



Legal drivers to eradicate HIV-related discrimination in Spain

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AYUNTAMIENTO DE SEVILLA

IATAC
INTERNATIONAL ASSOCIATION
OF PROVIDERS OF AIDS CARE





III. OTRAS DISPOSICIONES

MINISTERIO DE SANIDAD

- 4554** *Resolución de 10 de marzo de 2021, de la Secretaría de Estado de Sanidad, por la que se publica el Convenio entre la Dirección General de Salud Pública, la Coordinadora Estatal de VIH y SIDA y la Universidad de Alcalá, para el desarrollo de acciones en el marco del pacto social por la no discriminación y la igualdad de trato asociada al VIH.*

This presentation is an activity included in the aforementioned Covenant



Background

The Lancet Commissions

The legal determinants of health: harnessing the power of law for global health and sustainable development



Lawrence O Gostin, John T Monahan, Jenny Kaldor, Mary DeBartolo, Eric A Friedman, Katie Gottschalk, Susan C Kim, Ala Alwan, Agnes Binagwaho, Gian Luca Burci, Luisa Cabal, Katherine DeLand, Timothy Grant Evans, Eric Goosby, Sara Hossain, Howard Koh, Gorik Ooms, Mirta Roses Periago, Rodrigo Uprimny, Alicia Ely Yamin

Executive summary

Health risks in the 21st century are beyond the control of any government in any country. In an era of globalisation, promoting public health and equity requires cooperation and coordination both within and among states. Law can

drawing on identified areas for reform, as well as principles of good governance and the right to health, we offer seven concrete recommendations for action.

Legal determinant 1 states that law can translate vision into action on sustainable development. The UN

Lancet 2019; 393: 1857–910

Published
April 30, 2019
[http://dx.doi.org/10.1016/S0140-6736\(19\)30461-2](http://dx.doi.org/10.1016/S0140-6736(19)30461-2)



In 2018, the Social Pact for Non-Discrimination and Equal Treatment Associated with HIV was passed, including the analysis of legal regulations at the national, regional and local levels to identify those with good practices towards people with HIV and those that discriminate against them.



Noviembre de 2018



PLAN NACIONAL SOBRE EL SIDA
DIRECCIÓN GENERAL DE SALUD PÚBLICA, CALIDAD Y SEGURIDAD DE LA ATENCIÓN
MINISTERIO DE SANIDAD, CONSUMO Y BIENESTAR SOCIAL





UNITED NATIONS
GENERAL ASSEMBLY

POLITICAL DECLARATION ON HIV AND AIDS: ENDING INEQUALITIES AND GETTING ON TRACK TO END AIDS BY 2030

Seventy-fifth session
Agenda item 10
Implementation of the Declaration of
Commitment on HIV/AIDS and the
political declarations on HIV/AIDS

THE GENERAL ASSEMBLY
Adopts the political declaration
entitled "Political Declaration on
HIV and AIDS: Ending Inequalities
and Getting on Track to End AIDS
by 2030" annexed to the present
resolution.

74TH PLenary MEETING
8 JUNE 2021

Realizing human rights and eliminating stigma and discrimination

65. Commit to eliminating HIV-related stigma and discrimination and to respecting, protecting and fulfilling the human rights of people living with, at risk of and affected by HIV, through concrete resource investment and development of guidelines and training for health-care providers, by:

- (a) Creating an enabling legal environment by reviewing and reforming, as needed, restrictive legal and policy frameworks, including discriminatory laws and practices that create barriers or reinforce stigma and discrimination such as age of consent laws and laws related to HIV non-disclosure, exposure and transmission, those that impose HIV-related travel restrictions and mandatory testing and laws that unfairly target people living with, at risk of and affected by HIV, with the aim of ensuring that less than 10 per cent of countries have restrictive legal and policy frameworks that lead to the denial or limitation of access to services by 2025;
- (b) Adopting and enforcing legislation, policies and practices that prevent violence and other rights violations against people living with, at risk of and affected by HIV and protect their right to the highest attainable standard of physical and mental health, right to education and right to an adequate standard of living, including adequate food, housing, employment and social protection, and that prevent the use of laws that discriminate against them;
- (c) Expanding investment in societal enablers – including protection of human rights, reduction of stigma and discrimination and law reform, where appropriate – in low- and middle-income countries to 3.1 billion United States dollars by 2025;
- (d) Ending impunity for human rights violations against people living with, at risk of and affected by HIV by meaningfully engaging and securing access to justice for them through the establishment of legal literacy programmes, increasing their access to legal support and representation and expanding training for judges, law enforcement, health workers and other duty bearers.



Ley 15/2022, de 12 de julio, integral para la igualdad de trato y la no discriminación.

Publicado en: «BOE» núm. 16
Entrada en vigor: 14/07/2022
Departamento: Jefatura del Est
Referencia: [BOE-A-2022-11](#)
Permalink ELI: <https://www.boe.es>

Artículo 2. Ámbito subjetivo de aplicación.

1. Se reconoce el derecho de toda persona a la igualdad de trato y no discriminación con independencia de su nacionalidad, de si son menores o mayores de edad o de si disfrutan o no de residencia legal. Nadie podrá ser discriminado por razón de nacimiento, origen racial o étnico, sexo, religión, convicción u opinión, edad, discapacidad, orientación o identidad sexual, expresión de género, enfermedad o condición de salud, estado serológico y/o predisposición genética a sufrir patologías y trastornos, lengua, situación socioeconómica, o cualquier otra condición o circunstancia personal o social.
2. No obstante lo previsto en el apartado anterior, y de acuerdo con lo establecido en el apartado 2 del artículo 4 de esta ley, podrán establecerse diferencias de trato cuando los criterios para tal diferenciación sean razonables y objetivos y lo que se persiga es lograr un propósito legítimo o así venga autorizado por norma con rango de ley, o cuando resulten de disposiciones normativas o decisiones generales de las administraciones públicas destinadas a proteger a las personas, o a grupos de población necesitados de acciones específicas para mejorar su calidad de vida o favorecer su incorporación al trabajo o a distintos bienes y servicios esenciales y garantizar sus derechos y libertades en condiciones de igualdad.



Artículo 29. Legitimación para la defensa del derecho a la igualdad de trato y no discriminación.

1. Sin perjuicio de la legitimación individual de las personas afectadas, los partidos políticos, los sindicatos, las asociaciones profesionales de trabajadores autónomos, las organizaciones de personas consumidoras y usuarias y las asociaciones y organizaciones legalmente constituidas que tengan entre sus fines la defensa y promoción de los derechos humanos estarán legitimadas, en los términos establecidos por las leyes procesales, para defender los derechos e intereses de las personas afiliadas o asociadas o usuarias de sus servicios en procesos judiciales civiles, contencioso-administrativos y sociales, siempre que cuenten con su autorización expresa.

2. A los efectos de lo establecido en el apartado anterior, las asociaciones y organizaciones legalmente constituidas que tengan entre sus fines la defensa y promoción de los derechos humanos tienen que acreditar los siguientes requisitos:

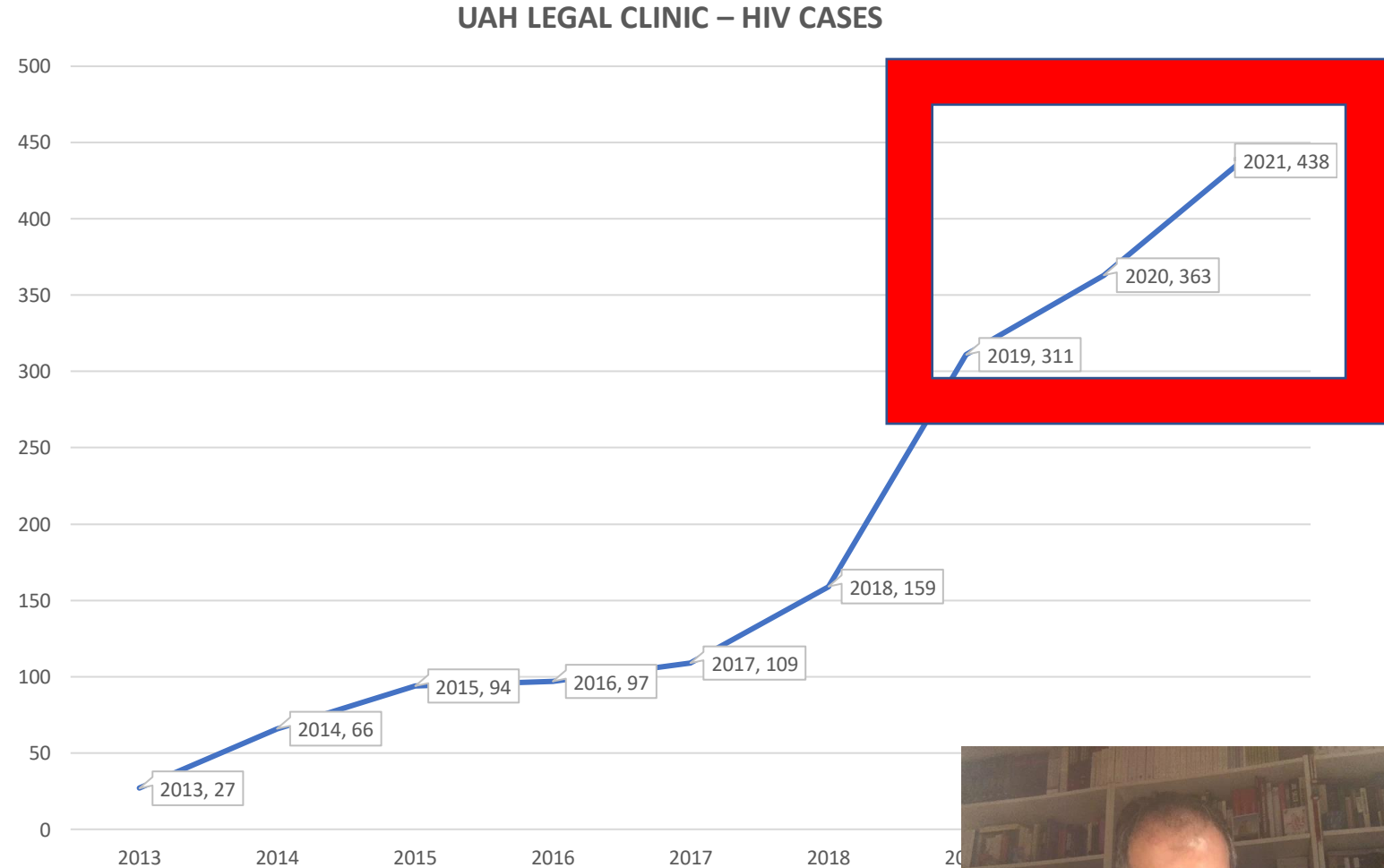
a) Que se hubieran constituido legalmente al menos dos años antes de la iniciación del proceso judicial y que vengan ejerciendo de modo activo las actividades necesarias para alcanzar los fines previstos en sus estatutos, salvo que ejerciten las acciones administrativas o judiciales en defensa de los miembros que la integran.

b) Que según sus estatutos desarrollen su actividad en el ámbito estatal o, en su caso, en un ámbito territorial que resulte afectado por la posible situación de discriminación.



Methods

- Through the cases sent by people with HIV and HIV associations to the Legal Clinic of the University of Alcalá (1112 consultations between 2019-2021), **different keywords have been identified** as search criteria in the main legal databases (vLex, Aranzadi, BOE).
- Once the legal norms were identified, they were analysed seeking whether there is discrimination against people with HIV or they constitute good practices.



- Concept of discrimination

- When a person with HIV, who is suspected of being infected with HIV, who is at risk of becoming infected with HIV or who works or regularly lives with people with HIV, is treated differently and unfavorably, due to their serological status, which is irrelevant for the purposes pursued.

- The 3 faces of Discrimination

- Direct

- when a provision, criterion or practice takes HIV status into account in order to treat people with HIV less favorably than others in a comparable situation

- Indirect

- when the application of a provision, criterion or practice (apparently) formulated in neutral terms with respect to serostatus puts people with HIV at a particular disadvantage with respect to others in a comparable situation

- By association

- when a person or group is subject to discriminatory treatment due to their relationship with another person or group on the grounds or because of their HIV serological status



Results

- To date, 209 legal regulations at national, regional and local levels could affect rights of people with HIV.
 - Good practices
 - Discrimination



- Good practices (highlights)
 - at the state level, the elimination of HIV (or infect-contagious disease) as exclusion criteria in access to state security forces and Army
 - at regional level (Catalonia), the regulation of discrimination based on serological status
 - at the local level (Seville), grants to non-profit entities that develop projects for the prevention, promotion and protection of HIV and people with HIV



- Discrimination based on HIV (highlights):
 - at the state level, people with HIV are excluded from access to private security forces
 - at the regional level (Comunidad de Madrid) people who live with (*convivencia*) people with HIV are deferred as blood donors
 - at the local level (Seville) the requirement of infectious contagious disease in access to the profession of taxi driver

We are collaborating or have begun conversations with the affected institutions to assess the relevance of the re



A case study: Access to Insurance

GOBIERNO DE ESPAÑA MINISTERIO DE LA PRESIDENCIA, RELACIONES CON LAS CORTES Y MEMORIA DEMOCRÁTICA

Agencia Estatal Boletín Oficial del Estado

Castellano ▼ Buscar 🔍 Mi BOE 👤 Menú ☰

Está Vd. en > Inicio > Buscar > Documento consolidado BOE-A-1980-22501

Legislación consolidada



Ley 50/1980, de 8 de octubre, de Contrato de Seguro.

Publicado en: «BOE» núm. 250, de 17/10/1980.
Entrada en vigor: 17/04/1981
Departamento: Jefatura del Estado
Referencia: [BOE-A-1980-22501](#)
Permalink ELI: <https://www.boe.es/eli/es/l/1980/10/08/50/con>

Disposición adicional quinta. No discriminación por razón de VIH/SIDA u otras condiciones de salud.

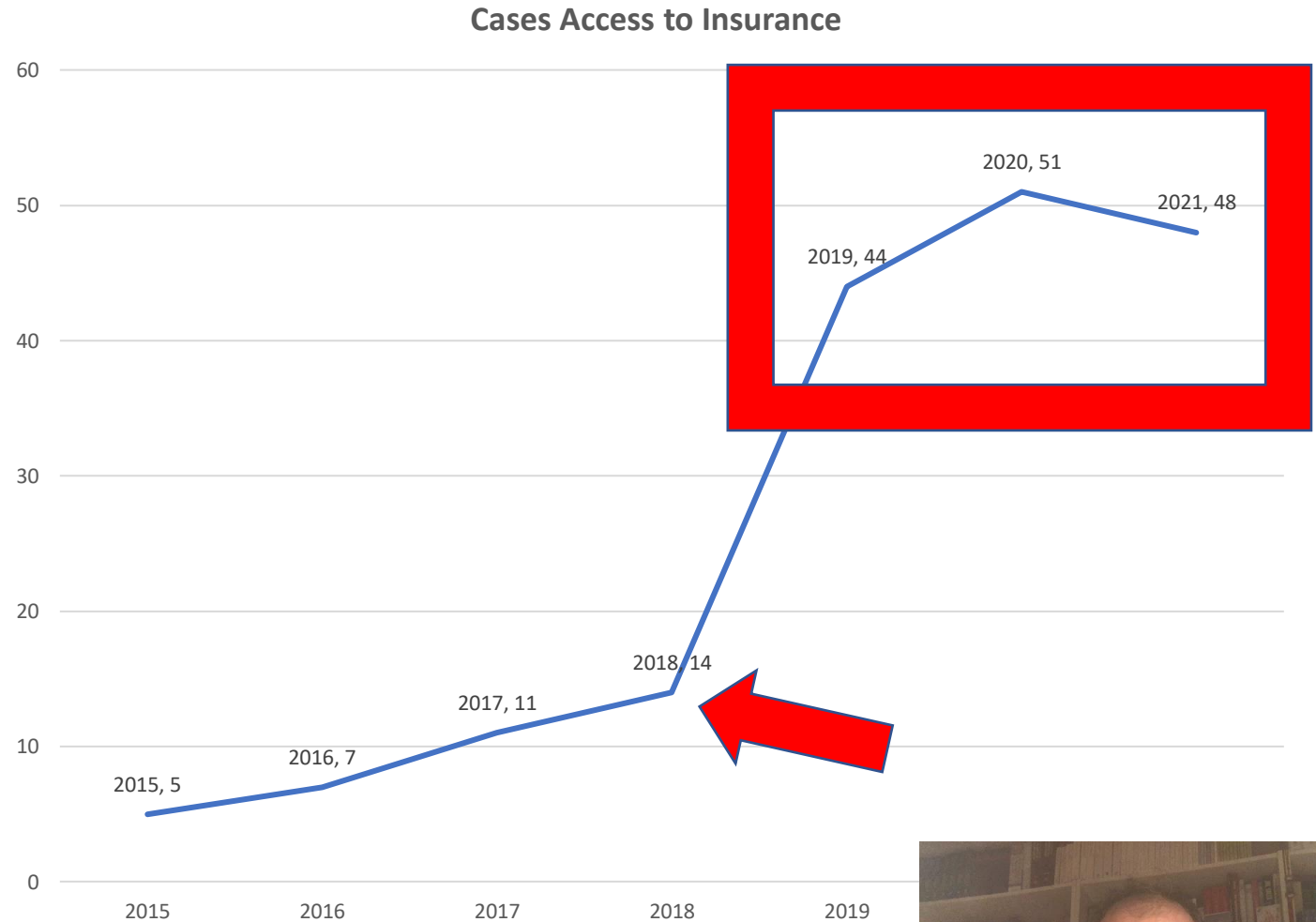
No se podrá discriminar a las personas que tengan VIH/SIDA u otras condiciones de salud. En particular, se prohíbe la denegación de acceso a la contratación, el establecimiento de procedimientos de contratación diferentes de los habitualmente utilizados por el asegurador o la imposición de condiciones más onerosas, por razón de tener VIH/SIDA u otras condiciones de salud, salvo que se encuentren fundadas en causas justificadas, proporcionadas y razonables, que se hallen documentadas previa y objetivamente.

- Se añade por la disposición final 1 de la Ley 4/2018, de 11 de junio. [Ref. BOE-A-2018-7832](#)



01/01/2019 – 31/12/2021: 1112 consultations were received at the HIV Legal Clinic, 143 (12.85%) were consultations related to accessing private health, life or death insurance. Of the 143 consultations, 98 (68,5%) were consultations of people with HIV who had been rejected by the insurance companies; 45 consultations were queries from people with HIV seeking information about their rights before requesting to take out insurance.

To date – None of the people with HIV to whom we sent the complaint documents have informed us that they had submitted them to the competent agency.



Conclusions

- Legal-drivers can help to eradicate the HIV epidemic abolishing the discrimination based on the serological status.
- Building an HIV response based on human rights demands review and reform those legal provisions, criteria and practices that perpetuates discrimination (direct, indirect, by association).
- But also demands passing new legal instruments to enforce the rights of people with HIV
- Since 2018, in Spain, at national, regional and local levels, several legal-drivers have been passed to build an HIV response based on human rights, but there is still work to be done (1) reforming provisions, criteria and practices and (2) improving rights' guarantee systems.



¡Gracias por la atención!

