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# **A legal mechanism to prevent the spread of HIV/AIDS**

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## **Abstract**

Modern regulation of social diseases requires consideration of the social context and criminogenic phenomena, which substantiate the necessity for a comprehensive approach. Combining medical, economic and legal aspects will build a legal infrastructure for the protection of HIV/AIDS patients and reduce discrimination in society while maintaining the safety of a healthy population. The aim of this article is to analyze the legal mechanism of HIV/AIDS prevention in Ukraine and in the world. The results demonstrate the basics of health and legal education as the most important means of preventing HIV/AIDS.

**Keywords:** HIV/AIDS prevention, Disease spread regulation, Preventive policing.

# Un mecanismo legal para prevenir la propagación del VIH / SIDA

## Resumen

La regulación moderna de las enfermedades sociales requiere la consideración Del contexto social y los fenómenos criminógenos, que justifican la necesidad de UN enfoque integral. La combinación de aspectos médicos, económicos y legales creará una infraestructura legal para la protección de los pacientes con VIH / SIDA y reducirá la discriminación en la sociedad al tiempo que se mantiene la seguridad de una población sana. El objetivo de este artículo es analizar el mecanismo legal de prevención del VIH / SIDA en Ucrania y en el mundo. Los resultados demuestran los fundamentos de la educación sanitaria y jurídica como el medio más importante para prevenir el VIH / SIDA.

**Palabras clave:** Prevención Del VIH / SIDA, Regulación de la propagación de enfermedades, Vigilancia preventiva.

## 1. INTRODUCTION

In today's global society, the development of the legal sciences, including criminal law, is characterized by the following:

- Updating the moral and ethical principles of the formation of sectoral rules of law;
- Fundamental restructuring of all main provisions of rules of law on a democratic basis. In essence, it is a qualitatively new stage of legal relations (GOSTIN ET AL., 2019). These cardinal transformations imply the following:

- Rejection of ideological dogmas in the legal sphere and criminal policy;
  
- Reform of social structures involved in the containment and neutralization of negative phenomena that determine crime.

This concern, first and foremost, the study and development of crime prevention measures in some social groups, including groups of people without a certain place of residence and work, who conduct an immoral lifestyle. The range of such individuals may be diverse and may also include people who intentionally spread sexually transmitted diseases (STDs) and HIV/AIDS (GOPINATHAN ET AL., 2019). Their “contribution” to criminal behavior is predominantly direct and substantial, which necessitates the introduction of a comprehensive counteraction mechanism, which, above all, will create a barrier to scaling up the precedents of social ills. The complexity of the approach will not only affect individuals but also the criminogenic phenomena, which include a set of negative manifestations in society, contributing to the commission of various unlawful acts, such as:

- Alcoholism;
  
- Drug addiction;
  
- Prostitution;
  
- AIDS-terrorism;

- Child neglect;
- begging;
- Vagrancy (NAZARENKO, 2013).

The problem of deviant behavior remains interdisciplinary and multidimensional – economic, social, medical, psychological, legal (criminological). Thus, the effective mechanism of its regulation will become the basis of public welfare.

## **2. METHODOLOGY**

The study is based on annual statistics (AIDS in Ukraine: statistics, 2019) of HIV incidence and HIV-related mortality in Ukraine. The obtained quantitative data allowed the authors to trace the correlation between the effectiveness of the implemented administrative measures and the spread of social diseases. While studying current regulatory acts, an integrated legal mechanism for combating the spread of HIV is modeled, which is conceptually based on international regulatory practice and takes into account national peculiarities of the legal system. (SADEGHI ET AL, 2017).

As the specificity of combating social illnesses requires consideration of the medical aspect, special attention is paid to the legal procedures for the introduction of medical measures to counteract

HIV. The mutually exclusive precedents of normative legal acts are determined concerning the concepts and procedures of HIV/AIDS. The subjects of analysis are the declarative nature of legal acts representing the rights of patients with HIV and the inconsistency of programs to protect healthy population from social ills.

### Conceptual frameworks for combating HIV/AIDS

Prevention of deviant behavior can be considered in three directions: 1) general social, 2) special criminological, 3) individual. General social measures are aimed at improving the economy, improving the material well-being of the population, developing democracy and social activity of people, growing people's culture. They do not have such a purpose as the fight against crime, but they significantly help to solve this problem, narrowing the environment in which the crime thrives, create the conditions for effective fight against it (DZHUZHA ET AL., 2011). In order to prevent HIV/AIDS, it is important to stop the practice of "epidemic indulgence", silencing both social and medical problems, including HIV/AIDS.

Criminological prevention of deviant behavior involves research and development of multifaceted activities of different parts of the social mechanism. Namely, activities that are directly aimed at eliminating both the common causes and conditions of crime and the determinants of committing certain types of crime (GOLINA ET AL., 2014; MACHADO ET AL, 2019).

Therefore, at the present stage, it is important to create and formulate the legal aspects of HIV/AIDS. The most important of these include the validity of a total, and therefore forced, population survey on HIV/AIDS, based on the results of which epidemiologists could make a correct idea about the properties and prospects of the epidemic, as well as plan measures to block its spread. Ukraine's use of strict imperative measures of regulation is conditioned primarily by the rate of HIV spread in the country (Fig. 1).

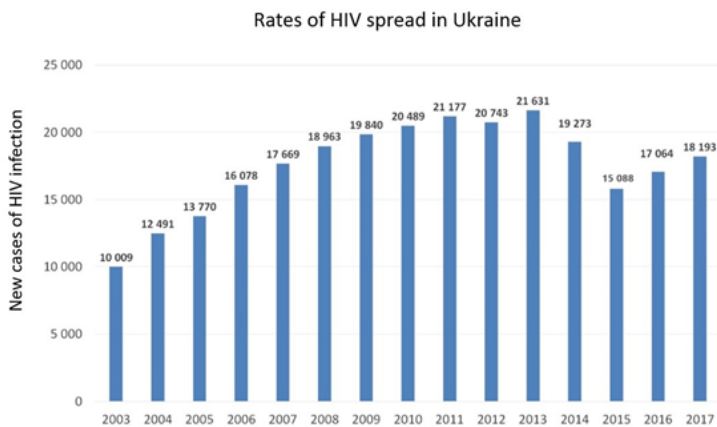


Figure 1: HIV prevalence in Ukraine (developed on the basis of "AIDS in Ukraine: Statistics", 2019)

In 2018, according to the Public Health Center of the Ministry of Health of Ukraine, 18 098 new cases of HIV infection were registered in 2018 (compared to 18 193 cases in 2017), out of which 2 428 were children under 14 years of age. In total, 333 716 new cases



of HIV infection have been officially registered in Ukraine since 1987, out of which 48 456 people died (14.5% of registered persons) during this period (Fig. 2).

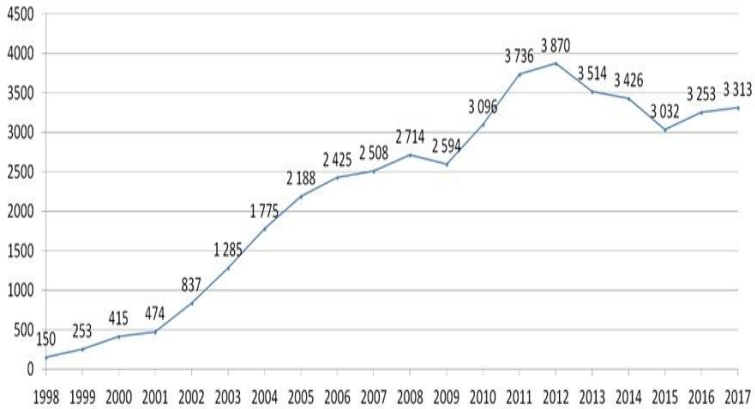


Figure.2: The dynamics of HIV deaths in Ukraine (developed on the basis of "AIDS in Ukraine: Statistics", 2019).

*2.1. Implementation of the legal mechanism of HIV/AIDS prevention in Ukraine*

On December 12, 1991, the Verkhovna Rada of Ukraine adopted the Law of Ukraine "On AIDS Prevention and Social Protection of the Population". This law defines the procedure and principles for inspection and preventive supervision, the sanctions provided by the prosecutor and the compulsory examination. It is inadmissible to restrict the rights of persons infected with HIV or

AIDS, the rights of such persons to medical and social assistance are legal, according to the following laws:

- The Law of Ukraine "On AIDS Prevention and Social Protection of the Population" as of 12 Dec 1991;
- The Law of Ukraine "On Amendments to the Law of Ukraine "On AIDS Prevention and Social Protection of the Population" as of 3 Mar 1998;
- The Law of Ukraine "On Amendments to the Law of Ukraine "On the prevention of acquired immune deficiency syndrome (AIDS) and special protection of the population" as of 23 Dec 2010.

In the unified system of HIV/AIDS prevention, which is carried out by various links of the state and public mechanism, an important role belongs to the bodies of the National Police of Ukraine (LAW OF UKRAINE "ON NATIONAL POLICE", 2015), in which there are two main directions:

- 1) Organization and implementation of a set of legal measures to prevent the spread of this disease among the population;
- 2) Providing a set of measures to prevent the spread of HIV/AIDS among different categories of persons on

departmental medical support (police personnel, convicted in penal institutions, and persons in detention centers).

In the implementation of the first direction, special attention is paid to the activity of preventing the immoral behavior of persons. Practice shows that this category of people is at the heart of the high-risk group for HIV/AIDS. The activities of the police in the context of this are as follows:

- Timely and complete identification of those who lead an immoral lifestyle, their records, their official warning;
- Taking effective measures to exercise continuous control over the behavior of designated persons;
- Prosecution of perpetrators of crimes against morality as a means of preventing their detrimental effect on fragile members of society;
- Re-socialization - i.e. activities to return to normal life those people who have been to prison.

The work of identifying those who lead an immoral lifestyle should be built depending on which conditional group - "explicit" or "hidden" - they belong. "Explicit" are those who are constantly on the lookout and are registered by the health and internal affairs agencies.

"Hidden" are the ones who mask their lifestyle. Practice shows that police officers, employees of medical institutions most often work with the first category of persons, as they identify 70-80% of such persons (BROWN ET AL., 2018). The second category is characterized by latency. In connection with this, police officers need to carefully identify and hold accountable those persons who are involved in prostitution, drug addiction and evade the treatment of STDs.

The analysis makes it possible to conclude that preventive agencies are the best form in combating this phenomenon and preventing immoralism. These units should become the organizing center for the development and implementation of programs to combat the unlawful behavior of those who lead an immoral lifestyle. The programs should include broad involvement of health and education authorities, organizations that deal with foreign nationals (BARBER, 2013).

Such units should focus on maintaining the necessary records, as this issue is not clearly regulated by departmental regulations today. Currently, the bulk of nationwide coercive measures to prevent the spread of HIV/AIDS are applied to at-risk populations (the marginalized population), where the primary objective in preventing the spread of HIV/AIDS is to examine such individuals in a timely manner. The National AIDS Prevention Program (1992) has been developed and implemented in Ukraine, which includes a wide range

of activities - diagnosis, treatment, AIDS prevention, promotion of healthy lifestyles. In the course of its implementation, in particular:

a) Successful attempts are made to analyze and compare HIV/AIDS legislation in the country and beyond, the correlation is also made of its norms with the norms of international law;

b) The importance of cross-sectoral health promotion is recognized (launching a Health Promotion Center, introduction into the school programs of subjects "Health", "Valeology", including sexual education), and planning of information and educational events through the media;

c) Mass screening for HIV/AIDS was replaced by voluntary consent services, including counseling programs and guarantees of confidentiality.

Enterprises, organizations, institutions that accept foreign nationals and stateless persons to study or work are obliged to inform the relevant health care institutions within 10 days and send them for medical HIV examination in case of absence of a certificate. The information on persons involved in prostitution is transmitted by the Ministry of Internal Affairs to the territorial health institutions at their place of residence for medical examination of the latter.

When conducting a medical examination to identify HIV-infected persons, healthcare providers (who take blood or other biological fluids) are required to create safe conditions so as not to cause harm to the health of the patients being examined. In their turn, heads of health care facilities, which include laboratories for HIV diagnosis, are obliged to create conditions to maintain their anti-epidemic regime. Patients of Ukrainian healthcare institutions are issued a medical certificate of the established specimen, which describes the state of health and the results of the examination.

## *2.2. Legal specifics of the implementation of medical measures to prevent the spread of HIV/AIDS incidence*

All HIV-positive people are registered. In order to preserve medical secrecy, such persons are recorded only in territorial or departmental medical and preventive establishments carrying out their medical examination, as well as in regional (city) sanitary and epidemiological stations and regional (city) centers on AIDS prevention and control. HIV-positive and AIDS patients are subject to mandatory preventive surveillance to monitor their physical and mental health, timely detect and treat infections, conduct specific antiviral therapy, psychological support and counseling.

Data on the infection of a person by HIV/AIDS is a legal secret. Transmission of such data is allowed only to legal representatives of a

person, medical institutions, prosecutor's office, pre-trial investigation, court and other bodies and persons provided by the legislation. In Ukraine, the disclosure of medical examination data and its results entails criminal liability. With regard to the implementation of medical prevention measures, the sanitary education of Ukrainian citizens today faces a number of difficulties and unresolved problems, including the following:

- a) Extremely low allocations for informing the population about HIV/AIDS;
- b) The social complexity of such education, which is forced to touch the most intimate side of human existence - the sphere of sexual life;
- c) Lack of a substantiated concept of sanitary education of such diseases.

Therefore, public health education (in particular, HIV/AIDS prevention) will be effective as long as:

- It ensures constant public health pressing concerning the dangers of HIV/AIDS;
- It has a mass character, that is, covers a large part of the population;

- It prevents the creation of a "saturation effect";
  
- It widely uses visual means and film propaganda (FISCHER-LESCANO & TEUBNER, 2019).

Sanitary education is a kind of catalyst that accelerates the formation of hygienic habits if the right conditions for their implementation are created. It includes such aspects as:

- a) Briefing people who have had sexual intercourse with HIV on the need for self-monitoring of their health and laboratory testing for HIV infection;
  
- b) Informing family members and relatives of the virus carrier (HIV/AIDS patient) of the precautionary rules in everyday life to prevent infection;
  
- c) Instructing a virus carrier or HIV/AIDS patient to adhere to the rules for preventing the spread of HIV infection.

NGOs and citizens are involved in preventing HIV/AIDS partially or with full specialization (when the NGO creates special structures for this activity). Today, there is the following trend in the field of HIV/AIDS prevention:



a) The emergence of mass public movements that combine the efforts of several NGOs (such as "Green World" and "HIV/AIDS prevention");

b) Creation of bodies formed on the basis of joint representation of state and public subjects of preventive activity, combining the features of state and public bodies.

Preventive action of public organizations is carried out through:

- Differentiated legal work to accelerate the social adaptation of people with weakened social ties (especially those who have returned from prison);

- Identifying family conflicts and influencing their causes;

- The use of measures of public influence on persons with behavioral abnormalities in order to prevent their further demoralization and ensure timely correction of behavior.

### *2.3. Prospects for the development of HIV/AIDS regulation*

HIV/AIDS legislation is progressively evolving based on the best practices in the world. The current regulations in Ukraine meet

international standards and demonstrate the country's strong interest in combating social ills, creating a basis for social welfare.

The most effective legal measures to prevent the spread of social diseases are as follows:

- Attracting public attention to the problem by creating community organizations;
- Fight against the marginalization of the population, vagrancy, leading an immoral lifestyle;
- Organizing young people's free time, creating youth psycho-methodological centers at the place of residence for work with alcoholics, drug addicts, etc. (TAN, 2019);
- A complex of medical and criminological measures (improvement of the current hospitalization system through the establishment of special departments for AIDS patients, the organization of medical and labor prophylactics for the combination of treatment with labor re-education, shelters for patients and carriers of HIV/AIDS)
- All this indicates that there is currently no international harmonization of HIV legislation, and whatever prevention measures may be appropriate, they sometimes conflict with the

Universal Declaration of Human Rights (1948) and the Protection of human rights in the context of human immunodeficiency virus (HIV) and acquired immunodeficiency syndrome (AIDS) (1997). Due to the fact that there is some inconsistency, and often mutually exclusive nature of certain aspects of regulations and concepts of HIV/AIDS, even within one country, there are incidents of non-compliance with current legislation.

### **3. CONCLUSION**

Preventing the spread of HIV/AIDS involves behavioral interventions at the individual and social levels. Individual work at the micro level is carried out both directly with one person and with his/her immediate environment. Work at the social level is an impact at the macro level, which is realized through the activities of information and education campaigns aimed at different target audiences. Regulatory prevention measures should first and foremost be behavior-oriented, not awareness-raising.

The large-scale distribution of social illnesses is driven by socio-economic instability, an increase in the number of socially not adapted people, and the existence of mutually exclusive approaches to identification of persons who carry the virus and preventive measures. Prevention of socially dangerous diseases is carried out at three levels -

primary (broad work with the general population), secondary (work with the most vulnerable groups) and tertiary (assistance to those who already have a problem to stop the spread of the disease or a negative phenomenon in the future).

Combating HIV/AIDS in Ukraine has long been based on the principles of a medicalized approach. Among the national measures to combat the epidemic, treatment measures have dominated (tertiary prevention), which is a fight against the consequences. HIV is a "behavioral" illness, which can be prevented by adhering to safe behavior - avoiding unprotected sex, using sterile injection tools, shaving, and more. Therefore, it is possible to prevent further deepening of negative phenomena in society through the formation of clear universal rules whose character will not be declarative but imperative. Harmonizing and structuring such rules will create a legal framework that protects both the healthy population and the sick, and will have a preventive impact of the first and second levels, gradually becoming an ethical norm in society.

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