



2022

REPORT ON HUMAN RIGHTS VIOLATIONS AND LEGAL ADVICE



POZİTİF-İZ ASSOCIATION
2021 REPORTING OF VIOLATIONS
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RECORD IN VIOLATIONS, NOT RIGHTS AND EQUALITY!

POZİTİF-İZ ASSOCIATION
2022 REPORTING OF RIGHTS VIOLATIONS

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RECORD IN VIOLATIONS, NOT RIGHTS AND EQUALITY!

REPORTING ON HUMAN RIGHTS VIOLATIONS OF THE RIGHTS OF PEOPLE LIVING WITH HIV – 2022

POZITIF-İZ ASSOCIATION

PREFACE

Every year we report on the human rights violations faced by people living with HIV. Every year we share with you a snapshot of the stigma, discrimination and human rights violations faced by people living with HIV. We provide numbers and explain what needs to be done to live equally and fairly. But the stories we touch are much more than numbers and human rights violations.

This report is a summary of our efforts in 2022. The story of everyone who is diagnosed with HIV or who contacts us with suspicion is also a part of our story. We feel sad together when we witness stigmatization, sometimes we get angry, yet we immediately focus on solutions. We know that we are stronger if we are together. We experience it beyond knowing.

Our dear friends living with HIV...

The human rights violations you will read about in this report may worry you. Remember, not every person living with HIV is subjected to these violations.

Therefore, please do not worry about “Will I also experience human rights violations?”. You must be aware of your rights and demand them in the event of a possible situation. When you are subjected to a violation, the Pozitif-iz Association is always with you through both peer support and legal counseling services. HIV is a medical condition that is manageable. You have the same rights as everyone else. Contact us in case of a possible violation or before it occurs. Let’s stand up for your rights together.

To everyone who reads the report...

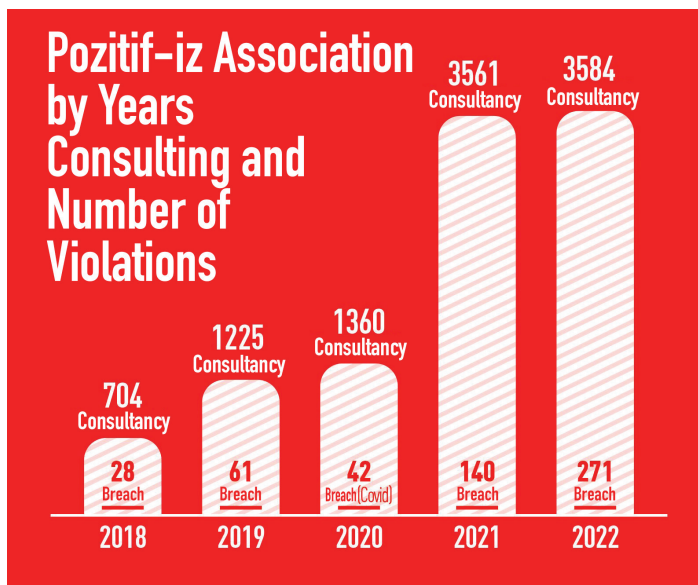
In this report, the quality and quantity of the applications received by the Pozitif-iz Association in 2022 and the types of human rights violations experienced were analyzed. The report concludes with findings and recommendations on why HIV-related violations have become entrenched even though Türkiye has a patient rights legislation that naturally covers people living with HIV, what obstacles there are to seek rights for people living with HIV in Türkiye, why people living with HIV have difficulty in acting against violations, and what civil society organizations and the state can do about all these.

Pozitif-iz Association



REPORT SUMMARY

In this study, the applications received by the Pozitif-iz Association in 2022 were anonymised and used as data, and the human rights violations faced by 271 applicants among the applications received in 2022 were reported.



If we look at the development of the numbers over the years, we see that both the number of applicants and the number of violations have increased every year. It is not possible to say that this is because more people have been diagnosed with HIV. The reason for the increase in the number of applicants can be seen in the fact that awareness of the Pozitif-iz Association has increased and that people living with HIV have become more aware and turn to organisations that can offer them support. We would like to emphasise that it is necessary to verify the Ministry of Health data on the number of people diagnosed with HIV and that commenting on how many people are living with HIV through this report would not be truthful.



Human rights violations against people living with HIV broke record in 2022

In 2018, the Pozitif-iz Association provided 704 counselling sessions to 345 people and there were 28 human rights violations. About 8% of the applicants who approached the association were exposed to human rights violations. In 2019, this rate increased to about 12%, with 1225 counselling sessions for 500 people and 61 human rights violations.

Although there was a decrease in individual cases of violations in 2020, the systematic obstruction of access to the right to health under the COVID 19 interventions stood out as an institutional violation. In 2020, 42 violations were recorded in 1,360 counselling sessions received by 451 people living with HIV. In other words, about 9% of people living with HIV who approached Pozitif-iz in 2020 were exposed to violations.

In 2021, 966 HIV-positive people were counselled 3561 times. With 140 violations, the rate was about 14%. Finally, in 2022, there was a dramatic increase in the number of violations. In 3584 counselling sessions of 954 people, 271 violations were found. The rate of violations reached a record of 28%.

Since 2018, when the Pozitif-iz Association started to report human rights violations in the field of HIV, the number of applications and human rights violations to the Association has increased by more than 300%. The threefold increase in violations reveals the deepening of discrimination and stigma against people living with HIV.

One third of all violations involve discrimination and human rights violations against foreign nationals

However, in addition to the problem of the Medical Information System (MEDULA), which was also highlighted in the last report on human rights violations¹ by the Pozitif-iz Association in 2021, it should be noted that issues regarding Foreigners' Right to Medication and Access to Healthcare have increased this year and have become a major problem that will become a major public health issue in the upcoming period.

Discrimination and human rights violations against foreigners increased by 36% in 2022 compared to 2021. Of the 271 violations in 2022, 105 were reported by HIV-positive foreign nationals.

Most of the complaints filed with the Pozitif-iz Association in 2022 concerned complaints that foreign nationals had been infected with HIV by the Social Security Institution (SGK) prior to the date of entry into the GSS (General Health Insurance) and were therefore excluded from reimbursement for medication and treatment.

The area with the most violations was the right to health in general. Discrimination and violation of the right to health accounted for a large proportion of the violations faced by foreign nationals.

Of the 271 applicants (nationals and foreigners), 139 approached the Association for human rights violations based on legislation on the right to health, 51 for human rights violations based on legislation on the right to work, 40 for human rights violations based on legislation on the protection of personal data, 7 for human rights violations based on legislation on family law, and the remaining 5 for human rights violations based on legislation on the military.



CLASSIFICATION OF APPLICATIONS BY VIOLATION TYPE

In 2022, the Pozitif-iz Association received applications for human rights violations from a total of 271 persons. The violations to which these 271 applicants were subjected were classified as follows: “violations based on the legislation on the right to health , violations based on the legislation on the right to work, violations based on the legislation on military service, violations based on the legislation on the protection of personal data, violations based on the legislation on criminal law, violations based on the legislation on family law, violations related to the right to travel, education and housing”.

According to this classification **139 of the 271 applicants were found to be in violation of legislation related to the right to health, 51 were found to be in violation of legislation related to the right to work, 40 were found to be in violation of legislation related to the protection of personal data, 15 were found to be in violation of criminal legislation, 7 were found to be in violation of family legislation, 5 were found to be in violation of military legislation and the remaining 14 were found to be in violation of the right to travel, education and housing.**

The majority of the classified human rights violations were committed together with other violations. These multiple violations were mainly human rights violations related to the right to health and human rights violations related to the right to work.

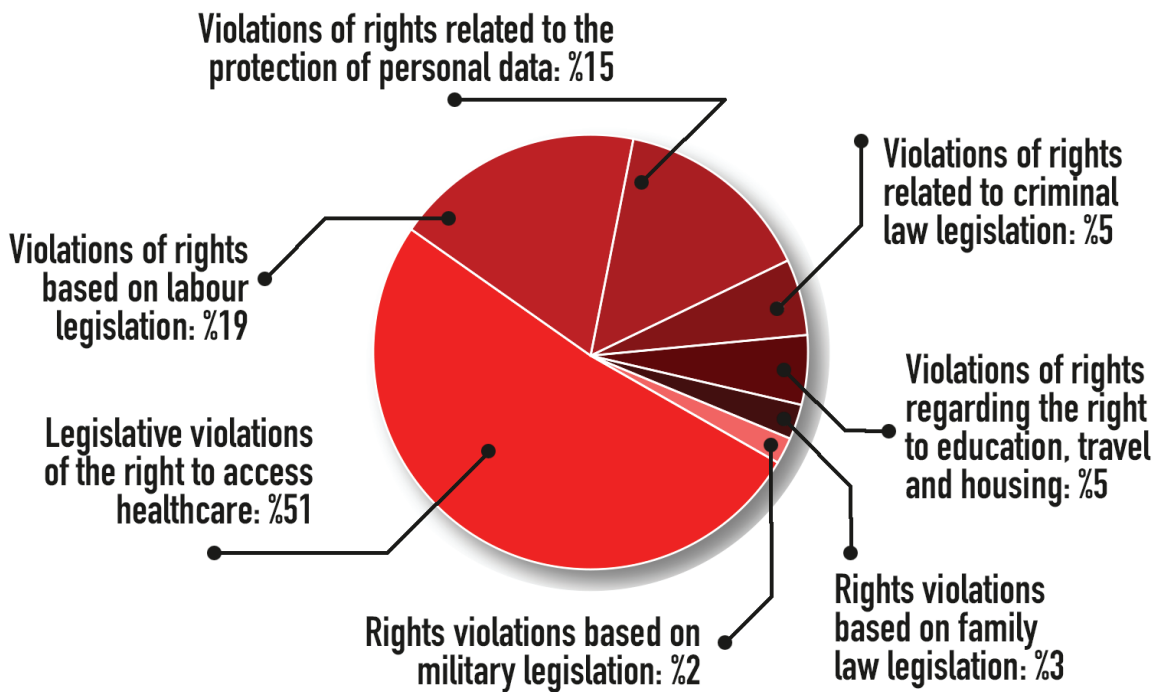
**Coming to Pozitif-iz Association in 2022
applications are anonymized and processed as data
was used and will be available throughout 2022.
Of the applications received, 271 applicants
reported the rights violations he was subjected to.**



The 271 applications are distributed among the provinces as follows: 101 in Istanbul, 19 in Izmir, 11 in Ankara, 10 in Antalya, 7 in Adana, 6 in Kayseri, 5 in Gaziantep, 5 in Kocaeli, 10 in other countries, 34 in other provinces and for the remaining 53 applications, the applicant did not indicate the province of residence.



CLASSIFICATION OF APPLICATIONS BY TYPE OF VIOLATION





FOREIGNERS AND THE GENERAL HEALTH INSURANCE PROBLEM

Foreign nationals are considered to have general health insurance and enjoy the rights granted to them if they reside in Türkiye, are insured in accordance with the relevant articles of Law No. 5510 and meet other conditions. The registration of these persons as persons with general health insurance or as dependants of persons with general health insurance is carried out in accordance with the provisions of the Law.

***Pursuant to Article 64(1)(c) of Law No. 5510 on Social Security and General Health Insurance, general health insurance does not cover the financing of chronic diseases of foreign citizens working in Turkey before the date of their commencement of employment.

***At the same time, the chronic diseases of the dependents of foreign workers before the date of their employment are also excluded from the scope of the general health insurance.

The foreign worker must submit a health report to the Social Security Centre/Provincial Directorates stating whether he or his relative suffers from a chronic disease before the date on which he is deemed to be insured.

Most of the claims submitted to the Pozitif-iz Association in 2022 consist of complaints that foreign citizens were infected with HIV by the Social Security Institution (SGK) before the date of enrolment in the GSS, and therefore medicines and treatments were excluded from reimbursement.

HIV (Human Immunodeficiency Virus) affects the white blood cells (C4T cells) which play an important role in the defence against various viruses, infections and cancers. As a result of this infection, the white blood cells lose their function. The loss of white blood cells causes the body's defence system to become ineffective against microbes and cancer. Therefore, the health of people with HIV infection (if not treated) is seriously damaged and the situation can lead to death. However, drugs that effectively suppress HIV (ARTs) are present today to ensure that people living with HIV do not experience any of the above problems, i.e. they live healthy lives and do not progress to the stage of AIDS.

In addition, suppression of viral load with antiretroviral therapy and maintenance of viral suppression eliminates the risk of sexual transmission of HIV. In order to maintain viral suppression, it is very important to take daily medication doses at the exact time every day without interruption, as well as starting treatment.



This scientific reality accepted by all world health authorities was announced by the United Nations Joint Programme on HIV/AIDS (UNAIDS) in 2017 with the slogan '**Undetectable equals Untransmittable**' (**U=U**) in English and 'Belirlenemeyen eşittir Bulaşmayan (B=B)' in Turkish.

It is obvious that HIV-positive people can give birth to HIV-uninfected babies, exist in all areas of social life, work and live their lives with the same rights as HIV-negative people in terms of laws, legislation and human rights if they are successfully treated with medication that prevents HIV transmission. However, the fact that the Social Security Institution ignores this situation and excludes the medicines of many people who are not citizens of the Republic of Türkiye, who live, study and work in Türkiye, from reimbursement in such a matter that is of great importance for public health, can have irreversible and difficult effects on both the healthy life, public health and social life of the person.

For many applicants, the responses and official letters sent to them by the SGK contradict logic and the law, especially the discontinuation of their medication on the assumption that the HIV diagnosis in question has already been made previously. Moreover, HIV-infected people may not show symptoms of the infection (between 2 and 17 years) if they are not tested.

HIV treatment is of great importance for people living with HIV and for public health: without treatment, HIV has an extremely negative effect on the immune system because it can multiply in the body. When it multiplies in large quantities, the immune system is further weakened and the body becomes vulnerable to other health disorders. This is usually the point at which the AIDS stage is defined and becomes a threat to life and public health along with other emerging health conditions.

Medical follow-up and drug treatment of applicants in relation to the infection is crucial. The nature of the treatment requires ART (antiretroviral) treatment, the cost of the drugs is prohibitive for many applicants and individuals depending on their income, and there is no option to choose other drugs than those recommended by the doctor.

In the context of the sanctity of the right to life, which is protected by the (Turkish) Constitution, it is imperative that the use of ART drugs, which are essential for HIV treatment, be included in the scope of reimbursement for foreigners.

The key to achieving the 95-95-95+95 global targets* set by the Joint United Nations Programme on HIV/AIDS (UNAIDS) and being successful in the fight against HIV in economic terms is only possible with diagnosis and drug treatment, especially by keeping new diagnoses to a minimum level to protect both individual and public health.

* The global targets set by UNAIDS to stop the spread of HIV by 2030 are as follows; **1)** 95% of all people worldwide to be tested and diagnosed, **2)** 95% of diagnosed HIV-positive people accessing treatment, **3)** The viral load (the amount of HIV in the blood) of 95% of HIV-positive people who start treatment is suppressed to an unmeasurable level (i.e. Undetectable=Untransmitted), **4)** 95% of people living with HIV who are diagnosed, start treatment and whose viral load is suppressed can use their rights in a manner befitting human dignity without experiencing stigma and discrimination.



LEGAL HUMAN RIGHTS VIOLATIONS OF THE RIGHT TO HEALTH

The right to health is an essential component of the right to life. This right is guaranteed by the Constitution and the European Convention on Human Rights. It is not possible to talk about the right to life and health in an environment where people's health is not protected and the necessary measures are not taken to preserve their lives. Article 56/3-4 of the Constitution, entitled "Healthcare and Protection of the Environment", which emphasises the principle of the welfare state, states: "The State shall ensure that everyone maintains his or her life in physical and mental health, and shall regulate the planning and service provision of healthcare institutions from a single source in order to achieve cooperation by increasing the savings and efficiency of human and material forces. The State fulfils this duty by benefiting and supervising health and social services in the public and private sectors." Furthermore, Article 60 of the Constitution states: "Everyone has the right to social security. The State shall take the necessary measures and establish the necessary institutions to ensure such security."

The right to health is one of the basic human rights protected for everyone, both by international regulations to which Türkiye is a party and by the Constitution. The most commonly used international and national legislation on the right to health in Türkiye are as follows: European Convention on Human Rights, Convention for the Protection of Human Rights and Dignity of the Human Person concerning the Application of Biology and Medicine, Universal Declaration of Human Rights, Constitution of the Republic of Türkiye, Patient Rights Regulation, Medical Deontology Regulation, Code of Professional Ethics for Physicians, Public Health Law, Social Insurance and General Health Insurance Law, Turkish Pharmacists' Deontology Regulation, Law on the Practice of Medicine and Medical Sciences, Law on the Turkish Pharmacists' Association.

As mentioned above, **139 of the 271 applications relate to human rights violations to access to health and, accordingly, the right to access to medical resources. Of these 139 applications, 113 of them were related to human rights violations to access medical resources, and the remaining 26 were related to violations of patients' rights.**

Within the framework of the violation of the right to access to health, 105 of the applicants are foreign nationals, and the Pozitif-iz Association believes that the reason for the increase in violations in this field and the related increase in applications compared to previous years is that ART treatment of foreigners cannot be provided free of charge and that there is an increase in cases due to the inability to keep infectious infections under control in general.



HUMAN RIGHTS VIOLATIONS REGARDING PERSONAL DATA PROTECTION

The majority of foreign applicants are from Turkic states, however, there has also been an increase in the number of Ukrainian and Russian applicants who sought refuge in Türkiye due to the Ukraine-Russia war that started on 24 February 2022. The applicants could not access treatment as they were excluded from the General Health Insurance (GSS) provision system, which does not cover some foreigners. The reason why individuals are excluded from the scope of the GSS is that they were diagnosed with a chronic health condition before they had the legal right to reside and work in Türkiye.

In addition to the abovementioned legislative provisions, the legislation that introduces regulations is the Law on Foreigners and International Protection and the Temporary Protection Regulation. The number of applications from foreign nationals has increased considerably compared to previous years, and as explained above, most of the applicants have citizenship of Turkic states such as Turkmenistan, Uzbekistan, and Kyrgyzstan. The fact that all applications by foreigners are limited to the right of access to health does not, of course, mean that the discrimination and human rights violations faced by these people only deepen in this respect.

Unfortunately, foreign nationals living with HIV are also exposed to violations in daily life that HIV-infected people who are citizens of the Republic of Türkiye are exposed to, and this encounter often manifests itself with burning effects because they are foreigners. **However, the fact that the applications of foreign nationals with HIV are limited to the right of to health can also be explained by the fact that the policies developed in Turkey regarding this intersectionality are insufficient and do not even include the first level of the need hierarchy. 40 of the 271 applications received by the Association in 2022 were related to personal data protection legislation.** In 2021, the most important development concerning violations of personal data protection rights was the opening of MEDULA to all healthcare service providers. In 2022, the repercussions of this situation continued to emerge.

Although applications based on violations of the Personal Data Protection Law (KVKK) have decreased compared to 2021, it is seen that the violations have reached concrete dimensions.

As it is known, with the circular sent to the provincial directorates by the General Directorate of Service

Delivery of the Presidency of the Social Security Institution of the Republic of Türkiye dated 16/08/2021, the requests for restricting access to the MEDULA system made by personal application/e-mail were prevented. Even the restricted accesses based on the applications made on the dates before the circular were opened to the access of healthcare service providers.

Non-Governmental Organizations working in the field of HIV filed a lawsuit in the Council of State in 2021 for the annulment of the said circular, and the trial is still ongoing. Regarding this issue, no progress (!) has been made in 2022.

As there are multiple concrete violations created by this problem, it constitutes a violation of both the Turkish Penal Code, the Constitution, and other regulatory provisions.

Article 20 of the Constitution states: “Everyone has the right to demand respect for his or her private and family life. Confidentiality of private and family life is inviolable”, however, ARTICLE 8 of the European Convention on Human Rights (ECHR) states that “Everyone has the right to respect for his private and family life, his home and his correspondence.”

The issue of recording health information without the permission of the person will also be determined according to the nature of the situation. Namely, HIV infection is an infection that is not transmitted in cases where necessary precautions are taken, and the diagnosis of the person, for example, transferring it to the spouse/partner candidate by obtaining his/her consent, may be a reason for compliance with the law. Apart from that, even if the viral load can be determined, it is not possible to share HIV status both medically and legally, and it is obvious that it clearly violates the patient’s right and private life.

Obtaining information about people’s health without their consent and disclosing it to irrelevant people is more than a criminal offence against the person. Although the MEDULA system appears to be useful for accessing health, simply accessing it by irrelevant third parties entails a number of violations of the law. For example, it is common for workers in pharmacies to access anyone’s previous records through Turkish ID information, even for standard prescriptions, which can lead to stigmatisation and discrimination against the person with HIV.



HUMAN RIGHTS VIOLATIONS ON THE BASIS OF LABOUR LAW

Out of 271 applicants, 51 applied to the association due to violations of legislation on the right to work.

The right to work is a social right that is one of the measures to realize the social state within the principle of the social state. According to Article 49 of the Constitution, "Labour is the right and duty of everyone. The State shall take the necessary measures to raise workers' standard of living, to protect workers in order to improve working life, to support work and to create an economic environment favorable to prevent unemployment."

The international and national legislation most commonly used in labour-related human rights violations in Türkiye are as follows: The European Convention on Human Rights, the Constitution of the Republic of Türkiye, the Universal Declaration of Human Rights, the Labour Law No. 4857, the International Labour Organisation (ILO) HIV/AIDS Code and the ILO Codes of Conduct for Working Life, the Civil Servants Law No. 657, the Turkish Armed Forces Health Fitness Regulation, the Security Forces Health Conditions Regulation, and the Bazaar and Neighbourhood Watch Entrance Examination Regulation.

In Turkish law, there is no legal regulation that would prevent people living with HIV from working or being employed or cause the termination of their employment contract. It is only in the private health regulations and legislation of the police, military, guarding, and guarding professions that living with HIV constitutes an obstacle to entering the profession. Again, the existing national regulations for the aviation sector refer to international regulations and cause an ambiguous situation regarding the right to work of pilots living with HIV and other personnel and candidates working in the aviation sector.

Although the International Labour Organization's "ILO Code of Practice and Conduct on HIV/AIDS and Working Life" explicitly states that "HIV/AIDS examinations should not be requested from people applying for work or currently working", the perception that there is a public interest in collecting data on this health issue, and prejudices against HIV make it difficult for people to oppose these routine HIV tests because they are unlawful.

As in previous years, human rights violations arising from tests required at the time of recruitment are a major problem for healthcare workers; in particular, bullying of the employee and refusal to work are the main violations in such cases.

Developing treatments and definitive cure studies show that although there were some professional regulations in the world in the past years due to this infection, such regulations do not have any function today. So much so that, in a country like the Republic of Türkiye, which has a system that can be an example for many developed countries in the field of health, the existence of these obstacles in terms of the performance of some professions is completely contrary to the requirements of the modern age, science, and medicine, as previously stated.



HUMAN RIGHTS VIOLATIONS BASED ON MILITARY LEGISLATION

How compulsory military service is to be fulfilled or in which cases it is considered fulfilled is regulated in specific laws. It should be noted here that HIV is a clear ground for exemption from military service and this situation is not made dependent on the individual's application or consent. The Turkish Armed Forces (TSK) legislation contains the clearest provisions on this issue and states that individuals with HIV status cannot perform military service. In Türkiye, the most commonly used human rights violations laws based on military service are the following: The Constitution of the Republic of Türkiye, the Military Service Law, the Military Service Ordinance and the Turkish Armed Forces Health Suitability Ordinance.

Out of 271 applicants, only 5 applied to the association for violating rights under military legislation.

As it is understood from the applications received by the Pozitif-iz Association, the situations and problems that people living with HIV may face during military service are far from predictable. Although the relevant legislation of the Turkish Armed Forces sets out the obstacles in this regard, the situation and outcome of each case may differ. The principle of legal security can be defined as the certainty, stability, and predictability of the rules of law, the trust of individuals in the state in all transactions and actions carried out by the administration during the application of these rules to them, and the protection of this trust by law.



HUMAN RIGHTS VIOLATIONS IN CONNECTION WITH CRIMINAL LAW PROVISIONS

15 applicants reported human rights violations in the area in question. However, it was found that **more than half of the applicants had resorted to legal remedies for these violations.** The applications in question here relate to human rights violations to privacy, the prohibition of ill-treatment, the right to a fair trial, the right to freedom of thought and expression under the Constitution, the Turkish Penal Code, the Code of Criminal Procedure and international legislation. **The common denominator of the criminal charges is the unauthorised seizure and disclosure of HIV status against the consent of the persons concerned.**

Most of the applications and the resulting human rights violations took the form of family members and partners of the person living with HIV threatening them and thus turning a situation into a criminal offence. The persons who committed criminal offences received the necessary support to file criminal charges and to request redress from the competent public prosecutor's office. The prosecution and investigation procedures in connection with these requests for redress are still ongoing in 2023.



HUMAN RIGHTS VIOLATIONS BASED ON FAMILY LAW LEGISLATION

Although the Turkish Civil Code, which includes the basic regulations on family law, does not have a direct regulation for people living with HIV, the same mechanisms for divorce, marriage, and reproduction work as those who are not infected with HIV.

There is no legal obstacle for people living with HIV to get married and have a baby in Türkiye. However, especially during the adoption and divorce phase, it can be more painful than any divorce case for those living with HIV.

In 2022, a total of 7 applications were made to the Pozitif-iz Association in this field. 2 of these applications were for divorce, and 5 of them were due to marriage.

One of the divorce filings was that the spouse infected the spouse with HIV (because he/she did not know his/her HIV status), thereby causing a fault in the divorce by fraud. In the other application, he/she declared his/her HIV status to family members without the spouse's consent and pressured them to divorce. In the first application, the first applicant was told that the HIV-infected spouse could be adduced as evidence in divorce proceedings for adultery if the cause of the infection was through unprotected sex, and that it would also fall under criminal law if he/she knew, that he/she is infected, and the other applicant was told that his/her HIV status is personal information, the disclosure of which to others without their consent is a criminal offence under the Turkish Penal Code (TCK) and that he/she can file a criminal complaint if he/she wishes to do so. The second applicant filed criminal charges against her husband and the investigation is ongoing.

However, all the remaining 5 applications are related to the ignorance of the family physicians about the procedure of informing the spouse candidate during the marriage procedures or the process of transferring false information to the spouse candidate, and it is clear that healthcare professionals, especially family physicians, are very inadequate about HIV, treatment and transmission methods in Türkiye.



HUMAN RIGHTS VIOLATIONS RELATING TO THE RIGHT TO EDUCATION, TRAVEL AND HOUSING

In 2022, unlike previous years, a total of 14 applications were submitted this year regarding human rights violations to Education, Travel, and Housing. 5 of these applications are related to human rights violations of the right to education, 6 of them are related to human rights violations to travel and finally 3 of them are related to human rights violations to housing.

First, the intense demand for foreign programs for undergraduate and graduate education in recent years has also affected people living with HIV. Although there is no obstacle for these people to go abroad, especially in European and American countries for education; the official procedures of Australia, TRNC, Russia, and some far eastern countries prevent people living with HIV from receiving education in these countries. In this regard, although 5 of the applicants applied for graduate and undergraduate education in Australia, Australia's procedures preventing the right of people living with HIV to stay legally for a long time prevent their right to education.

Secondly, although there are no obstacles to the entry and exit of people living with HIV in many modern countries around the world, this travel ban continues in Middle Eastern countries such as Saudi Arabia and the United Arab Emirates. The outdated procedures of these countries, even for business, tourism, and education purposes, prevent the travel rights of people living with HIV.

Finally, it was determined that 3 applications received by the Pozitif-iz Association in 2022 were aimed at violating the right to housing. It was determined that all 3 applications were related to the housing problem of dormitory students during higher education. Although there is no legal legislation obstacle that people living with HIV cannot live in dormitories in state dormitories affiliated with the Credit and Dormitories Agency of the Ministry of Youth and Sports of the Republic of Türkiye, there are also HIV tests in the health reports that some dormitory administrations insist on requesting, and this prevents the housing and indirect education rights of people living with HIV.



LEGAL CONSIDERATIONS

In this part of the report, with the information obtained from the applications received by the Pozitif-iz Association, it was tried to include evaluations on whether Türkiye has legislation for people living with HIV, the difficulty of those living with HIV to apply for judicial rights seeking mechanisms, how there are obstacles to seeking rights for those living with HIV in Türkiye, and in which cases those living with HIV can apply to judicial mechanisms.

A- A Brief Overview of the Legislation on People Living with HIV in Türkiye

1- One of the most common questions when talking about HIV and law is whether there are legal regulations to protect the rights of people living with HIV in Türkiye. Unfortunately, there is still no specialized legislation on HIV in Türkiye. However, the laws in general, especially the entire patient rights legislation, also cover those living with HIV. In addition, some vague expressions (general morality, public morality, public health, etc.) that are criticized very much by disadvantaged groups in Turkish laws, of course, create an uncanny ground for those living with HIV.

2- As determined in the reports prepared by the Pozitif-iz Association in previous years, the lack of a specialized law on HIV and the fact that there is a huge gap in the legal legislation on HIV result in the gaps being filled against those living with HIV in practice. As the European Court of Human Rights has found, HIV is still one of the most biased issues in the world and has a huge stigma.

The lack of specific legal regulations on HIV in Türkiye, combined with HIV phobia in the country, leads to the legal gaps being interpreted and filled against those living with HIV during the proceedings. During the proceedings, lawyers working in the field have a great responsibility to interpret these gaps based on human rights. But of course, that's not enough. The rights of a group that is particularly vulnerable to stigmatization should be regulated by law, without leaving it to the initiative of law enforcement, and explicit discrimination and stigmatization should be sanctioned. Otherwise, even judicial jurisprudence and scientific developments cannot prevent discrimination against people living with HIV.

3- Most of the legislation on HIV was not made with primary sources such as laws, but with secondary regulations such as regulations, circulars, and communiqués. Unfortunately, this both makes it difficult

for people living with HIV to learn about their rights and makes it very difficult to understand what is legally correct in our country where the research culture is very weak.

It is possible to open the aforementioned situation with a discussion reflected on social media in 2020; It was discussed at length on social media whether there is a legal basis for requiring mandatory HIV testing in pre-marital tests. In this debate, people living with HIV were targeted by those who said that there was no HIV test among marriage tests and that there was no legal basis for municipalities to require this test.

According to Article 136 of the Turkish Civil Code, among the documents that must be submitted to the marriage registrar's office in the marriage application, "a medical report showing that there is no obstacle to marriage" is also listed. In Regulation No. 2169 on Marriage, reference is made to the "Regulation on Marriage Examination" regarding the procedures and principles under which this medical board report will be issued. The Regulation on Marriage Medical Examination specifies how the marriage medical examination is to be conducted and refers to the General Hygiene Law by stating that "If he/she believes that he/she is disabled by one of the health conditions mentioned in Articles 123 and 124 of the General Hygiene Law, he/she does not issue the medical report and keeps the documents in his/her file and notifies the government physician to whom the matter belongs."

In the relevant articles of the General Hygiene Law (Articles 123 and 124), syphilis, gonorrhea, mild chancre, leprosy, and advanced yellow tuberculosis are counted among the mental conditions that may prevent marriage. In these cases, the law states that a report stating that there does not impede marriage can be issued after the health problem has been treated. As will be seen by those who follow this "complicated" path, HIV is not one of the conditions that prevent marriage, nor is it one of the conditions that are considered compulsory to be examined in the examination for the pre-marital health report. Despite this, a significant number of municipalities in Türkiye require mandatory HIV testing from couples applying for marriage. When this situation is reflected on social media, prejudices against HIV are seen everywhere with arguments that do not want to be repeated here but are tried to be legitimized with concepts such as "general health, general morality". In the end, it remains a mystery as to who has access to accurate and up-to-date information and to what extent.

B- The low number of requests for redress for human rights violations due to HIV and related assessments.

Out of the 271 applicants who applied to the association in 2022 with allegations of human rights violations, 49 stated that they intend to seek judicial remedies. Although this number indicates a significant increase compared to previous years. The rate of exercising the right to complain about violations of labour rights and criminal law rights increased.

- The number of doctors who inform people about their rights after HIV diagnosis or refer them to facilities where they can get information about their rights is quite low. Some of the doctors who disclose the HIV diagnosis only say what the person can no longer do(!) (e.g. you cannot join the military etc.) and do not share what the person can use despite the human rights violations the person may face while living in a country like Turkey where prejudice against HIV is very



high. At this point, it is very important and useful to ensure that people diagnosed with HIV are referred to an HIV expert, a peer counsellor or a social worker working in the field of HIV and receive information.

- According to the general opinion in Türkiye, trust in public officials, especially law enforcement officers, has gradually decreased. Again, since it is rare in the history of the country for public officials to be prosecuted for offenses committed in the course of their duties, the applicants believe that there would be no sanction in the event of such a violation.
- The long duration of the proceedings in Türkiye and the possibility that support mechanisms may fall apart during this long period may cause applicants to hesitate. "Justice delayed", which manifests itself in situations such as even a criminal complaint waiting for months in the police station/prosecutor's office cabinets, indictments not being prepared, and hearings being held at very long intervals, can have a deterrent effect when it is weighed against the difficulties to be endured during this time.
- Again, the ignorance and prejudices of public officials about HIV during the trials can prevent people from entering this process. For example, the applicant, who had to go to the police station or prosecutor's office to file a criminal complaint, avoided filing a complaint, thinking that his/her private life might be scrutinized too much, that his/her family or relatives might be informed about his/her HIV status, and that he/she might be asked questions/assigned questions about his/her sexual orientation/gender identity.
- Especially in cases of discrimination, the fact that it is very difficult to prove the violation is one of the reasons for applicants not to use remedies. For example, the applicant, who was not hired because he was living with HIV, was told that he was not hired for this reason in a face-to-face and private conversation with the employer's representative. Or the ill-treatment by a physician took place in a bilateral interview due to the nature of the patient-physician relationship and there are no witnesses. In these cases, judicial mechanisms are thought to be ineffective, as people do not have any evidence to prove their claims and there is no law protecting people living with HIV, which regulates that the statement of the disadvantaged person in such cases will be the basis for starting the investigation.

C- Evaluations on the Conditions Under Which Persons Living with HIV Apply for Legal Remedies.

- It was observed that applicants were more willing to apply to the judiciary if they were unlikely to meet/interact with the person they complained about again.
- The fact that the applicants are aware of their rights, have participated in advocacy, capacity building, and peer training of associations working in the field of HIV, and have eliminated their prejudices about HIV leads them to be more agile in identifying that they have been subjected to human rights violations and demanding their rights.



- The fact that applicants are in contact with peer counsellors, especially from the association, and believe that they are not alone in the court process and that they can experience solidarity and make their voices heard when they are exposed to or triggered by human rights violations during the court process, makes it easier for them to take steps to remedy the violation.
- Cases where there are precedent judicial decisions, such as unjust termination of the employment contract by the employer, and violation of privacy by the physician, constitute a presumption (clue) that the application may yield results, and therefore judicial mechanisms are more frequently used in these matters.



CONCLUSION AND RECOMMENDATIONS

Unlike previous years, the main framework of the human rights violations reports this year is the “FOREIGNERS and GENERAL HEALTH INSURANCE PROBLEM”. Following the evaluations, we have made above, the steps to be taken immediately are as follows:

- The right of all people living with HIV within the borders of the Republic of Türkiye to access treatment, whether they are citizens of the Republic of Türkiye or not, should be considered within the scope of the right to life.
- All relevant institutions should make the necessary arrangements for the Social Security Institution for foreigners living in Türkiye to benefit from HIV treatment and follow-up opportunities before/after the scope of GSS.
- Regardless of their citizenship status, those who have a residence/work permit within the borders of the Republic of Türkiye or who are under asylum seeker/protection status and live with HIV should also be granted free treatment to asylum seekers and refugees, in cooperation with the Ministry of Health, the Social Security Institution, the Turkish Medicines and Medical Devices Agency, the United Nations, the World Health Organization and the European Union.
- The district governorship Social Assistance and Solidarity Foundations should facilitate the application requirements for the green card and should only be based on one’s income.
- The Ministry of Health should disseminate the ‘HIV/AIDS Diagnosis and Treatment Guide’ among all branches that do not monitor HIV other than infectious diseases.
- With the encouragement of the Ministry of Health, local governments should increase the number of Voluntary Counseling and Testing Centers (VCTCs) across Türkiye. All GDTMs should provide consultancy services before and after the test.
- The Ministry of Health should establish the HIV/AIDS monitoring and evaluation system urgently and share data transparently.

- The Ministry of Health should take the necessary measures to prevent the treatment of people living with HIV in crises affecting the health system in situations such as pandemics or disasters. Again, in such international crises, the necessary protocols and agreements should be made for those stranded abroad to access medicine.
- Family Physicians should inform those who apply for marriage procedures about HIV and share the information that being HIV positive does not prevent marriage and having children.
- The Ministry of Justice should eliminate the problems preventing prisoners' and convicts' access to medication and treatment, implement voluntary HIV testing and counseling for prisoners and convicts, and prevent the isolation of prisoners and convicts living with HIV.
- The Ministry of Justice should provide training to law enforcement agencies and members of the judiciary to increase the perception of privacy in judicial processes and work with non-governmental organizations to strengthen the access of people living with HIV to justice.
- The Ministry of Labour and Social Security, in cooperation with workers' and employers' unions, should prevent the demand for an HIV test at recruitment and the termination of the employment contract due to the workers living with HIV.
- The Ministry of Family and Social Services should identify the specific needs of groups subjected to multiple discrimination, such as women living with HIV, children, and LGBTI+ persons, and take them into account when developing policies on HIV.
- The Ministry of National Education should include up-to-date and comprehensive HIV knowledge in the curriculum at all levels of education and training institutions.
- The Ministry of Culture and Tourism should produce public service announcements containing up-to-date information on HIV, directing people to HIV testing, mentioning treatment opportunities, and preventing discrimination and stigmatization.
- All ministries, in cooperation with the Communications Directorate of the Republic of Türkiye, should establish legislation to ensure, maintain, and supervise these standards and to impose sanctions on those concerned in case of failures/negligence. Firstly, "health status" should be added to the article of the Constitution regulating equality before the law, and then necessary amendments should be made to all relevant laws.



2022 CASE SOLUTIONS

APPLICATION NO 1: The applicant shared their HIV status with their partner whom they met on a social dating application. They were then repeatedly harassed by their partner so that their HIV status and sexual orientation would be disclosed. They contacted the association to find out what they could do legally if their partner publicized the matter.

LEGAL GROUNDS: Constitution Article 20; ECHR Article 8; UDHR Article 12; Law No. 6284 Article 5; Turkish Penal Code Article 134, Article 136.

LEGAL JUSTIFICATION: The legal mechanisms that the applicant can apply before the disclosure of HIV status and the legal mechanisms that the applicant can apply after disclosure differ. The applicant may apply protective and preventive measures within the scope of Law No. 6284 to prevent the sharing of HIV status. Law No. 6284 regulates the procedures and principles regarding the measures to be taken to protect women, children, family members, and unilaterally persistent follow-up victims who have been subjected to violence or are in danger of being subjected to violence and to prevent violence against these people. The law defines violence as “all kinds of physical, sexual, psychological, verbal or economic attitudes and behaviors that occur in the social, public or private sphere, including acts that result or are likely to result in physical, sexual, psychological or economic harm or suffering of the person, threats and pressure against it or arbitrary obstruction of freedom”. In this context, the applicant may apply legal remedies to benefit from the preventive measures listed in Law No. 6284. The preventive measures listed in the law that the applicant may request are listed in Article 5 of the law. With these measures, the applicant can obtain a decision that the ex-partner who persistently harasses them should not use words and behaviors that include threats of violence, insult, insult or humiliation; should be immediately removed from the joint residence or place of residence; should not approach the applicant’s residence, school or workplace; should not approach the applicant’s relatives, witnesses and children, without prejudice to the cases regarding the establishment of a personal relationship, even if the applicant has not been subjected to violence; should not damage the applicant’s personal belongings and household items; should not disturb the applicant through communication tools or otherwise, etc.

As can be seen, under the law, it may be decided to stop the threats of the perpetrator of violence and to prevent the applicant from communicating with himself and his relatives, including his family.



Precautionary decisions to be taken per this law can be requested from the family court judge, the property manager, or the law enforcement unit in the fastest and easiest place to reach. Evidence is not sought for the precautionary decision; it is sufficient to apply with a petition in which the events are properly explained. In addition, the precautionary decisions taken are for some time, and if the threat of violence has not ended despite the expiry of the period, the period may be extended in case of re-application. The measure decision is notified to the parties, and if the perpetrator of violence violates the decision after the notification, forced imprisonment is applied. If the applicant's HIV status is shared by his/her partner without his/her consent, a criminal complaint may be filed under the provisions of the relevant Turkish Penal Code. Since the HIV status of the person is a health condition, it is "sensitive personal data". So, it has superior protection. **It is a crime to share personal data with third parties.** Again, **HIV status is intrinsic to a person's private life, and disclosure of HIV status is a violation of privacy.** For these reasons, if the HIV status is disclosed by the applicant's partner, he/she may file a criminal complaint for violating the privacy of private life within the scope of Article 134 of the Turkish Penal Code and unlawfully giving or seizing the data within the scope of Article 136 of the Turkish Penal Code.

APPLICATION NO 2: The applicant is a citizen of the Republic of Türkiye residing in the TRNC. As a result of the tests, he was deported due to his HIV status. He wanted to know what he could do legally by applying to the association.

LEGAL GROUNDS: Article 23 of the Constitution, Additional Protocol No:6 to the ECHR, Article 13 of the Universal Declaration of Human Rights, Article 12 of the UN Political and Civil Rights Convention.

LEGAL JUSTIFICATION: Freedom of travel is one of the basic human rights defined as the ability to go from place to place in any way and to move freely. At the same time, the right to travel, which is one of the first-generation rights, is one of the rights that imposes the duty not to do anything to the state and not to interfere in the field of the person. *According to Article 23 of the Constitution*, it is defined as follows: Everyone has the freedom to settle and travel. Freedom of establishment may be limited by law to prevent the commission of a crime, to ensure social and economic development, to realize healthy and regular urbanization, and to protect public goods; freedom of travel may be limited by law to prevent the commission of a crime and due to criminal investigation and prosecution.

The freedom of the citizen to go abroad may be limited due to the duty of citizenship or criminal investigation or prosecution. Citizens cannot be deported and deprived of the right to enter the country. However, although there are no obstacles in the travel and entry and exit of people living with HIV in many countries around the world, this travel and settlement ban continues in countries such as Saudi Arabia, TRNC, the United Arab Emirates, and the travel rights of people living with HIV, even for business, tourism, and education purposes, prevent the travel rights of these countries.

APPLICATION NO 3: The applicant is a foreign national living with HIV and does not have a work permit. The applicant requested information from the association on whether the HIV status constitutes an obstacle for foreign nationals to obtain a work permit in Türkiye.



LEGAL GROUNDS: Article 16, Article 48, Article 49 of the Constitution; Article 8 of the ECHR; Article 23 of the IHEB; Article 9, Article 21 of the ICC.

LEGAL JUSTIFICATION: According to Article 48 and Article 49 of the Constitution, everyone has the right to work. Within the scope of Article 16 of the Constitution, for foreigners, the right to work granted to everyone is allowed for some studies, and for some studies, a limitation has been introduced. Foreigners who need permission to work due to the regulations in the International Labour Law and the regulations regarding the implementation of the relevant law do not need to obtain any health report to apply for a work permit. Moreover, the employee's HIV status is not an obstacle to his/her participation in working life, and therefore preventing his/her participation in working life will constitute a discriminatory intervention.

Article 9 of the International Labour Law regulates the reasons for the rejection of work permit applications of foreigners. Although the applicant does not need to be notified separately, the applicant's learning of the applicant's HIV status does not result in the rejection of the work permit application. The provision of "foreigners who are inconvenient to work in Türkiye in terms of public health", which is among the reasons for rejection, is not a provision that covers HIV, considering the transmission routes of HIV and its ineffectiveness in working life with its material facts. As a result, the applicant's HIV status does not require a different evaluation and procedure than other foreign workers. It is a violation of the prohibition of discrimination that the applicant is subjected to different intervention than other foreign work permit applicants only due to his/her HIV status. If a refusal decision is given, the applicant may appeal to the Ministry of Family, Labour, and Social Services within thirty days from the date of notification of the refusal decision under Article 21 of the International Labour Law. In case of rejection of the objection, it may apply for administrative judicial remedy.

APPLICATION NO 4: When the applicant was diagnosed with HIV, he shared his HIV status with his co-worker, who shared it with their employer. As a result, the applicant was exposed to mobbing by his employers. The applicant contacted the Association to find out what he could do legally.

LEGAL GROUNDS: Article 122 of the TCC, Article 5 of the Labour Law, Article 20, Article 48, Article 49 of the Constitution; Article 8 of the ECHR; Article 12, Article 23 of the UDHR; Article 17 of the Labour Law; Article 117, Article 134, Article 136 of the TCC.

LEGAL JUSTIFICATION: The employer may terminate the employment contract with the employee under the conditions and methods specified in the Labour Law. **The fact that the applicant is living with HIV does not give the employer the right to unilaterally terminate the employment contract based on a justified or valid reason.** Article 18 of the Labour Law classifies workers who work within the scope of the labour law as workers who are within the scope of job security and those who are not. As stated in Article 18 paragraph 1 of the Labour Law, for employers to terminate the employment contract of employees working within the scope of job security, there must be a valid reason arising from the competence or behavior of the employee or the requirements of the enterprise, workplace or business. Termination, since the employee is living with HIV, will be considered among the similar reasons within the scope of "race, color, sex, marital status,

family obligations, pregnancy, birth, religion, political opinion, and similar reasons” clearly stated in subparagraph d of paragraph 3 of the same article and will not constitute a valid reason.

For employees who are not subject to job security, the employer is not obliged to show any reason when terminating the employment contract. However, this freedom is limited by the prohibition of abuse of the right of termination regulated by Article 17 paragraph 4 of the Labour Law. In this context, in the objective reality that the fact that the employee is living with HIV will not have any effect on the continuation of the employment relationship, the termination of the employment contract of the employee, for this reason, is considered an abuse of the right of termination.

Another way that the employer can use when terminating the employment contract with the employee is the immediate termination of the employment contract for just cause under Article 25 of the Labour Law. Although employers usually try to include the fact that the employee is living with HIV among the health reasons within the scope of this article, in today’s reality, it is not possible to include the HIV status of the person among the justified health reasons within the scope of the article. Within the scope of the same article, **failure to disclose the HIV status of the employee to the employer during the employment negotiations or misinforming the employee in this regard cannot be considered as making misleading statements about the essential points in the employment relationship within the meaning of Article 25 paragraph 2 of the Labour Law and therefore does not lead to immediate termination of the employment contract for just cause.** As a result, no situation prevents the execution of the labour relationship, and it would not be legally possible for the employer to obtain a right based on its fault about a piece of misleading information that it has obtained through its fault. Because the questions to be asked to find out the HIV status of the prospective worker constitute unlawful questions. The employee is not obliged to answer, nor is he/she obliged to answer correctly.

Of course, the employer must investigate whether the employee can find other solutions before terminating the employment relationship. Terminations contrary to this principle, which is referred to as the principle of last resort, will also be unlawful. As **a result, it is unlawful for the employer to terminate the employment contract with the employee, whether the employee is covered by job security or not, solely because the employee lives with HIV.** In this case, the employee can use lawsuits such as reinstatement, determination of invalid termination, as well as the compensation rights granted to him under the law.

Data on the HIV status of the applicant is health data. According to the Law on the Protection of Personal Data, health data are considered among special categories of data and their processing is subject to very severe conditions. The fact that the applicant’s HIV status, which is one of the private life and private data of the applicant, is learned by the employer against his consent violates the rights to privacy and protection of personal data protected by Article 20 of the Constitution. The same acts also led to many offenses under the Turkish Penal Code. In this context, the aforementioned acts that will violate the confidentiality of private life under Article 134 of the Turkish Penal Code (TCK) will of course also give rise to the offense of unlawfully giving or obtaining data within the scope of Article 136 of the TCK. The dismissal of the applicant for this reason also leads to the offense of violation of freedom of work and labour regulated under Article 117 of the TCK.



APPLICATION NO 5: The applicant stated that he was going to undergo a rhinoplasty operation in a private hospital and that he had informed the physician about his HIV status. The hospital, by returning to the client, canceled the surgery because adequate equipment was not available. The applicant contacted the association to find out what he could do about this matter legally.

LEGAL GROUNDS: Constitution Article 17, Article 20, Article 56; ECHR Article 8; UDHR Article 25; HHL Article 6, Article 8, Article 11; TİHEK Article 3, Article 5; Regulation on Private Hospitals; Regulation on Private Health Institutions for Outpatient Diagnosis and Treatment.

LEGAL JUSTIFICATION: The Regulation on Private Hospitals regulates the characteristics of private hospitals and the personnel working therein. The qualification requirements for the medical procedure to be performed in this regulation and the materials to be found are regulated in detail. In addition to all regulations, the obligation to carry out these qualification conditions has been imposed on these enterprises. Here, the qualification requirements of private hospitals are arranged according to the type and departments of medical interventions to be applied, not according to the type of infections of patients. As such, these centers, which reject the applicant living with HIV who applied to them for a procedure performed within their body, violate the prohibition of discrimination.

Under Article 6 of the Patient Rights Regulation, the applicant has the right to benefit from healthcare services per justice and equity. According to Article 8 of the aforementioned regulation, the patient has the right to choose the health institution and institution and to benefit from the healthcare service provided in the health institution he/she chooses, provided that the procedures and conditions stipulated by the legislation to which he/she is subject are complied. Per Article 11 of the same regulation, the patient has the right to request diagnosis, treatment, and care by medical requirements. The applicant may apply in writing to the patient rights unit, which is obliged to establish all health centers where he/she cannot receive services because these 3 rights are violated.

The applicant may also leave a notification and complaint record to the Patient Rights Board within the Provincial Health Directorate and ALO 184 SABİM (Ministry of Health Communication Center) regarding his/her violated rights. Again, the applicant may apply to TİHEK since it is clearly stated in Article 3 of the Human Rights and Equality Institution of Türkiye Law No. 6701 that discrimination cannot be made due to health status and it is stated that private law persons who will provide healthcare services following Article 5 cannot make these discrimination while providing this service.

It should be noted here that, by Article 17 (2) of the TİHEK (HUMAN RIGHTS AND EQUALITY INSTITUTION OF TÜRKİYE) Law, a written application must be made to the discriminating institution before applying to TİHEK. If the Institution determines that the prohibition of discrimination has been violated because of its examination, it will impose an administrative fine on the business.

APPLICATION NO 6: The applicant, a heavy industry worker, learned about his HIV diagnosis as a result of the health report required for employment. Because of his HIV diagnosis, he applied to the association to find out what he could do legally about it, mentioning that he had not been hired.

LEGAL GROUNDS: Constitution Article 20, Article 48, Article 49; ECHR Article 8; UDHR Article 12, Article 23; ILO Code of Practice and Conduct on HIV/AIDS and Working Life; Labour Law Article 5; TIHEK Article 3, Article 6; Regulation on the Establishment, Duties and Working Principles of Provincial and District Human Rights Boards Article 9; Turkish Penal Code Article 117; Regulation on the Duties, Authorities, Responsibilities and Training of Workplace Physicians and Other Health Personnel.

LEGAL JUSTIFICATION: Among the tests that may be requested from the applicant for recruitment, there is no HIV test as required by the **“Recruitment / Periodic Examination Form”**. Likewise, the International Labour Organization (ILO), one of the specialized organizations of the United Nations, of which Türkiye is a member, has introduced regulations on working life, as per the “ILO Code of Practice and Conduct on HIV/AIDS and Working Life”: “HIV/AIDS examination should not be requested from people applying for a job or currently working. Considering these provisions, it is contrary to the law to require the applicant to take an HIV test for employment. In this case, the employer’s refusal to hire the prospective employee upon learning that the prospective employee is living with HIV solely for this reason violates the prohibition of discrimination in both international conventions to which Türkiye is a party and domestic law.

Again, this unfair behavior of the employer constitutes a violation of the equal treatment obligation of the employer regulated by Article 5 of the Labour Law. The candidate worker can apply to TIHEK for discrimination in recruitment because he/she is living with HIV since Article 3 of Law No. 6701 on the Human Rights and Equality Institution of Türkiye clearly states that discrimination cannot be made due to health status and Article 6 specifically states that such discrimination cannot be made in recruitment.

It should be noted here that, following Article 17 (2) of the TIHEK Law, a written application must be made to the discriminating institution before applying to TIHEK. If TIHEK determines that the prohibition of discrimination has been violated because of its investigation, it will impose an administrative fine on the employer. Again, a candidate worker who is discriminated against in recruitment due to living with HIV can apply to the Human Rights Boards in the province or district where he/she is located.

According to Article 9 of the Regulation on the Establishment, Duties, and Working Principles of Provincial and District Human Rights Committees, these committees are tasked with carrying out the necessary work to prevent all forms of discrimination. In this respect, the Boards, that examine the violation notifications made to them, notify the Chief Public Prosecutor’s Offices or the relevant administrative authorities, if required by the results they reach, and follow up on the outcome.

This unfair and unlawful attitude of the employer will violate the freedom to work, which is accepted and protected in the Constitution and international texts, and at the same time constitutes the offense of violation of freedom of work and work per Article 117 of the Turkish Criminal Code No. 5237. The candidate worker may also exercise his/her right to file a complaint against the employer based on the aforementioned provisions as a result of discrimination due to living with HIV.

APPLICATION NO 7: The general practitioner to whom the applicant went to get the health report required for marriage procedures told the client that he could not give a health report due to his HIV status. The applicant contacted the association to find out what he could do about this matter legally.



LEGAL GROUNDS: Article 17, Article 20 of the Constitution; Article 10 of the Biomedicine Convention; Article 8 of the ECHR; Article 5, Article 11, Article 21 of the HHY; Article 5, Article 24 of the HMEK.

LEGAL JUSTIFICATION: Continuous learning is crucial in the ever-evolving medical profession. Article 5 of the Rules of Professional Ethics of Medicine states that “The primary duty of the physician is to protect the life and health of the person by trying to prevent diseases and to heal patients by fulfilling scientific requirements. Observing human dignity during professional practice is also the primary duty of the physician. The physician closely monitors the developments to fulfill these obligations. “In particular, it is the most natural right of patients to expect physicians working in an area where new scientific information is constantly obtained, such as HIV, to be aware of these developments. It is a scientific fact that people living with HIV can have a baby naturally if certain conditions occur. Even if a physician, whether they work in this field or not, does not know this information, they should certainly investigate the patient’s question and inform the patient without prejudice. It is against the rules of medical professional ethics for the physician to mislead the patient due to his prejudice or concerns that do not comply with scientific developments. Likewise, since the patient sees the physician as a specialist, he/she may be hopeful or disappointed with what his/her physician says.

In Article 24 titled “Use of the Effect on the Patient” of the Rules of Professional Ethics of Medicine, this situation is stated as “The physician cannot use the effect on the patient for other than medical purposes.” In addition to all these ethical rules, Article 11 of the Patient Rights Regulation regulates that the patient has the right to be diagnosed, treated, and cared for following the requirements of modern medical knowledge and technology.

In light of this information, considering that one or all of the options where the physician does not follow the scientific developments in the field of a-) does not provide the correct information to the patient due to the bias of b-), the applicant’s complaint to the Turkish Medical Association about his/her physician and the application of the physician to the patient rights unit of the hospital where he/she works are legal tools that he/she can use.

However, the Public Health Law does not specify HIV infection among the diseases that prevent marriage. Many people in Türkiye learn that they are infected with HIV as a result of the tests requested for marriage procedures. For this reason, it is necessary to obtain a consent letter from the spouse candidates before the HIV test, and if it is learned as a result of the test that the spouse candidate is infected with HIV, a health report should be issued stating that there is no obstacle to the marriage of the spouse candidates.

APPLICATION NO 8: The applicant stated that he/she did not want to submit the report in this way, seeing that the HIV test was requested in the health report requested by the employer at the time of employment and that the HIV status was written in the report as a result of the test. The applicant contacted the association to find out what he could do about this matter legally.

LEGAL GROUNDS: Article 20, Article 48, Article 49 of the Constitution; Article 8 of the ECHR; Article 12, Article 23 of the IHEB; Article 10 of the Biomedicine Convention; Article 23 of the HHY; Article 9 of the HMEK; Article 6, Article 11, Article 13 of the KVKK (PDDL); Article 3, Article 6 of the TIHEK; Article 136 of the TCK 137. 73

LEGAL JUSTIFICATION: The data obtained regarding the applicant's HIV test and the resulting HIV status is health data. According to the Personal Data Protection Law, health data are considered among special quality data groups and their processing is subject to very severe conditions.

The fact that the physician who prepared the medical report against the consent of the applicant's HIV status, which is related to his/her private life and is one of his/her sensitive data, shares it with the hospital management and that all hospital personnel learn it violates the rights to privacy and the protection of personal data protected by Article 20 of the Constitution.

Again, with the fact that the relationship between the relevant physician and the patient is a patient-doctor relationship, as per Article 23 of the Patient Rights Regulation, the information obtained due to the provision of healthcare services should be kept confidential as a rule. Pursuant to Article 9 of the Medical Professional Ethics Rules published by the Turkish Medical Association, the secrets learned while practicing the profession of physician cannot be disclosed. In this respect, sharing the HIV status of the applicant by the relevant physician gives rise to the professional responsibility of the relevant physician. At the same time, the aforementioned actions of the relevant physician cause the crime defined in Article 136 of the Turkish Criminal Code titled "Giving or seizing data unlawfully".

Article 137 of the Turkish Penal Code, states that taking advantage of the convenience provided by a certain profession for the crime of 'giving or seizing data unlawfully' is a aggravating reason. The relevant physician also has criminal responsibility in this context.

In addition to all these, what is meant by data processing is defined in Article 3 of the relevant law titled Definitions. **Every activity carried out for personal data, including the phase of deletion/destruction/anonymization from the acquisition of personal data, is within the scope of processing activities.** In this context, every action taken by the employer hospital management from learning the HIV status of the applicant's health data and privacy to sharing it with other employees is considered data processing. In this context, the applicant may request his employer to terminate the processing activity contrary to this law following Article 11 of the PPDL.

If a satisfactory solution is not provided by the employer, the applicant may exercise his/her right to complain to the Personal Data Protection Board under Article 13 of the said law. At the same time, **employers are obliged to provide a work environment for their employees where they are not subject to discrimination and stigma.** In this context, the Turkish Human Rights and Equality Institution can apply to TIHEK as it is clearly stated in Article 3 of Law No. 6701 that discrimination cannot be made due to health conditions, and it is specifically stated that these discriminations cannot be made in employment and working conditions as per Article 6. If the Institution determines that the prohibition of discrimination has been violated because of its investigation, it will impose an administrative fine on the employer.

APPLICATION NO 9: The applicant shared his/her HIV status with the emergency physician during the examination in the emergency department, was exposed to discriminatory words by the physician for this reason, and the physician refused treatment. The applicant contacted the association to find out what he could do about this matter legally.



LEGAL GROUNDS: Constitution Article 17, Article 20; Biomedicine Convention Article 10; ECHR Article 8; HHY Article 5, Article 11, Article 21; HMEK Article 5, Article 24, TCK.257, TCK.122, Medical Deontology Regulation Article 2.

LEGAL JUSTIFICATION: Article 5 of the Code of Ethics of the Medical Profession: “The primary duty of the physician is to protect human life and health by trying to prevent diseases and to cure patients by fulfilling scientific requirements. Observing human dignity during professional practice is also the primary duty of the physician. To fulfill these obligations, the physician closely monitors developments.” It is the most natural right of patients to expect physicians working in a field such as HIV, where new scientific information is constantly obtained, to be aware of these developments. It is known that people living with HIV can have a baby naturally if certain conditions are met. Even if a physician does not know this information, he/she should certainly investigate the patient’s question and inform the patient without prejudice. It is also against the rules of professional ethics for a physician to mislead a patient due to prejudice or concerns that are not in line with scientific developments. Likewise, since the patient sees the physician as a specialist, he/she may be hopeful or disappointed with what his/her physician says.

Article 24 of the Code of Professional Ethics of Physicians titled “Use of Influence on the Patient” states that “The physician may not use his/her influence on the patient for purposes other than medical purposes.” In addition to all these ethical rules, Article 11 of the Patient Rights Regulation regulates that the patient has the right to be diagnosed, treated, and cared for in accordance with the requirements of modern medical knowledge and technology. The fact that the patient is HIV-positive is not a reason for the physician to refuse treatment. Therefore, although the client’s right to receive treatment as required is taken away, a model of thinking such as depriving the patient of his/her rights and/or the right to diagnosis and treatment as required if the person is living with HIV is unacceptable. This is against the law. In light of this information, considering that one or all of the options that the physician a) did not follow the scientific developments in his field and b) did not provide the correct information to his patient due to his prejudice, the applicant’s complaint to the Turkish Medical Association about the physician and the application to the patient rights unit of the hospital where the physician works are legal tools that the applicant can use.

APPLICATION NO 10: The applicant learned that he was HIV Positive during routine screening tests while continuing to work, and subsequently shared the situation with the workplace physician, after which the HIV status was shared with the workplace authorities by the relevant physician, and the applicant was placed on unpaid leave. The applicant contacted the association to find out what he could do about this matter legally.

LEGAL GROUNDS: Right to respect for the right to privacy (Article 20 of the Constitution, Article 12 UDHR, Article 8 ECHR, Article 134 of the Turkish Penal Code), Right to the protection of personal health data (Article 20 of the Constitution, Article 12 UDHR, Article 8 ECHR, Article 6 of the KVKK, Article 135, 136, 137 of the Turkish Penal Code), Article 258 of the Turkish Penal Code, Freedom of work, study and contract (Article 48, 49 of the Constitution, Article 23 UDHR, Article 117 of the Turkish Penal Code), Prohibition of discrimination (Article 10 of the Constitution, Article 2 UDHR, Article 14 ECHR, Article 5 of the Labour Law).

LEGAL JUSTIFICATION: Physicians are persons who are obliged to keep secrets, and the violation of this obligation and its consequences are regulated by the provisions of the Turkish Penal Code and the relevant legislation. Article 258 (1) of the Turkish Penal Code: A public official who discloses or publishes documents, decisions, orders, and other notifications that are given to him/her due to his/her duty or that he/she has received information for the same reason and that should remain confidential or facilitates the acquisition of information by others in any way, shall be sentenced to imprisonment from one to four years. In the justification of the said article: the disclosure of the secret related to the public duty is punished.

The crime in question occurs by disclosing or publishing matters that should remain confidential or by making it easier for others to obtain information in any way. The perpetrator of the crime will be a public official. The subject of the crime is information that is related to the public duty performed and should be kept confidential, that is, kept secret. Article 5/f and further of the Regulation on Patients' Rights: **The most concrete and detailed regulation of the physician's obligation to keep confidentiality is regulated in the Patient Rights Regulation. In subparagraph f of Article 5 of the relevant regulation regulating the principles to be followed in the provision of healthcare services; It is regulated that the confidentiality of the patient's private life and family life cannot be touched, except in cases permitted by law and medical necessities.**

Article 23 of the Regulation In Article 23 of the Regulation, it is stated that the information obtained due to the provision of healthcare services cannot be disclosed in any way except as permitted by law, and even if it is based on the consent of the person, disclosure of the information in cases that result in the complete renunciation of personal rights, transfer of this right to others or excessive limitation of this right, The rule stipulates that the disclosure of information that is likely to harm the patient without a legally and morally valid reason does not remove the legal responsibility of the discloser, that the disclosure of information that is likely to harm the patient without a legally and morally valid reason also entails the legal and criminal responsibility of the personnel and other persons, and that the patient's identity information cannot be disclosed without consent in activities carried out for research and training purposes.

In the "Code of Professional Ethics for Physicians" adopted by the Turkish Medical Association, the obligation to keep confidentiality is specifically mentioned as "A physician shall not disclose the confidential information from patients that the physician has learned during the practice of their profession" (Article 9). Based on the fact that the most important aspect of the information characterized as a secret within the scope of the physician's obligation to keep secrets is the lack of publicity, the information given to the physician on the condition that it remains confidential and the things that the physician learns in the course of performing their profession can be evaluated within the scope of secrets. The term "confidential" should be interpreted broadly, as the physician's obligation to keep secrets constitutes the basis of professional ethics and is also protected by the Constitution (Article 20).

This concept covers not only the type and development of the disease, diagnosis, measures, psychological disorders, material and mental disorders, patient files, x-rays, and examination results, but also all personal family, professional, economic, and financial situations. The important point is the purpose of obtaining the information during the execution of the profession. **Considering the secret of the patient, this should be considered not only as information about the patient's health but also as information that concerns other special conditions of the patient. The obligation to keep secrets is**



also imposed on other health personnel other than the physician. In this sense, in addition to the physician who personally performs the treatment, other physicians, assistants, midwives, nurses, caregivers, and administrative officers who are consulted are also under this obligation and are responsible for their violation.

Article 136 (1) of the Turkish Penal Code: The person who unlawfully gives, disseminates, or obtains personal data to another person shall be punished with imprisonment from two to four years. **In the Justification of Article 136 of the Turkish Penal Code: Giving, disseminating, or seizing personal data to others in violation of the law, whether registered in accordance with the law or not, is defined as an independent crime.** Accordingly, it is clearly contrary to the law and professional ethics that the physician, who is under the obligation of confidentiality, violates the obligations required by the medical duty and spreads the personal health information of the person to the employees of the institution who are not even related to the person. In light of this information, filing a criminal complaint against the relevant physician to the Chief Public Prosecutor's Office and applying to the Provincial Health Directorate are legal tools that can be used.

APPLICATION NO 11: The applicant stated that the information regarding the ART drugs and drug reports he used was disclosed to third parties by the pharmacy employee and this situation continues. He wanted to know what he could do legally by applying to the association.

LEGAL GROUNDS: The right to respect for the right to privacy (Article 20 of the Constitution, Article 12 of the UDHR, Article 8 of the ICCPR, Article 134 of the Turkish Penal Code), the right to protection of personal health data (Article 20 of the Constitution, Article 12 of the UDHR, Article 8 of the ICCPR, Article 6 of the KVKK, Articles 135, 136, 137 of the Turkish Penal Code), Article 258 of the Turkish Penal Code.

LEGAL JUSTIFICATION: The person who commits the violation is one of the persons who are obliged to keep secrets, and the violation of this obligation and its consequences are regulated by the provisions of the Turkish Penal Code and the relevant legislation. Article 258 (1) of the Turkish Penal Code states the following: "A public official who discloses or publishes documents, decisions, orders and other notifications which are given to him/her due to his/her duty or which he/she has obtained information for the same reason and which should remain confidential, or who facilitates others to obtain information by any means whatsoever, shall be sentenced to imprisonment from one year to four years." Since the obligation to keep secrets constitutes the basis of professional ethics and is also protected by the Constitution (Article 20), the term "secret" should be interpreted broadly. This includes not only the type and development of the disease, diagnosis, judicial measures, psychological disorders, material and mental disorders, patient files, X-ray results, and examination results, but also all personal, family, professional, economic, and financial circumstances.

What is important is that the information was obtained while practicing the profession. Considering the secret of the patient, this should be considered not only as information about the patient's health but also as information that concerns other special conditions of the patient. The obligation to keep secrets is also imposed on other health personnel other than physicians. In this sense, in addition to the treating

physician, other physicians, assistants, midwives, nurses, nurses, nurses, nurses, administrative officers and other health workers whose knowledge is consulted are also under this obligation and are also responsible for its violation.

Article 136 (1) of the Turkish Penal Code: Any person who unlawfully gives, disseminates, or obtains personal data to another person shall be sentenced to imprisonment from two to four years. In the Justification of Turkish Penal Code 136: Giving, disseminating, or obtaining personal data to others unlawfully, whether or not it has been recorded in accordance with the law, is defined as an independent offense. Again, in Article 20 of the Constitution: "Everyone has the right to respect for his private and family life. The right to privacy and confidentiality of private and family life shall be inviolable." In addition, Article 8 of the ECHR stipulates that "Everyone has the right to respect for his private and family life, his home and his correspondence".

The recording of such health information without the consent of the person in question is again determined according to the nature of the situation. Namely, HIV infection is a non-contagious infection in cases where necessary precautions are taken, and transferring the diagnosis of the person to the prospective spouse with consent may be a reason for compliance with the law. **Apart from that, even if the viral load can be determined, it is not possible to share their HIV status both medically and legally, and it is obvious that it clearly violates the patient's rights and private life.**

First of all, pursuant to Article 258 of the Turkish Penal Code, it is clear that the suspect who disclosed or published the documents, decisions, orders, and other notifications, that were given to him due to his duty or for which he obtained information for the same reason and which should remain confidential, or by any means whatsoever facilitated others to obtain information, clearly violated his duties and obligations in the concrete case, and it is also clear that the suspect committed the acts of unlawfully giving, disseminating or obtaining personal data to others in accordance with Article 136 of the Turkish Penal Code.

As it is clearly understood from Article 136 of the Turkish Penal Code, the offense of unlawful disclosure, dissemination, or seizure of personal data is regulated as an abstract danger crime, and the offense occurs by performing optional acts. It is not necessary that any damage has occurred as a result of the offense. Again, as clearly stated in Article 137/1-b of the Turkish Penal Code, "If this offense is committed by taking advantage of the convenience provided by a certain profession and art, the penalty to be imposed according to Article 136 of the Turkish Penal Code shall be increased by 1/2". In light of this information, filing a criminal complaint with the Chief Public Prosecutor's Office against the relevant pharmacy employee is a legal tool that can be used.

APPLICATION NO 12: The applicant has been diagnosed with HIV and is a military student. Stating that he would be dismissed from his profession due to the realization of his status, he applied to the association to find out what he could do legally in order to continue his profession.

LEGAL GROUNDS: Article 72 of the Constitution; Article 6 of the Turkish Armed Forces Health Competency Regulation, Article 52 of the annex to the list of diseases and malfunctions of the relevant regulation.



LEGAL JUSTIFICATION: Article 6, paragraph b of the Turkish Armed Forces Health Competency Regulation states that “those who are not fit for military service are those whose diseases and malfunctions fall into the (B) and (D) sections of the List of Diseases and Malfunctions: Those whose diseases and malfunctions are included in the (B) and (D) sections of the List of Diseases and Malfunctions.” In the list of diseases and malfunctions in the annex of the Regulation, in Article 52 of the Infectious Diseases section, HIV infection proven by verification tests is among the group D diseases.

Therefore, people living with HIV are exempt from military service, in other words, they are not eligible for military service. HIV is the reason for definitive exemption from military service and this situation is not dependent on the request or consent of the persons.

Since the applicant is a Turkish Armed Forces personnel, military service will be canceled, and the employment will be terminated if it is known that they have HIV. However, in recent years, this practice has been discontinued in countries such as the USA and the United Kingdom.

In this regard, the cancellation lawsuit filed by the applicants for reinstatement in the past years is still ongoing, and it was informed that, if necessary, a lawsuit can be filed before the Administrative Courts for the cancellation of the administrative act of dismissal from the profession.

APPLICATION NO 13: The applicant stated that he had insurance debts and therefore could not obtain his medication and wanted to know what he could do legally by contacting the association about how he could access medication to benefit from insurance and to obtain his medication.

LEGAL GROUNDS: Social Security and General Health Insurance Law No. 5510, Law No. 5684.

LEGAL JUSTIFICATION: Persons working on a permanent or contracted basis in a workplace are considered within the scope of 4A. 4B, formerly known as Bağ-Kur, covers those who work independently on their own behalf without a service contract and those who pay voluntary insurance premiums. In the old system, civil servants affiliated with the Pension Fund are evaluated within the scope of 4C. It has been said that those who are not covered by 4A, 4B, and 4C are compulsorily covered by general health insurance and have GSS in return for a monthly premium invested in an amount determined for that year.

There are many services that provide free access to health facilities within the scope of general health insurance. The person who has any health problems can be examined free of charge thanks to GSS when he/she goes to the hospital, even if he/she is not an SGK member. Expenses incurred during the examination are covered by the state. However, to be eligible for GSS, premiums must be paid in the amount determined by the state (usually 3% of the minimum wage during the month). Otherwise, the GSS debt accumulates, and healthcare services cannot be used. The people who need to pay premiums are those who are not actively working, that is, those who are not insured by SGK and could pay by conducting an income test.

Premium payments of persons who are insured by SGK are made by the employer. Medication costs are also included in the scope of GSS. All or part of the cost of the drugs required for treatment is covered

by general health insurance. In other words, the question “Does the general health insurance cover medicines?” can be answered differently depending on the medicine. Some medicines can be taken completely free of charge, while others can be taken at a discount.

The discount rate for medicines to be taken within the scope of general health insurance is at different rates for pensioners and other persons. In addition, the discount rate is different for different categories of remedies such as prostheses and medicines. If you have made your premium payments for general health insurance, you can benefit from medicines and other supplies within the scope of GSS. In order to benefit from general health insurance, the premium debt must be paid. This debt, which must be paid at a certain rate, accumulates for a while if it is not paid. People with GSS debt cannot benefit from either healthcare or medicines.

They must pay all these fees out of their own pockets. People who are insured by SSI do not have general health insurance debts. However, people who are not actively working in any job have to pay their premium debts to benefit from general health insurance. Persons with solvency are determined by income test. People who do not have the ability to pay do not need to pay for general health insurance.

APPLICATION NO 14: The applicant disclosed his HIV status to the physician and hospital with whom he had previously contracted for the operation and was told that he would have to pay an additional fee for the operation to be performed since he was a person living with HIV. The applicant contacted the association to find out what he could do legally.

LEGAL GROUNDS: Constitution Article 17, Article 20, Article 56; ECHR Article 8; UDHR Article 25; HHL Article 6, Article 8, Article 11; TIHEK Article 3, Article 5; Regulation on Private Hospitals; Regulation on Private Health Institutions for Outpatient Diagnosis and Treatment.

LEGAL JUSTIFICATION: The Regulation on Private Hospitals regulates the characteristics of private hospitals and the personnel working therein. In this regulation, the qualification requirements and the materials required for the medical procedure to be performed are regulated in detail. In addition to all regulations, the obligation to fulfil these qualification requirements is imposed on these enterprises. Here, the qualification requirements of private hospitals are regulated according to the type and departments of the medical interventions to be applied, not according to the type of infections of the patients. As such, these centers violate the prohibition of discrimination by rejecting the applicant living with HIV who applied to them for a procedure carried out within their premises.

The applicant has the right to benefit from healthcare services in accordance with justice and equity in accordance with Article 6 of the Patient Rights Regulation. Pursuant to Article 8 of the aforementioned regulation, the patient has the right to choose the health institution and institution and to benefit from the healthcare service provided in the health institution he/she chooses, provided that the procedures and conditions stipulated by the legislation to which he/she is subject are complied. In accordance with Article 11 of the same regulation, the patient has the right to request diagnosis, treatment and care in accordance with medical requirements.



Since these 3 rights of the applicant have been violated, the applicant can make a written application to the patient rights unit, which is obliged to be established by all health centers where the applicant cannot receive service. The applicant may also leave a notification and complaint record to the Patient Rights Board within the Provincial Health Directorate and ALO 184 SABİM (Ministry of Health Communication Center) regarding his/her violated rights. Again, the applicant may apply to TIHEK since it is clearly stated in Article 3 of the Human Rights and Equality Institution of Türkiye Law No. 6701 that discrimination cannot be made due to health status, and it is stated that private law persons who will provide healthcare services in accordance with Article 5 cannot make these discriminations while providing this service.

It should be noted here that, in accordance with Article 17 (2) of the TIHEK Law, a written application must be made to the discriminating institution before applying to TIHEK. If the Institution determines that the prohibition of discrimination has been violated as a result of its examination, it will impose an administrative fine on the business.

APPLICATION NO 15: The applicant went to a private clinic for dental treatment. Upon sharing his HIV status, the private clinic refused treatment. The applicant contacted the association about what they could do in the face of discriminatory behavior.

LEGAL GROUNDS: Constitution Article 56; UDHR Article 25; Regulation on Private Health Institutions Providing Oral and Dental Healthcare Services, HHL Article 6, Article 8, Article 11. TIHEK Article 3, Article 5.

LEGAL JUSTIFICATION: The private clinic to which the applicant applies for dental treatment is within the scope of the Regulation on Private Health Institutions Providing Oral and Dental Healthcare Service. In the relevant regulation, the qualifications required to be carried by these clinics and the personnel to work here, and the equipment required to be available for the procedures are regulated in detail.

There is no separate determination of HIV among the aforementioned determinations. For this reason, the intervention of the clinic, which obliges the applicant to intervene separately from other patients for an unfair and invalid reason or prevents him/her from exercising his/her right of choice, constitutes a violation of the prohibition of discrimination.

The applicant has the right to benefit from healthcare services in accordance with justice and equity in accordance with Article 6 of the Patient Rights Regulation. Under Article 8 of the aforementioned regulation, the patient has the right to choose the health institution and institution and to benefit from the healthcare service provided in the health institution he/she chooses, provided that the procedures and conditions stipulated by the legislation to which he/she is subject are complied. By Article 11 of the same regulation, the patient has the right to request diagnosis, treatment, and care by medical requirements.

The applicant may apply in writing to the patient rights unit, which is obliged to establish all health centers where he/she cannot receive services because these 3 rights are violated. They can also file a complaint with the Provincial Health Directorate and leave a report and complaint to ALO 184 SABİM (Ministry of Health Communication Centre).

Again, the applicant can apply to TIHEK since Article 3 of Law No. 6701 on the Human Rights and Equality Institution of Türkiye explicitly states that no discrimination can be made on the grounds of health status and Article 5 states that private law persons who will provide healthcare services cannot make such discrimination while providing these services.

It should be noted here that, by Article 17 (2) of the TIHEK Law, a written application must be made to the discriminating institution before applying to TIHEK. If TIHEK determines that the prohibition of discrimination has been violated as a result of its investigation, it will impose an administrative fine on the employer.

APPLICATION NO 16: The applicant's doctor scared the patient with false information by stating that HIV drugs were quite side-effective, that it was risky to marry, and that they would infect his wife in case of marriage. After learning about the scientific developments in this regard, he requested information from the association about what they could do legally in response to the act of his doctor who misinformed him.

LEGAL GROUNDS: Article 17, Article 20 of the Constitution; Article 10 of the Biomedicine Convention; Article 8 of the ECHR; Article 5, Article 11, Article 21 of the HHY; Article 5, Article 24 of the HMEK.

LEGAL JUSTIFICATION: Article 24 of the Code of Professional Ethics of Physicians titled "Use of Influence on the Patient" states that "The physician cannot use his/her influence on the patient for purposes other than medical purposes." In addition to all these ethical rules, Article 11 of the Patient Rights Regulation regulates that the patient has the right to be diagnosed, treated, and cared for according to the requirements of modern medical knowledge and technology. In light of this information, considering that one or all of the options that the physician a) did not follow the scientific developments in his field and b-) did not provide the correct information to his patient due to his prejudice, the applicant's complaint to the Turkish Medical Association about the physician and the application to the patient rights unit of the hospital where the physician works are legal tools that the applicant can use.

APPLICATION NO 17: The applicant has shared their HIV status with her husband, who is in the process of divorce. Subsequently, the applicant was repeatedly harassed by the partner and family, warning that their HIV status would be disclosed. They contacted the association to find out what they could do legally if their partner publicized the matter.

LEGAL GROUNDS: Constitution Article 20; ECHR Article 8; UDHR Article 12; Law No. 6284 Article 5; Turkish Penal Code Article 134, Article 136.

LEGAL JUSTIFICATION: The legal mechanisms that the applicant can apply before the disclosure of HIV status and the legal mechanisms that the applicant can apply after disclosure differ. The applicant may apply protective and preventive measures within the scope of Law No. 6284 to prevent the sharing of HIV status.



Law No. 6284 regulates the procedures and principles regarding the measures to be taken for the protection of women, children, family members, and victims of unilateral stalking who have been subjected to violence or who are at risk of being subjected to violence and for the prevention of violence against these persons. **The law defines violence as “all kinds of physical, sexual, psychological, verbal or economic attitudes and behaviors that occur in the social, public or private sphere, including acts that result or are likely to result in physical, sexual, psychological or economic harm or suffering of the person, threats and pressure against it or arbitrary obstruction of freedom”.**

In this context, the applicant may apply legal remedies to benefit from the preventive measures listed in Law No. 6284. The preventive measures listed in the law that the applicant may request are listed in Article 5 of the law. With these measures, the applicant can obtain a decision that the ex-partner who persistently harasses them should not use words and behaviors that include threats of violence, insult, insult or humiliation; should be immediately removed from the joint residence or place of residence; should not approach the applicant’s residence, school or workplace; should not approach the applicant’s relatives, witnesses and children, without prejudice to the cases regarding the establishment of a personal relationship, even if the applicant has not been subjected to violence; should not damage the applicant’s personal belongings and household items; should not disturb the applicant through communication tools or otherwise, etc.

As can be seen, under the law, it may be decided to stop the threats of the perpetrator of violence and to prevent the applicant from communicating with himself and his relatives, including his family. Precautionary decisions to be taken following this law can be requested from the family court judge, the property manager, or the law enforcement unit in the fastest and easiest place to reach. Evidence is not sought for the precautionary decision, it is sufficient to apply with a petition in which the events are properly explained. In addition, the precautionary decisions taken are for some time, and if the threat of violence has not ended despite the expiry of the period, the period may be extended in case of re-application. The measure decision is notified to the parties, and if the perpetrator of violence violates the decision after the notification, forced imprisonment is applied.

If the applicant’s HIV status is shared by his/her partner without his/her consent, a criminal complaint may be filed by the provisions of the relevant Turkish Penal Code. **Since the HIV status of the person is a health condition, it is “sensitive personal data”. So it has superior protection. It is a crime to share personal data with third parties. Again, HIV status is information inherent to the private life of the person, and disclosure of HIV status is a violation of the right to privacy.** For these reasons, the applicant may file a criminal complaint for the offenses of a violation of privacy under Article 134 of the TPC and unlawful disclosure or acquisition of data under Article 136 of the TPC in case of disclosure of HIV status by their partner.

APPLICATION NO 18: The applicant’s military service has been postponed and their problems in obtaining an exemption report because of the HIV status. They wanted to know whether they would be exempt from military service because of their HIV status and, if so, whether third parties and employers would be able to learn about their HIV status.

LEGAL GROUNDS: Constitution Article 20, Article 72; Turkish Armed Forces Health Competency Regulation Article 6, Related Regulation List of Diseases and Malfunctions Article 52.

LEGAL JUSTIFICATION: HIV is the reason for definitive exemption from military service and this situation is not dependent on the request or consent of the persons. In paragraph b of Article 6 of the Turkish Armed Forces Health Competence Regulation, “those who are not suitable for military service: Those whose diseases and malfunctions are included in the (B) and (D) sections of the List of Diseases and Malfunctions.” In the list of diseases and malfunctions in the annex of the Regulation, in Article 52 of the Infectious Diseases section, HIV infection proven by verification tests is among the group D diseases. Therefore, people living with HIV are exempt from military service, in other words, they are not eligible for military service.

Documents to be submitted to the workplace regarding military exemption can now be obtained from the e-government. Here, it is not stated for what reason the person is unfit for military service, it is only written as “not found suitable for military service”.

Therefore, the employer can’t understand the HIV status of the candidate worker with this document. This situation may be questioned by some employers, but this is against the right to respect the privacy of the employee and the right to protection of personal data. Detailed explanations of this and the legal mechanisms that can be applied in such a case are also explained in cases related to discrimination in recruitment.

APPLICATION NO 19: The applicant was asked for a recruitment examination report for recruitment. The applicant wanted to get a report from the GP, but the GP insisted that he would write his HIV status. The applicant stated that they did not want to print it because they thought that they would be subjected to discrimination and asked the association how they could proceed in this regard.

LEGAL GROUNDS: Violation of Privacy of Private Life and Family Life (ECHR Art. 8, Constitution Art. 20, TCK Art. 134 Medical Deontology Regulation Art. 4, Patient Rights Regulation Art. 21), Violation of the Right to Protection of Personal Health Data (Constitution Art. 20, TCK Art. 136), Violation of the freedom of labour and contract (Constitution Article 48- 49, TPC Article 117), Violation of the prohibition of discrimination (ECHR Article 14, IHL Article 11, TPC Article 122, Biomedicine Convention Article 11), Violation of the right to confidentiality of information (HHL Article 23), Violation of the right to respect for privacy (HHL Article 21).

LEGAL JUSTIFICATION: The applicant was informed that the HIV test was not counted in the Recruitment/Periodic Examination Form annexed to the Regulation on Duties, Authorities, Responsibilities and Training of Family Physicians, Workplace Physicians, and Other Health Personnel, so the HIV test was not a mandatory test for recruitment and periodic examinations.

Because according to the ILO Code of Conduct on HIV/AIDS and Working Life; there can be no reason to ask job applicants or employees to provide personal information about HIV. In addition, employees may not have an obligation to provide such information to their colleagues. In matters related to the health status of workers, access to their data must be subject to confidentiality rules.



APPLICATION NO 20: The applicant met with a plastic surgery center for hair transplantation. As the applicant stated that they were living with HIV, the institution stated that they could not carry out the hair transplantation procedure. The applicant sought information from the association on what they could legally do about this issue.

LEGAL GROUNDS: Constitution Article 20, Article 56; ECHR Article 8; UDHR Article 25; HHL Article 6, Article 8, Article 11; TIHEK Article 3, Article 5; Regulation on Private Hospitals; Regulation on Private Health Institutions for Outpatient Diagnosis and Treatment.

LEGAL JUSTIFICATION: The plastic surgery centers to which the applicant applies for hair transplantation are private enterprises. This private enterprise may be located in private hospitals or may be established separately as medical centers. The Private Hospitals Regulation regulates the characteristics of private hospitals and the personnel working here.

Regulations on the aforementioned issues within medical centers are regulated by the Regulation on Private Health Institutions Performing Outpatient Diagnosis and Treatment. The qualification requirements for the medical procedure to be carried out within both regulations and the materials to be found are regulated in detail. In addition to all regulations, the obligation to fulfill these qualification requirements is imposed on these enterprises. In both regulations, there is no separate regulation on HIV in the qualification conditions for aesthetic interventions.

As such, the applicant has the right to benefit from healthcare services following justice and equity as per Article 6 of the Patient Rights Regulation. Under Article 8 of the aforementioned regulation, the patient has the right to choose the health institution and institution and to benefit from the healthcare service provided in the health institution he/she chooses, provided that the procedures and conditions stipulated by the legislation to which he/she is subject are complied.

Under Article 11 of the same regulation, the patient has the right to request diagnosis, treatment, and care by medical requirements. Since these 3 rights of the applicant have been violated, the applicant will be able to make a written application to the patient rights unit, which is obliged to be established by the health center where the applicant cannot receive service. The applicant may also leave a notification and complaint record regarding the violated rights to the Patient Rights Board within the Provincial Health Directorate and ALO 184 SABİM (Ministry of Health Communication Centre).

Again, the applicant can apply to TIHEK since Article 3 of Law No. 6701 on the Human Rights and Equality Institution of Türkiye explicitly states that no discrimination can be made on the grounds of health status and Article 5 states that private law persons who will provide healthcare services cannot make such discrimination while providing these services. If the Institution determines that the prohibition of discrimination has been violated as a result of its investigation, it will impose an administrative fine on the employer.

ABBREVIATIONS

AIDS:	Acquired Immune Deficiency Syndrome
ECHR:	European Convention on Human Rights
Constitution:	Constitution of the Republic of Turkey No. 2709
Biomedicine Convention:	Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine
See.:	See
CDC:	Center for Disease Control and Prevention
A.D.:	Access Date
TPR:	Temporary Protection Regulation
PRR:	Patients' Rights Regulation
HIV:	Human Immunodeficiency Virus
CME:	Code of Medical Ethics UDHR: Universal Declaration of Human Rights
Labor Law:	Labor Law No. 4857
ILO:	International Labour Organization
TCL:	Turkish Condominium Law No. 634
PDPL:	Personal Data Protection Law No. 6698
art.:	Article
SSGHIL:	Social Security and General Health Insurance Law No. 5510
TCO:	Turkish Code of Obligations No. 6098
TPC:	Turkish Penal Code No. 5237
MDR:	Medical Deontology Regulation
LHREIT:	Law No. 6701 of the Human Rights and Equality Institution of Turkey
TCC:	Turkish Civil Code No. 4721
TVK:	Turkish Citizenship Law No. 5901
RITCL:	Regulation on the Implementation of the Turkish Citizenship Law
PHL:	Public Health Law No. 1593
UNAIDS:	Joint United Nations Programme on HIV/AIDS
WHO:	World Health Organization
LFIP:	Law no. 6458 on Foreigners and International Protection
RILFIP:	Regulation on the Implementation of the Law on Foreigners and International Protection
Law No. 1219:	Law on the Practice of Medicine and Medical Sciences
Law No. 3071:	Law on the Exercise of the Right to Petition
Law No. 6284:	Law on the Protection of the Family and Prevention of Violence against Women