



RECOMMENDATIONS FOR SERVICE PROVIDERS

based on the results of the regulatory and legal
review on HIV/AIDS prevention and access
of adolescents, including most-at-risk adolescents,
to medical and social services



RECOMMENDATIONS FOR SERVICE PROVIDERS

**based on the results of the regulatory and legal
review on HIV/AIDS prevention and access
of adolescents, including most-at-risk adolescents,
to medical and social services**

Authors:

V.M. Steshenko, PhD in Law
O.M. Balakireva, PhD in Sociology
T.V. Bondar, PhD in Sociology
O.T. Sakovych

Reviewers:

T.V. Zhuravel, PhD in Pedagogy
O.P. Yatsura., PhD in Philology

*Approved for publication by the Academic Board of the Ukrainian Institute for Social Research
after Olexander Yaremenko (protocol # 1 of 06 March 2013)*

Produced within the project on «Capacity building for non-state actors in relation to HIV/AIDS prevention, treatment and care for the European Neighbourhood and Partnership countries». The project is funded by the EU. The statements in this publication are the views of the authors and do not necessarily reflect the policies or the views of the EU and UNICEF.

United Nations Children's Fund (UNICEF)

5 Klovsyky Uzviz, 01021 Kyiv, Ukraine
Tel: (+ 380-44) 254 2450, 254 2439, (+ 380-44) 230-2514 ext.103, Fax: (+380-44) 230 2506
www.unicef.org.ua

RECOMMENDATIONS FOR SERVICE PROVIDERS based on the results of the regulatory and legal review on HIV/AIDS prevention and access of adolescents, including most-at-risk adolescents, to medical and social services. / V.M. Steshenko, O.M. Balakireva, T.V. Bondar et al. – K.: Ukrainian Institute for Social Research after Olexander Yaremenko, 2013. – 64 p.

ISBN 978-617-684-048-0

This publication, prepared with the support of the United Nations Children's Fund (UNICEF), provides recommendations to providers of social services and medical care that work with adolescents, including most-at-risk adolescents, in the sphere of HIV prevention, counselling and testing on HIV. The recommendations also take into consideration the regulatory and legal conflicts that arise during the provision of these services. The publication was prepared based on the results of the regulatory and legal review of HIV/AIDS prevention, and access to medical and social services for adolescents, including most-at-risk adolescents (V.M. Steshenko, M.V. Buromenskyi, O.M. Balakireva et al. – K.: Ukrainian Institute for Social Research after Olexander Yaremenko, 2013. – 230 p.), however this publication is an independent document, intended for practitioners and their needs in their current work.

The publication will be of use to everyone who works with children and youth, specialists who work in the sphere of combating the HIV-infection epidemic in Ukraine: civil servants, lawyers, medical and social workers, NGO representatives.

The research of regulatory and legal and other sources is provided as of **01 July 2013**.

© 2013, Ukrainian Institute for Social Research
after Olexander Yaremenko

© 2013, United Nations Children's Fund (UNICEF)

ISBN 978-617-684-048-0

Contents

ACKNOWLEDGEMENTS	5
ABBREVIATIONS.....	7
FOREWORD	8
SECTION 1. AN ANALYSIS OF CHANGES IN UKRAINIAN LEGISLATION ON THE PROVISION OF MEDICAL CARE AND SOCIAL SERVICES FOR ADOLESCENTS	13
1.1. The problem of defining “child” and “adolescent” in national legislation..	13
1.2. Children’s rights to proper medical care and social services. Access to information on the condition of one’s own health	15
1.3. Changes in the policy of combating the HIV-infection epidemic.....	18
1.4. The most significant changes in the current legislation of Ukraine in the sphere of provision of medical care and social services to adolescents, including most-at-risk adolescents	20
SECTION 2. THE PROVISION OF SOCIAL SERVICES AND MEDICAL CARE TO ADOLESCENTS, INCLUDING MOST-AT-RISK ADOLESCENTS FROM THE STANDPOINT OF REGULATORY AND LEGAL ENVIRONMENT	22
2.1. Person’s age when testing for HIV, and clinical management (provision of contraceptives and syringe exchange). How regulatory and legal regulation is carried out?.....	24
2.2. The requirement for medical workers to report mandatorily to competent authorities about occurrence of infectious diseases and violence.....	27
2.3. Establishment of the person’s sexual partner in case of contracting HIV infection through sexual contact.	31
2.4. Protection, care and guardianship of adolescents, including most-at- risk adolescents. Responsible authorities and their powers, as well as mechanisms of their functioning	32
2.5. Parents’ and other legal representatives’ consent for receipt of medical care by adolescents, including most-at-risk adolescents	35
2.6. Inadmissibility of stigmatisation and discrimination of individual social groups	41

- 2.7. Involvement of adolescent boys in homosexual relationships and involvement of adolescent girls in sexual relationships on commercial basis (sex in exchange for something or sex for reward). 43
- 2.8. Sexual relationships with participation of underage children and minors and the concept “marriage age for men and women”. What is the legislative regulation of protection of children in cases of corruption? 45
- 2.9. Legal responsibility for the illegal purchase, storage and selling of drugs, psychotropic substances or their analogues. 47
- 2.10. Standards of provision of medical care and social services 51

AFTERWORD 53

GLOSSARY 54

REFERENCES 62

Acknowledgements

The preparation of this publication was possible thanks to the participation of representatives from different governmental and non-governmental organisations who have experience of working in the sphere of HIV/AIDS, development and implementation of preventive programmes for children and youth, including most-at-risk groups.

The authors express their gratitude to a wide circle of experts, and are thankful to everyone who has supported or participated in the study and/or the associated interviews, meetings and consultations. This includes those who have helped in the organisation of the study and in the preparation and expert assessment of this report, namely:

- Aleksandrina Tetyana Andriyivna, Head of the State Service of Ukraine on Combating HIV-infection/AIDS and Other Socially Dangerous Diseases;
- Buromenskyi Mykhailo Vsevolodovych, Doctor in Law, Professor, Head of Chair of International Law of the National University “Yaroslav the Wise Law Academy of Ukraine”, correspondent member of the National Academy of Legal Sciences of Ukraine (Kharkiv), *ad hoc* judge of the European Court of Human Rights (Strasbourg, France);
- Golotsvan Olena Anatoliyivna, doctor-psychiatrist, psychotherapist of the highest category, PhD in Medicine, national trainer and expert on assessment of YFC;
- Zhuravel Tetyana Vasylivna, Head of the Executive Committee of All-Ukrainian Public Centre “Volunteer”, PhD in Pedagogy, Senior Lecturer of the Chair of Social Pedagogy and Correctional Education of Borys Grinchenko Kyiv University;
- Krysov Leonid Petrovych, Chief Specialist in social work with persons with HIV/AIDS of the Department of Social Inspection and Social Work with Families of Kyiv City Centre of Social Services for Families, Children and Youth;
- Lyakh Tetyana Leonidivna, Head of Methodological Council of All-Ukrainian Public Centre “Volunteer”, Associate Professor of the Chair of Social Pedagogy and Correctional Education of the Institute of Psychology and Social Pedagogy of Borys Grinchenko Kyiv University;
- Melnik Nataliya Anatoliyivna, Head of Youth-Friendly Clinic of Dniprovskyi District of Kyiv;
- Meshkova Olena Mykhailivna, PhD in Medicine, Deputy General Director on Organizational-Methodological Work of the National Children’s Specialized Hospital OKHMATDIT, Honoured Doctor of Ukraine;

- Sotskyi Oleksandr, Master of the Chair of Social Structures and Social Relations of Taras Shevchenko Kyiv National University;
- Sudakova Anastasiya Vyacheslavivna, Project Management Specialist of Ukrainian Institute for Social Research after Olexander Yaremenko;
- Tsvila Olga Vyacheslavivna, Senior Specialist of Policy and Advocacy Department of All-Ukrainian Charity Foundation “Coalition of HIV Service NGOs”;
- Yatsura Oleksandra Petrivna, PhD in Philology, Advisor for international technical assistance projects in regard to orphans and children, vulnerable to HIV.

Abbreviations

HIV	Human Immune Deficiency Virus
WHO	World Health Organization
NGO	Non-governmental organization
VCT	Voluntary counselling and testing for HIV
FSW	Female sex worker
STI	Sexually transmitted infection
YFC	Youth-friendly clinic
PLWH	People living with HIV
MoESYS¹	Ministry of Education and Science, Youth and Sports of Ukraine
MoSP	Ministry of Social Policy of Ukraine
MoH	Ministry of Health of Ukraine
UN	United Nations
MARA	Most-at-risk adolescents
CSW	Commercial sex worker
IDU	Injecting drug user
MSM	Men who have sex with men
UNAIDS	Joint United Nations Programme on HIV/AIDS
UNICEF	United Nations Children's Fund
USAID	United States Agency for International Development

¹ Since **28 February 2013**, the Ministry of Education and Science, Youth and Sports of Ukraine and the State Service for Youth and Sports of Ukraine was reorganized into the Ministry of Education and Science of Ukraine and Ministry of Youth and Sports of Ukraine. See.: On certain measures regarding optimization of the system of central bodies of the executive authority: The Decree of the President of Ukraine of 28 February 2013, #96/2013 [Electronic resource]. – See at: <http://zakon0.rada.gov.ua/laws/show/96/2013>

Provisions on the Ministry of Education and Science of Ukraine are approved by the Decree of the President of Ukraine of 25 April 2013, #240/2013. [Electronic resource]. – See at <http://zakon4.rada.gov.ua/laws/show/410/2011>

Provisions on the Ministry of Youth and Sports of Ukraine are approved by the Decree of the President of Ukraine of 24 July 2013, #390/2013 [Electronic resource]. – See at : <http://www.president.gov.ua/documents/15919.html>

Foreword

According to current information from the State Service of Ukraine on Combating HIV-infection/AIDS and Other Socially Dangerous Diseases, as of June 2013, 234,257 people in Ukraine have been diagnosed with HIV for the first time. 87,382 of them have been infected through the genital tract (86,551 heterosexual, 831 homosexual) and 103,180 persons have been infected due to injecting drug use².

Children and youth are especially vulnerable to HIV-infection in countries where HIV-infection is actively spreading because the level of risky practices among them is higher than the one among adults, according to different studies.

According to official statistics for 2012, there has been a steady positive decrease in the share of new HIV-infection cases among youths. The number of officially registered HIV-positive persons in the age category 15–24 years decreased from 2,775 persons in 2005 to 1,647 persons in 2012³.

There are 165,000⁴ most-at-risk adolescents (MARA) in Ukraine and 42% of MARA are exposed to the danger of HIV-infection due to their behaviour. Only half of them (49%) are covered by preventive programmes and about a quarter of them (26%) have taken an HIV test and received the results during the last 12 months.

Young intravenous drug users, adolescent girls who provide sex services and adolescents living or working on the street are especially exposed to risk of HIV-infection due to their vulnerability and limited access to prevention services, care and HIV support. Most HIV prevention measures and services, which are provided by governmental and non-governmental organisations in Ukraine, are aimed at the adult population and not on those persons who are aged under 18. At the same time, the adoption of the new version of the relevant law on HIV/AIDS contributed to significant changes in the national legislation and policy on access of adolescents, including MARA, to medical and social services.

The “Regulatory and legal review on HIV/AIDS prevention and access of adolescents, including most-at-risk adolescents, to medical and social services” (*hereinafter – Regulatory and Legal Review*) has been prepared as part of a project run by the United Nations Children’s Fund (UNICEF). The Regulatory and Legal Review contains analysis of international law and Ukrainian legislation (as of **01 January 2013**) regarding the

² Current information on officially registered cases of HIV-infection, AIDS and deaths, caused by AIDS, for June 2013. [Electronic resource]. – See at : <http://ucdc.gov.ua/attachments/article/609/%D0%9A%D0%B2%D1%96%D1%82%D0%B5%D0%BD%D1%8C2013.pdf>

³ HIV-infection in Ukraine: Information bulletin of MoH, Ukrainian Centre for Prevention and Fighting AIDS, Groshashevsky Institute of Epidemiology and Infectious Diseases of the National Academy of Medical Sciences of Ukraine, Central Sanitary-Epidemiological Station of MoH – 2013. – # 39 – P. 5.

⁴ “Most-at-risk adolescents: updated assessments”– see at http://www.unicef.org/ukraine/ukr/L_624x297_mm_Internet.pdf

rights of children and adolescents, and indicates legal gaps and barriers to medical and social services and a number of references to this review are made in relevant sections of this report.

The Regulatory and Legal Review is approved according to a decision, made on 02 April 2013 by the Coordination Council of the Ministry of Health of Ukraine on provision of medical and social services to adolescents and youth.

This publication has been prepared for practical use and is intended for medical and social workers who provide services to children and youth, including from most-at-risk groups. It contains specific recommendations regarding the regulation of medical and social workers' work with those target groups. The document contains references to the *Regulatory and Legal Review* with an indication of pages where information is provided in a broader manner and with detailed analysis.

The issues considered do not cover all the problematic aspects and provide orientation and regulatory and legal basis for overcoming key barriers in provision of medical care and social services to children and youth.

The methodological approach of this study is based on WHO materials "Adolescent job aid: a handy desk reference tool for primary level health workers"⁵. Taking into account this approach during preparation of the publication and considering adapted goals and tasks in the context of Ukrainian reality, an analysis of ***the main problematic issues*** has been carried out since these issues arise in practical activity of medical and social workers during provision of medical and social services to adolescents, namely:

1. Age at the time of testing for HIV and clinical management (provision of contraceptives and syringe exchange). How regulatory and legal regulation is carried out?

- *Free testing on HIV.*
- *Provision of free contraceptives (including condoms) and syringe exchange.*
- *Communication about HIV-positive result of the test.*

2. A requirement for medical workers to mandatorily report to relevant authorities about occurrence of infectious diseases and violence (physical, psychological, sexual one). How confidentiality is regulated in such a case? and in what cases, on what grounds and to which entities a medical worker can provide the indicated information?

- *Does a medical worker have to report to relevant authorities about detection of infectious diseases in the adolescent?*

⁵ Adolescent job aid: a handy desk reference tool for primary level health workers. – WHO, 2010. – 180 p. (P. 9, 10) [Electronic resource]. – See at: http://whqlibdoc.who.int/publications/2010/9789241599962_eng.pdf.

- *Does a medical worker have to report to relevant authorities about detection of facts of physical, sexual or psychological violence in regard to the adolescent?*
3. **A requirement to establish the sexual partner in cases when a patient has contracted an infection through genital tract. How is treatment of the partner to be carried out and how legal provisions on confidentiality are to be observed?**
 - *Establishing a person – sexual partner in case of contracting an infection.*
 - *Treatment of a person – sexual partner in case of contracting an infection.*
 4. **Protection, care and guardianship of adolescents, including most-at-risk adolescents. Responsible bodies, their authority and mechanism of activity?**
 - *Absence of documents.*
 - *Neglect and homelessness.*
 5. **How does the legislation regulate the consent of parents and other legal representatives for the receipt of medical care by adolescents, including most-at-risk adolescents?**
 - *Age specifics in terms of receipt of medical care.*
 - *Placement of a person on record due to his/her STI.*
 - *Placement of a person on record due to his/her use of psychoactive substances.*
 - *Artificial interruption of pregnancy.*
 6. **Inadmissibility of stigmatisation and discrimination of individual social groups:**
 - *Determination of groups of increased risk and vulnerable groups*
 - *Legal basis of inadmissibility of discrimination and stigmatisation of people living with HIV and groups of increased risk*
 7. **Regulatory and legal environment regarding:**
 - *Homosexual relationships between adolescent boys.*
 - *Involvement of adolescent girls in sexual relationships on commercial basis (sex in exchange for something or sex for reward).*

8. Sexual relationships with the participation of underage children and minors and a concept “marriage age for men and women” (for example, underage boys and girls or minors who have experienced sexual violence or sex partners, one of whom is an underage person or a minor, etc.). What is the legislative regulation of protection of children in case of corruption?

- *Marriage age for men and women.*
- *Legislative regulation of protection of children in case of sexual relationships (corruption)*

9. Legal responsibility for illegal purchase, storage and selling of drugs, psychotropic substances or their analogues. Difference from use of drugs, substances or their analogues. What recommendations can be developed for services providers who work with adolescent injecting drug users?

- *“The illegal manufacturing, production, purchase, storage, transporting, sending or selling of drugs, psychotropic substances or their analogues”.*
- *Treatment of drug addiction, treatment of dependence syndrome – prescription of substitution therapy and antiretroviral therapy.*

10. Standards of provision of medical care and social services.

- *Standards of provision of medical care.*
- *Standards of provision of social services.*

The source base includes an analysis of national legislation, scientific publications, and interviews with experts (consultations and in-depth interviews). In order to raise problematic issues and exchange experience with regards to the provision of medical care and social services to adolescents, including most-at-risk adolescents, and a discussion of the publication was organised during sittings of the working groups, and in the process of individual consultations with experts. The results obtained from the interviews with experts and providers of medical and social services were correlated with the problematic spheres defined above.

This publication has a special focus on access to medical and social services for children and young people, with consideration of age specifics:

- Children under 14 years of age (underage children);
- From 14 years until 18 years (minors).

The study regarding the specifics of access to medical and social services for adolescents, including most-at-risk adolescents is carried out depending on their legal status according to the current legislation of Ukraine (homeless children, orphans, disabled children, children deprived of parental care, fosterlings and other groups of adolescents). The subject of this publication is the following: legal statuses (rights, duties, legal responsibility) of parents, guardians, caregivers and other legal representatives of underage children and minors; legal statuses (rights, duties, legal responsibility) of service providers – medical and social workers.

The publication will be of use to those who work with children, adolescents and young people, including individuals from most-at-risk groups, and for those who provide medical care or social services: HIV prevention, counselling and testing on HIV, harm reduction, prevention of drug use, health preservation. It will be no less useful for psychologists, employees of law-enforcement bodies, lawyers, volunteers of governmental and non-governmental organisations who work in the indicated sphere and for decision-makers.

SECTION 1.

An analysis of changes in Ukrainian legislation on the provision of medical care and social services for adolescents

1.1. The problem of defining “child” and “adolescent” in national legislation⁶.

In accordance with the Convention on the Rights of the Child⁷, “a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier”. Note that the international treaty law does not contain a definition of the concept “adolescent”. The Convention on the Rights of the Child is a part of the national legislation and has a legal priority over the laws of Ukraine in case of conflict⁸. So, until reaching the age of 18 years a person is a child unless under the law applicable to him or her, he or she attains the rights of a person of majority age earlier⁹.

In accordance with the current legislation (Article 6 of the Family Code of Ukraine)¹⁰ an underage person is considered to be a child until he or she reaches the age of 14 and a minor is a person aged from 14 to 18 years.

At the time this publication was prepared, the national legislation of Ukraine only contains the concept of ‘child’. At the same time, the concepts of “an adolescent” and “of an adolescent age” is applied at least in 20 legislative acts and in about 700 regulatory acts of the current legislation of Ukraine. In particular, this term is applied in the State Programme “Reproductive Health of the Nation”¹¹, in Item 1 of the Order of MoH of 01 December 2004, # 588 “On Approval of Record-keeping Statistical Forms”¹².

⁶ For more details see: Regulatory and Legal Review – p. 49–54.

⁷ Convention on the Rights of the Child of 20 November 1989. [Electronic resource]. – See at : http://zakon2.rada.gov.ua/laws/show/995_021

⁸ For reference: Part 2 of Article 19 of the Law of Ukraine “On International Treaties of Ukraine” of 29 June 2004, # 1906-IV: *If an international treaty of Ukraine, which has become effective according to the established procedure, establishes other rules than those that are stipulated in a relevant legislative act of Ukraine, rules of the international treaty shall be applied.*

⁹ On Protection of Childhood: Law of Ukraine of 26 April 2001. #2402-III [Electronic resource]. – See at: <http://zakon2.rada.gov.ua/laws/show/2402-14>

¹⁰ Family Code of Ukraine of 10 January 2002, # 2947-III [Electronic resource]. – See at : <http://zakon2.rada.gov.ua/laws/show/2947-14/page>

¹¹ On approval of the State Programme “Reproductive Health of the Nation” by 2015: Resolution of the Cabinet of Ministers of Ukraine of 27 December 2006, # 1849 [Electronic resource]. – See at: <http://zakon2.rada.gov.ua/laws/show/1849-2006-%D0%BF>

¹² On approval of record-keeping statistical forms: Order of the Ministry of Health of Ukraine of 01 December 2004, # 588 [Electronic resource]. – See at: http://www.moz.gov.ua/ua/portal/dn_20041201_588.html. – Heading as seen from the screen.

Technically, the **definition of the concepts** “an adolescent” and “of an adolescent age” **is not contained** in any regulatory act of the national legislation. The Resolution of the Cabinet of Ministers of Ukraine of 13 October 1993 #859 “On organisation of activity of special educational institutions for children and adolescents who require special conditions of upbringing”¹³ is exemplary in this respect – the document contains the term ‘adolescent’ only in its title. Pursuant to the indicated Resolution, relevant documents¹⁴ have been adopted – they concern two age categories: 1) **from 11 to 14 years**, and 2) **from 14 years of age**. Probably, the indicated Instruction separates accordingly the concepts “**children**” and “**adolescents**” by age category.

It is rather obvious that the indicated Instruction should be brought in line with requirements of Paragraph 2 of Part 2 of Article 6 of the Family Code of Ukraine of 10 January 2002, 2947-III¹⁵, according to which *a minor is a child aged from fourteen to eighteen years*.

Application of the concept “children of adolescent age” is more specific in the Order of MoH of 12 December 2002 #465¹⁶. This document refers to “*children of adolescent age (15–17 years inclusive)*”. Paragraph 2.6 of the indicated Order contains a specification that those are children **aged from 15 years to 17 years 11 months and 29 days**. Probably, the basis of the concept ‘adolescent’ is based on the concept ‘child’ with adding an age characteristic – from 15 years to 17 years 11 months and 29 days.

The authors believe that, not only is *the lower age limit of 15 years* of the adolescent child improper in terms of real social relations but it also creates a conflict with regulatory acts of higher legal effect, codes and laws of Ukraine that relate creation of a number of legal rights and obligations of a person with his/her reaching **the age of 14 years**.

¹³ On organization of activity of special educational institutions for children and adolescents who require special conditions of upbringing: Resolution of the Cabinet of Ministers of Ukraine of 13 October 1993, # 859 [Electronic resource]. – See at: <http://zakon2.rada.gov.ua/laws/show/859-93-%D0%BF>

¹⁴ On approval of the Instruction on medical examination of children and adolescents who are sent to general education schools and professional schools of social rehabilitation for children and adolescents who require special conditions of upbringing: The Order of the Ministry of Health of Ukraine and the Ministry of Education of Ukraine of 05 May 1997, # 137/131 (registered in the Ministry of Justice of Ukraine on 20 August 1997 under # 328/2132) [Electronic resource]. – See at: <http://zakon2.rada.gov.ua/laws/show/z0328-97>

¹⁵ Family Code of Ukraine of 10 January 2002 # 2947-III [Electronic resource]. – See at : <http://zakon2.rada.gov.ua/laws/show/2947-14/page>

¹⁶ On improvement of organization of medical care for children of adolescent age: The Order of the Ministry of Health of Ukraine of 12 December 2002, # 465 [Electronic resource]. – See at : <http://zakon.nau.ua/doc/?uid=1039.2336.0>

1.2. Children's rights to proper medical care and social services. Access to information on the condition of one's own health

Since international-legal treaties are a part of the national legislation of Ukraine and, as indicated before, they have a legal priority in case of a conflict¹⁷; it is expedient to provide the main provisions for children's rights that are reflected in international-legal acts¹⁸.

*The International Pact on Economic, Social and Cultural Rights*¹⁹ stipulates the following:

- ✓ Recognition of the rights of every human being to social security, including social insurance.
- ✓ Children and adolescents must be protected from economic and social exploitation. Regarding all children and adolescents, special measures for security and assistance should be applied, without any discrimination.
- ✓ The right of every human being is recognised for the following: the highest attainable level of physical and mental health; the right of every person for sufficient standard of living for him/her and his/her family and that includes sufficient nutrition, clothes and housing, steady improvement of living conditions.

The Convention on the Rights of the Child defines the following rights, among others:²⁰

- ✓ The right to life, for use of the most perfect services of healthcare system and means of treatment of diseases.
- ✓ The right to know his/her parents and the right for their care.
- ✓ The right for citizenship, name and family relations, freedom of thought, conscience and religion;
- ✓ The right for a standard of living, necessary for physical, intellectual, spiritual, moral and social development of the child.

The Constitution of Ukraine confers the children's rights and freedoms that are fully agreed with relevant international-legal acts on the rights of the human being and the approval regarding the obligatory nature of those acts is provided by the Verkhovna Rada of Ukraine. Children are recognised to be equal in their rights regardless of their

¹⁷ *For reference:* Part 2 of Article 19 of the Law of Ukraine "On International Treaties of Ukraine" of 29 June 2004, # 1906-IV: If an international treaty of Ukraine, which has become effective according to the established procedure, establishes other rules than those that are stipulated in a relevant legislative act of Ukraine, rules of the international treaty shall be applied.

¹⁸ For more details see the Regulatory and Legal Review – pp. 44–49.

¹⁹ The International Pact on Economic, Social and Cultural Rights of 16 December 1966 [Electronic resource]. – See at: http://zakon2.rada.gov.ua/laws/show/995_042

²⁰ Convention of the Rights of the Child of 20 November 1989. [Electronic resources]. – See at: http://zakon2.rada.gov.ua/laws/show/995_021

origin. Any violence in regard to the children and their exploitation are prosecuted under the law. Narrowing the sense and scope of the existing rights and freedoms is not allowed in the process of adoption of new laws or amending current ones. Considering the above indicated, it can be stated: *Adolescents, including most-at-risk adolescents, have the entire range of rights, stipulated by the Constitution of Ukraine, acts of the national legislation of Ukraine and international-legal acts.*

In addition to general rights and freedoms, people living with HIV (including children and adolescents) also have the rights, stipulated by the Law of Ukraine “On Prevention of Diseases Caused by Human Immunodeficiency Virus (HIV), and Legal and Social Security of People Living with HIV”²¹, namely²²:

- ✓ Compensation of harm, related with limitation of their rights, due to disclosure or revealing of information about their HIV-positive status;
- ✓ Free provision of antiretroviral drugs and medicinal products for treatment of opportunistic infections;
- ✓ It is forbidden to refuse people living with HIV in admission to educational and medical institutions, institutions of social guardianship and care, social services and also to refuse them in provision of medical care and social services;
- ✓ It is unlawful to limit other rights of people living with HIV due to their HIV-positive status and also limit the rights of their relatives and close people;
- ✓ Parents of HIV-positive children have the rights for joint staying in the in-patient department of the hospital with children aged under 14.

Monthly state financial assistance of 170 hryvnia is provided for HIV-positive children and children, who suffer from a disease caused by HIV²³. The indicated regulation **does not contain quantitative limitation by age of children who have the right** to receive such assistance. That is, considering the Law of Ukraine “On Protection of Childhood”²⁴, the indicated Resolution provides the right to receive such assistance *for all children until they reach 18 years of age (majority age).*

The rights of the child in terms of access to the most important services – medical and social ones – have to be clearly described by referencing to two comprehensive main principles of the Convention on the Rights of the Child:²⁵

²¹ “On Prevention of Diseases Caused by Human Immunodeficiency Virus (HIV), and Legal and Social Security of People Living with HIV”: The Law of Ukraine of 12 December 1991, #1972-XII [Electronic resource]. – See at : <http://zakon2.rada.gov.ua/laws/show/1972-12>

²² For more details see the Regulatory and Legal Review – pp. 59–60.

²³ On the amount of the monthly financial assistance for HIV-positive children and children who suffer from a disease, caused by HIV: Resolution of the Cabinet of Ministers of Ukraine of 12 September 2012, # 852 [Electronic resource]. – See at : <http://zakon2.rada.gov.ua/laws/show/852-2012-%D0%BF>

²⁴ On Protection of Childhood: The Law of Ukraine of 26 April 2001, #2402-III [Electronic resource]. – See at : <http://zakon2.rada.gov.ua/laws/show/2402-14>

²⁵ Convention on the Rights of the Child of 20 November 1989 [Electronic resource]. – See at : http://zakon2.rada.gov.ua/laws/show/995_021

- ✓ *In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration (Article 3).*
- ✓ *Assuring to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child; for this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child (directly or through a representative) (Article 12).*

Based on “On Fundamental Principles of Health Care Legislation of Ukraine”²⁶ **every citizen** has the right to free medical services at government and municipal health facilities, namely:

- ✓ Emergency and primary medical care.
- ✓ Secondary (specialized), tertiary (highly specialized) and palliative medical care.

Youth and adolescents who have reached the majority age have the right of access to information on the condition of their health²⁷. Accordingly, *the right to receive information* on the health condition of minors and underage persons belongs to their parents, guardians and care providers²⁸.

Medical workers are imposed with a duty to provide every patient with information in understandable manner on the condition of his/her health, the goal of conducting any proposed treatments, and a forecast of the possible development of the disease²⁹. The right to provide incomplete information on the health condition of the child arises only in case if information on the disease can worsen the health condition of the patient or harm the treatment process³⁰.

Information on the disease, medical examinations, check-ups and results which are known to medical representatives remains confidential³¹. Information on the results of HIV testing or information that has been identified during the provision of VCT services is also confidential and represents patient confidentiality³². Disclosure of such information entails **criminal responsibility**.

²⁶ On Fundamental Principles of Health Care Legislation of Ukraine: The Law of Ukraine of 19 November 1992, #2801-XII [Electronic resource]. – See at : <http://zakon1.rada.gov.ua/laws/show/2801-12>

²⁷ On Fundamental Principles of Health Care Legislation of Ukraine: The Law of Ukraine of 19 November 1992, #2801-XII [Electronic resource]. – See at : <http://zakon1.rada.gov.ua/laws/show/2801-12>

²⁸ Ibid.

²⁹ On Fundamental Principles of Health Care Legislation of Ukraine: The Law of Ukraine of 19 November 1992, #2801-XII [Electronic resource]. – See at : <http://zakon1.rada.gov.ua/laws/show/2801-12>

³⁰ Ibid.

³¹ According to Part 2 of Article 39–1 of On Fundamental Principles of Health Care Legislation of Ukraine, it is forbidden to demand and submit at a patient's job or place of studying the information on patient's diagnosis and methods of treatment of the patient.

³² “On Prevention of Diseases Caused by Human Immunodeficiency Virus (HIV), and Legal and Social Security of People Living with HIV”: The Law of Ukraine of 12 December 1991, #1972-XII [Electronic resource]. – See at : <http://zakon2.rada.gov.ua/laws/show/1972-12>

1.3. Changes in the policy of combating the HIV-infection epidemic³³

Underlying principles for combating the HIV-infection epidemic in Ukraine are laid out in the Law of Ukraine “On Prevention of Diseases Caused by Human Immunodeficiency Virus (HIV), and Legal and Social Security of People Living with HIV” of 12 December 1991, #1972-XII³⁴. Measures for combating HIV-infection rates are listed in the *National Programme to Ensure Prevention of HIV Infection, Treatment, Care and Support to HIV Positive People and AIDS Patients for 2009–2013*³⁵, which aims to stabilise the epidemic, and reduce levels of morbidity and mortality due to HIV-infection and AIDS. It involves the implementation of the state policy in terms of access to preventive measures, and services for treatment, care and support. Financing has been planned for the state and local budgets. Taking into account that Laws of Ukraine have higher legal effect than the one of all other acts of national legislation and regarding the sphere of HIV-infection prevention, treatment, care and support of people living with HIV, *one should be guided*, first and foremost, by this Law of.

Advocacy of measures for combating HIV-infection/AIDS among children under 14 years-old, including most-at-risk adolescents, is an important aspect in this context.

The above mentioned law indicates only the following scenarios as results which are expected from the National Programme:

“Fulfilment of measures of the Programme will provide an opportunity to:...

- Cover 60 per cent of representatives of most-at-risk groups with medical services on prevention of HIV/AIDS;
- Improve the mechanism of HIV/AIDS prevention among persons aged from 15 to 24 in order to raise their awareness regarding safe sexual behaviour and that will provide an opportunity to increase up to 60 per cent the number of persons who can independently make decisions regarding prevention of HIV-infection transmission through genital tract”³⁶.

³³ For more details see the Regulatory and Legal Review (Section 3. General analysis of changes that have taken place in the Ukrainian legislation in the sphere of provision of medical and social services to adolescents, including most-at-risk adolescents; Section 4. Underlying principles of organization and provision of medical care to adolescents, including most-at-risk adolescents. Programmes of provision of HIV-infection prevention, treatment, care and support of people living with HIV) – pp. 41–64; pp. 67–71.

³⁴ “On Prevention of Diseases Caused by Human Immunodeficiency Virus (HIV), and Legal and Social Security of People Living with HIV”: The Law of Ukraine of 12 December 1991, #1972-XII [Electronic resource]. – See at: <http://zakon2.rada.gov.ua/laws/show/1972-12>

³⁵ On approval of the National Programme to Ensure Prevention of HIV Infection, Treatment, Care and Support to HIV Positive People and AIDS Patients for 2009–2013 : The Law of Ukraine of 19 February 2009, #1026-VI [Electronic resource]. – See at : <http://zakon2.rada.gov.ua/laws/show/1026-17>

³⁶ On approval of the National Programme to Ensure Prevention of HIV Infection, Treatment, Care and Support to HIV Positive People and AIDS Patients for 2009–2013 : The Law of Ukraine of 19 February 2009, #1026-VI [Electronic resource]. – See at : <http://zakon2.rada.gov.ua/laws/show/1026-17>

Currently, a process of public discussions and approval of the new National Target Social Programme for Combating HIV/AIDS for 2014–2018³⁷ is underway. Its goal is to decrease the level of morbidity and mortality due to HIV/AIDS by providing good-quality and accessible services for preventing and diagnosing HIV-infection and for reforming the healthcare system and social sphere.

Resolving problems to combat the HIV/AIDS epidemic is defined as follows: the provision and sustainability of the system for the provision of accessible services for quality diagnostics and treatment of HIV, first and foremost, among groups of increased risk. Resolving the problems described is possible by implementing the following directions of activity in 2014–2018:

- Provide access for 100% of the total population to programmes of HIV prevention (in particular, for children and youth).
- **Take measures to reduce the number of new HIV cases among adolescents by 70% (including high risk groups in terms of HIV-infection (14–18 years)).**
- Provide access to uninterrupted treatment with antiretroviral therapy for patients with HIV-infection who need such a treatment.
- Consider a gender-based approach during provision of medical, social and preventive services to people living with HIV (including adolescents).
- Provide access to legal assistance for people living with HIV and representatives of most-at-risk groups in case their rights are violated, etc.

The Programme also entails a number of measures and tasks, in particular, to reduce the number of new HIV cases to zero among the total population and reduce this indicator by 50% among groups of increased risk to HIV-infection; reduce the number of cases of mother-to-child HIV transmission to zero; cover 100% of schoolchildren and student youth with programmes for HIV and AIDS prevention; reduce the level of stigmatisation and discrimination by 50%, etc.

Regarding adolescents, including most-at-risk adolescents, individual measures are planned. For example, plans to provide information about technologies and the experience of social workers, and training for instructors of educational institutions and employees of bodies of internal affairs by means of a resource and information centre.

The following goals have been set: to develop preventive programmes, encouraging people to adopt safe behaviour in terms of HIV (in particular, children's and youth's motivation); to include courses on HIV and AIDS prevention in the list of mandatory courses of vocational schools and higher educational institutions of all levels of accreditation. Campaigns and events (aimed at children and youths) will promote skills for healthy lifestyles, and facilitate the provision of a range of social and preventive servic-

³⁷ Draft of the National Target Social Programme for Combating HIV-infection/AIDS for 2014–2018 (updated on 11 April 2013) [Electronic resource]. – See at : <http://dssz.gov.ua/index.php/uk/gromadske-obgovorennya/1561-2014-2018-proekt>

es to children from families in difficult living conditions. They will do that with the help of street multi-disciplinary teams and YFCs.

1.4. The most significant changes in the current legislation of Ukraine in the sphere of provision of medical care and social services to adolescents, including most-at-risk adolescents³⁸

Due to amendments to the Law of Ukraine “On prevention of the acquired immune deficiency syndrome (AIDS) and social protection of the population”³⁹, documents that regulate provision of medical and social services to adolescents, including most-at-risk adolescents, have been worded essentially in a new manner⁴⁰. In particular, from now on testing for the purpose of detecting HIV in persons **aged from 14 years and older is carried out on a voluntary basis**, with the informed consent of a person. Such consent can be received after providing the person with a preliminary counselling session with observance of confidentiality of their personal data.

According to the provisions of international law, this Law defines a procedure for legal regulation of activity in the sphere of prevention, treatment, care and support, necessary for provision of effective fighting the spread of the disease, caused by human immune deficiency virus, and relevant measures regarding legal and social protection of people living with HIV. Consequently, a glossary in the sphere of legal regulation of fighting HIV-infection has been reconsidered too. HIV and not AIDS has become the fundamental notion. That is, currently AIDS is understood as a stage of development of the disease, caused by HIV-infection. Such a change narrows the possibility of discrimination and stigmatisation of people living with HIV in the Ukrainian society.

The notion “**groups of increased risk in terms of HIV-infection**” has received a legislative definition: these are population groups, who are exposed to danger due to an increased risk of contact with an HIV source due to specifics of their behaviour and behaviour of their environment.

People living with HIV (including children and adolescents) have the right for compensation of damage, related with limitation of their rights due to disclosure or the revealing of information about their HIV-positive status, for free provision of ARV drugs and medicinal products for treatment of opportunistic infections. The following is **forbidden** in regard to PLWH: dismissal from work; refusal to hire on a job; refusal to admit to educational or medical institutions, institutions of social care and guardianship

³⁸ For more details see the Regulatory and Legal Review – pp. 56–60.

³⁹ On amendments to the Law of Ukraine “On prevention of the acquired immune deficiency syndrome (AIDS) and social protection of the population”: The Law of Ukraine of 23 December 2010, #2861-VI [Electronic resource]. – See at : <http://zakon1.rada.gov.ua/laws/show/2861-17>

⁴⁰ “On Prevention of Diseases Caused by Human Immunodeficiency Virus (HIV), and Legal and Social Security of People Living with HIV”: The Law of Ukraine of 12 December 1991, #1972-XII, version of 05 December 2012. [Electronic resource]. – See at : <http://zakon2.rada.gov.ua/laws/show/1972-12>

and social services. a The refusal to provide medical care and social services is also forbidden; limitations on the rights of people living with HIV on the basis of their HIV-positive status and also limitation on the rights of their relatives and close people on that basis. Overall, the indicated Law has fundamentally changed the concept for fighting HIV-infection/AIDS and currently this concept is close to real societal relations and is being brought in line with current international approaches to fighting HIV-infection. According to provisions in international law, this law establishes a procedure for the legal regulation of activity in the sphere of prevention, treatment, care and support, necessary for provision of effective fighting the spread of the disease, caused by human immune deficiency virus. Relevant measures regarding legal and social protection of people living with HIV are also defined.

SECTION 2.

The provision of social services and medical care to adolescents, including most-at-risk adolescents from the standpoint of regulatory and legal environment

This section contains information on the main problematic issues that arise during provision of social services and medical care to adolescents, including most-at-risk adolescents (*see Foreword, p. 7–9*), in social and medical institutions. For every issue, the essence of the problem is examined, provisions that regulate the problem in current legislation are considered, and specific recommendations are provided. In those spheres where regulatory and legal regulation of a certain problem depends on the age of the child, practical recommendations focus on two age groups of children, adolescents and youth – from 10 years to 14 years of age (underage persons) and from 14 years to 18 years of age (minors).

The main problems faced by adolescents (including most-at-risk adolescents, in the age categories from 10 years until 18 years) when seeking medical and social services, are:

Physical accessibility – first and foremost, establishing of legislative age limitations for independent access of adolescents, including most-at-risk adolescents, to relevant medical care and services, in particular, testing on HIV;

The provision of, and voluntary nature of counselling and testing for HIV-infection – the right to free decision making is possible if a person does not have defects of the will and is related with absence of his/her psychological encumbrances;

The completeness, accuracy, objectivity and reliability of information are considered in the legislation as components of the main principles of information relations; due to the age specifics of adolescents, including most-at-risk adolescents, certain limitations of the indicated principles can be established;

“Economic” accessibility – some medical institutions continue to apply the following arrangement: patients pay for medical services and that is done on the form of collecting of donations (charitable contributions). This circumstance may be insuperable for adolescents, including most-at-risk adolescents, and prevent access to relevant medical care and services;

Discrimination –provision of advantages or limitation of rights according to a certain characteristic (disease, place of residence, gender, skin colour, ethnic origin, etc.). Proof of the fact of discrimination is related with analysis of legal status of persons who belong to a certain group and with revealing of advantages or limitations of rights (legal

or actual ones) of individuals from this group. The right not to be discriminated is a fundamental right of the human being⁴¹;

Stigmatisation – measures (social isolation), actions (marks, ‘marking’, creation of sinister image, etc.) that lead to distinguishing a certain group of people or individuals according to certain characteristics, which can lead to discrimination. The problem and existence of stigmatisation is more related to professional ethics and an insufficient awareness of the population rather than to legislation.

Considering the above, brief recommendations have been developed for medical and social care providers on the provision of services to adolescents, including most-at-risk adolescents.

⁴¹ Article 2 of the Universal Declaration of Human Rights of 10 December 1948: *“Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”* See: The Universal Declaration of Human Rights of 10 December 1948 [Electronic resource]. – See at: http://zakon1.rada.gov.ua/laws/show/995_015

Article 14 (1) of the Convention for the Protection of Human Rights and Fundamental Freedoms of 04 November 1950: *“The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”* See: The Convention for the Protection of Human Rights and Fundamental Freedoms of 04 November 1950. [Electronic resource]. – See at: http://zakon2.rada.gov.ua/laws/show/995_004

2.1. Person's age when testing for HIV, and clinical management (provision of contraceptives and syringe exchange). How regulatory and legal regulation is carried out?⁴²

Legal basis: The Law of Ukraine “On prevention of the acquired immune deficiency syndrome (AIDS) and social protection of the population”.

✓ *Person's age for testing on HIV*

Age limits	Condition for referring for testing on HIV	
From 10 years till 14 years of age	Child has legal representatives ⁴³	Consent of legal representatives and deliberate informed consent of the child or young person; <ul style="list-style-type: none"> – <i>Legal representatives have the right:</i> <ul style="list-style-type: none"> ▪ To be present during conducting such a test ▪ To familiarize themselves with the results of the test – <i>Legal representatives are obliged:</i> <ul style="list-style-type: none"> ▪ To provide confidentiality of data on HIV-status of persons, whose interests they represent – <i>Children who are under care in children's institutions or educational institutions with complete state support have to realize consequences and advantages of such an examination only for the purpose of prescribing these children with treatment, care and support due to HIV-infection</i>
	Child does not have legal representatives	<ul style="list-style-type: none"> – Testing is carried out per request of a relevant service for children and per agreement of bodies of care and guardianship in case of life and health threat based on medical examination⁴⁴
From 14 years till 18 years of age	Child can refer independently ⁴⁵	<ul style="list-style-type: none"> – Testing is carried out on voluntary basis, under availability of deliberate informed consent of the person (consent for testing by a patient who was able to take an informed decision based on comprehensible pre-testing counselling information on purpose and procedure of testing, modes of HIV transmission, prevention measures and consequences of detection of HIV infection)⁴⁶

✓ *Free testing on HIV*

The Law of Ukraine “On Prevention of Diseases Caused by Human Immunodeficiency Virus (HIV), and Legal and Social Security of People Living with HIV” of 12 Decem-

⁴² For more details see the Regulatory and Legal Review (Section 8. Recommendations on provision of medical care and social services to adolescents, including most-at-risk adolescents, depending on the age and legal status of the adolescent) – pp. 160–161.

⁴³ Paragraph 1 of Part 3 of Article 6 of the Law of Ukraine “On Prevention of Diseases Caused by Human Immunodeficiency Virus (HIV), and Legal and Social Security of People Living with HIV” of 12 December 1991, #1972-XII

⁴⁴ Resolution of the Cabinet of Ministers of Ukraine “On approval of standard provisions on Service for Children” of 30 August 2007, #1068 and the Resolution of the Cabinet of Ministers of Ukraine “Activity of bodies of care and guardianship, related with protection of the rights of the child” of 24 September 2008, #866.

⁴⁵ Part 2 of Article 6 of the Law of Ukraine “On Prevention of Diseases Caused by Human Immunodeficiency Virus (HIV), and Legal and Social Security of People Living with HIV” of 12 December 1991, #1972-XII

⁴⁶ On improvement of voluntary counselling and counselling on HIV-infection: The Order of the Ministry of Health of Ukraine of 19 August 2005, #415 (registered in the Ministry of Justice on 22 November 2005, under ref. #1404/11684) [Electronic resource]. – See at: <http://zakon2.rada.gov.ua/laws/show/z1404-05/page>

ber 1991, #1972-XII does not contain a direct indication that testing on HIV is provided absolutely free of charge (Paragraph 1 of Part 4 of Article 6 of the Law⁴⁷).

However, such provisions are found in subordinate regulatory acts. Testing for HIV [and AIDS]⁴⁸ are excluded from the “List of Paid Services”, which can be provided at government and municipal healthcare facilities, higher medical educational institutions and scientific-research institutions. The list was approved by the Resolution of the Cabinet of Ministers of Ukraine of 17 September 1996, #1138⁴⁹.

In the same way, section 3 of the “Procedure of Voluntary Counselling and Testing on HIV-infection (Protocol)”, approved by the Order of the Ministry of Health of Ukraine of 19 August 2005, #415 (registered in the Ministry of Justice of Ukraine on 22 November 2005, under ref. # 1404/11684)⁵⁰ emphasises that *the essence* of VCT principle “accessibility and absence of discrimination” includes *economic accessibility* and means that voluntary testing [on HIV] must be *free for all patients*.

✓ *Provision of free contraceptives (including condoms) and syringe exchange*⁵¹

Current legislation regulates the provision of contraceptives and syringe exchanges **without specifying the age of recipients**.

Considering the above, the options for providing these services to children under 14 years of age is unclear. Apparently, in such cases, one should follow item 3.1. of the Temporary Standards, Criteria and Indicators of Provision of Medical Care to Adolescents and Youth in Centres (Departments, Rooms) for Medical Care for Adolescents and Youth of 02 June 2009, #382⁵²: medical services for underage visitors under 14 are provided only per their parents’ (legal representatives) consent and for visitors **aged 14–18** – per personal consent and parents’ (guardians, family members) consent. Non-medical services (counselling and the provision of information) are provided per personal consent of the visitor.

⁴⁷ “4. Free testing to detect HIV, relevant pre-test and post-test counselling, preparation and issuance of the conclusion on the results of such a test can be carried out by medical institutions regardless of their form of ownership and subordination, social support services and other organizations that work in the sphere of fighting the spread of diseases, caused by HIV, have a relevant license for carrying out such an activity and have a medical laboratory that is certified according to the procedure, established by law.”

⁴⁸ Quoted verbatim – authors’ **note**.

⁴⁹ On approval of the List of Paid Services, provided at state healthcare facilities and higher medical educational institutions: Resolution of the Cabinet of Ministers of Ukraine of 17 September 1996, #1138 [Electronic resource]. – See at: <http://zakon1.rada.gov.ua/laws/show/1138-96-%D0%BF>

⁵⁰ On improvement of voluntary counselling and counselling on HIV-infection: The Order of the Ministry of Health of Ukraine of 19 August 2005, #415 (registered in the Ministry of Justice on 22 November 2005, under ref. #1404/11684) [Electronic resource]. – See at: <http://zakon2.rada.gov.ua/laws/show/z1404-05/page>

⁵¹ For more details see the Regulatory and Legal Review (Issue of legality of provision of contraceptives and syringes exchange and Section 8. Recommendations on provision of medical care and social services to adolescents, including most-at-risk adolescents, depending on the age and legal status of the adolescent) – pp. 120–121, p.161.

⁵² On approval of Temporary Standards of Provision of Medical Care to Adolescents and Youth: The Order of the Ministry of Health of Ukraine of 02 June 2009, # 382 [Electronic resource]. – See at: <http://zakon.nau.ua/doc/?uid=1039.9288.0>

Social workers who provide contraceptives and syringe exchanges to **children and adolescents aged 14–18** can refer to the following legislation of Ukraine:

- Paragraph 8 of Part 1 of Article 4 of the Law of Ukraine “On Prevention of Diseases Caused by Human Immunodeficiency Virus (HIV), and Legal and Social Security of People Living with HIV”⁵³
- Paragraph 35 of the Programme on HIV/AIDS Prevention for 2001–2003⁵⁴
- In accordance with the List of organisations and facilities that can provide VCT services included into Section 5 of the Procedure of Voluntary Counselling and Testing on HIV-infection (Protocol)⁵⁵, *associations of citizens (including international ones, registered in accordance with the laws of Ukraine) that provide VCT services to IDU and CSW, PLWH support groups, religious communities etc., can also **distribute contraceptives and exchange syringes** (if available) to injecting drug users.*
- Item 2.2 of the Standards for Provision of Social Services on HIV Prevention among Persons at Risk of Contracting HIV through Sexual Mode of Transmission⁵⁶.
- Item 2.5 of the Standards for Provision of Social Services on Care and Support to People Living with HIV⁵⁷

✓ *Communication about HIV-positive test results*⁵⁸

Contradictory situations exist with regards to the regulation of confidentiality about the person’s health, and the communication about his/her HIV-positive status to third parties. Contradictions occur during the practical activity of workers who provide services to children and adolescents.

⁵³ “On Prevention of Diseases Caused by Human Immunodeficiency Virus (HIV), and Legal and Social Security of People Living with HIV”: The Law of Ukraine of 12 December 1991, #1972-XII [Electronic resource]. – See at: <http://zakon2.rada.gov.ua/laws/show/1972-12>

⁵⁴ On Programme on HIV/AIDS Prevention for 2001–2003: Resolution of the Cabinet of Ministers of Ukraine of 11 July 2001, #790 [Electronic resource]. – See at : <http://zakon2.rada.gov.ua/laws/show/790-2001-%D0%BF>

⁵⁵ On improvement of voluntary counselling and counselling on HIV-infection: The Order of the Ministry of Health of Ukraine of 19 August 2005, #415 (registered in the Ministry of Justice on 22 November 2005, under ref. #1404/11684) [Electronic resource]. – See at: <http://zakon2.rada.gov.ua/laws/show/z1404-05/page>

⁵⁶ Standards for Provision of Social Services on HIV Prevention among Persons at Risk of cContracting HIV through Sexual Mode of Transmission: Order of the Ministry of Family, Youth and Sports of Ukraine, Ministry of Labour and Social Policy of Ukraine, Ministry of Health of Ukraine “On Approval of the Standards of Social Services Provision to the Most-at-risk Populations” of 13 September 2010, #3123/275/770 (registered in the Ministry of Justice of Ukraine on 08 October 2010, #904/18199) [Electronic resource]. – See at : <http://zakon1.rada.gov.ua/laws/show/z0904-10>

⁵⁷ Standards for Provision of Social Services on Care and Support to People Living with HIV: Order of the Ministry of Family, Youth and Sports of Ukraine, Ministry of Labour and Social Policy of Ukraine, Ministry of Health of Ukraine “On Approval of the Standards of Social Services Provision to the Most-at-risk Populations” of 13 September 2010, #3123/275/770 (registered in the Ministry of Justice of Ukraine on 08 October 2010, #904/18199) [Electronic resource]. – See at : <http://zakon1.rada.gov.ua/laws/show/z0903-10>

⁵⁸ For more details see the Regulatory and Legal Review (5.4. Providing adolescents, including most-at-risk adolescents, with the right for information on the results of testing on HIV and the right to confidentiality of information on their health condition) – pp.108–118.

For example, “in September 2012, at a boarding school, a nurse who has known about HIV-positive status of one of the students for already two years started to insist that the mother of the boy, who was 10 years old, tell the school director about that her child had HIV-positive status since the nurse was worried and afraid to lose her job. The mother referred to an attorney of Kyiv City Department of All-Ukrainian Charitable Organisation “All-Ukrainian Network of PLWH” and the attorney prepared an explanatory letter for the nurse, in which it was indicated that medical staff bears responsibility for disclosure of a person’s HIV-positive status to other persons. After familiarizing herself with the letter, the nurse signed it and the issue was resolved. As of today, the child attends the school without any problems and receives ART at the school every evening.”⁵⁹

The table below contains a procedure and list of actions that may be followed when deciding on revealing **the HIV-positive diagnosis** of persons from different age groups.

Conditions supplying information about a HIV-positive diagnosis		
Case	Who must be notified?	Requirements
Children who have not reached 14 years of age and in whom HIV has been detected	Legal representatives, parents	<ol style="list-style-type: none"> 1. Parents and other legal representatives have to be provided with relevant counselling. 2. Recipients provide a written confirmation in free from and sign it in regard to receipt of information on preventive measures, necessary for supporting the child’s health.
Children aged 14 and older diagnosed with HIV	The person himself/herself	<ol style="list-style-type: none"> 1. Competent post-test counselling is obligatory. 2. Recipients provide a written confirmation in free from and sign it in regard to receipt of information on preventive measures, necessary for supporting the child’s health.
Confidentiality	Other medical workers and healthcare facilities	Information is passed solely in relation with treatment of the person ⁶⁰ .
	Any third person (bodies of prosecution, investigation, interrogation and courts)	Information can be received only according to a court ruling, in the interests of an investigation and on the basis of relevant articles of the criminal and procedural code ⁶¹ .

2.2. The requirement for medical workers to report mandatorily to competent authorities about occurrence of infectious diseases and violence

✓ *Reporting about detection of infectious diseases to competent authorities*

Legal basis: The Law of Ukraine “On protection of the population from infectious diseases” of 06 April 2000, #1645-III: Article 26. The treatment and legal protection of pa-

⁵⁹ The example is provided by Kyiv City Department of All-Ukrainian Charitable Organization “All-Ukrainian Network of PLWH”.

⁶⁰ On Fundamental Principles of Health Care Legislation of Ukraine: The Law of Ukraine of 19 November 1992, #2801-XII [Electronic resource]. – See at: <http://zakon1.rada.gov.ua/laws/show/2801-12>

⁶¹ Criminal Procedural Code of Ukraine of 13 April 2012, #4651-VI [Electronic resource]. – See at: <http://zakon1.rada.gov.ua/laws/show/4651%D0%B0-17>

tients with infectious diseases, which are sexually transmitted. “Persons with infectious diseases, which are sexually transmitted, are subject to obligatory treatment (anonymously, if they wish).”

Information about a person who has contracted an infectious disease, which is sexually transmitted; medical examinations and check-ups conducted in this regard; data of an intimate nature, received in relation with fulfilment of professional duties by specialists and medical workers of healthcare facilities – these pieces of information represent patient confidentiality. Provision of such information is allowed in cases, stipulated by laws of Ukraine⁶².

In case of referral of the adolescent aged from 14 years to 18 years, the following is regulated:	In case of referral of the child, who has not reached 14 years of age, the following is regulated:
The anonymity of detection and treatment of infectious diseases, information on these diseases represent <i>patient confidentiality</i> .	Any necessity for medical workers to provide relevant information on the child's health condition to his/her parents or other legal representatives.
The provision of medical care only per person's consent.	The rights of parents or other legal representatives to be present during a medical examination ⁶³ .
The necessity for medical workers to provide patients, who have infectious diseases, and bacteria carriers and (or) their legal representatives with information on danger of infecting people around and information on requirements of sanitary-epidemiological rules and regulations, which should be followed in order not to allow spreading of the disease.	Carrying out medical intervention (diagnostics, prevention, treatment, related with impacting the person's body) per consent of legal representatives ⁶⁴ .

✓ *Reporting to **competent authorities** about violence (physical, psychological, sexual and economic)*⁶⁵

Legal basis:

The Law of Ukraine “On Prevention of Domestic Violence” and the Order of the State Committee of Ukraine for Families and Youth, Ministry of Internal Affairs of Ukraine, Ministry of Education and Science of Ukraine and Ministry of Health of Ukraine “On approval of the Procedure for consideration of appeals and communications regarding cruel treatment of children or real threat of applying such a treatment”.

⁶² On Protection of Population from Infectious Diseases: The Law of Ukraine of 06 April 2000, #1645-III [Electronic resource]. – See at: <http://zakon3.rada.gov.ua/laws/show/1645-14>

⁶³ On Approval of Temporary Standards for Provision of Medical Care to Adolescents and Youth: The Order of the Ministry of Health of Ukraine of 02 June 2009, #382 [Electronic resource]. – See at: <http://zakon.nau.ua/doc/?uid=1039.9288.0>

⁶⁴ On Fundamental Principles of Health Care Legislation of Ukraine: The Law of Ukraine of 19 November 1992, #2801-XII [Electronic resource]. – See at: <http://zakon1.rada.gov.ua/laws/show/2801-12>

⁶⁵ For more details see the Regulatory and Legal Review (Actions of medical workers in cases of cruel treatment of children; Prevention of domestic violence; Prevention of cruel treatment of children; and Section 8. Recommendations on provision of medical care and social services to adolescents, including most-at-risk adolescents, depending on the age and legal status of the adolescent) – p.75; pp.121–122; p.162.

Physical, psychological, sexual and economic violence in the current legislation of Ukraine is combined in the category “domestic violence”⁶⁶ and “cruel treatment of children”⁶⁷.

Domestic violence is defined as deliberate actions of physical, sexual, psychological or economic nature of one member of the family in regard to another member of the family if such actions violate constitutional rights and freedoms of the person and do damage to him/her.

“Cruel treatment of children” is defined as any forms of physical, psychological, sexual, or economic and social violence in regard to a child within and outside the family.

Types of domestic violence:

- physical domestic violence is a deliberate assault and battery of one family member by another family member that leads to death of the victim, damages his/her physical and mental health, infringes his/her honour and dignity
- sexual domestic violence is an unlawful infringement of one family member upon sexual integrity of another family member and actions of sexual nature in regard to a child who is a member of a family
- psychological domestic violence is a type of violence which is connected with impact on the mental state of one family member by another family member through verbal insults or threats, persecution, intimidation which deliberately inflicts emotional lack of confidence and insecurity and might damage or damages mental health
- economic domestic violence is a deliberate deprivation by one family member of the legal right of another family member to housing, food, cloth and other property or resources which might lead to the victim’s death and might damage his/her physical and mental health

Information about cruel treatment must be registered with the relevant territorial department of the Service for Children **and law enforcement bodies** within one calendar day (24 hours) from the moment of receipt of an appeal (communication) or suspicion by the specialist that a child might suffer from such actions.

It is forbidden to disclose information regarding the essence of the child’s appeal and to find out additional information that does not concern the essence of the appeal. At the same time, this ban does not apply to civil servants who are related to resolving the case.

⁶⁶ On Prevention of Domestic Violence: The Law of Ukraine of 15 November 2001, #2789-III [Electronic resource]. – See at: <http://zakon2.rada.gov.ua/laws/show/2789-14>

⁶⁷ On approval of the Procedure for consideration of appeals and communications regarding cruel treatment of children or real threat of applying such a treatment: the Order of the State Committee of Ukraine for Families and Youth, Ministry of Internal Affairs of Ukraine, Ministry of Education and Science of Ukraine and Ministry of Health of Ukraine of 16 January 2004, #5/34/24/11 (registered in the Ministry of Justice of Ukraine of 22 January 2004, under #99/8698) [Electronic resource]. – See at: <http://zakon3.rada.gov.ua/laws/show/z0099-04>

Per child's request, expressed in any form, his/her last name, place of residence, place of studying or work shall not be subject to disclosure.

Assistance to the child, who has suffered from acts of violence, is provided by treatment facilities and institutions of social orientation (Fig. 1).

✓ *Services, provided to children in case of physical, psychological or sexual violence*

The right to free secondary legal assistance is guaranteed for children who have become (or can become) victims of domestic violence. Such assistance includes representation of the person's interests in court, other state bodies and before other persons, preparation of documents of procedural nature⁶⁸.

Children who have experienced cruelty or violence and require social protection can be sent to a temporary shelter for minors or centre of social and psychological rehabilitation of children.⁶⁹ If necessary, centres for the social and psychological rehabilitation of children can provide primary social and psychological, legal, social and medical assistance to children who have suffered from cruel treatment. Such services can be aimed at preservation of the social status and full-fledged life of the child.

Age specifics for the provision of medical and social assistance in the above indicated cases are not provided. Therefore, one should be guided by a general principle of provision of medical and social services: underage visitors (under 14 years) are provided with relevant services only with the consent of their parents or legal representatives and visitors aged from 14 to 18 – per personal consent of the adolescent and per permission of his/her parents (legal representatives)⁷⁰. At the same time, though his/her parents can initiate the examination of their child, **the child aged from 14 has the right to independently receive medical care.**

⁶⁸ On Free Legal Assistance: The Law of Ukraine of 02 June 2011, #3460-VI [Electronic resource]. – See at: <http://zakon2.rada.gov.ua/laws/show/3460-17>

⁶⁹ Actually, there are no temporary shelters for minors in Ukraine. Instead, their functions are fulfilled by children's shelters of the Service for Children of a relevant local state administration and Centres for Social and Psychological Rehabilitation of Children. See relevant definitions – **authors' note.**

⁷⁰ On approval of Temporary standards of provision of medical care to adolescents and youth: The Order of the Ministry of Health of Ukraine of 02 June 2009, #382 [Electronic resource]. – See at: <http://zakon.nau.ua/doc/?uid=1039.9288.0>

Diagram for the provision of medical care and social support to a child who has suffered from cruel treatment

Treatment and prevention institutions and facilities		
Around-the-clock admission of children who have experienced cruel treatment and providing them with necessary medical care	During examination of the child, medical workers take notice of damages that could have occurred due to cruel treatment of the child → they report about this to the district paediatrician, the body of internal affairs and Service for Minors	In case of detection or receipt of appeals or communications regarding cruel treatment of the child, medical and social rehabilitation of children who have suffered due to cruel treatment is carried out.
Centres of Social Services for Families, Children and Youth		
Accept appeals and communications regarding cases of cruel treatment or real threat of committing it in regard to the child. In urgent manner (within a calendar day) they report about this in writing to the Service for Minors and Bodies of Internal Affairs.	If necessary, they provide primary (when the child refers for help) social and psychological assistance to children who has suffered from cruel treatment.	Provide legal, psychological, social and medical, and social and psychological services to preserve the social status and full-fledged life activity, and to provide adaptation of the children, who have suffered from cruel treatment, in the society.

2.3. Establishment of the person's sexual partner in case of contracting HIV infection through sexual contact.

Legal basis: The Law of Ukraine “On Prevention of Diseases Caused by Human Immunodeficiency Virus (HIV), and Legal and Social Security of People Living with HIV”.

✓ *Establishing the person's sexual partner in case of contracting HIV-infection*

The concept ‘partner’ is defined as a sexual partner of an HIV-positive person or his/her partner for drug use and injecting use of psychotropic substances⁷¹.

During the provision of post-test counselling, employees who have conducted testing, have the right to offer a person, in whom HIV has been detected, **per his/her consent to inform his/her partner (partners) about the risk of HIV-infection** and provide recommendations regarding the necessity of testing on HIV and applying preventive measures (Article 7)⁷². In case post-test counselling did not cause the behavioural change in a person living with HIV, which is necessary to minimize the risk of HIV transmission to the partner (partners), a medical worker who provides medical services related to HIV infection has to repeat to the person the measures which he or

⁷¹ “On Prevention of Diseases Caused by Human Immunodeficiency Virus (HIV), and Legal and Social Security of People Living with HIV”: The Law of Ukraine of 12 December 1991, #1972-XII [Electronic resource]. – See at: <http://zakon2.rada.gov.ua/laws/show/1972-12>

⁷² Ibid

she should take to prevent the spread of HIV infection and has to offer to inform his/her partner (partners) upon his/her consent about the risk of HIV infection and provide recommendations on necessity of HIV testing and measures to prevent HIV infection.

In case repeated explanation of the necessity of the above mentioned preventive measures did not cause the behavioural change in a person living with HIV, which is necessary to minimize the risk of HIV transmission to other persons, and a person living with HIV refused to give a consent to inform his/her partner (partners) about the risk of HIV infection, **a medical worker has a right to inform his/her partner (partners) without his/her consent about the risk of HIV infection** and provide recommendations on necessity of HIV testing and measures to prevent HIV infection (Article 11).

The medical worker's disclosure of information about HIV-positive status of the person **to his/her partner** is allowed if:

1. A person, living with HIV, refers to a medical worker with a corresponding request, confirmed in writing (Article 13).
2. A person, living with HIV, died, lost his/her consciousness or there is a probability that he or she will not regain consciousness and will not restore his/her ability to provide a deliberate informed consent (Article 13).

2.4. Protection, care and guardianship of adolescents, including most-at-risk adolescents. Responsible authorities and their powers, as well as mechanisms of their functioning

✓ Absence of documents

The absence of documents can, in fact, be a serious obstacle in receiving medical care and social support. For instance, in order to access life-saving treatment of HIV, "street children" should have identification documents. AIDS Centre specialists can register undocumented children as "anonymous patients" but such patients cannot receive state-funded anti-retroviral treatment.

Other obstacles which undocumented child might face: access to medical care in state health care facilities based on the territorial principle, property and housing rights, entitlement to subsidies and state support etc.

Legal basis: The Law of Ukraine "On Social Services"⁷³ and the Law of Ukraine "On Social Work with Families, Children and Youth"⁷⁴.

'Legal services' are a type of social service that can be provided. This includes:

⁷³ On Social Services: The Law of Ukraine of 19 June 2003, #966-IV [Electronic resource]. – See at: <http://zakon2.rada.gov.ua/laws/show/966-15>

⁷⁴ The Law of Ukraine "On Social Work with Families, Children and Youth" of 21 June 2001, #2558-III [Electronic resource]. – See at: <http://zakon2.rada.gov.ua/laws/show/2558-14>

- Counselling regarding the current legislation
- Carrying out protection of the rights and interests of persons who are in difficult living conditions
- The facilitation of application of public enforcement and implementation of legal responsibility of persons who engage into unlawful actions in regard to the person;
- **The preparation of legal documents** and protection of the rights and interests of the person, etc.

Providers of social services to families, children and youth provide different social services, social, medical, psychological, pedagogical, legal, informational, material and other support, counselling for children and youth (Article 12 of the Law of Ukraine “On Social Work with Families, Children and Youth”).

Non-governmental organisations supervise clients in their cooperation with the ‘Service for Children’ that deals with re-issuing the child’s documents, among other duties (in accordance with the Resolution of the Cabinet of Ministers of Ukraine “Activity of bodies of care and guardianship, related with protection of the rights of the child”)⁷⁵.

✓ *Neglect and homelessness*

Legal basis: The ‘Family Code of Ukraine, Resolution of the Cabinet of Ministers of Ukraine “Activity of bodies of care and guardianship, related with protection of the rights of the child”.

Adolescent orphans and adolescents, deprived of parental care (neglected), are a part of the population category that is vulnerable to HIV, first and foremost, due to their life circumstances, the impact of their environment, and a lack of access to social services and programmes.

Child orphans and children, deprived of parental care, must be transferred for care, for guardianship in foster families or institutionalised in relevant institutions for full state support (children’s homes, boarding schools, etc.).

Services for family and youth, and the ‘Service for Children’ **identify, register and temporary place** homeless children, orphans and institutionalised children deprived of parental care, into families (foster families, family-type children’s homes) and provide other actions within their competencies⁷⁶.

⁷⁵ Activity of bodies of care and guardianship, related with protection of the rights of the child: The Resolution of the Cabinet of Ministers of Ukraine of 24 September 2008, #866 [Electronic resource]. – See at: <http://zakon2.rada.gov.ua/laws/show/866-2008-%D0%BF>

⁷⁶ On Approval of Rules of Care and Guardianship: Order of the State Committee of Ukraine for Family and Youth, Ministry of Education of Ukraine, Ministry of Health of Ukraine, Ministry of Labour and Social Policy of Ukraine of 26 May 1999, #34/166/131/8811 (registered in the Ministry of Justice of Ukraine of 17 June 1999, under #387/3680) [Electronic resource]. – See at: <http://zakon1.rada.gov.ua/laws/show/z0387-99>

The temporary institutionalisation of children, who are left without parental care, is carried out by the ‘Service for Children’ within the area of detection of the child and by the Criminal Police for Minors⁷⁷. In accordance with Paragraph 2 Article 24 of the Law of Ukraine “On Protection of Childhood” of 26 April 2001, #2402-III⁷⁸ homeless children are temporary accommodated, following the process established by law, in the shelters for minors run by the services for minors⁷⁹ with decent housing conditions and conditions for social adaptation of such families and **preparation to return to own families or appointment of care and guardianship**, provision of legal, psychological, medical and other support.

Bodies of care and guardianship within their responsibilities and distribution of tasks among structural units of different departments and local administrations decide on appointment and cancellation of care and guardianship, register persons in need of care (guardianship) and oversee the caregivers and guardians etc⁸⁰.

It has been stipulated that bodies of care and guardianship provide **upbringing, education, protection of the rights and interests** of child orphans and children, deprived of parental care. These very bodies are imposed with the duty to conduct activity on provision of the status of children and their institutionalization. The bodies of care and guardianship are district state administrations, state administrations in the city of Kyiv and Sevastopol, executive bodies of city councils, executive bodies of district city councils, executive bodies of town councils, and executive bodies of village councils.

- ✓ If guardians or caregivers are **not appointed**, their duties are imposed on institutions for temporary institutionalization of children, in particular, on heads of these institutions.
- ✓ If the child permanently lives in a healthcare institution⁸¹, educational or other children’s institution, functions of care and guardianship in regard to the child are imposed on administration of these institutions⁸².

⁷⁷ Activity of bodies of care and guardianship, related with protection of the rights of the child: The Resolution of the Cabinet of Ministers of Ukraine of 24 September 2008, #866 [Electronic resource]. – See at: <http://zakon2.rada.gov.ua/laws/show/866-2008-%D0%BF>

⁷⁸ On Protection of Childhood: The Law of Ukraine of 26 April 2001, #2402-III [Electronic resource]. – See at: <http://zakon2.rada.gov.ua/laws/show/2402-14>

⁷⁹ Obviously, the notion “shelters for minors run by the services for minors” has to correspond to the Law of Ukraine “On Bodies and Services for Children and Special institutions for Children” of 24 January 1995, #20/95-BP

⁸⁰ On Approval of Rules of Care and Guardianship: Order of the State Committee of Ukraine for Family and Youth, Ministry of Education of Ukraine, Ministry of Health of Ukraine, Ministry of Labour and Social Policy of Ukraine of 26 May 1999, #34/166/131/8811 (registered in the Ministry of Justice of Ukraine of 17 June 1999, under #387/3680) [Electronic resource]. – See at: <http://zakon1.rada.gov.ua/laws/show/z0387-99>

⁸¹ *Healthcare institution* is a legal entity of any form of ownership and organizational-legal form or its separate subdivision, whose main task is to provide medical service for population on the basis of its relevant license and professional activity of medical workers (pharmacists). See Paragraph 3 of Part 1 of Article 3 of “On Fundamental Principles of Health Care Legislation of Ukraine”: The Law of Ukraine of 19 November 1992, # 2801-XII [Electronic resource]. – See at: <http://zakon1.rada.gov.ua/laws/show/2801-12>

⁸² Family Code of Ukraine of 10 January 2002, #2947-III [Electronic resource]. – See at: <http://zakon2.rada.gov.ua/laws/show/2947-14/page>

- ✓ In the process of appointing a guardian for an underage person (under 14 years of age) and in the process of assigning a caregiver for a minor (from 14 years until 18 years of age), wishes of a fosterling⁸³ are taken into account under the condition that the child has reached 10 years of age.
- ✓ Guardianship can be established over the child under 14 years of age, trusteeship – from 14 to 18 years⁸⁴.

2.5. Parents' and other legal representatives' consent for receipt of medical care by adolescents, including most-at-risk adolescents

- ✓ *Age specifics of receipt of medical care*⁸⁵

The provision of medical care to children under 14:

Part 1 of Article 43 of “On Fundamental Principles of Health Care Legislation of Ukraine” establishes that medical intervention (application of diagnostics methods, prevention or treatment, related with impact on the person's body) in regard to **the patient under 14 (underage patient)** is carried out per consent of his/her legal representatives.

The indicated provision is more detailed to some extent in the ‘Temporary Standards, Criteria and Indicators of Provision of Medical Care to Adolescents and Youth in Centres (Departments, Rooms) for Medical Care for Adolescents and Youth’, which was approved by the Order of MoH of 02 June 2009, #382⁸⁶. Item 3.1 of the indicated ‘Temporary Standards’ establishes that medical services for underage visitors under 14 are provided only per their parents' consent. That is, **children under 14** (including children aged from 10 to 14) **can** receive medical services only per consent of their parents (or their legal representatives) who have the right to be present during such an examination.

The provision of medical and other services to children under 14, who do not have an established status and legal representatives, has to be carried out per request of a relevant Service for Children⁸⁷ and per agreement of bodies of care and guardianship⁸⁸. The

⁸³ Civil Code of Ukraine of 16 January 2003, # 435-IV [Electronic resource]. – See at: <http://zakon2.rada.gov.ua/laws/show/435-15/page>

⁸⁴ Article 243 of the Family Code of Ukraine of 10 January 2002, #2947-III

⁸⁵ For more details see the Regulatory and Legal Review (“Age specifics of receipt of medical care” and “Section 8. Recommendations on provision of medical care and social services to adolescents, including most-at-risk adolescents, depending on the age and legal status of the adolescent”) – p.92–97; 165–166.

⁸⁶ On approval of Temporary Standards of Provision of Medical Care to Adolescents and Youth: The Order of the Ministry of Health of Ukraine of 02 June 2009, # 382 [Electronic resource]. – See at: <http://zakon.nau.ua/doc/?uid=1039.9288.0>

⁸⁷ On approval of Standard Provisions on the Service for Children: Resolution of the Cabinet of Ministers of Ukraine of 30 August 2007, #1068 [Electronic resource]. – See at: <http://zakon2.rada.gov.ua/laws/show/1068-2007-%D0%BF>

⁸⁸ Activity of bodies of care and guardianship, related with protection of the rights of the child: Resolution of the Cabinet of Ministers of Ukraine of 24 September 2008, #866 [Electronic resource]. – See at: <http://zakon2.rada.gov.ua/laws/show/866-2008-%D0%BF>

authority of bodies of care and guardianship to provide such permission is stipulated by the current legislation: According to Article 65 of the Civil Code of Ukraine of 16 January 2003, #435-IV. Bodies of care and guardianship must “provide care or guardianship of the physical person prior to establishing care or guardianship and appointing a guardian or caregiver” – in other words, those bodies act as his/her legal representatives (Article 242 of the Civil Code of Ukraine). If the matter is urgent, bodies of care and guardianship have to provide their permission within one day.

The provision of medical care to adolescents aged from 14 to 18 years

In fact, the term “medical services” (concerning both adolescents and all patients in general) can be applied rather conditionally since the Law of Ukraine “On Fundamental Principles of Health Care Legislation of Ukraine” of 19 November 1992, #2801-XII⁸⁹ (in Part 1 of Article 3) contains only the term “medical care” which means activity of professionally trained medical workers, aimed at prevention, diagnostics, treatment and rehabilitation in regard to diseases, injuries, poisonings and pathological conditions and also in regard to pregnancy and labour.

At the same time, Paragraph 5 of Article 4 of “On Fundamental Principles of Health Care Legislation of Ukraine” contains a formulation “medical care and other services in the sphere of healthcare” but content of the concept “medical services” is not defined by the current legislation of Ukraine.

According to Item 3.1 of Temporary Standards, Criteria and Indicators of Provision of Medical Care to Adolescents and Youth in Centres (Departments, Rooms) for Medical Care for Adolescents and Youth, approved by the indicated Order of MoH of 02 June 2009, #382⁹⁰, medical services for underage visitors from 14 to 18 years are provided per personal consent of the person and per permission of his/her parents (guardians, family members) according to the current legislation. Non-medical services (counselling, provision of information) are provided per personal consent of the visitor.

In our view, the formulation of the indicated provision is based on the following key points:

1. On one hand, this provision reflects a broader (if compared with children under 14) amount of civil capacity⁹¹ of adolescents aged from 14 to 18.

Greater civil capacity for such adolescents has been laid out in the content of Part 2 of Article 284 of the Civil Code of Ukraine of 16 January 2003, #435-IV, It stipulates that

⁸⁹ On Fundamental Principles of Health Care Legislation of Ukraine: The Law of Ukraine of 19 November 1992, #2801-XII [Electronic resource]. – See at: <http://zakon1.rada.gov.ua/laws/show/2801-12>

⁹⁰ On Approval of Temporary Standards for Provision of Medical Care to Adolescents and Youth: The Order of the Ministry of Health of Ukraine of 02 June 2009, #382 [Electronic resource]. – See at : <http://zakon.nau.ua/doc/?uid=1039.9288.0>

⁹¹ See definition of the concept “Incomplete civil capacity of the physical person aged from fourteen to eighteen years” in Section 2 of the Review “Glossary”.

upon reaching **fourteen** years of age, the person has the right to choose a doctor and to choose methods of treatment according to the doctor's recommendations. At the same time, Part 3 of Article 284 of the Civil Code of Ukraine establishes that provision of medical care to a physical person, who has reached fourteen years of age, is carried out per his/her consent.

Part 1 of Article 38 of "On Fundamental Principles of Health Care Legislation of Ukraine" of 19 November 1992, #2801-XII⁹² contains a similar provision that establishes that *"every patient who has reached fourteen years of age and who has referred for medical care has the right to freely choose a doctor if the latter can offer his/her services and freely choose treatment methods according to his/her recommendations."*

Obviously "to freely choose a doctor" is understood by the following criteria: a facility where a doctor works; specialisation of the doctor; the doctor's gender, work experience, etc. The 'right to choose' a doctor also stipulates the right of a patient not to provide a reason for his/her choice.

In its turn, Part 2 of Article 6 of the Law of Ukraine "On Prevention of Diseases Caused by Human Immunodeficiency Virus (HIV), and Legal and Social Security of People Living with HIV" of 12 December 1991, #1972-XII⁹³ stipulates that **persons aged 14 years and older can take a test to detect HIV** voluntarily provided there is their deliberate informed consent, which is received after they have been provided with preliminary counselling regarding specifics of testing, its results and possible consequences, with observance of confidentiality of personal data, including data on the person's health condition.

2. On the other hand, the provision of Item 3.1 of Temporary Standards takes into account a number of legislative provisions on the rights and duties of parents and other legal representatives:

In particular, Part 2 of Article 150 of the Family Code of Ukraine of 10 January 2002, #2947-III⁹⁴ stipulates that it is the parents duty to take care of their child's health, his/her physical, spiritual and moral development.

According to Part 1 of Article 285 of the Civil Code of Ukraine of 16 January 2003, # 435-IV, *only a full-aged* physical person has the right to reliable and complete information on his/her health condition, including his/her familiarization with relevant medical documents that regard his/her health⁹⁵.

⁹² On Fundamental Principles of Health Care Legislation of Ukraine: The Law of Ukraine of 19 November 1992, #2801-XII [Electronic resource]. – See at : <http://zakon1.rada.gov.ua/laws/show/2801-12>

⁹³ "On Prevention of Diseases Caused by Human Immunodeficiency Virus (HIV), and Legal and Social Security of People Living with HIV": The Law of Ukraine of 12 December 1991, #1972-XII [Electronic resource]. – See at: <http://zakon2.rada.gov.ua/laws/show/1972-12>

⁹⁴ Family Code of Ukraine of 10 January 2002 # 2947-III [Electronic resource]. – See at : <http://zakon2.rada.gov.ua/laws/show/2947-14/page>

⁹⁵ At the same time, Part 3 of Article 285 of the Civil Code of Ukraine contains *an exception to this provision*: "If information on a disease of a physical person can worsen his/her health condition or worsen health condition of physical persons, defined in part two of this Article, harm the treatment process, medical workers have the right to

Thus, it is possible to conclude that the right of an adolescent aged 14 years and older to receive medical care, stipulated by Part 3 of Article 284 of the Civil Code of Ukraine **is not absolute but more likely complex, that is, it includes certain rights and duties of his/her parents and other legal representatives.**

If adolescents (especially MARA) do not want their legal representatives to know about health condition of the former, service providers can be guided by the following: by-laws of Part 1 of Article 9 of the Law of Ukraine “On Protection of Childhood” of 26 April 2001, #2402-III (*every child has the right to free expression of his/her personal opinion*). That is, on one hand, it is necessary to take into account the adolescent’s opinion during implementation of his/her right for healthcare and, on the other hand, to convey in free form to the adolescent about the necessity to inform his/her parents (legal representatives) about his/her health condition and to receive consent of his/her parents (legal representatives) for provision of medical care. That is, even when adolescents aged from 14 to 18 have received medical services without consent of their parents (other legal representatives), medical workers are obliged to provide the latter with relevant information about health condition of their child.

As of today, the current legislation of Ukraine does not have a definition of the concept “provision of consent by the adolescent”, “adolescent’s personal consent”⁹⁶. That is why, on one hand, it is necessary to convey to the adolescent about the necessity to inform his/her legal representatives about his/her health condition and a necessity to receive consent of the latter for provision of medical care. On the other hand, every child has the right to free expression of his/her personal opinion⁹⁷ (which can be considered as the adolescent’s consent for providing medical services to him/her).

Besides, children and youth, upon their own request can receive anonymous and confidential medical services in the youth friendly clinics. Centres (departments) are established to provide medical and social services to children aged 10–18 and young people aged 18–24 and to young people under 35 years of age. Centres (departments) follow the principles of youth friendly approach to young people⁹⁸.

Also, a child can **request the** address of a ‘centre of social and psychological rehabilitation of children’ (a social protection institution for a long-term inpatient stay or day care for children aged 3–18 in difficult life circumstances) which provides integrated social, psychological, pedagogical, medical, legal and other types of care⁹⁹.

provide incomplete information on health condition of the physical person and limit possibilities of their familiarization with certain medical documents.”

⁹⁶ Civil Code of Ukraine of 16 January 2003, # 435-IV [Electronic resource]. – See at: <http://zakon2.rada.gov.ua/laws/show/435-15/page>

⁹⁷ Part 1 of Article 9 of the Law of Ukraine “On Protection of Childhood” of 26 April 2001, #2402-III

⁹⁸ Standard Provision on the Centre (Department) of Medical and Social Care for Children and Youth “Youth Friendly Clinic” approved by the Order of the Ministry of Health of Ukraine of 14 November 2005, #604 [Electronic resource]. – See at: http://www.moz.gov.ua/ua/portal/dn_20051114_604.html

⁹⁹ On Approval of Standard Provision on centre of Social and Psychological Rehabilitation of Children: Resolution of the cabinet of Ministers of Ukraine of 28 January 2004, #87 [Electronic resource]. – See at: <http://zakon4.rada.gov.ua/laws/show/87-2004-%D0%BF>

✓ *Placing a person 'on record' due to STI*

Legal basis: Law of Ukraine “On protection of population from infectious diseases” of 06 April 2000, #1645-III: **Article 26:** Treatment, and legal protection of patients with infectious diseases, which are sexually transmitted.

Persons with infectious diseases, which are sexually transmitted, are subject to obligatory treatment (*anonymously, if they wish*).

Information that a person has contracted an infectious disease, which is sexually transmitted; conducting a medical examination and a check-up in this regard; data of intimate nature, received in relation with fulfilment of professional duties by specialists and medical workers of healthcare facilities – these pieces of information are confidential to the patient. However, the provision of such information is allowed in cases, stipulated by laws of Ukraine.

Comprehensive measures to prevent spreading of sexually transmitted diseases are approved by the Resolution of the Cabinet of Ministers of Ukraine of 23 March 1998, #357 entail organisation of a network of budget-financed and commercial anonymous rooms on the basis of specialized institutions for treatment of skin diseases and improvement of regulatory documents that regulate their activity to make them accessible for all categories of persons who suffer from sexually transmitted diseases.

✓ *Placement of the person on record due to HIV*

Legal basis: The Law of Ukraine “On Prevention of Diseases Caused by Human Immunodeficiency Virus (HIV), and Legal and Social Security of People Living with HIV”.

Registration and keeping records of people living with HIV and their medical care are carried out with observance of confidentiality of personal data on health condition, respect to personal rights and freedoms of human being¹⁰⁰.

The form of primary record-keeping documentation on HIV-infection¹⁰¹ is approved in Ukraine and this form is applied in health facilities that conduct dispensary observation of HIV-positive persons, regardless of the form of ownership and subordination of the health facilities. It includes the following data on the person, among other data: full name, citizenship, date of birth, gender, place of actual residence, probable way of contracting the infection. The indicated document is intended for persons aged over 18 years and also for children aged up to 17 years inclusive.

¹⁰⁰ “On Prevention of Diseases Caused by Human Immunodeficiency Virus (HIV), and Legal and Social Security of People Living with HIV”: The Law of Ukraine of 12 December 1991, #1972-XII [Electronic resource]. – See at: <http://zakon2.rada.gov.ua/laws/show/1972-12>

¹⁰¹ On approval of forms of primary record-keeping documentation and reporting on monitoring and treatment of HIV-positive persons and instructions for their filling-out: The Order of the Ministry of Health of Ukraine of 21 March 2012, #182 – See at: <http://zakon2.rada.gov.ua/laws/show/z0794-12>

The methodological leadership, and control and organisation of the collection and processing of information is carried out by the Ukrainian Centre for Prevention and Fighting AIDs of the Ministry of Health of Ukraine.

✓ *Placement of the person on record due to use of psychotropic substances*

Persons who illegally use drugs or psychotropic substances are sent by bodies of internal affairs for a medical examination at a treatment and prevention institution that provides dispensary drug dependency treatment.

Establishing a diagnosis ‘drug addiction’, ‘toxic substances abuse’ or ‘state of drug intoxication’¹⁰² is a basis for placement of a person on record.

Functions of institutions/organisations regarding placement on record:

- ✓ A doctor is imposed with a duty to conduct a medical check-up (examination): establishing the availability of the state of drug intoxication due to illegal use of drugs or psychotropic substances;
- ✓ The counselling commission of doctors: establishing a diagnosis ‘drug addiction’;
- ✓ Bodies of internal affairs: keeping record of all persons, in regard to whom it has been established that they illegally use drugs or psychotropic substances. **The exception are persons who have voluntarily referred for medical care** and follow doctor’s recommendations.

✓ *Artificial interruption of pregnancy*

According to Item 1.7 of the Instruction on the procedure of conducting the operation of artificial interruption of pregnancy, approved by the Order of the Ministry of Health of Ukraine of 20 July 2006, #508 (registered in the Ministry of Justice of Ukraine on 25 October 2006, #1155/13029)¹⁰³, artificial interruption of pregnancy of a patient *aged under 14* or incapable person is carried out *per request of his/her legal*. Artificial interruption of pregnancy of a patient *who has reached the age of 14* is carried out *per her consent* (Article 284 of the Civil Code of Ukraine of 16 January 2003, #435-IV). At the same time, one should take into account Item 3.1 of Temporary Standards, Criteria and Indicators of Provision of Medical Care to Adolescents and Youth in Centres (Departments, Rooms) for Medical Care for Adolescents and Youth, approved by the Order

¹⁰² On approval of the Instruction on procedure of detection and placement on record of persons who illegally use drugs or psychotropic substances. The Order of the Ministry of Health of Ukraine and Ministry of Internal Affairs of Ukraine of 05 November 1997, #534/2338

¹⁰³ On approval of the Instruction on the procedure of conducting the operation of artificial interruption of pregnancy, forms of primary record-keeping documentation and instructions on their filling-out: The Order of the Ministry of Health of Ukraine of 20 July 2006, #508 (registered in the Ministry of Justice of Ukraine on 25 October 2006, #1155/13029) [Electronic resource]. – See at: <http://zakon2.rada.gov.ua/laws/show/z1155-06>

of MoH “On approval of Temporary standards of provision of medical care to adolescents and youth” of 02 June 2009, #382¹⁰⁴: Medical services for underage visitors aged from 14 to 18 are provided per person’s personal consent and with permission of his/her parents (guardians, family members) according to the current legislation.

2.6. Inadmissibility of stigmatisation and discrimination of individual social groups

Legal basis: Universal Declaration of Human Rights of 10 December 1948.

Facts: Despite the formal provision of equal rights there are facts about discrimination against most-at-risk adolescents in Ukraine. There are communications about physical violence on the part of representatives of law-enforcement bodies, employees of children’s shelters for minors and of correctional institutions.

More than half of adolescents who live or work on the street have reported about their experience of staying in temporary shelters and 83% of boys and 58% of girls – about their experience of prosecution or detention by police.

Adolescent girls with risky sexual behaviour have limited access to relevant medical services¹⁰⁵.

Article 14. Equality before the law and ban of discrimination of people living with HIV and persons who are a part of most-at-risk groups for HIV-infection.

1. People living with HIV and persons who are a part of most-at-risk groups for HIV-infection, <...> use all rights and freedoms, stipulated by the Constitution and laws of Ukraine and other regulatory and legal acts of Ukraine.
2. The State guarantees that all people living with HIV and persons who are a part of most-at-risk groups for HIV-infection are provided with possibilities, equal to the ones of other citizens, for implementation of their rights, in particular in terms of possibilities of administrative and court protection of their rights.
3. Discrimination against the person on the basis of his/her HIV-infection and on the person’s belonging to a most-at-risk group for HIV-infection is forbidden. Discrimination is an act or lack of activity that directly or indirectly creates limitations, deprives the person of his/her applicable rights or humiliates his/her human dignity on the basis of one or several characteristics, related with actual or possible presence of HIV in this person or provides grounds to relate the person to a most-at-risk group for HIV-infection (*Article 14 of the Law of Ukraine “On Prevention of Diseases Caused by Human Immunodeficiency Virus (HIV),*

¹⁰⁴ On Approval of Temporary Standards for Provision of Medical Care to Adolescents and Youth: The Order of the Ministry of Health of Ukraine of 02 June 2009, #382 [Electronic resource]. – See at: <http://zakon.nau.ua/doc/?uid=1039.9288.0>

¹⁰⁵ Most-at-risk adolescents: the evidence base for strengthening the HIV response in Ukraine: analytical report / UNICEF, Ukrainian Institute for Social Research after Olexander Yaremenko. – K.: K.I.S., 2008. – 192 p.

and *Legal and Social Security of People Living with HIV*” of 12 December 1991, # 1972-XII, with amendments.

In such a way, the legal status of such children provides the entire range of rights, benefits and state support, which are stipulated by the entire range of regulatory documents. Also, the right to non-discrimination is stipulated under the status of such children. That is, an act or lack of activity that directly or indirectly creates limitations, deprives the person of his/her applicable rights or humiliates human dignity of the child or adolescent on the basis of their belonging to most-at-risk groups for HIV-infection is unlawful.

The right not to be discriminated is a fundamental right of the human being¹⁰⁶, therefore:

- ✓ *Discrimination* is understood to be as provision of advantages or limitations in rights per certain characteristic (*disease*, place of residence, gender, skin colour, ethnic origin, etc.). In essence, the matter is about the legal status of persons of certain group, namely, detection of limitations in their rights
- ✓ Measures and acts that actually lead to discrimination are called *stigmatisation*. That is, the problem of stigmatisation, first and foremost, concerns professional ethics, in particular, providers of medical and social services (“marking”, creation of sinister image, biased attitude)

Ukrainian legislation does not use the term ‘stigmatisation’. However, as practice shows, “in medical institutions there is stigmatisation on the part of the staff due to suspicions regarding a person’s injecting drug use and due to suspicions of engagement in sex business”¹⁰⁷. It is important to emphasize that:

- ✓ A general ban of discrimination is stipulated in the Constitution of Ukraine¹⁰⁸;
- ✓ Since 04 October 2012, the Law of Ukraine “On foundations of prevention and fighting discrimination in Ukraine” of 06 September 2012, # 5207-VI¹⁰⁹ has become effective;

¹⁰⁶ Article 2 of the Universal Declaration of Human Rights of 10 December 1948: “Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.” See: (The) Universal Declaration of Human Rights of 10 December 1948 [Electronic resource]. – See at: http://zakon1.rada.gov.ua/laws/show/995_015

¹⁰⁷ Article 14 (1) of the Convention for the Protection of Human Rights and Fundamental Freedoms of 04 November 1950: “The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.” See: The Convention for the Protection of Human Rights and Fundamental Freedoms of 04 November 1950. [Electronic resource]. – See at : http://zakon2.rada.gov.ua/laws/show/995_004

Buromenskyi M.V., Nizova N.M., Rudyi M.V. Reproductive rights and mechanisms of their implementation in HIV-positive women in Ukraine. – K.: Rayevsky Publishing House, 2005. – p. 82.

¹⁰⁸ “There can be no privileges or limitations per characteristics of race, skin colour, political, religious and other beliefs, gender, ethnic and social origin, property, place of residence, per language or other characteristics”.

¹⁰⁹ On foundations of prevention and fighting discrimination in Ukraine: The Law of Ukraine of 06 September 2012, #5207-VI [Electronic resource]. – See at : <http://zakon2.rada.gov.ua/laws/show/5207-17>

- ✓ Every citizen of Ukraine has the right to healthcare that includes legal protection from any unlawful forms of discrimination, related with **health condition**¹¹⁰.
- Person, who assumes being discriminated against, has a right to lodge a complaint to the Human Rights Ombudsman at Verkhovna Rada of Ukraine or to a court (Article 14 of the Law of Ukraine “On Prevention and Response to Discrimination in Ukraine”)
- Person has a right to compensation of material damage and moral harm resulted from discrimination (Article 15 of the Law of Ukraine “On Prevention and Response to Discrimination in Ukraine”)
- Civil society organisations, physical and legal entities have a right to litigate on behalf of a discriminated person or a group of people (Article 13 of the Law of Ukraine “On Prevention and Response to Discrimination in Ukraine”).

2.7. Involvement of adolescent boys in homosexual relationships and involvement of adolescent girls in sexual relationships on commercial basis (sex in exchange for something or sex for reward)

- ✓ *Regulatory environment regarding homosexual relationships between adolescent boys*

Legal basis:. Current Ukrainian legislation does not contain legal provisions regarding this issue¹¹¹. This provides an opportunity to apply in regard to adolescent boys who are MSM all legal provisions of general nature, in particular, provisions on ban of discrimination, including on the basis of belonging to the MSM social group.

Historical reference. Sodomy, that is sexual relationships of a man with a man and which are carried out by using physical violence, threat or helpless state of the aggrieved person was treated as a crime according to Article 122 of the Criminal Code of Ukraine of 28 December 1960. However, this Code lost its effect since 01 September 2001, that is, from the day when the new Criminal Code of Ukraine of 05 April 2001, #2341-III became effective. At the same time, the current Criminal Code **does not provide** criminal responsibility for sodomy.

¹¹⁰ On Fundamental Principles of Health Care Legislation of Ukraine: The Law of Ukraine of 19 November 1992, #2801-XII [Electronic resource]. – See at: <http://zakon1.rada.gov.ua/laws/show/2801-12>

¹¹¹ For more details see the Regulatory and Legal Review (“Legal regulation regarding adolescent boys who are involved in anal sex with men, including for reward”, “Legal regulation regarding adolescent girls who are involved in sex for reward” and “Section 8. Recommendations on provision of medical care and social services to adolescents, including most-at-risk adolescents, depending on the age and legal status of the adolescent”) – pp. 54-56, p.168.

The following provisions of the Criminal Code of Ukraine of 05 April 2001, #2341-III can be applied for legal protection of adolescent boys, involved in sex with men, including for reward:

- Part 3 of Article 152 (rape of a minor); Part 4 of Article 152 (rape of an underage person);
- Part 2 of Article 153 (violent satisfaction of sexual passion in an unnatural way, committed in regard to a minor);
- Part 3 of Article 153 (violent satisfaction of sexual passion in an unnatural way, committed in regard to an underage person);
- Article 155 (sexual relationships with a person who has not reached sexual maturity);
- Article 156 (corruption of minors).

- ✓ *The regulatory and legal environment regarding the involvement of adolescent girls in sexual relationships on commercial basis (sex in exchange for something or sex for reward).*

Legal basis:. Article 303 of the Criminal Code of Ukraine “Trading in prostitution or involvement of the person into prostitution activity”¹¹².

Trading in prostitution should be understood as actions of a person to provide prostitution activity by another person.

Involving the person into prostitution activity or coercing him or her into prostitution activity or trading in prostitution **are punished by deprivation of liberty...**

- ... *committed in regard to a minor* – punished by a prison term from five to ten years (with confiscation of property or without its confiscation);
- ... *committed in regard to an underage person* (or if the crime has caused severe consequences) – punished by a prison term from eight to fifteen years (with confiscation of property or without its confiscation).

Responsibility for involving an underage person or a minor into prostitution activity or coercing him or her into prostitution activity has to arise *regardless of* whether such actions are committed with applying deceit, blackmail, vulnerable state of the indicated persons or with applying or threat of violence, malversation, or committed by a person, on whom the victim depended financially or in other way.

¹¹² Criminal Code of Ukraine of 05 April 2001, # 2341-III [Electronic resource]. – See at : <http://zakon2.rada.gov.ua/laws/show/2341-14>

In addition, for legal protection of adolescent girls involved in sex for reward, one can apply the same provisions of the Criminal Code of Ukraine of 05 April 2001 # 2341-III, applied for protection of MSM boys:

- Part 3 of Article 152 (rape of a minor);
- Part 4 of Article 152 (rape of an underage person);
- Part 2 of Article 153 (violent satisfaction of sexual passion in an unnatural way, committed in regard to a minor);
- Part 3 of Article 153 (violent satisfaction of sexual passion in an unnatural way, committed in regard to an underage person);
- Article 155 (sexual relationships with a person who has not reached sexual maturity);
- Article 156 (corruption of minors).

2.8. Sexual relationships with participation of underage children and minors and the concept “marriage age for men and women”. What is the legislative regulation of protection of children in cases of corruption?

✓ *Marriage age for men and women*

Legal basis: The “Family Code of Ukraine”¹¹³, whose main provisions include the following:

- Family can be created by a person, who has delivered a child, regardless of the person’s age¹¹⁴.
- *Marriage age for men and women*¹¹⁵ is established to be 18 years¹¹⁶; however, per application of a person who has reached 16 years of age and per a court ruling, the person can be provided with the right for marriage. In such a case the person acquires **full civil capacity** and this status is preserved for the person further.

¹¹³ For more details see the Regulatory and Legal Review (Section 8. Recommendations on provision of medical care and social services to adolescents, including most-at-risk adolescents, depending on the age and legal status of the adolescent). – pp. 169–170.

¹¹⁴ Part 2 of Article 4 of the Family Code of Ukraine of 10 January 2002, # 2947-III [Electronic resource]. – See at: <http://zakon2.rada.gov.ua/laws/show/2947-14/page>

¹¹⁵ Change of marriage age for women (adolescent girls) from seventeen to eighteen years is based on Article 1 of Section 1 of the Law of Ukraine “On amendments to the Family Code of Ukraine regarding rising the marriage age” of 15 March 2012, #4525-VI. The indicated provision became effective on the next day after its publication in the newspaper “Golos Ukrainy” of 07 April 2012, #64, that is on **08 April 2012**.

¹¹⁶ Article 22 of the Family Code of Ukraine of 10 January 2002, #2947-III [Electronic resource]. – See at: <http://zakon2.rada.gov.ua/laws/show/2947-14/page>

- Persons of female and male gender **under 14 years of age** are considered as such who have not reached sexual maturity¹¹⁷.
- For men and women aged from 14 to 18, the issue of reaching sexual maturity is resolved in each case separately, on the basis of a medico-legal assessment.
- Juvenile parents have the same rights and responsibilities regarding the child as full-aged parents and the former can carry out these rights and responsibilities independently.
- Juvenile parents who have not reached the age of fourteen have the right to appeal to court to protect the rights and interests of their child. Juvenile parents have the right for free legal assistance in court¹¹⁸.

✓ *Legislative regulation of protection of children in cases of sexual relationships (corruption) that entail criminal responsibility¹¹⁹ (crimes against sexual freedom and sexual integrity of the person) are presented in the table below.*

Type of crime	Legal basis:	General provisions	Age of the victim of the crime	
			From 10 years until 14 years of age	From 14 years until 18 years of age
Rape	Article 152 of CC of Ukraine	<i>The perpetrator</i> of the crime can be a person of male or female gender, which is opposite to the gender of the victim, and who has reached 14 years of age. Rape, i.e., sexual relationships with use of physical violence, threat of its use or by using helpless state of the aggrieved person is punished	...by deprivation of liberty for a perpetrator of the crime for the term from 10 to 15 years	... by deprivation of liberty for a perpetrator of the crime for the term from 7 to 12 years
Violent satisfaction of sexual passion in an unnatural way	Article 153 of CC of Ukraine	<i>Perpetrator</i> of the crime can be a person of male or female gender who has reached 14 years of age. Satisfaction of sexual passion in an unnatural way with use of physical violence, threat of its use or by using helpless state of the aggrieved person is punished	...by deprivation of liberty for a perpetrator of the crime for the term from 10 to 15 years	...by deprivation of liberty for a perpetrator of the crime for the term from 3 to 7 years

¹¹⁷ Article 155 of the Criminal Code of Ukraine of 05 April 2001, #2341-III [Electronic resource]. – See at: <http://zakon2.rada.gov.ua/laws/show/2341-14>

¹¹⁸ Article 156 of the Family Code of Ukraine of 10 January 2002, #2947-III [Electronic resource]. – See at : <http://zakon2.rada.gov.ua/laws/show/2947-14/page>

¹¹⁹ Criminal Code of Ukraine of 05 April 2001, #2341-III – hereinafter “CC of Ukraine”.

Continuation of the Table

Type of crime	Legal basis:	General provisions	Age of the victim of the crime	
			From 10 years until 14 years of age	From 14 years until 18 years of age
Sexual relationships with the person who has not reached sexual maturity	Article 155 of CC of Ukraine	<i>The aggrieved person can be a person of female or male gender who has not reached sexual maturity. Perpetrator of the crime can be a person of male or female gender who has reached 16 years of age.</i>	Persons of female and male gender under 14 years of age are considered as such who have not reached sexual maturity	Issue regarding a person's reaching of sexual maturity is resolved in each case on the basis of a conclusion of a medico-legal assessment.
			... perpetrators of the crime are punished by restriction of liberty for the term up to 5 years or deprivation of liberty for the same term.	
Sexual relationships with the person who has not reached sexual maturity, committed by parents/guardians/caregivers, etc.	Article 155 of CC of Ukraine	<i>Same as above</i>	... perpetrators of the crime are punished by deprivation of liberty for the term from 5 to 8 years with deprivation of the right to hold certain positions or carry out certain activity for a term of up to three years or without such deprivation	
Corruption of minors	Article 156 of CC of Ukraine	<i>Perpetrator of the crime can be a person of male or female gender who has reached 16 years of age.</i>	... restriction of liberty for a perpetrator of the crime for the term up to 5 years or deprivation of liberty for the same term	
Corruption of minors, committed by parents/guardians/caregivers, etc.	Article 155 of CC of Ukraine	<i>Same as above</i>	... deprivation of liberty for the term from 5 to 8 years with deprivation of the right to hold certain positions or carry out certain activity for a term of up to three years or without such deprivation	

2.9. Legal responsibility for the illegal purchase, storage and selling of drugs, psychotropic substances or their analogues¹²⁰.

- ✓ “Illegal manufacturing, production, purchase, storage, transporting, sending or selling of drugs, psychotropic substances or their analogues”.

Legal basis:. Article 307 of the Criminal Code of Ukraine.

¹²⁰ For more details see the Regulatory and Legal Review (Section 8. Recommendations on provision of medical care and social services to adolescents, including most-at-risk adolescents, depending on the age and legal status of the adolescent). – pp.171–172.

- ✓ *The illegal purchase* of drugs, psychotropic substances or their analogues is the purchase, exchange for other goods or things, acceptance as payment for fulfilled work or provided services, payment for debt. This category also includes collecting remains of drug-containing plants, collecting wild plants.
- ✓ *Illegal storage* is any deliberate actions, related with the guilty person's actual illegal possession of drugs, psychotropic substances or their analogues (he or she can keep them with him/her, in any premises, a storage place or other place).
- ✓ *Illegal selling* is any paid or non-paid forms of selling of drugs. In essence, this is selling, presenting, exchange, payment of debt, loaning, injecting a drug into another person¹²¹.

A perpetrator of a crime is a person who has reached 16 years of age.

Types of punishments for those convicted of a crime:

1. Theft, appropriation, extortion of drugs, psychotropic substances or their analogues or their abstraction by fraud are punished by deprivation of liberty for a term from three to six years.
2. Those same actions, committed repeatedly or according to previous concert of a group of persons or with use of violence which is not dangerous to life or health of the aggrieved person or with threat of use of such violence, or by a person who earlier has committed one of the crimes, stipulated by Articles 306, 307, 310, 311, 312, 314, 317 of this Code or in great amounts, and also abstraction of drugs, psychotropic substances or their analogues by a functionary's abuse of his/her official position are punished by the deprivation of liberty for a term from five to ten years with deprivation of the right to hold certain positions or carry out certain activity for a term of up to three years and with confiscation of his/her property.
3. Actions, stipulated in part one or two of this Article, if they are committed in especially large amounts or by an organised group of persons, robbery for the purpose of theft of drugs, psychotropic substances or their analogues, and also extortion of such drugs or substances, combined with violence that is dangerous to life and health are punished by deprivation of liberty for a term from seven to twelve years with confiscation of property.

¹²¹ "On drugs, psychotropic substances and precursors" of 15 February 1995, # 60/95-BP (in the version of the Law of Ukraine of 22 December 2006, #530-V)

Definitions and signs of drugs, psychotropic substances, their analogues and precursors are provided in the Law of Ukraine “On drugs, psychotropic substances and precursors” of 15 February 1995, #60/95-BP (in the version of the Law of Ukraine of 22 December 2006, #530-V).

A **list** of drugs and psychotropic substances is provided in the Resolution of the Cabinet of Ministers of Ukraine “On approval of the list of drugs, psychotropic substances and precursors” of 06 May 2000, #770.

The amount of drugs, psychotropic substances, their analogues or precursors is determined on the basis of their total amount. If, in addition to such means or substances, a precursor was also the subject of the crime, it is inadmissible to combine their quantity with the quantity of the latter.

One can add together only the quantity of precursors of different types (*Clause 21 of the Resolution of the Plenary Session of Supreme Court of Ukraine “On court practice in cases on crimes in the sphere of trafficking of drugs, psychotropic substances, their analogues or precursors” of 26 April 2002, #4*).

Tables of small, large and especially large amounts of drugs, psychotropic substances and precursors, which are in illegal trafficking, are approved by the *Order of the Ministry of Health of Ukraine of 01 August 2000, 188 (registered in the Ministry of Justice of Ukraine on 16 August 2000, ref. #512/4733)*.

Service providers who work with IDUs need to take the following aspects into account:

- Purchase of drugs, psychotropic substances or their analogues according to the doctor’s prescription, issued on legal grounds, **is not recognised as illegal**. That is, the purchase of drugs, psychotropic substances or their analogues **under programmes of substitution maintenance therapy will not be recognised as illegal**¹²².
- **The joint injection** of drugs, psychotropic substances or their analogues by persons who have purchased them for joint funds **does not represent their selling**.
- The illegal production, purchase, storage, transporting or sending drugs **without the purpose of selling and in small amounts** entails **administrative responsibility**. In particular, the following punishments are applied: a penalty in the amount from 25 to 50 tax-exempt minimums of incomes of citizens or community service for a term from 20 to 60 hours; administrative arrest for a term up to 15 calendar days¹²³.

¹²² Article 307 of the Criminal Code of Ukraine “Illegal manufacturing, production, purchase, storage, transporting, sending or selling of drugs, psychotropic substances or their analogues”

¹²³ Article 44 of the Code of Ukraine on administrative violations of 07 December 1984, #8073-X (*Item 22 of the Resolution of the Plenary Session of Supreme Court of Ukraine “On court practice in cases on crimes in the sphere of trafficking of drugs, psychotropic substances, their analogues or precursors” of 26 April 2002, #4*)

- A person who has voluntarily surrendered drugs or psychotropic substances, which he or she has had in small quantities (produced, purchased, transported), is relieved from administrative responsibility for those actions.

✓ *Treatment of drug abuse, treatment of dependence syndrome – prescription of substitution therapy and antiretroviral therapy, rehabilitation*

The State guarantees ... the prevention and spreading of HIV-infection among persons who use drugs or psychotropic substances by injection, with the help of programmes of rehabilitation of such persons and harm reduction programmes, which, among other things, entail **use of substitution maintenance therapy** for persons who suffer from drug addiction and creation of conditions for replacement of used injection needles and syringes for sterile ones with their further disposal¹²⁴.

Substitution treatment is a type of medical care which is based on use of similar or identical substance for treatment of opioid addiction. Properties of this substance are similar to the properties of a drug which is regularly illegally used. Methadone and buprenorphine are such medical drugs. Substitution treatment gives a chance to injecting drug users to change the behaviour which puts them at risk of contracting HIV/AIDS, viral hepatitis and other blood-transmitted infections as well to stabilize their life in medical and social sense¹²⁵.

There is legal uncertainty regarding the provision of opioid substitution treatment to adolescents. Indeed, national legislation does not contain any age requirements for the clients of opioid substitution treatment. At the same time, legislation at the municipal and regional levels might contain age requirement for the clients of opioid substitution treatment to be over 18 years old. For instance, the main Health Department at Kyiv City State Administration does not provide opioid substitution treatment to drug using persons under 18 years old in accordance with the joint Order of the Main Health Department at Kyiv City State Administration and Ministry of Health of Ukraine “On Provision of Substitution Treatment to Persons with Opioid Addiction and HIV at Kyiv City Clinical Hospital #5” of 9 November 2005 #593.

In accordance with the “Standard Provision on a Centre of Re-socialisation for Drug-addicted Young People” approved by the Resolution of the Cabinet of Ministers of Ukraine of 16 September 2009 #979¹²⁶, persons **under 18 years of age** are admitted to the Centre based on the request of parents or persons who act on parents’ behalf. It is

¹²⁴ Item 8 of Part 1 of Article 4 of the Law of Ukraine “On Prevention of Diseases Caused by Human Immunodeficiency Virus (HIV), and Legal and Social Security of People Living with HIV” of 12 December 1991, #1972-XII

¹²⁵ Substitution treatment: questions and answers. – Kyiv City AIDS Centre [Electronic resource]. – See at: <http://kmcs.org.ua/zpt.php?lang=ua>.

¹²⁶ On approval of Standard Provision on a Centre of Re-socialization for Drug-addicted Young People: The Resolution of the Cabinet of Ministers of Ukraine of 16 September 2009 #979 [Electronic resource]. – See at: <http://zakon1.rada.gov.ua/laws/show/979-2009-%D0%BF>

a specialized institution for voluntary round-the-clock stay of young people who were treated for drug addiction in health care facilities and are in need of social services.

Currently, there is only one rehabilitation centre for drug-addicted children in Dnipropetrovsk, and it functions on the basis of a Youth Friendly Clinic, which, in its turn, operates on the basis of the Rehabilitation Centre of Dnipropetrovsk Oblast Clinical Narcological Dispensary¹²⁷. Youth Friendly Clinics in Dnipropetrovsk were established with support of United Nations Children's Fund (UNICEF). These institutions provide medical and psychological support to adolescents and young people aged 10–24. All young people can access the services without providing documents, address or home telephone number.

2.10. Standards of provision of medical care and social services

✓ *Standards of provision of medical care*¹²⁸

Standards in the sphere of healthcare are:

Standard of medical care (medical standard) is a complex set of regulations, rules and standards and also quality indicators of provision of medical care of relevant type, which are developed with consideration of the current level of development of medical science and practice;

Clinical protocol is a unified document that defines requirements for diagnostics, treatment, preventive and rehabilitation methods of provision of medical care and their sequence;

Table of procurement is a document that determines a minimum list of equipment and means that are necessary for equipping a specific type of a healthcare institution, its subdivision and also for provision of activity of physical persons-entrepreneurs who carry out economic activity on medical practice under certain specialisation (specialisations);

List of medicines is a list of medicinal products, registered in Ukraine. It includes drugs with proven effectiveness and margin of safety and their use is economically acceptable.

Standards in the sphere of healthcare are developed and approved by the central body of the executive authority in the sphere of healthcare.

Standards in the sphere of healthcare are also regulations, rules and standards that are stipulated by law and that regulate activity in the sphere of healthcare.

¹²⁷ Oleksandr Vilkul: "We are creating a European healthcare system for youth in Dnipropetrovsk Region". Information from the archive of the web-site of Dnipropetrovsk Oblast State Administration [Electronic resource]. – See at : <http://www.adm.dp.ua/OBLADM/Obldp.nsf/archive/453CC51D68093917C22577AB0041E6B9?opendocument>

¹²⁸ For more details see the Regulatory and Legal Review – pp. 85, 173.

Observance of standards of medical care (medical standards), clinical protocols, tables of procurement are obligatory for all health facilities and also for physical persons-entrepreneurs who carry out economic activity on medical practice.

✓ *Standards of provision of social services*¹²⁹

Standards of provision of social services are approved by the Order of the Ministry of Social Policy of Ukraine “On approval of standards for provision of social support services to population according to a principle of ‘single window’” of 23 March 2012, #158 (registered in the Ministry of Justice of Ukraine of 10 April 2012, under ref. #528/20841)¹³⁰. In particular, the indicated Order has approved the following: Standard of provision of service on assigning and payment of state social support for care, and Standards of provision of service on assigning and payment of state social support for persons who do not have the right for pension and for disabled people.

¹²⁹ For more details see the Regulatory and Legal Review – pp. 132, 173.

¹³⁰ On approval of standards for provision of social support services to population according to a principle of ‘single window’: Order of the Ministry of Social Policy of Ukraine of 23 March 2012, #158 (registered in the Ministry of Justice of Ukraine on 10 April 2012, #528/20841) [Electronic resource]. – See at : <http://zakon4.rada.gov.ua/laws/show/z0525-12>

Afterword

This publication is intended for those who need to receive the most significant information on the indicated topic in a fast manner. It is prepared on the basis of the report “Regulatory and Legal Review on HIV/AIDS prevention and access of adolescents, including most-at-risk adolescents, to medical and social services”.

One of the main problems in provision of medical and social services to adolescents, including most-at-risk adolescents, is that a significant number of regulatory documents require changes according to most topical and pressing needs of practical activity in this sphere. It is obvious that provision of social services and medical care to adolescents, including most-at-risk adolescents, is complicated by problems of legal nature. In particular, this is related with that most-at-risk adolescents (IDUs, FSWs, MSM, street children, etc.) receive prevention services primarily from non-governmental organisations and institutions.

Detailed analysis and the necessary recommendations regarding limitations and access to necessary level of medical care and social services are provided in “Regulatory and Legal Review on HIV/AIDS prevention and access of adolescents, including most-at-risk adolescents, to medical and social services”, which is prepared within the Project of the United Nations Children’s Fund (UNICEF). It contains analysis of international law and Ukrainian legislation on the rights of children and adolescents, with indication of legal gaps and barriers of access to medical and social services. It also contains a number of recommendations, addressed to relevant ministries and agencies.

This publication does not provide answers to all issues that arise in practical work of service providers.

General advice for medical and social services is:

If contentious legal issues arise in the work process, service providers can refer for professional assistance of lawyers for interpretation and explanation of the issues and also experiment, create precedents on the local, regional and national levels in order to reveal the arising regulatory conflicts and find ways and means for their resolving.

Glossary

The glossary, used in this publication, concerns legal status of adolescents, including most-at-risk adolescents; the glossary uses those terms, which are contained in the current legislation of Ukraine¹³¹, documents of international intergovernmental organisations (in particular, WHO and UNICEF) and reference literature.

There are two main reasons for provision of such a glossary:

First, this will facilitate the raising of legal awareness among medical and social workers and also workers of public associations that deal with adolescents' rights;

Second, this will provide an opportunity for medical and social workers and also workers of non-governmental organisations that deal with an adolescents' rights to legally substantiate their position regarding provision of medical and social services to adolescents, including most-at-risk adolescents, in relations with their parents and other legal representatives and also with representatives of state bodies, including law-enforcement bodies.

Considering that the key problem of normative-legal regulation of provision of medical and social services are differences in legal status of adolescents of different age groups, concepts related with age specifics are provided in a separate block; the indicated concepts are provided at the beginning of this section.

Glossary, related with age specifics of adolescents, including most-at-risk adolescents

Child – a person under 18 (majority age) if according to a law applied in his/her regard the person does not acquire the rights of the person of majority age earlier (*Paragraph 2 of Part 1 of Article 1 of the Law of Ukraine “On Protection of Childhood” of 26 April 2001, #2402-III*).

Children of adolescent age (15–17 years of age inclusive) – children aged from 15 years to 17 years 11 months 29 days (*Item 2.6. of the Order of the Ministry of Health of Ukraine “On improvement of organisation of medical care for children of adolescent age” of 12 December 2002, #465*).

Underage child is considered to be a child until he or she has reached fourteen years of age (*Part 2 of Article 6 of the Family Code of Ukraine of 10 January 2002, #2947-III*).

¹³¹ With obligatory reference to specific provisions of relevant regulatory acts that define these terms – **authors' note**.

Youth, young citizens – citizens of Ukraine, aged from 14 to 35 years (*Paragraph 1 of Part 1 of Article 1 of the Law of Ukraine “On facilitation of social becoming and development of youth in Ukraine” of 05 February 1993, #2998-XII*).

Youth (according to WHO definition) – persons aged from 15 to 24 years (*information from the official website of the World Health Organization*¹³²).

Young people (according to WHO definition) – persons aged from 10 to 24 years (*information from the official web-site of the World Health Organization*¹³³).

Minor is a child aged from fourteen to eighteen years (*Paragraph 2 of Part 2 of Article 6 of the Family Code of Ukraine of 10 January 2002, #2947-III*).

Adolescents (according to WHO definition)¹³⁴ are young people aged from 10 until they reach 19 years inclusive (*information from the official web-site of the World Health Organization*¹³⁵).

Most-at-risk adolescents (according to UNICEF definition) are:

- Adolescents who inject drugs
- Adolescents who practice unprotected sexual contacts, including due to sexual exploitation, including with those who have become a victim of human trafficking and have unprotected (often forced) sex for reward
- Adolescent boys who have unprotected anal sex with men, including for reward¹³⁶.

Adolescents vulnerable to HIV-infection (according to WHO and UNICEF definition) – this is a category of children and youth (10–19 years), who due to certain life circumstances, influence of society and environment, belonging to a certain subculture or group, lack or limit of access to information, services and programmes, can start to practice behaviour that is risky from the standpoint of HIV-infection¹³⁷.

The following adolescents are most vulnerable to HIV-infection:

¹³² See, for example: 10 facts on adolescent health [Electronic resource]. – See at: http://www.who.int/features/factfiles/adolescent_health/en/index.html. – Title from the screen; see also: HIV/AIDS prevention among young people: systematic review of factual data from developing countries/ UNAIDS Inter-agency Target Group on Youth. – 10 p. [Electronic resource] – See at: http://www.who.int/maternal_child_adolescent/documents/pdfs/ru_hiv_y_people_9241209380.pdf. – Title from the screen.

¹³³ Ibid.

¹³⁴ See also a definition of the concept “Children of adolescent age (15–17 years of age inclusive)”.

¹³⁵ See, for example: 10 facts on adolescent health [Electronic resource]. – See at: http://www.who.int/features/factfiles/adolescent_health/en/index.html. – Title from the screen; see also: HIV/AIDS prevention among young people: systematic review of factual data from developing countries/ UNAIDS Inter-agency Target Group on Youth. – 10 p. [Electronic resource] – See at: http://www.who.int/maternal_child_adolescent/documents/pdfs/ru_hiv_y_people_9241209380.pdf

¹³⁶ Most-at-risk adolescents in regard to HIV-infection: book for participants: study guide / [Anopriyenko Ye. V., Zhuravel T.V., Parkhomenko Zh. V.]; under the general editorship of Zhuravel T.V. – K. : Publishing Centre “Foliant”, 2012. – p. 43.

¹³⁷ Ibid. – p. 44.

- Adolescents who live in families in difficult living conditions (alcoholism, parental drug dependency, domestic violence, cruel treatment of the child, etc.);
- Adolescent orphans and adolescents, deprived of parental care (neglected);
- Minors in correctional facilities and remand centres;
- Adolescents who stay in shelters, Centres for Social and Psychological Rehabilitation for Children, schools and vocational schools for social rehabilitation, distribution centres for children and other special institutions;
- Adolescents who live and work on the street;
- Adolescents who use alcohol or drugs (but not by injecting), etc.¹³⁸

*Key concepts regarding the legal status of adolescents,
including most-at-risk adolescents¹³⁹*

Anonymous counselling and testing is counselling and testing which takes place without collecting information that identifies the individual being tested (personal details, e.g. full name, date of birth, home address, work/school address, etc. are not recorded) (*Paragraph 1 of Subsection 1.1. of Section 1 of the Procedure of voluntary counselling and testing (Protocol) on HIV-infection, approved by the Order of MoH of Ukraine of 19 August 2005, #415 “On improvement of voluntary counselling and counselling on HIV-infection”; registered in the Ministry of Justice on 22 November 2005, ref. #1404/11684*);

A homeless person is a person who has the social condition of homelessness. Category of homeless people include homeless persons and persons who have a shelter to live at (*Paragraph 2 of Part 1 of Article 2 of the Law of Ukraine “On fundamental principles of social protection of homeless persons and homeless children” of 02 June 2005, #2623-IV*)

Homeless children are children who were abandoned by their parents or who themselves abandoned their families or children’s institutions, where they were brought up, and who do not have a specific place of residence (*Paragraph 7 of Article 1 of the Law of Ukraine “On Protection of Childhood” of 26 April 2001, #2402-III and Paragraph 5 of Part 1 of Article 2 of the Law of Ukraine “On fundamental principles of social protection of homeless persons and homeless children” of 02 June 2005, #2623-IV*)

The age, from which criminal responsibility can arise:

1. Persons, who have turned sixteen years of age before committing a crime, are subject to criminal responsibility

¹³⁸ Ibid. – p. 45, 46.

¹³⁹ A complete list of concepts can be found in “Regulatory and Legal Review on HIV/AIDS prevention and access of adolescents, including most-at-risk adolescents, to medical and social services” (Section 2. Glossary). – P.13–37.

2. Persons, who have committed a crime in the age from fourteen to sixteen years, are subject to criminal responsibility only for intentional homicide (Articles 115–117), infringement on life of a state figure or public person, an employee of a law-enforcement agency, member of a public organisation on protection of public order and state order, a judge, a people's assessor or juror due to their activity, related with administration of justice, a defence counselor or a representative of a person due to activity, related with provision of legal assistance, a representative of a foreign state (Articles 112, 348, 379, 400, 443), intentional infliction of serious bodily injury (Article 121, part three of Articles 345, 346, 350, 377, 398), intentional infliction of bodily injury of medium gravity (Article 122, part two of Articles 345, 346, 350, 377, 398), subversion (Article 113), banditry (Article 257), act of terrorism (Article 258), taking of hostages (Articles 147 and 349), rape (Article 152), violent satisfaction of sexual passion in an unnatural way (Article 153), theft (Article 185, part one of Articles 262, 308), robbery (Articles 186, 262, 308), robbery with violence (Article 187, part three of Articles 262, 308), extortion (Articles 189, 262, 308), intentional destruction or damage of property (part two of Articles 194, 347, 352, 378, part two and part three of Article 399), damage of communication routes and means of transportation (Article 277), hijacking or capture of railway vehicle, aircraft, sea craft or river craft (Article 278), misappropriation of a vehicle (part two, part three of Article 289), hooliganism (Article 296) (*Article 22 of the Criminal Code of Ukraine of 05 April 2001, # 2341-III*);

The HIV status of a person is a condition of the person's body in terms of absence or presence of HIV-infection in it: negative HIV status of the person is characterized by absence of HIV in his/her body, positive HIV status of the person is characterized by presence of HIV in his/her body (*Item 3 of Part 1 of Article 1 of the Law of Ukraine "On Prevention of Diseases Caused by Human Immunodeficiency Virus (HIV), and Legal and Social Security of People Living with HIV" of 12 December 1991, #1972-XII*)

Non-governmental organisations are associations of citizens – including international associations – registered in Ukraine according to the Laws of Ukraine "On Charity and Charitable Organisations" and "On Citizens' Associations" (2460–12) that work in the field of HIV/AIDS prevention, care and support to people living with HIV (*Paragraph 20 of Subsection 1.1. of Section 1 of the Procedure of voluntary counselling and testing (Protocol) on HIV-infection, approved by the Order of MoH of 19 August 2005, #415 "On improvement of voluntary counselling and testing on HIV-infection"; registered in the Ministry of Justice on 22 November 2005, ref. #1404/11684*)

Groups of increased risk in terms of HIV-infection are population groups that are exposed to an increased risk of contact with a source of HIV due to specifics of their behaviour and behaviour of people from their environment. Determination and review of the list of such groups is carried out specifically by an authorized central body of the executive authority in the sphere of healthcare with consideration of criteria and rec-

ommendations of the World Health Organisation [currently such a list is not determined – *authors' note*] (*Item 4 of Part 1 of Article 1 of the Law of Ukraine “On Prevention of Diseases Caused by Human Immunodeficiency Virus (HIV), and Legal and Social Security of People Living with HIV” of 12 December 1991, #1972-XII*)

Child-orphan¹⁴⁰ – a child, whose parents died or perished (*Paragraph 5 of Part 1 of Article 1 of the Law of Ukraine “On Protection of Childhood” of 26 April 2001, #2402-III; Paragraph 2 of Part 1 of Article 1 of the Law of Ukraine “On provision of organizational and legal conditions of social security of orphans and children, deprived of parental care” of 13 January 2005, #2342-IV and Paragraph 6 of Part 1 of Article 2 of the Law of Ukraine “On Fundamental Principles of Social Security of Homeless Persons and Homeless Children” of 02 June 2005, #2623-IV*)

Voluntary consent is a decision to have a HIV test made by a patient in an environment that rules out any possibility of coercion (*Paragraph 11 of Subsection 1.1. of Section 1 of the Procedure of voluntary counselling and testing (Protocol) on HIV-infection, approved by the Order of MoH of 19 August 2005, #415 “On improvement of voluntary counselling and testing on HIV-infection”; registered in the Ministry of Justice on 22 November 2005, ref. #1404/11684*)

Legal representatives: parents, adoptive parents, parents-fosterers, foster parents, foster educators, guardians, caregivers, representatives of institutions that perform functions of guardians and caregivers (*Item 2 of Part 1 of Article 1 of the Law of Ukraine “On Free Legal Assistance” of 02 June 2011, #3460-VI*)

Informed consent means a patient has agreed to undergo testing and has made his/her choice after he/she has been provided with clear and easy-to-understand information on the goals and procedures of testing, ways of HIV transmission, prevention measures and consequences of HIV (*Paragraph 14 of Subsection 1.1. of Section 1 of the Procedure of voluntary counselling and testing (Protocol) on HIV-infection, approved by the Order of MoH of 19 August 2005, #415 “On improvement of voluntary counselling and testing on HIV-infection”; registered in the Ministry of Justice on 22 November 2005, ref. #1404/11684*)

‘Youth-Friendly Clinics’ (YFC) are a network of centres (departments, rooms) of medical and social assistance for children and youth (*Sub-item 3 of Item 3 of Section I of the Action Plan on fulfilment of the following in 2012: Nationwide Programme “National Action Plan on Implementation of the UN Convention on the Rights of the Child” by 2016, approved by the Instruction of the Cabinet of Ministers of Ukraine of 31 May, 2012, #329-p*)

People living with HIV are HIV-positive individuals and individuals who suffer from a disease, caused by HIV (*Item 5 of Part 1 of Article 1 of the Law of Ukraine “On Preven-*

¹⁴⁰ In reality, such children are also defined by a synonym “biological orphans” – *authors' note*.

tion of Diseases Caused by Human Immunodeficiency Virus (HIV), and Legal and Social Security of People Living with HIV” of 12 December 1991, # 1972-XII)

Care and guardianship are established over orphans and children, deprived of parental care. **Care** is established over a child who has not reached fourteen years of age and **guardianship** – over a child aged from fourteen to eighteen years of age. Care and guardianship over the child are established by a body of care and guardianship and also by court in cases, stipulated by the Civil Code of Ukraine (*Article 243 of the Family Code of Ukraine of 10 January 2002, #2947-III*)

Partner is a sexual partner of an HIV-positive person or his/her partner for using drugs and psychotropic substances by injection (*Item 7 of Part 1 of Article 1 of the Law of Ukraine “On Prevention of Diseases Caused by Human Immunodeficiency Virus (HIV), and Legal and Social Security of People Living with HIV” of 12 December 1991, #1972-XII*)

Pre-test counselling means counselling prior to test for HIV (*Paragraph 22 of Subsection 1.1. of Section 1 of the Procedure of voluntary counselling and testing (Protocol) on HIV-infection , approved by the Order of the Ministry of Health of Ukraine of 19 August 2005, #415 “On improvement of voluntary counselling and counselling on HIV-infection”; registered in the Ministry of Justice on 22 November 2005, ref. #1404/11684*)

Post-test counselling means counselling after receiving HIV test results (*Paragraph 23 of Subsection 1.1. of Section 1 of the Procedure of voluntary counselling and testing (Protocol) on HIV-infection , approved by the Order of the Ministry of Health of Ukraine of 19 August 2005, #415 “On improvement of voluntary counselling and counselling on HIV-infection”; registered in the Ministry of Justice on 22 November 2005, ref. #1404/11684*)

VCT services denote voluntary counselling (in the form of consultative support on medical, psychological, legal and other issues, and the provision of health, social and other types of assistance at government or municipal health facilities and in other institutions, organisations and facilities, in health facilities of other forms of ownership, and in citizen associations) and testing for HIV infection at the government or municipal health facilities with adequately equipped laboratories that received accreditation according to procedure established by the Cabinet of Ministers of Ukraine (*Paragraph 24 of Subsection 1.1. of Section 1 of the Procedure of voluntary counselling and testing (Protocol) on HIV-infection , approved by the Order of the Ministry of Health of Ukraine of 19 August 2005, #415 “On improvement of voluntary counselling and counselling on HIV-infection”; registered in the Ministry of Justice on 22 November 2005, ref. #1404/11684*).

Representatives of most-at-risk groups (*in the context of HIV-infection*) are injecting drug users; persons who are kept at penal institutions; persons released from serving a punishment; persons who are engaged into prostitution; migrants; homeless citizens, first and foremost, children, including from families who are in difficult living con-

ditions, etc. (Section “Main Programme Tasks” of the National HIV/AIDS Programme for 2009–2013, approved by the Law of Ukraine of 19 February 2009, 1026-VI)

Representation by law:

1. Parents (adoptive parents) are legal representatives of their underage children and minors
2. Guardian is a legal representative of an underage child and a physical person who is recognised as incapable
3. Other person can be a legal representative in cases, stipulated by law (*Article 242 of the Civil Code of Ukraine of 16 January 2003, #435-IV*)

Risky behaviour means habits and stereotypes of behaviour that increase the risk of contracting HIV infection, STIs and also a possibility of unplanned pregnancy (WHO).

Acquired Immune Deficiency Syndrome (AIDS) is a developmental stage of a disease, caused by HIV (HIV infection) and characterized by clinical implications, caused by a severe immune system impairment due to influence of HIV (*Item 9 of Part 1 of Article 1 of the Law of Ukraine “On Prevention of Diseases Caused by Human Immunodeficiency Virus (HIV), and Legal and Social Security of People Living with HIV” of 12 December 1991, #1972-XII*)

AIDS (according to VCT Protocol) is Acquired Immune Deficiency Syndrome, IV stage of HIV-infection (*Paragraph 27 of Subsection 1.1. of Section 1 of the Procedure of voluntary counselling and testing (Protocol) on HIV-infection , approved by the Order of the Ministry of Health of Ukraine of 19 August 2005, #415 “On improvement of voluntary counselling and counselling on HIV-infection”; registered in the Ministry of Justice on 22 November 2005, ref. #1404/11684*)

Social patrol is a mobile form of provision of social services by relevant specialists beyond the limits of facilities, for homeless persons and homeless children (*Paragraph 14 of Part 1 of Article 2 of the Law of Ukraine “On Fundamental Principles of Social Security of Homeless Persons and Homeless Children” of 02 June 2005, # 2623-IV*)

Social supervision is work, aimed at provision of social care, assistance and patronage of socially unprotected categories of children and youth in order to overcome their life difficulties, preserve and raise their social status (*Paragraph 21 of Part 1 of Article 1 of the Law of Ukraine “On provision of organizational and legal conditions of social security of orphans and children, deprived of parental care” of 13 January 2005, #2342-IV*)

Supervision (according to VCT Protocol) stands for guidance, observation and control over the work of a counsellor, and provision of necessary support to ensure adequate quality of counselling (*Paragraph 28 of Subsection 1.1. of Section 1 of the Procedure of voluntary counselling and testing (Protocol) on HIV-infection , approved by the Order of the Ministry of Health of Ukraine of 19 August 2005, #415 “On improvement of volun-*

tary counselling and counselling on HIV-infection”; registered in the Ministry of Justice on 22 November 2005, ref. #1404/11684)

Vulnerability (according to WHO definition) is the degree to which an individual or society in general is unable to control the risk of contracting HIV-infection and absence of choice of a safe behaviour model, which leads to a risk of contracting HIV-infection¹⁴¹;

Forms of institutionalization of orphans and children, deprived of parental care, are adoption; establishment of care, guardianship; transfer to a foster family, children’s homes of family type, institutions for orphans and children, deprived of parental care (*Paragraph 6 of Part 1 of Article 1 of the Law of Ukraine “On provision of organizational and legal conditions of social security of orphans and children, deprived of parental care” of 13 January 2005, #2342-IV*).

¹⁴¹ Adolescents most at risk for HIV: the participant’s book: study guide / [Anopriyenko Ye. V., Zhuravel T.V., Parkhomenko Zh. V.]; under the general editorship of Zhuravel T.V. – K.: Foliant Printing Centre, 2012. – p. 43.

References

1. Buromenskyi M.V., Nizova N.M., Rudyi M.V. Reproductive rights and mechanisms of their implementation in HIV-positive women in Ukraine. – K.: Rayevsky Publishing House, 2005. – p. 82.
2. Health and behavioural orientations of student youth: monograph / O.M. Balakireva, N.O. Rynhach, R. Ya. Levin et al. [Text] / Science editor O.M. Balakireva. – K.: Ukrainian Centre for Social Research after O. Yaremenko, 2007. – 128 pages.
3. Convention on the Rights of the Child of 20 November 1989. [Electronic resource]. – See at: http://zakon2.rada.gov.ua/laws/show/995_021
4. Constitution of Ukraine of 28 June 1996, #254к/96-BP [Electronic resource]. – See at: <http://zakon2.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80/page>
5. Criminal Procedural Code of Ukraine of 13 April 2012, #4651-VI [Electronic resource]. – See at: <http://zakon1.rada.gov.ua/laws/show/4651%D0%B0-17>
6. Monitoring of behaviour among most-at-risk groups (IDU, FSW, MSM) / Ukrainian Centre for Social Research after O. Yaremenko, ICF “International HIV/AIDS Alliance in Ukraine”, USAID Project / Health Policy Project. – K., 2007.
7. Current information on officially registered cases of HIV-infection, AIDS and deaths, caused by HIV, for January 2013 [Electronic resource]. – See at: <http://dssz.gov.ua/attachments/article/1483/Січень%202013%20pik.pdf>.
8. Population size estimate of most-at-risk children and youth in the 10–19 age group / UNICEF; Ukrainian Centre for Social Research after O. Yaremenko. – K., 2011. – C. 44. [Electronic resource] – See at : http://www.unicef.org/ukraine/Ocinka_chiselnosti_ditey_ukr.pdf.
9. Most-at-risk adolescents: the evidence base for strengthening the HIV response in Ukraine: analytical report / UNICEF, Ukrainian Centre for Social Research after O. Yaremenko. – K.: K.I.S., 2008. – 192 p.
10. Adolescents most at risk for HIV: the participant’s book: study guide / [Anopriyenko Ye. V., Zhuravel T.V., Parkhomenko Zh. V.]; under the general editorship of Zhuravel T.V. – K. : Foliant Printing Centre, 2012. – p. 44
11. On prevention of Acquired Immune Deficiency Syndrome (AIDS) and social security of population [Text] : Law of Ukraine of 12 December 1991, #1972-XI// News of Verkhovna Rada of Ukraine. – 1998. – # 35. – Article 235.

12. On approval of the Concept of Strategy of Government's Actions, aimed at prevention of HIV-infection/AIDS by 2011 and the National Program of HIV Prevention, Treatment, Care and Support for HIV-positive People and AIDS Patients for 2004–2008: Resolution of the Cabinet of Ministers of Ukraine of 04 March 2004, #264 [Electronic resource]. – See at: <http://zakon2.rada.gov.ua/laws/show/264-2004-%D0%BF>
13. On Social Services: Law of Ukraine of 19 June 2003, #966-IV [Electronic resource]. – See at: <http://zakon2.rada.gov.ua/laws/show/966-1>
14. On approval of the Concept of the National Programme of HIV Prevention, Treatment, Care and Support for HIV-positive People and AIDS Patients for 2009–2013: Instruction of the Cabinet of Ministers of Ukraine of 21 May 2008, #728-p [Electronic resource]. – See at: <http://zakon2.rada.gov.ua/laws/show/728-2008-%D1%80>
15. On improvement of voluntary counselling and counselling on HIV-infection: Order of the Ministry of Health of Ukraine of 19 August 2005, #415 (registered in the Ministry of Justice on 22 November 2005, ref. #1404/11684) [Electronic resource]. – See at : <http://zakon2.rada.gov.ua/laws/show/z1404-05/page>
16. Current state of policy and legislation on provision of medical and social services for children and youth most at risk for HIV-infection: analytical review / Buromenskyi M.V., Steshenko V.M. – K.: Ukrainian Centre for Social Research after O. Yaremenko, 2008. – 127 p. [Electronic resource] – See at : [http://www.unicef.org/ukraine/ukr/Legal_review-UA\(1\).pdf](http://www.unicef.org/ukraine/ukr/Legal_review-UA(1).pdf). –C. 101–104
17. 10 facts on adolescent health [Electronic resource]. – See at : http://www.who.int/features/factfiles/adolescent_health/en/index.html.
18. Adolescent job aid: a handy desk reference tool for primary level health workers. – WHO, 2010. – 180 p. (P. 9, 10) [Electronic resource]. – See at : http://whqlibdoc.who.int/publications/2010/9789241599962_eng.pdf.

Useful web-sites:

- a. Web-site of Verkhovna Rada of Ukraine. www.rada.gov.ua
- b. Web-site of the Cabinet of Ministers of Ukraine. www.kmu.gov.ua
- c. Web-site of the Ministry of Health of Ukraine. www.moz.gov.ua
- d. Web-site of UN High Commissioner for Human Rights. www.ohchr.org
- e. Web-site of UNICEF Ukraine. www.unicef.org/ukraine/ukr

RECOMMENDATIONS FOR SERVICE PROVIDERS
based on the results of the regulatory and legal review on HIV/AIDS
prevention and access of adolescents, including most-at-risk
adolescents, to medical and social services

Information about the authors:

Steshenko Volodymyr Mykolaivych,
PhD in Law, Assistant Professor of Chair
of International Law of the National University
“Yaroslav the Wise Law Academy of Ukraine” (city of Kharkiv)

Balakireva Olga Mykolaivna,
PhD in Sociology, Chairwoman of the Board of
Ukrainian Institute for Social Research after Olexander Yaremenko

Bondar Tetyana Vasylivna,
PhD in Sociology, Director of
Ukrainian Institute for Social Research after Olexander Yaremenko

Sakovych Olena Trokhymivna,
Youth & Adolescent Development Specialist, UNICEF Country Office in Ukraine