASONING: The counselee’s sister’s spouse threatens the counselee with disclosing her/his HIV status – health-related data – with her/his employer who is a third person. We should emphasize that

Article 15 of the Law stipulates the valid termination reasons for work permit applications. The counselee's obligation of informing the employer of her/his employer while applying for a work permit are the same as for workers who have Turkish citizenship. The provision about the "foreigners who are reported to be risky to work in Turkey in terms of public health" does not mention HIV when considering transmission and ineffectiveness in working life. The counselee's HIV status does not require any different evaluation and procedure from other foreigner employees. Any different treatment against the counselee from other work permit holders because of the counselee's HIV status violates the prohibition of discrimination. Termination of the counselee's employment agreement by employers because of her/his HIV status is the misuse of termination right. However, Article 15 of ÜİK, which regulates termination reasons for work permits, states that if a foreigner's employment is terminated for any reason, their work permit is cancelled as well. In case of cancellation, the counselee can submit their objection to the Ministry of Family, Labour and Social Services within 30 days as per Article 21 of ÜİK. If the objection is rejected, the applicant has the right to take the case to court.

HIV status is health-related personal data which requires more strict protection compared to other personal data. Additionally, HIV status is related to a person's privacy and disclosing information regarding private life without consent is a crime. If the counselee's sister's spouse discloses her/his HIV status to her/his employer, the spouse commits the crime of violating privacy as per Article 134 and illegally disclosing or obtaining data as per Article 136 of TCK. Therefore, the counselee can exercise their right to make an official complaint. In this case, blackmailing crime has also arisen as per Article 107 of TCK.

CASE NO 65: The counselee's HIV status is disclosed by someone on social media. Later, the counselee's colleague who learns the counselee's HIV status discloses it to the workplace. The counselee's workplace terminates the employment agreement of the counselee's colleague who has disclosed the counselee's HIV status. The counselee contacts the association to ask the legal actions that can be taken against the ex-colleague who has disclosed the counselee's HIV status.

LEGAL BASIS: Constitution Art. 20; ECHR Art. 8; UDHR Art. 12; TCK Art. 134 and 136.

LEGAL REASONING : HIV status is health-related personal data which requires more strict protection compared to other personal data. The counselee's personal data has been disclosed to the counselee's colleagues who are third parties. Furthermore, HIV status is related to privacy and disclosing information regarding private life without consent is a crime. For this reason, the counselee can denounce their ex-colleague as per Article 134 (violation of the right to privacy) and Article 136 (disclosing or obtaining data illegally).

CASE NO 66: The counselee is exposed to discrimination against because of HIV status at the hospital where they go for treatment regularly. Healthcare personnel that provide services to the counselee take additional precautions when they are in contact with the counselee compared to other patients. The counselee contacts the association to learn the legal actions that can be taken against this discriminatory attitude.



LEGAL BASIS: Constitution Art. 17 and 20; Biomedicine Convention Art. 10; ECHR Art. 8; HHY Art. 5; TDN Art. 2; HMEK Art. 21.

LEGAL REASONING: Infection prevention rules to follow during medical intervention are standard. The rules also do not require additional precaution or sterilisation for PLWHIV. Therefore, there might be two reasons for taking extraordinary precautions when providing healthcare services to a patient living with HIV: First reason: Standard precautions that need to be taken for every patient are not taken assuming that patients do not live with HIV. Second reason: Standard procedure is not followed due to judgemental and discriminatory motives because the patient lives with HIV. Both possibilities are obviously against patients' rights.

In this case, the counselee has been discomforted by additional precautions of healthcare personnel. Article 5 of HHY clearly stipulates the principles to follow when providing healthcare services. Humane attitude towards patients is one of these principles. The counselee can make an official complaint to the hospital's patient rights unit if the counselee thinks that they have been exposed to healthcare personnel's prejudices and discriminatory attitudes. The counselee can make an official complaint to the Provincial Health Directorate and also call ALO 184 SABİM to make an official complaint. This is also against Article 2 of TDN and Article 21 (respecting patient rights) of HMEK. In this case, the family doctor can be reported to the TMA.

CASE NO 67: The counselee lives with HIV and is married. The counselee and their spouse consult their infectious diseases specialist on having a baby. The specialist says that they can have a baby only through sperm washing method. After the couple learns that they can have a baby through natural ways, they visit their doctor who has said "I do not approve this because this is quite risky." The counselee contacts the association to learn whether the doctor is legally responsible for providing misleading information.

LEGAL BASIS: Constitution Art. 17 and 20; Biomedicine Convention Art. 10; ECHR Art. 8; HHY Art. 6, 7 and 11; HMEK Art. 5 and 8.

LEGAL REASONING: It is known that women or men who live with HIV can have babies who might not live with HIV. There are different types of methods to prevent from getting infected with HIV, and "sperm washing" is one of them. In addition to sperm washing, unprotected sex when both partners are U=U is also a method suggested and chosen. The counselee states that the doctor has not shared any information on pregnancy through unprotected sex when partners are U=U. Later, the doctor has said negative things about this method and made the counselee and their spouse anxious.

Article 5 of HMEK states that "Doctor's priority is to protect people's lives and health by complying with scientific requirements, trying to avoid diseases and treat patients. Protecting human dignity while doing their job is one of the priorities for doctors. Doctors follow up-to-date developments to fulfil these obligations." Article 8 of the same legislation states that "Doctors act in line with conscientious and professional scientific opinions when exercising their profession." Additionally, HHY regulates the following:

Patients' right to benefit from healthcare services in line with their needs, to request information on how to benefit from healthcare services, to request a diagnosis which meet the standards of modern medical

knowledge and technology, and also to be treated and taken care of (Article 6, 7 and 11) including activities and protective health services to encourage patients to live a healthy life in line with principles of justice and equity.

The counselee can report the doctor to hospital's patient rights unit and to the Provincial Health Directorate considering the legislation and this case. The doctor can also be reported to the TMA. We should remind that an investigation should be carried out considering the following points:

Because the doctor follows up the counselee's treatment, the doctor might suggest sperm washing as the best method for the counselee after conscientious and medical evaluation. The doctor might be against the other methods for other reasons which are not discriminatory motives.

CASE NO 68: The counselee shares their HIV status with their employer at workplace. The employer shares the counselee's HIV status with other colleagues and informs them on HIV transmission. The employer shares the counselee's HIV status with every new employee. The counselee feels uncomfortable about this and resigns from the job. The counselee contacts the association to receive legal advice on this situation.

LEGAL BASIS: Constitution Art. 20, 48 and 49; ECHR Art. 8; UDHR Art. 12 and 23; KVKK Art. 6, 11 and 13; TCK Art. 134 and 136.

LEGAL REASONING: The counselee's HIV status is health-related data and considered to be sensitive data as per Article 6 of KVKK. As per paragraph 3 of the same article, the data mentioned above can be protected and processed in line with more special and strict conditions compared to other data. Processing data is defined under Article 3 of KVKK's section titled 'definitions'. Any activity, which includes deleting/destroying/anonymising, related to personal data falls within the data processing category. Every action from learning HIV status, which is health-related data owned by employer and related to counselee's private life, to sharing it with other colleagues is considered to be data processing.

The employer thinks that (s)he acts in goodwill but violates the counselee's private life and processes data illegally. As a result, the counselee has been exposed to a discrimination and stigmatisation. Under these conditions, the counselee can request from their employer to stop processing data illegally as per Article 11 of KVKK. If the employer does not offer a satisfying solution, the counselee can exercise their right to make a complaint to the Board of Protecting Personal Data as per Article 13 of KVKK. Sharing counselee's HIV status, which is sensitive personal data and related to private life, with their colleagues without consent violates the right to privacy and to protect personal data regulated under Article 20 of the Constitution of the Republic of Turkey. The said actions also constitute a crime under TCK. Abovementioned actions violate privacy thus constituting a crime under Article 134 of TCK. They also constitute a crime of providing or obtaining data illegally as per Article 136 of TCK.

CASE NO 69: The counselee's friend learns that the counselee lives with HIV. The counselee's friend threatens and attacks the counselee by saying (s)he had sex with one of the counselee's ex-partners. The counselee contacts the association to ask which legal actions can be taken against this person.



LEGAL BASIS: Constitution Art. 17; TCK Art. 86.

LEGAL REASONING: The counselee can denounce the person, who has attacked them, to judicial authorities. Article 86 of TCK states that “A person who hurt someone else’s body or causes damage to their health or perception ability deliberately is sentenced to from 1 to 3 years in prison. If there is threat or insult in this case, these all should be included in the petition to court (attackers’ sentences should be written same as original).”

CASE NO 70: The counselee goes to a private dentist clinic for tartar removal. After sharing HIV status with healthcare personnel at the private clinic, the counselee is told that they would be the last patient to be admitted due to lack of equipment or they should go to a university hospital. The counselee contacts the association to ask which legal actions can be taken against the discriminatory attitude.

LEGAL BASIS: Constitution Art. 56; UDHR Art. 25; Regulation on Private Healthcare Institutions which Provide Oral and Dental Health, HHY Article 6, 8 and 11; TİHEKK Art. 3 and 5.

LEGAL REASONING: The private clinic the counselee has been to for tartar removal falls is subject to the Regulation on Private Healthcare Institutions which Provide Oral and Dental Health. The regulation regulates qualifications these clinics and healthcare personnel working there must have, and also equipment the clinics must have for medical operations. The regulation does not have any rule regarding HIV specifically. For this reason, the clinic, which applies a different procedure for the counselee with unfair and invalid reasons or which prevents the counselee from using their right to choose, violates the prohibition of discrimination. As per Article 6 of HHY, the counselee has the right to benefit from healthcare services in line with fairness and equity principles. As per Article 8 of the said regulation, a patient has the right to choose the healthcare institution and receive healthcare services from the chosen institution in line with principles and conditions mentioned in the regulation. As per Article 11 of the said regulation, a patient has the right to demand diagnosis, treatment and care in line with the standard medical requirements. Because the counselee’s all three rights mentioned above have been violated, the counselee can make an official complaint to these institutions’ patient rights unit which the institutions must establish. The counselee can make an official complaint to the Provincial Health Directorate and also call ALO 184 SABİM to make an official complaint. Article 3 of TİHEKK clearly prohibits the discrimination against because of health condition, and Article 5 states that private entities which provide healthcare services cannot discriminate against because of health condition while providing health services. Therefore, the counselee can apply to TİHEK. As per paragraph 2 of Article 17 of TİHEKK, an application in writing must be made to the organization that discriminates against before applying to TİHEK. If TİHEK detects that the prohibition of discrimination has been violated after an investigation, the clinic is fined.

CASE NO 71: The counselee learns that they live with HIV after blood tests have been performed for operation. The counselee contacts the association to learn whether it is legal to get tested for HIV without being informed.

LEGAL BASIS: Constitution Art. 17 and 20; Biomedicine Convention Art. 10; ECHR Art. 8; HHY Art. 15 and 18.

LEGAL REASONING: Doctors request patients, who need to have an operation, to give blood for some tests and have examinations before an operation. These tests and examinations could vary based on patient's age, type of operation and patient's health condition.

Testing a patient for HIV without telling them before an operation is a situation that occurs often in Turkey. The Guide for HIV/AIDS Diagnosis and Treatment, which has been prepared by the Ministry of Health, states that all HIV tests should be performed in line with the World Health Organization's rules. The rules are: person getting tested for HIV must consent to get tested, privacy of person getting tested must be respected, person must be informed based on correct test result, person must receive counselling and information by people trained for this or by doctors before and after a test⁸. Testing patient for HIV before an operation is a decision that a doctor can make but the patient must be informed of this. We should remind that tests before an operation are considered to be medical interventions. HHY regulates the procedures for informing patients of operations or tests before a medical intervention. (HHY Art. 15 and 18)

Testing the counselee for HIV without telling them is against the law. The counselee can apply to the hospital's patient rights unit to make an official complaint about this. The counselee can make an official complaint to the Provincial Health Directorate and also call ALO 184 SABİM to make an official complaint. We should underline the fact that refusing tests requested by a doctor before an operation means refusing treatment in practice. If a patient refuses to get tested before an operation, they can get discharged after filling in a refusal of treatment form.

CASE NO 72: The counselee goes to a hospital to apply to be exempted from compulsory military service. The counselee is given a document which postpones his compulsory military service for one year because of his HIV status. The counselee contacts the association to learn whether there has been a change about exemption from military service because of HIV status. The association tells the counselee that he has the right to be exempted from military service for good. Upon learning this, the counselee goes back to the hospital to receive exemption document. The counselee is exposed to discrimination at the hospital where his procedure is dragged out. The counselee contacts the association again to ask for a legal advice on this issue.

LEGAL BASIS: Constitution Art. 72; Conscription Law; Turkish Armed Forces' Regulation on Health Competence Art. 6, List of Diseases and Disorders in the Same Regulation Art. 52; Regulation on Conscription Art. 9 and 14; HHY Art. 5, 17 and 39.

LEGAL REASONING: As per 9 of Regulation on Conscription, before a medical examination, people's statements regarding their health condition are taken and later medical reports and documents (if any) are examined. As a result of a medical examination, a report stating "ineligible to serve in military" has been issued for people who have the diseases mentioned in (B) or (D) sections of the Diseases List under Appendix C of the Turkish Armed Forces and Gendarmerie General Command Health Competence Regulation Article (Article 9/8). Paragraph b of Article 6 of the Turkish Armed Forces Health Competence

8. (Online) https://hsgm.saglik.gov.tr/depo/birimler/Bulasici-hastaliklar-db/hastaliklar/HIV-ADS/Tani-Tedavi_Rehberi/HIV_AIDS_Tani_Tedavi_Rehberi.pdf E.T.: 26 August 2020.



Regulation states that “those who are ineligible to serve in military: the ones whose diseases fall within (B) or (D) sections of the Diseases and Disorders List.” As per Article 52 of Infectious Diseases Section in the List of Diseases and Disorders, confirmed HIV infection is included in diseases falling within section D. Therefore, it is clear that PLWHIV are exempted - in other words, ineligible - from the compulsory military service. HIV is a definite reason for being exempted from compulsory military service and this does not depend on individuals’ request or consent.

The counselee shares his HIV status during medical examination. For this reason, postponing the counselee’s military service instead of a definite exemption is against the Conscription Law, Regulation on Conscription and also the Turkish Armed Forces’ Regulation on Health Competence. Article 14 of the Conscription Law regulates how to object to the reports prepared for a health condition. Reports can be objected within 30 days after the report is communicated or delivered. Objection to the reports titled “Eligible for Military Service”, “Ineligible for Military Service”, “Postponement for Next Year”, “Delay (because of a health condition)”, “Does not Have any Obstacle for Military Service” are made to recruiting offices for military service. If the objection is made within the given period, medical examination is done again. No objection is made to reports which are not confirmed by the authorities which confirm reports.

In this case, objection can be made to a recruiting office for the report titled “Postponement for Next Year” within 30 days after confirmation date. Moreover, the counselee states that he has been exposed to a discriminatory attitude and his procedure has been dragged out. The counselee can submit an official complaint to hospital’s patient rights unit and also to the Provincial Health Directorate as per HHY.

CASE NO 73: The counselee works as an otorhinolaryngologist (ear, nose and throat specialist) at a hospital. According to the hospital’s policy, healthcare personnel at the hospital go through health screening annually. The counselee’s HIV status would be found out by the hospital administration. The counselee is under heavy pressure by the hospital administration to go through health screening and asks for legal advice from the association.

LEGAL BASIS: Constitution Art. 20, 48 and 49; ECHR Art. 8; UDHR Art. 12 and 23; Biomedicine Convention Art. 10; ILO Code of Practice on HIV/AIDS and the World of Work; KVKK Art. 6.

LEGAL REASONING: United Nations, of which Turkey is a member, has a specialized agency named International Labour Organization (ILO) that has a “code of practice on HIV/AIDS and the world of work”. The code states that “HIV/AIDS examination cannot be demanded from potential or current employees.” As a result of health screening, the hospital administration, which is the counselee’s employer, would have plenty of health-related data in addition to personnel’s HIV status. KVKK stipulates that health-related data is sensitive personal data which requires strict conditions to be processed. Article 6 of KVKK states that the hospital administration cannot perform any test without personnel’s explicit consent as the administration would have personnel’s plenty of data after annual health screening. The administration’s heavy pressure on the counselee, who does not consent to annual health screening, is bullying/mobbing.

CASE NO 74: The counselee has been diagnosed with HIV recently. The counselee applies to work at a company which requests a medical report during recruitment process. The counselee contacts the association to ask whether a medical report stating the counselee's HIV status could be requested during recruitment process. The counselee also asks for legal advice about what happens if the counselee is not employed after the employer learns the HIV status.

LEGAL BASIS: Constitution Art. 20, 48 and 49; ECHR Art. 8; UDHR Art. 12 and 23; ILO Code of Practice on HIV/AIDS and the World of Work; Labour Law Art. 5; Regulation on Occupational Physician and Other Healthcare Personnel's Duty, Authority, Responsibility and Trainings; TİHEKK Art. 3 and 6; Regulation on Principles regarding Establishment, Duty and Working of City and Province's Human Rights Councils Art. 9; TCK Art. 117.

LEGAL REASONING: "Statement of Employment / Periodical Examination Form" mentioned on the Regulation on Occupational Physician and Other Healthcare Personnel's Duty, Authority, Responsibility and Trainings does not require an HIV test from applicants. United Nations, of which Turkey is a member, has a specialized agency named International Labour Organization (ILO) that has a "Code of Practice on HIV/AIDS and the World of Work". The code states that "HIV/AIDS examination cannot be demanded from potential or current employees." In light of these provisions, asking for HIV test result from candidates for recruitment is against the law. The counselee should remind potential employer of these provisions and object to getting tested.

If the counselee's HIV status is disclosed despite their objections and the counselee does not get recruited, not recruiting a candidate after learning that they live with HIV violates the prohibition of discrimination mentioned in international agreements to which Turkey has been a party and in the domestic law. Employer's unfair treatment does not comply with employer's liability to treat equally as per Article 5 of the Labour Law. The counselee can apply to TİHEK because of the discrimination against because of HIV status during recruitment as Article 3 of TİHEKK clearly prohibits the discrimination against because of health condition and Article 6 specifically prohibits this type of discrimination during recruitment process. If TİHEK detects that the prohibition of discrimination has been violated after an investigation, the employer is fined. The counselee who is discriminated against because of their HIV status can also apply to the Human Rights Councils in their city and province. As per Article 9 of Regulation on Principles regarding Establishment, Duty and Working of City and Province's Human Rights Councils; the councils are responsible for preventing all types of discrimination. In this case, Councils investigate the rights violations reported to them and inform, if necessary, the chief public prosecutor or relevant administrative authorities about the violation. Councils also follow up on the decision. Employer's unfair and unlawful treatment violates the freedom of labour and employment accepted under the Constitution and international agreements and also constitutes the crime of violating the freedom of labour and employment as per Article 117 of TCK. The counselee can make an official complaint about the potential employer based on the mentioned provisions as a result of being discriminated against because of their HIV status.

CASE NO 75: The counselee has difficulty in breathing through nose and needs to have septoplasty surgery. The counselee goes to a private hospital and receives a price quote for surgery. The counselee shares their HIV status with healthcare personnel at the hospital before some tests for surgery are performed. Upon this, the price is doubled. Later, the counselee is called and told that the surgery cannot



be performed by claiming that the surgery is risky because of the counselee's HIV status. The counselee contacts the association to ask for legal advice on discrimination they have experienced.

LEGAL BASIS: Constitution Art. 10 and 56; UDHR Art. 25; Regulation on Private Healthcare Institutions which Provide Ambulatory Diagnosis and Treatment, HHY Article 6, 8 and 11; TİHEKK Art. 3 and 5.

LEGAL REASONING: The private hospital the counselee has applied for septoplasty is a private institution. Private institutions can be established inside a private hospital and also separately as medical centres. Regulation on Private Hospitals regulates the features the private hospitals and the staff working here must have. Regulation on Private Healthcare Institutions which Provide Ambulatory Diagnosis and Treatment regulates the relevant features for medical centres. Both regulations state the conditions for being competent and materials required to carry out medical procedures elaborately and clearly. In addition to the mentioned regulations; the institutions, which carry out the procedures, are solely responsible for meeting the conditions for being competent. Both regulations have conditions for being competent on aesthetic operations but the conditions do not mention anything related to HIV. The centre admitting the counselee for septoplasty surgery, raising the price unfairly and then refusing to perform the surgery violates the prohibition of discrimination.

As per Article 6 of HHY, the counselee has the right to benefit from healthcare services in line with fairness and equity principles. As per Article 8 of the said regulation, a patient has the right to choose the healthcare institution and receive healthcare services from the chosen institution in line with principles and conditions mentioned in the regulation. As per Article 11 of the said regulation, a patient has the right to demand diagnosis, treatment and care in line with the standard medical requirements. Because the counselee's all three rights mentioned above have been violated, the counselee can make an official complaint to these institutions' patient rights unit which the institutions must establish. The counselee can make an official complaint to the PRC which operates under the Provincial Health Directorate and also call ALO 184 SABİM to make an official complaint. Article 3 of TİHEKK clearly prohibits the discrimination against because of health condition, and Article 5 states that private entities which provide healthcare services cannot discriminate against because of health condition while providing health services. Therefore, the counselee can apply to TİHEK. As per paragraph 2 of Article 17 of TİHEKK, an application in writing must be made to the organization that discriminates against before applying to TİHEK. If TİHEK detects that the prohibition of discrimination has been violated after an investigation, the hospital is fined.

CASE NO 76: The counselee needs to have rhinoplasty surgery because of their breathing problems. The counselee talks to their infectious diseases specialist at the hospital, to which the counselee goes for their regular treatment, about the surgery. Infectious diseases specialist tells the counselee that the hospital would cause problems due to their HIV status if the counselee has the surgery in this hospital. Therefore, the specialist suggests the counselee that they had better have the surgery at a private hospital. The counselee contacts the association to learn whether the potential problem the specialist mentions is based on any legislation.

LEGAL BASIS: Constitution Art. 56; HHY Art. 1, 2, 6 and 8; TİHEKK Art. 3 and 5.

LEGAL REASONING: HHY has been prepared to regulate principles and procedures regarding the following:

Benefiting from “patients’ rights” with human dignity, being protected from rights violations and benefiting from legal protective ways at healthcare institutions and the times when healthcare services are provided outside the healthcare institutions. Therefore, it concerns all state and private healthcare institutions, the authorities with various positions and titles who are part of the services inside or outside the healthcare institutions, and everyone who has the right to benefit from the services. As per Article 6 of HHY, patients have the right to benefit from healthcare services including activities promoting a healthy life, and protective health services in line with justice and equity principles. As per Article 8 of the said regulation, a patient has the right to choose the healthcare institution and receive healthcare services from the chosen institution in line with principles and conditions mentioned in the regulation.

According to the things the counselee’s infectious disease specialist says, the surgery can actually be performed at the state hospital. For this reason, the counselee can have the surgery at this hospital and is entitled to this right. If the counselee cannot benefit from this right because of their HIV status while everyone else can, the counselee can make an official complaint to the hospital’s patient rights unit as per HHY. The counselee can make an official complaint to the Provincial Health Directorate and also call ALO 184 SABİM to make an official complaint. Additionally, if the counselee cannot benefit from the healthcare services because of living with HIV, this clearly leads to discrimination. The counselee can apply to the TİHEK. As per Article 5 of TİHEKK; public institutions, professional organizations – which also serve as public institution –, real persons and legal entities which all provide services related to education, justice, law enforcement, healthcare, transformation, communication, social security, social services, social aid, sports, accommodation, culture, tourism etc., cannot discriminate against people who benefit from these services or who have applied to benefit from these services, or who would like to receive information about these services. As per paragraph 2 of Article 17 of TİHEKK, an application in writing must be made to the organization (in this case, the hospital) that discriminates against before applying to TİHEK.

CASE NO 77: The counselee is not a Turkish citizen. The counselee cannot access to their medication. This is because of an amendment on GSS. The new amendment affects the access to medication for foreigners in Turkey. The counselee contacts the association to ask for a legal advice on this issue.

LEGAL BASIS: Constitution Art. 16 and 56; UDHR Art. 25; YUKK Art. 3 and 89; SSGSSK Art. 60 and 64; GKY Art. 27.

LEGAL REASONING: Foreigner is defined as someone who does not have citizenship relation to the Republic of Turkey as per Article 3 of YUKK. For foreigners, legal way of being within and entering, leaving the borders of Turkey is defined as regular migration; illegal way is defined as irregular migration. Being within Turkey through regular migration and through irregular migration assign different statuses to foreigners under the legislation in Turkey. Foreigners who are in Turkey through irregular migration and meet required conditions could have international protection status under YUKK. In addition to international protection status, YUKK also regulates temporary protection status as part of mass migration.



States have different regulations for their citizens and foreigners in line with international and principles. For this reason, we should know the counselee's status. As per Article 60 of the SSGSSK, the counselee can benefit from GSS under the following conditions: The counselee has international protection application or status and is defined as stateless; the counselee is in Turkey through regular migration and has work permit and is not insured in their own country and their legal residence in Turkey exceeds one year. Healthcare services provided to foreigners, who have temporary protection status, are regulated as per Article 27 of GKY. The regulation introduced under Article 64 of SSGSSK cause problems in practice for foreigners who have GSS. With Article 64, healthcare services for chronic diseases of foreigners or their dependent ones are not supported financially under GSS. Chronic diseases are considered as diseases before the start of the insurance. As per Article 89 of YUKK, individuals who have international protection status, their dependent ones, and individuals who have applied for international protection status can benefit from GSS for one year. When considering HIV treatment, it would be such an economic burden for an individual not to be covered by insurance, and to have a limited insurance period for one year. The real aim is to eliminate protection applications from people with chronic diseases because refugee process cannot be completed due to health reasons. In practice, PLWHIV have problems with accessing healthcare services as well as other problems that can be considered a valid reason for demanding international protection. Therefore, the reasons related to demanding international protection should be explained to request insurance coverage for them. Individuals, who are not covered by GSS at the end of one year, can be exempt from one-year limitation as per Article 89 of YUKK either by applying to the Provincial Migration Administration Management with documents proving that they have special needs in line with the said law or by applying to be one of those whom Directorate General for Migration Management approves to insure. Applications, which the Directorate General for Migration Management approves to insure, are related to treatment procedures which have an important effect on an individual's health and which are financial burden on the individual. When it comes to HIV, the Directorate General for Migration Management should use discretionary power to insure the individual. An action for annulment to exclude the counselee from GSS can be brought before the administrative courts. As a result, regardless of being in Turkey through regular or irregular migration, the counselee should have the right to health as per the Constitution and international agreements to which Turkey is a party.

CASE NO 78: The counselee goes to a hospital for HIV treatment regularly and sees that healthcare personnel write HIV in large fonts, which can be read easily, on the counselee's documents and tests. The counselee contacts the association to ask which legal actions can be taken against this discriminatory and stigmatizing attitude.

LEGAL BASIS: Constitution Art. 17 and 20; Biomedicine Convention Art. 10; ECHR Art.8; HHY Art. 21.

LEGAL REASONING: HHY Article 21 titled "the right to privacy" states that the following falls within the category of the right to privacy: "Medical assessments related to patient's health condition must be made in privacy. Examination, diagnose, treatment and other operations requiring direct contact must be carried out in a reasonably private place." For this reason, it is against the law to write the counselee's HIV status on documents in a way that is visible to the whole hospital staff. In such cases, hospital staff should be warned and an official complaint must be made to patient rights unit and the Ministry of Health immediately if the violation continues.

CASE NO 79: The counselee sees a gynaecologist for warts. The doctor requests a blood test from the counselee after the medical examination. After learning that the counselee lives with HIV, the doctor intimidates and discriminates against the counselee by saying “now I have to clean even the door handles.” The counselee contacts the association to learn the legal actions that can be taken against doctor’s attitude.

LEGAL BASIS: Constitution Art. 17 and 20; Biomedicine Convention Art. 10; ECHR Art. 8; HHY Art. 5; TDN Art. 2; HMEK Art. 21.

LEGAL REASONING: Infection prevention rules to follow during medical intervention are standard. The rules also do not require additional precaution or sterilisation for PLWHIV. Therefore, there is no need to take extraordinary precautions when providing healthcare services to a patient living with HIV. Furthermore, the ways HIV is transmitted are clear and well-known. It is not acceptable especially for a doctor who thinks that (s)he can get infected with HIV because of touching the same door handle which a person living with HIV has touched. Article 5 of HHY clearly stipulates the principles to follow when providing healthcare services. Humane attitude towards patients is one of these principles. The counselee can make an official complaint to the hospital’s patient rights unit if the counselee has been exposed to doctor’s prejudices and discriminatory attitudes. The counselee can make an official complaint to the Provincial Health Directorate and also call ALO 184 SABİM to make an official complaint. This is also against Article 2 of TDN and Article 21 (respecting patient rights) of HMEK. In this case, the doctor can be reported to the TMA.

CASE NO 80: The counselee, who works as a nurse at a hospital, learns that they live with HIV after a routine health screening performed by the hospital they work at. The counselee has been exposed to discrimination and stigmatisation intensely by the hospital administration and staff because of their HIV status disclosed without their consent. The counselee contacts the association to ask for a legal advice on this issue.

LEGAL BASIS: Constitution Art. 20, 48 and 49; ECHR Art. 8; UDHR Art. 12 and 23; Biomedicine Convention Art. 10; HHY Art. 23; HMEK Art. 9; KVKK Art. 6, 11 and 13; TİHEKK Art. 3 and 6; TCK Art. 136 and 137.

LEGAL REASONING: The counselee’s HIV test result is health-related data because it shows counselee’s HIV status. KVKK stipulates that health-related data is sensitive personal data which requires strict conditions to be processed. Sharing counselee’s HIV status, which is sensitive personal data and related to private life, with the administration without counselee’s consent and the fact that all the hospital staff learns counselee’s HIV status violates the right to privacy and to protect personal data regulated under Article 20 of the Constitution of the Republic of Turkey. Furthermore, the data obtained must be kept confidential because of doctor - patient relationship and because of providing healthcare services as per Article 23 of HHY. The doctors cannot disclose the secrets they learn while exercising a profession as per Article 9 of HMEK published by the TMA. Therefore, disclosure of the counselee’s HIV status by the doctor creates an occupational liability. The doctor’s actions mentioned above constitute a crime of “providing or obtaining



data illegally” stated under Article 136 of TCK. Article 137 of TCK states that taking an advantage of convenience through a specific profession is an aggravating circumstance for the crime of “providing or obtaining data illegally.” The doctor’s actions also create a criminal liability.

In addition, processing data is defined under Article 3 of KVKK’s section titled ‘definitions’. Any activity, which includes deleting/destroying/anonymising, related to personal data falls within the data processing category. Every action from learning HIV status, which is health-related data owned by employer and related to counselee’s private life, to sharing it with other colleagues is considered to be data processing. Under these conditions, the counselee can request from their employer to stop processing data illegally as per Article 11 of KVKK. If the employer does not offer a satisfying solution, the counselee can exercise their right to make a complaint to the Board of Protecting Personal Data as per Article 13 of KVKK. Employers are responsible for creating a work environment where employees are not exposed to discrimination and stigmatisation. The counselee can apply to TİHEK because of the discrimination against because of HIV status as Article 3 of TİHEKK clearly prohibits the discrimination against because of health conditions. Furthermore, Article 6 specifically prohibits this type of discrimination during recruitment and at work-place. If TİHEK detects that the prohibition of discrimination has been violated after an investigation, the employer is fined.

CASE NO 81: The counselee works as a flight attendant for an airline company. The counselee tests positive for HIV and the airline company learns this. The counselee is put on unpaid leave while waiting for the result of confirmation test. The airline tells that the counselee’s work relationship depends on the result of confirmation test. The counselee contacts the association to learn the legal actions that can be taken if the counselee is discharged.

LEGAL BASIS: Constitution Art. 20, 48 and 49; ECHR Art. 8; UDHR Art.12 and 23; SHT - MED; SHT OPS - SAĞLIK, Circular Letter on Aviation; Appendix 4 titled PART-MED of Commission Regulation no. (AB) 1178/2011.

LEGAL REASONING: Recruitment and working life of aircrew personnel have been regulated in a casuistic way both domestically and internationally. The counselee is employed as a cabin crew member. Health condition and requirements cabin crew must have and how to evaluate them are regulated elaborately as per the following:

SHT - MED; SHT OPS - SAĞLIK; Circular Letter on Aviation and its Appendix published by the Directorate General of Civil Aviation; Appendix 4 titled PART-MED of Commission Regulation no. (AB) 1178/2011, and also AMC and GM.

Cabin crew’s medical reports are renewed periodically. Renewals are made every five year as per Article 8 of SHT OPS - SAĞLIK. Cabin crew’s health checks are carried out by AeMC authorised by the Directorate General of Civil Aviation. HIV test is in the required tests for medical reports requested from cabin crew as per Circular Letter on Aviation Medical Examination, Health Certificate and Health Examination Report and its Appendix published by the Directorate General of Civil Aviation. The legislation does not state whether or not living with HIV is an obstacle for cabin crew members to work. SHT - MED MED.C.020

states that cabin crew members should not have “active, idiopathic, acute or chronic disease or disorder.” Although there is a specific regulation on HIV status for pilots, a similar regulation does not exist for cabin crew members. The most specific regulation on HIV status and cabin crew has been introduced in Appendix 4 titled PART-MED of Commission Regulation no. (AB) 1178/2011, and also AMC 8 MED. C. 025. As per this regulation above; if a cabin crew member living with HIV does not provide an evidence base of clinical diagnosis and is assessed fit for a satisfactory aero-medical assessment, they are considered to be eligible to work. Apart from being considered to be eligible to work, an individual’s HIV status is not an obstacle for work when considering transmission of HIV, U=U reality, today’s improvements on methods for HIV treatment. The counselee should remind the authorised AeMC of the evaluation criteria. The counselee should demand a report, which is unbiased, objective and does not deny scientific facts, from the occupational physician.

If the report states that the counselee is ineligible to work, the counselee can object to the report within 2 months as per SHT OPS - SAĞLIK Article 8 and also the Circular Letter on Aviation and its Appendix published by the Directorate General of Civil Aviation. In case of objection, cabin crew staff and candidates can apply to the Objection AeMC on the Directorate General’s website to request a medical examination for objection in writing. Later, the Directorate General starts the medical examination process. Cabin crew staff and candidates apply to Aviation Health Unit for a decision by filling out “Civil Aviation Health Commission Application Form” along with an examination report supporting the reason for objection by referring to relevant articles and provisions mentioned before. Applications which are accepted by the Aviation Health Unit are submitted to the Civil Aviation Health Commission for an opinion. Aviation Health Unit makes a decision by taking the opinion of the Civil Aviation Health Commission into account. If the Aviation Health Unit decides that the report must state ‘eligible to work’, as per Article 115 of SHT - MED, an administrative sanction is imposed on AeMC which has prepared the report stating ‘ineligible to work’. Because the Aviation Health Unit makes the final decision, an action for annulment of the Unit’s report stating ‘ineligible’ can be brought before the administrative courts within 30 days. Unfortunately, final decision on being ‘ineligible’ is still possible despite scientific facts. If the counselee cannot have a different decision after all claims and remedies are exhausted, the counselee gets discharged for an acceptable reason. We should draw attention to the fact that the counselee’s test result cannot be shared with the counselee’s employer. All the regulations mentioned above clearly state that medical report procedure must be completed by protecting the privacy of doctor - patient relationship. The counselee’s employer can only access a report stating ‘ineligible’ but cannot know the reason for ineligibility. In practice, authorised occupational physicians can view the reason for ineligibility on applications such as e-nabız or Medula. If occupational physicians disclose the counselee’s HIV status to the employer, both occupational and criminal liability arise.

CASE NO 82: The counselee sees an ear, nose and throat specialist who views on his screen that the counselee lives with HIV. The specialist refuses to treat the counselee by saying “Why don’t you tell that you have HIV? You cannot risk anyone. You have to share this information.” The counselee contacts the association to learn the legal actions that can be taken against the specialist’s attitude.

LEGAL BASIS: Constitution Art. 17 and 20; Biomedicine Convention Art. 10; ECHR Art. 8; HHY Art. 5; TDN Art. 2; HMEK Art. 21.



LEGAL REASONING: Nobody has to share their HIV status as long as there is not a medical requirement (as long as operation(s) performed are not related to HIV). When providing healthcare services, sterilisation procedure is standard. Healthcare personnel have to follow the standard procedure for every patient and take necessary precautions. There is no need for additional precaution or sterilisation procedure for PLWHIV. Therefore, the counselee does not have to tell the specialist that they live with HIV. Not sharing this information does not risk anyone. In this case, the specialist's attitude is discriminatory, stigmatizing and far from the scientific facts.

Article 5 of HHY clearly stipulates the principles to follow when providing healthcare services. Humane attitude towards patients is one of these principles. The counselee can make an official complaint to the hospital's patient rights unit if the counselee has been exposed to doctor's prejudices and discriminatory attitudes. The counselee can make an official complaint to the Provincial Health Directorate and also call ALO 184 SABİM to make an official complaint. This is also against Article 2 of TDN and Article 21 (respecting patient rights) of HMEK. In this case, the doctor can be reported to the TMA.

CASE NO 83: The counselee has been diagnosed with HIV recently. The counselee says that their doctor has not provided sufficient information thus causing the counselee to feel anxious. The counselee learns about U=U on websites of associations working in the field of HIV and shares this with their doctor. The doctor distresses the counselee by saying "There is no such thing. How can the associations know about it? I am a specialist. The associations cannot know better than me." The counselee contacts the association to ask what to do apart from going to another doctor.

LEGAL BASIS: Constitution Art. 17; HHY Art. 5, 11 and 15; HMEK Art. 12.

LEGAL REASONING: Article 12 of HMEK states that "a doctor considers scientific and progressive diagnoses, treatment methods and protective medical ethics when exercising his/her profession, and cannot apply unscientific methods for treatment", and clearly points that a doctor must follow scientific and progressive developments and determine treatment methods accordingly. Being a doctor requires of following ever-changing updates on scientific findings. It is not acceptable especially for a doctor, who works with PLWHIV, not to follow updates on HIV which is a field where constant scientific research is made and improvements are introduced.

In this case, the counselee learns about U=U by themselves and asks about this to their doctor despite the doctor's distressing comments. Even if the doctor does not know about this information, the doctor should research the information coming from a patient and see whether it is true and act accordingly. The doctor's intimidation and rejection of this information is a result of prejudices against HIV and discrimination. HHY states that the right to live in a fully well-being state physically, mentally and socially is the most fundamental human right (Article 5/a). The same regulation also states that informing a patient includes providing information on the following: choices for diagnosis and treatment; benefits and risks caused by these choices; choices' possible effects on patient (Article 15).

Article 11 of HHY regulates patients' right to request a diagnosis which meet the standards of modern medical knowledge and technology, and also to be treated and taken care of. It is known that U=U has an important and positive impact on PLWHIV physically and mentally. If the counselee thinks that their doctor

acts in a prejudicial manner by not sharing this scientific and vital information and even saying negative things about it, the counselee can report the doctor to the hospital's patient rights unit and to the Provincial Health Directorate, and can make an official complaint by calling ALO 184 SABİM. The doctor can be reported to the TMA for not complying with HMEK.

CASE NO 84: The counselee is not a Turkish citizen. The counselee cannot access treatment because of amendment on GSS. The counselee contacts the association to ask what to do about this.

LEGAL BASIS: Constitution Art. 16 and 56; UDHR Art. 25; YUKK Art. 3 and 89; SSGSSK Art. 60 and 64; GKY Art. 27.

LEGAL REASONING: Foreigner is defined as someone who does not have citizenship relation to the Republic of Turkey as per Article 3 of YUKK. For foreigners, legal way of being within and entering, leaving the borders of Turkey is defined as regular migration; illegal way is defined as irregular migration. Being within Turkey through regular migration and through irregular migration assign different statuses to foreigners under the legislation in Turkey. Foreigners who are in Turkey through irregular migration and meet required conditions could have international protection status under YUKK. In addition to international protection status, YUKK also regulates temporary protection status as part of mass migration.

States have different regulations for their citizens and foreigners in line with international and principles. For this reason, we should know the counselee's status. As per Article 60 of the SSGSSK, the counselee can benefit from GSS under the following conditions: The counselee has international protection application or status and is defined as stateless; the counselee is in Turkey through regular migration and has work permit and is not insured in their own country and their legal residence in Turkey exceeds one year. Healthcare services provided to foreigners, who have temporary protection status, are regulated as per Article 27 of GKY. The regulation introduced under Article 64 of SSGSSK cause problems in practice for foreigners who have GSS. With Article 64, healthcare services for chronic diseases of foreigners or their dependent ones are not supported financially under GSS. Chronic diseases are considered as diseases before the start of the insurance. As per Article 89 of YUKK, individuals who have international protection status, their dependent ones, and individuals who have applied for international protection status can benefit from GSS for one year. When considering HIV treatment, it would be such an economic burden for an individual not to be covered by insurance, and to have a limited insurance period for one year. The real aim is to eliminate protection applications from people with chronic diseases because refuge process cannot be completed due to health reasons. In practice, PLWHIV have problems with accessing healthcare services as well as other problems that can be considered a valid reason for demanding international protection. Therefore, the reasons related to demanding international protection should be explained to request insurance coverage for them. Individuals, who are not covered by GSS at the end of one year, can be exempt from one-year limitation as per Article 89 of YUKK either by applying to the Provincial Migration Administration Management with documents proving that they have special needs in line with the said law or by applying to be one of those whom Directorate General for Migration Management approves to insure. Applications, which the Directorate General for Migration Management approves to insure, are related to treatment procedures which have an important effect on an individual's health and which are financial burden on the individual. When it comes to HIV, Directorate



General for Migration Management should use discretionary power to insure the individual. An action for annulment to exclude the counselee from GSS can be brought before the administrative courts. As a result, regardless of being in Turkey through regular or irregular migration, the counselee should have the right to health as per the Constitution and international agreements to which Turkey is a party.

CASE NO 85: The counselee applies to an aesthetic surgery centre for an aesthetic operation. The centre rejects the counselee because of their HIV status. The counselee contacts the association about the legal actions that could be taken against the aesthetic surgery centre.

LEGAL BASIS: Constitution Art. 56; UDHR Art. 25; Regulation on Private Healthcare Institutions which Provide Ambulatory Diagnosis and Treatment, HHY Article 6, 8 and 11; TİHEKK Art. 3 and 5.

LEGAL REASONING: The aesthetic surgery centre the counselee has applied for aesthetic surgery is a private institution. Private institutions can be established inside a private hospital and also separately as medical centres. Regulation on Private Hospitals regulates the features the private hospitals and the staff working here must have. Regulation on Private Healthcare Institutions which Provide Ambulatory Diagnosis and Treatment regulates the relevant features for medical centres. Both regulations state the conditions for being competent and materials required to carry out medical procedures elaborately and clearly. In addition to the mentioned regulations; the institutions, which carry out the procedures, are solely responsible for meeting the conditions for being competent. Both regulations have conditions for being competent on aesthetic operations but the conditions do not mention anything related to HIV. These centres violate the prohibition of discrimination by first accepting and then refusing to operate PLWHIV without stating any reason.

As per Article 6 of HHY, the counselee has the right to benefit from healthcare services in line with fairness and equity principles. As per Article 8 of the said regulation, a patient has the right to choose the healthcare institution and receive healthcare services from the chosen institution in line with principles and conditions mentioned in the regulation. As per Article 11 of the said regulation, a patient has the right to demand diagnosis, treatment and care in line with the standard medical requirements. Because the counselee's all three rights mentioned above have been violated, the counselee can make an official complaint to the centre's patient rights unit which the centre must establish. The counselee can make an official complaint to the PRC which operates under the Provincial Health Directorate and also call ALO 184 SABİM to make an official complaint. Article 3 of TİHEKK clearly prohibits the discrimination against because of health condition, and Article 5 states that private entities which provide healthcare services cannot discriminate against because of health condition while providing health services. Therefore, the counselee can apply to TİHEK. As per paragraph 2 of Article 17 of TİHEKK, an application in writing must be made to the organization that discriminates against before applying to TİHEK. If TİHEK detects that the prohibition of discrimination has been violated after an investigation, the centre is fined.

CASE NO 86: The counselee is transgender and applies to a private hospital for gender reassignment surgery. When the hospital staff learns that the counselee lives with HIV, they tell that they cannot perform the surgery. The counselee contacts the association to receive legal advice on this situation.

LEGAL BASIS: Constitution Art. 17 and 20; Biomedicine Convention Art. 10; ECHR Art. 8; Regulation on Private Hospitals; HHY Art. 6, 8 and 11; TİHEKK Art. 3 and 5.

LEGAL REASONING: Regulation on Private Hospitals regulates the features the private hospitals and the staff working here must have. The regulation states the conditions for being competent and the materials required to carry out medical procedures elaborately and clearly. In addition to the mentioned regulations; the institutions, which carry out the procedures, are solely responsible for meeting the conditions for being competent. The conditions for being competent have been regulated according to the types of medical interventions and the department which perform these interventions, not according to patients' infections. It is clear that the hospital staff violates the prohibition of discrimination by stating that they can perform the surgery and then refusing the counselee because of their HIV status. As per Article 6 of HHY, the counselee has the right to benefit from healthcare services in line with fairness and equity principles. As per Article 8 of the said regulation, a patient has the right to choose the healthcare institution and receive healthcare services from the chosen institution in line with principles and conditions mentioned in the regulation. As per Article 11 of the regulation, a patient has the right to demand diagnosis, treatment and care in line with the standard medical requirements. The counselee can apply in writing to the patient rights unit of the hospital they could not receive services from. The counselee can make an official complaint to the PRC which operates under the Provincial Health Directorate and also call ALO 184 SABİM to make an official complaint. Article 3 of TİHEKK clearly prohibits the discrimination against because of health condition, and Article 5 states that private entities which provide healthcare services cannot discriminate against because of health condition while providing health services. Therefore, the counselee can apply to TİHEK. As per paragraph 2 of Article 17 of TİHEKK, an application in writing must be made to the organization that discriminates against before applying to TİHEK. If TİHEK detects that the prohibition of discrimination has been violated after an investigation, the hospital is fined.

CASE NO 87: The counselee sees a psychiatrist but is exposed to discrimination and ill-treatment because of their HIV status. The counselee contacts the association to ask about the legal actions that could be taken against the psychiatrist.

LEGAL BASIS: Constitution Art. 17 and 20; Biomedicine Convention Art. 10; ECHR Art. 8; HHY Art. 5 and 6; TDN Art. 2; TİHEKK Art. 3 and 5; HMEK Art. 21.

LEGAL REASONING: Article 5 of HHY clearly stipulates the principles to follow when providing healthcare services. Humane attitude towards patients is one of these principles. As per Article 6 of HHY, patients have the right to benefit from healthcare services including activities promoting a healthy life, and protective health services in line with justice and equity principles. This right includes the responsibility of healthcare provider institutions and personnel working in this field to provide services in line with fairness and equity principles. Article 2 of TDN states that doctors' first priority is to care and respect patients' health, life and individuality. Therefore, counselee can make an official complaint to Provincial Health Directorate and also call ALO 184 SABİM (Ministry of Health Contact Centre) if counselee thinks that psychiatrist's behaviour has been discriminatory and exclusionist after learning counselee's HIV status. This is also against Article 2 of TDN and Article 21 (respecting patient rights) of HMEK. In this case, the psychiatrist can be reported to the TMA.



CASE NO 88: The counselee is diagnosed with HIV when they are about to complete their training to become a pilot. Although the counselee has spent too much money on the training, the counselee has discontinued the training by thinking that they would not be able to work due to their HIV status. The counselee still contacts the association to ask for legal advice on this situation.

LEGAL BASIS: Constitution Art. 20, 48 and 49; ECHR Art. 8; UDHR Art.12 and 23; Regulation on Pilot Licence Art. 16; SHT - MED; Circular Letter on Aviation; Appendix-1 of ICAI; Appendix 4 titled PART-MED of Commission Regulation no. (AB) 1178/2011.

LEGAL REASONING: To work as a pilot, a commercial licence is required in addition to flight trainings and exams for a private pilot licence. Principles and procedures on how to obtain a commercial licence is regulated in the Regulation on Pilot Licence. Licence types vary depending on the aircraft that requires to be flew. As per Article 16 of the regulation, – depending on the licence type – first class, second class or light aircraft pilot licence (LAPL) medical certificate is required. SHT - MED; Circular Letter on Aviation and its Appendix; Chicago Convention on International Civil Aviation Personnel Licensing prepared by the International Civil Aviation Organization (ICAO Appendix-1); Appendix 4 titled PART-MED of Commission Regulation no. (AB) 1178/2011; AMC and GM all have casuistic regulations for the medical certificates which must be obtained.

Pilots' health checks are carried out by AeMC authorised by the Directorate General of Civil Aviation. Circular Letter on Aviation and its Appendix regulates the tests required for first class, second class or light aircraft pilot licence (LAPL) medical certificate. HIV test is one of the required tests but not for LAPL. As per the regulation regarding infectious diseases that fall within the health criteria for SHT-MED pilot medical certificate, PLWHIV can be evaluated as eligible to fly in terms of health if the result of their medical examination is satisfying. People who apply for first class medical certificate must be directed to the Aviation Health Unit.

ICAO Appendix-1 regulates HIV status for three types of medical report that can be prepared for pilot licences. In the regulations, requirements for three types of medical reports state that PLWHIV must have medical examinations and get satisfying results. Later, PLWHIV are evaluated as eligible to fly. The regulations underline that early diagnosis for HIV, antiretroviral therapy and active management of HIV increases the possibility of being evaluated as eligible.

Appendix 4 titled PART-MED of Commission Regulation no. (AB) 1178/2011; provisions of AMC and GM, which are in line with international regulations, regulate first class, second class or light aircraft pilot licence (LAPL) medical certificates separately. As per the regulations mentioned above, living with HIV is an obstacle for first class medical certificates. As for second class medical reports, PLWHIV must have medical examination and then get satisfying results regarding any chronic disease. If they do not have any chronic disease, they are evaluated as eligible to fly. For LAPL medical certificate if people do not have chronic diseases generally, they are evaluated as eligible to fly.



Apart from being considered to be eligible to fly, an individual's HIV status is not an obstacle for work when considering transmission of HIV, U=U reality, today's improvements on methods for HIV treatment. The counselee should remind the authorised AeMC of the evaluation criteria. The counselee should demand a report, which is unbiased, objective and does not deny scientific facts, from the occupational physician. If the report states that the counselee is ineligible to fly, the counselee can object to the report within 2 months as per the Circular Letter on Aviation and its Appendix. In case of objection, cabin crew staff and candidates can apply to the Objection AeMC on the Directorate General's website to request a medical examination for objection in writing. Later, the Directorate General starts the medical examination process. Cabin crew staff and candidates apply to Aviation Health Unit for a decision by filling out "Civil Aviation Health Commission Application Form" along with an examination report supporting the reason for objection by referring to relevant articles and provisions mentioned before. Applications which are accepted by the Aviation Health Unit are submitted to the Civil Aviation Health Commission for an opinion. Aviation Health Unit makes a decision by taking the opinion of the Civil Aviation Health Commission into account. If the Aviation Health Unit decides that the report must state 'eligible to work', as per Article 115 of SHT - MED, an administrative sanction is imposed on AeMC which has prepared the report stating 'ineligible to work'. Because the Aviation Health Unit makes the final decision, an action for annulment of the Unit's report stating 'ineligible' can be brought before the administrative courts within 30 days. If the counselee cannot have a different decision after all claims and remedies are exhausted, the counselee may not get employed.

CASE NO 89: The counselee is requested to provide an HIV test result during recruitment process. The counselee learns that they live with HIV after getting tested. The company interviewing the counselee ceases the job interview. The counselee asks for a legal advice on the relationship between HIV and recruitment process.

LEGAL BASIS: Constitution Art. 20, 48 and 49; ECHR Art. 8; UDHR Art. 12 and 23; Labour Law Art. 5; TİHEKK Art. 3 and 6; Regulation on Principles regarding Establishment, Duty and Working of City and Province's Human Rights Councils Art. 9; TCK Art. 117.

LEGAL REASONING: If the counselee's HIV status is disclosed and the counselee does not get recruited, not recruiting a candidate after learning that they live with HIV violates the prohibition of discrimination mentioned in international agreements to which Turkey has been a party and in the domestic law. Employer's unfair treatment does not comply with employer's liability to treat equally as per Article 5 of the Labour Law. As per Article 5 of the Labour Law, a candidate, who claims that an employer violates their liability to treat equally and discriminates against a candidate because of candidate's HIV status, must prove this. Similar to other discrimination cases, the candidate's obligation to prove employer's discrimination does not require too much from the candidate. After a candidate proves with evidence that they are not hired and are discriminated against because of their HIV status, employer has the obligation to prove otherwise. Employer tries to prove that candidate has not been hired due to other reasons, and living with HIV is not related to not hiring the candidate. As another option, employer tries to prove that candidate is not discriminated against because of their HIV status because candidate's HIV status is not related to the job directly and objectively.



The counselee can apply to TİHEK because of the discrimination against because of HIV status during recruitment as Article 3 of TİHEKK clearly prohibits the discrimination against because of health condition and Article 6 specifically prohibits this type of discrimination during recruitment process. If TİHEK detects that the prohibition of discrimination has been violated after an investigation, the employer is fined. The counselee who is discriminated against because of their HIV status can also apply to the Human Rights Councils in their city and province. As per Article 9 of Regulation on Principles regarding Establishment, Duty and Working of City and Province's Human Rights Councils; the councils are responsible for preventing all types of discrimination. In this case, Councils investigate the rights violations reported to them and inform, if necessary, the chief public prosecutor or relevant administrative authorities about the violation. Councils also follow up on the decision. Employer's unfair and unlawful treatment violates the freedom of labour and employment accepted under the Constitution and international agreements and also constitutes the crime of violating the freedom of labour and employment as per Article 117 of TCK. The counselee can make an official complaint about the potential employer based on the mentioned provisions as a result of being discriminated against because of their HIV status.

FINDINGS AND RECOMMENDATIONS

Findings and recommendations to address the rights violations reported to Pozitif-iz Association in 2018 and 2019 are categorised as follows:

Evaluation for Healthcare Services

Findings

As cases in the report demonstrate, the majority of discrimination events against PLWHIV are related to the right to health. When providing legal advice, referring to HHY (the Regulation on Patients' Rights) in 41 cases out of 89 is the most important indicator for this. Most of discrimination events in this field also violate the right to respect for private life which is stated in Article 8 of ECHR.

When the cases regarding the right to health are examined, it is seen that healthcare workers are involved in the majority of the discrimination events against PLWHIV. We can see that healthcare and support staff at healthcare institutions avoid complying with the most fundamental rules of Biomedicine Convention when it comes to HIV. Biomedicine Convention, to which Turkey is a party, is the most important regulation for international patients' rights and the right to health. This demonstrates that even the group that is supposed to know more about HIV than an average person can be the source of discrimination because of prejudices. When exercising the right to health, one of the fundamental problems is the violation of the right to respect for private life of PLWHIV at healthcare institutions – regardless of state or private – and also the violation the right to privacy. As can be seen from the cases, most of the counselees do not know where to apply when their right to privacy and right to respect for private life are violated.

Furthermore, HIV status can be accessed by any healthcare worker through e-health applications such as Medula, e-Pulse. This happens although HIV status is a part of private life and specifically protected by the Ministry of Health. HIV status also requires special protection due to being a reason for discrimination and stigmatisation. It has been revealed that the counselees do not know they are able to cancel the access to their data by any healthcare worker.

The cases also show that PLWHIV do not know about their rights and they feel helpless about this. It is not about being aware of legal mechanisms and regulations in health law. The counselees do not even know the scope of the right to health and about the patient rights units at healthcare institutions.

Recommendations

We should underline that doctors and other healthcare workers should be given a comprehensive training on HIV and other infectious diseases causing discrimination and stigmatisation. In the ethics part of the training, it must be emphasized that professionals' intervention and attitudes should comply with international human rights.

The Ministry of Health's and chambers of various professions' units, which file reports and take complaints, should handle complaints by considering social exclusion aspect of HIV and should do their best to avoid any further violation of patient rights. In order to have fair results from reporting and complaint mechanisms



for PLWHIV, evaluation criteria which focus on the following aims should be set: detect discrimination, comply with human rights, and include HIV-related specifications.

Although we mostly mention the violations caused by healthcare workers, the cases also show that PLWHIV are not aware of their rights. Therefore, the state should organize and supervise a counselling process when people are diagnosed with HIV as the state is the prominent responsible authority to protect individuals' right. This counselling process should be integrated with medical aspect of HIV and should PLWHIV with information on their rights.

Evaluation for Professional Life

Findings

The cases reveal that PLWHIV are systemically discriminated against in each and every step in professional life, starting from recruitment procedures to termination of employment agreements. Even the biggest global companies in Turkey do not apply the "ILO Code of Practice on HIV/AIDS and the World of Work" in any stage of professional relationship – even in the recruitment step. In addition to the right to work, the right to respect for private life is also violated in most of the cases.

Anyone related to professional life could cause discrimination against PLWHIV. The violations are one of the most visible signs in social relationships and reveal people's prejudices against HIV. The signs demonstrate that prejudices against HIV could exist in any social status or title. Discrimination can be seen at any position starting from employers to colleagues.

Another important factor about professional life is that PLWHIV are discriminated against regardless of their sectors. This type of discrimination is very common among different sectors, and the same for different professions.

Recommendations

The fact that violations widely occur in every stage of professional life shows that there should be more supervision. Supervision should focus on solutions for discrimination in professional life, especially prejudices against HIV. The Ministry of Family, Labour and Social Services is the institution which has the greatest responsibility for supervision. The Ministry should work to promote ILO Code of Practice, relevant international and national regulations mentioned in the cases above and should encourage employers to implement them.

Discriminatory attitudes of people in professional life show how prevalent prejudices against HIV are. For this reason, carrying out activities to provide every segment of society with information on HIV would be an important step to see effective results in the long term.

Chambers of different professions should review their activities and their sanctions on prejudices against HIV since discrimination against HIV is seen in every aspect and sector of professional life. Otherwise, it would be difficult to see an impactful change on today's professional life which is full of curiosity and prejudices.

Evaluation for Public Institutions

Findings

As cases in the report demonstrate, legal regulations are ignored even in public institutions where procedures are carried out based on information full of prejudices against HIV. The institutions carry out their procedures by putting their prejudices at the centre and without examining the relevant legislations.

Recommendations

The personnel, who are in direct contact with applicants, at public institutions should leave their prejudices. This is especially related to the personnel who are in patient rights units and who deal with reporting and complaints at the ministry, also related to the employees at equality and human rights-oriented public institutions. Every employee authorised to carry out procedures at public institutions should know about the required regulation to apply for any violation or discrimination against HIV. A supervision mechanism should be established considering that employees use their prejudices to fill the gap of lack of information and the procedures could be carried out wrongly, especially the factors related to reason and aim. Additionally, principles and criteria to evaluate discrimination against HIV and discrimination's source should be established. These would lead employees' (discrimination source) to comply with disciplinary rules properly.

Evaluation for Legislation and Regulations

Findings

A striking point we have realized is that there is a huge gap regarding HIV in legislation. When combined with HIV phobia in Turkey, this gap is used against PLWHIV in practice. Lawyers working in this field need to use human rights-oriented perspectives to address these gaps in the courts.

A huge part of legislation on HIV has not been made with the primary rules such as law or acts but with the secondary rules such as regulations, circular letters, and communiqués.

Although the academia produces the researches that are the sources of legislation and also trains the lawyers who implement law and regulations, it (the academia) still maintains same prejudices as the ones mentioned throughout the report. When scientific sources are reviewed for the cases, the specialists who write articles in this field use obsolete, incorrect and hearsay information when deciding on terminology, creating content, stating conclusions. In practice, specialists' lack of information causes more difficulty to find solutions for rights violations against PLWHIV.

Recommendations

The most important recommendation for legislation is to make human rights-oriented, agreed and clear regulations regarding HIV by considering discrimination events PLWHIV face.

It is important to discuss the studies on HIV because the academia has an impact on legislation and it is necessary to have objective and human rights-oriented scientific studies.



Bar associations, public institutions and NGOs working in this field should organise trainings where lawyers better learn about discrimination events PLWHIV face. These trainings should not only focus on general provisions of law and gloss over important issues about HIV. Case studies should be used to highlight that lawyers, who would like to work in the field of HIV, must have comprehensive knowledge of secondary sources.

CONCLUSION

We should state that legal advice provided in the report include legal interpretations because of the gaps in regulations. When providing legal advice, international and domestic law have been interpreted from human rights perspectives. Unfortunately, legal security in Turkey can be questioned, especially for vulnerable groups. For this reason, we suggest that people contact a professional lawyer when filing a lawsuit for rights violations and do not limit themselves to legal advice in the report.

This report once again proves that prejudices are the source of discrimination against PLWHIV. In every study or work in the HIV field, it should be emphasized that the rights of PLWHIV are human rights. This message needs to be delivered to everyone who is prejudiced against people living with HIV.