

Fighting against the virus or human beings? Case study on human rights violations regarding HIV criminalization in Taiwan

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HIV Special criminal law the Article 21: Legislative Evolution



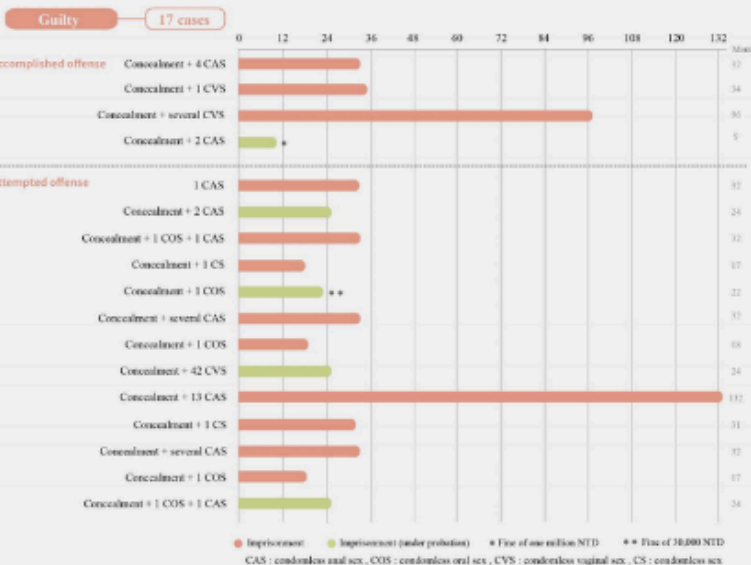
The uses of the Article 21 in Taiwan



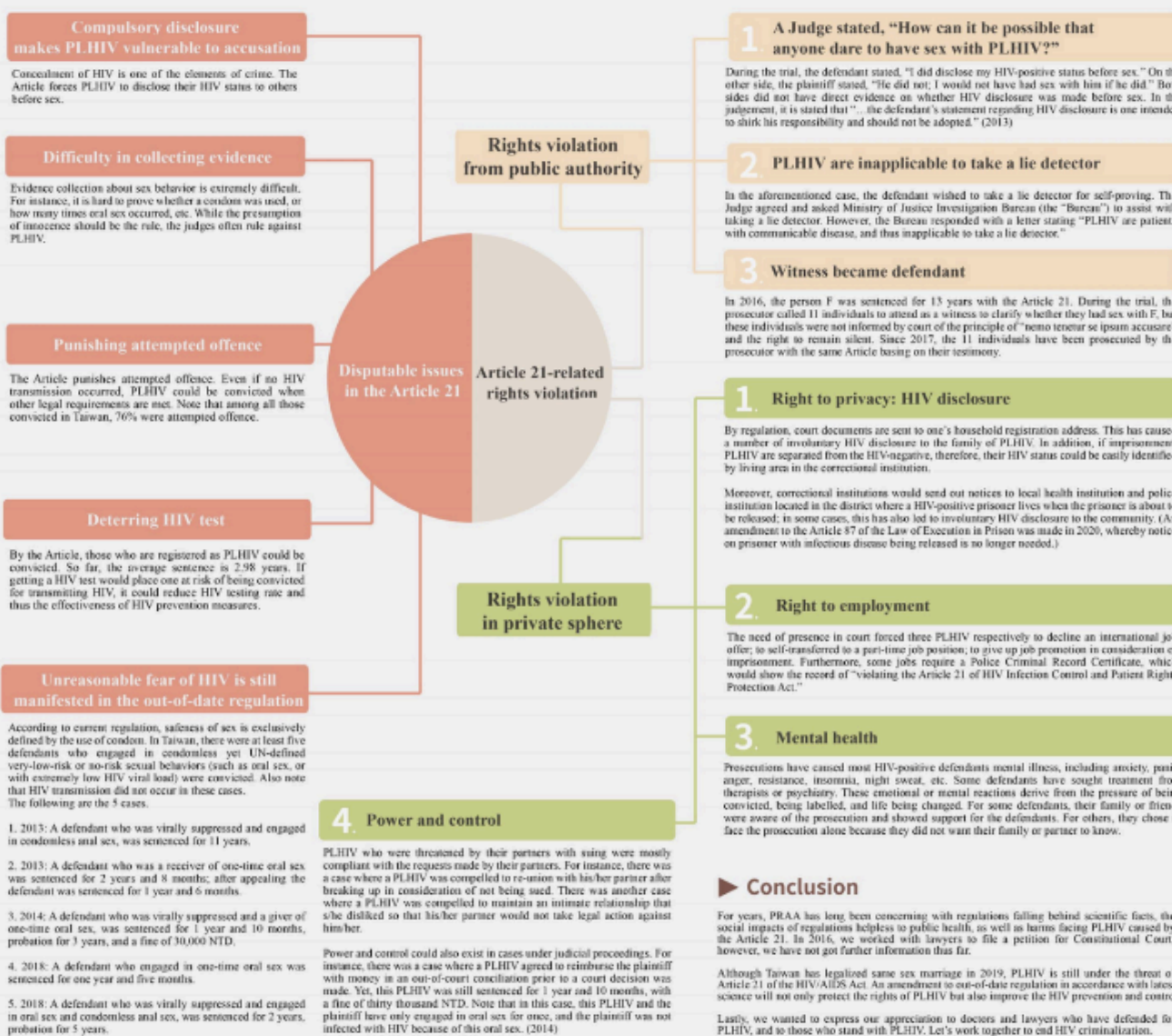
Prosecuted sexual behaviors



Court decisions



Human rights violations caused by the Article 21



Compulsory disclosure makes PLHIV vulnerable to accusation
Concealment of HIV is one of the elements of crime. The Article forces PLHIV to disclose their HIV status to others before sex.

Difficulty in collecting evidence
Evidence collection about sex behavior is extremely difficult. For instance, it is hard to prove whether a condom was used, or how many times oral sex occurred, etc. While the presumption of innocence should be the rule, the judges often rule against PLHIV.

Punishing attempted offence
The Article punishes attempted offence. Even if no HIV transmission occurred, PLHIV could be convicted when other legal requirements are met. Note that among all those convicted in Taiwan, 76% were attempted offence.

Detering HIV test
By the Article, those who are registered as PLHIV could be convicted. So far, the average sentence is 2.98 years. If getting a HIV test would place one at risk of being convicted for transmitting HIV, it could reduce HIV testing rate and thus the effectiveness of HIV prevention measures.

Unreasonable fear of HIV is still manifested in the out-of-date regulation
According to current regulation, safety of sex is exclusively defined by the use of condom. In Taiwan, there were at least five defendants who engaged in condomless yet UN-defined very-low-risk or no-risk sexual behaviors (such as oral sex, or with extremely low HIV viral load) were convicted. Also note that HIV transmission did not occur in these cases. The following are the 5 cases.

- 2013: A defendant who was virally suppressed and engaged in condomless anal sex, was sentenced for 11 years.
- 2013: A defendant who was a receiver of one-time oral sex was sentenced for 2 years and 8 months; after appealing the defendant was sentenced for 1 year and 6 months.
- 2014: A defendant who was virally suppressed and a giver of one-time oral sex, was sentenced for 1 year and 10 months, probation for 1 year, and a fine of 30,000 NTD.
- 2018: A defendant who engaged in one-time oral sex was sentenced for one year and five months.
- 2018: A defendant who was virally suppressed and engaged in oral sex and condomless anal sex, was sentenced for 2 years, probation for 5 years.

Conclusion

For years, PRAA has long been concerned with regulations falling behind scientific facts, the social impacts of regulations helpless to public health, as well as harms facing PLHIV caused by the Article 21 of the HIV/AIDS Act. An amendment to out-of-date regulation in accordance with latest science will not only protect the rights of PLHIV but also improve the HIV prevention and control. However, we have not got further information thus far.

Although Taiwan has legalized same sex marriage in 2019, PLHIV is still under the threat of Article 21 of the HIV/AIDS Act. An amendment to out-of-date regulation in accordance with latest science will not only protect the rights of PLHIV but also improve the HIV prevention and control. Lastly, we wanted to express our appreciation to doctors and lawyers who have defended for PLHIV, and to those who stand with PLHIV. Let's work together to end HIV criminalization.