

# HUMAN IMMUNODEFICIENCY VIRUS/ACQUIRED IMMUNODEFICIENCY SYNDROME PREVENTION AND TRANSMISSION LIABILITY

*A PREVENÇÃO CONTRA VÍRUS DA IMUNODEFICIÊNCIA HUMANA/SÍNDROME DA IMUNODEFICIÊNCIA ADQUIRIDA  
E RESPONSABILIDADE DA TRANSMISSÃO*

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## ABSTRACT

**Introduction:** A study on the relationship between the human immunodeficiency virus (HIV)/acquired immunodeficiency syndrome (AIDS) transmission and the need for preventive education and information measures. **Objective:** To research the references on social reality to guide a preventive-repressive criminal policy aimed at the HIV/AIDS transmission, but able to strengthen the importance of prevention through information and education measures. **Methods:** A retrospective and prospective interdisciplinary theoretical study, in the field of public health policy and legal-international-criminal-environmental terms, concerning the execution of the perspective of universal human rights considering cultural relativism, the hypothesis of the right to the difference and the peculiarities of the matter of affective-sexual relationships and HIV/AIDS transmission. **Results:** The importance of preventive measures against the HIV/AIDS transmission through the universalization of health. **Conclusion:** The need for public policies emphasizing information and educational actions about the disease and its mode of transmission, that is, emphasizing the need of condoms in sexual relations, the co-liability of the person being infected, and the window period in order to avoid criminalization as a solution.

**Keywords:** human rights; health public policy; disease prevention; crime; HIV.

## RESUMO

**Introdução:** Estudo sobre a relação entre a transmissão do vírus da imunodeficiência humana (HIV)/síndrome da imunodeficiência adquirida (AIDS) e a necessidade de medidas preventivas de informação. **Objetivo:** Buscar referências na realidade social para nortear uma política criminal preventivo-repressiva dirigida à transmissão do HIV/AIDS, mas que seja capaz de relevar a importância da prevenção por meio de medidas de informação e educação. **Métodos:** Estudo teórico prospectivo e retrospectivo, e interdisciplinar, entre o campo da política de saúde coletiva e os termos jurídico-internacional-ambiental-penais, no que concerne à efetivação da perspectiva da universalização dos direitos humanos, considerando o relativismo cultural, a hipótese do direito à diferença e as particularidades inerentes ao binômio da questão relações afetivo-sexuais e transmissão do HIV/AIDS. **Resultados:** A importância de medidas preventivas contra a transmissão do HIV/AIDS por meio da universalização da saúde. **Conclusão:** A necessidade de políticas públicas de ênfase na informação e na educação sobre a doença e o modo de transmissão, portanto da “janela imunológica”, da necessidade do uso de preservativo e da corresponsabilidade da vítima, de modo a evitar a criminalização e o uso da lei penal como solução.

**Palavras-chave:** direitos humanos; políticas públicas de saúde; prevenção de doenças; crime; HIV.

## INTRODUCTION

This paper is dedicated to the relation between the criminal policy for Human Immunodeficiency Virus (HIV) transmission, whose infection results in the Acquired Immunodeficiency Syndrome (AIDS), and the lack of measures to inform the population about this disease's prevention. The basic argument of this study is “the right to love”, used to understand one's omission of their seropositivity to their affective-sexual partner, supported by the principle of *habeas corpus* (HC), number 98,712, from November 5<sup>th</sup>, 2010, decided by the Supreme Federal Court (STF). Originally, this appeal has been related to cases of individuals contaminating their partners with HIV by not wearing condoms deemed attempted murder. The STF changed the imputation of crime of attempted murder to risk of serious infection, article 131 of the Penal Code.

The position of STF is based on the Technical Paper (NT) on the criminalization of HIV sexual transmission, NT 350/2009,

November 27, 2009, by the Department of Sexually Transmitted Diseases, AIDS, and Viral Hepatitis of the Health Surveillance Secretariat of the Ministry of Health (SVS/MS).

Such a legal instrument supports the perspective of confronting HIV and AIDS outside the scope of criminalization of transmission and criticizes penalization as a means of prevention. It also draws attention to the need of universalization of preventive health public policies, and so emphasizes the lack of measures to disseminate information about the many factors favoring HIV/AIDS epidemics. On the authorities side, there is a lack of information on the pool of HIV-positive people; on the individuals side, there is a lack of knowledge about: their serologic status; the high transmissibility of the virus during the “window period”; the need of preventive measures such as use of condoms; the success of antiretroviral therapy (ART); the “cocktail” highly active antiretroviral therapy (HAART); and the understanding that AIDS is no death sentence, but a treatable disease.

This study explored the issues of HIV/AIDS transmission and the current matters requiring a universal preventive understanding of human rights, with a view to the progression of the disease beyond the social groups — drug users and homosexuals, for instance — that have been stigmatized in the 1980s, for nowadays the picture of the epidemics is feminized and heterosexualized,

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especially due to deficient information, as above-mentioned. As alternative to this issue, we emphasize the thesis of objective imputation, presenting the victim's self-endangering and consent as penal response coherent to this relation, once it shows the understanding of the current risk society that supports the status of "victims" in penalization, considering their role of protagonists of their own lives, not of mere spectators, and therefore sharing the liability of transmission with the person who infected them.

## OBJECTIVE

To seek references in social reality to guide a criminal, preventive, repressive policy aimed at HIV/AIDS transmission that is also able to give importance to prevention with educational measures of information dissemination.

## METHODS

The methodology used in this study should be identified as juridical, theoretical, retrospective and prospective, and interdisciplinary.

This is a retrospective theoretical reflection that takes HC 98.712/2009 as example, but also provides elements for a prospective analysis once it uses the theory of objective imputation, within the strands of victim self-endangering and consent as a response to the need of HIV/AIDS transmission liability, without promoting stigmas by criminalizing the virus carrier, thus reshaping the status of the victim in penalization.

This is a multidisciplinary study, once it involves Law and Medicine. In the legal field, we make reference to Human Rights and Environmental Law, to the model of liberal State-Society criminal justice policies, and to the notion of universal respect for human rights. In the medical-scientific field, we present orientations by the Health Ministry in NT 350/2009.

In the Law Field, environmental human rights are present in the dyad affective-sexual relations and HIV/AIDS transmission when it comes to the right to quality of life and healthy environment:

The notion of quality of life goes through a polysemic semantic field: it is related to life ways, conditions and style, but also comprehends sustainable development and human ecology. It is also related to democracy, development and human and social rights. As to health, the notions unite and result in the collective building of standards of comfort and tolerance that a society will use as parameter (p. 10)<sup>(1)</sup>.

The above-mentioned dyad is also studied under the perspective of the Liberal State-Social criminal policy, whose basic premises are protection of individual legal goods and social peace<sup>(2)</sup> in the face of individual guaranties, rights and freedoms guaranteed by the democratic state of rights. The context of polemics, beliefs and prejudice involving HIV/AIDS transmission was taken into consideration, so as to allow reflections on which legal goods are protected, whether this protection may contribute with social peace or not, and how the arguments of universal respect for human rights — where such objectives are based on — considers particularities, and behavioral and cultural differences. That is why

the notion of universalization of human rights is still addressed in Law, and it means that humans are subjected to rights, but this expression has been misunderstood and treated as an imposition of absolute truths and values; if this were true, particularities would have been banished in History of Men, which obviously implies erasing differences in all dimensions. The human right to information is fundamental so that there can be prevention of HIV/AIDS. Interdisciplinarity is also present in references of the Medical field. The binomial Medicine-Law is also essential for the total understanding of this issue. The society cannot fail in considering that positions and decisions are not to be inflexible. Legal responses are weak, fragile, and temporary given uncertainties and constant changes in Medicine; therefore, in view of this complexity, the understanding of Law principles must not be lost sight of, especially reasonableness, within the framework of the contemporary society. NT 350/2009 is reference object in this study because it meets the binomial Medicine-Law by pointing the biases of the public health policy, which must be the basis of the public criminal law policy in order to assist the society.

In these terms, we attempted to exit the dichotomist frame of common sense: on one hand, collective health issues against the matter of epidemics, requiring a preventive-repressive character to AIDS transmission; on the other hand, moral-repressive reasons related to moralists — religious or not — that link the disease to socially stigmatized groups, denying the possibility of dissemination to people from all social strata, as underlined by NT 350/2009:

Despite scientific advances and the widening of access to information, prevention, diagnosis and treatment, and despite all sexually active people being potentially exposed to HIV regardless of gender, ethnicity, sexual orientation or profession, the stigma and prejudice concerning people living with HIV is a serious obstacle to the confrontation of the epidemics (Item 11).

As a result, these perspectives do not reinforce the need for more and clearer information, and, instead of protecting people, they make them vulnerable and punished by the lack of information, education, and public policies aimed at preventive educational actions.

## RESULTS

Criminal Law is used as response in our society — even being a risk society — to address the matter of HIV/AIDS transmission, as the emblematic case brought to STF, HC 98,712, decision dating from October 5th, 2010. Originally, a case of an individual who infected his partner by not wearing condom was treated as attempted murder, and therefore judged by Jury Trial. Nevertheless, the STF changed the imputation of this crime to serious risk of infection, so the process was sent to one of the common criminal divisions of the State of Sao Paulo. The decision says:

Severe disease — HIV transmission — intentional crime against human life versus transmitting serious illnesses. Facing prediction

expressed as to the criminal approach, it is not appropriate to fit the case of risk of serious infection as intentional crime against human life (HC 98,712).

Considering that the society is protected because an individual marginalized in various dimensions (i.e. the standard of prison profile, because they are “mannerless and misinformed” when excluded from the formal educational system and stigmatized as homosexual, drug user, and so on) has been arrested for not using condom by ignorance or negligence verges on surrealism, for the right to punish by the State is no absolute duty, but an essentially subsidiary measure to be used as *ultima ratio*<sup>(3)</sup>. This expression, meaning the last refuge guaranteed by Human Rights, is a subsidiary public policy to be used when all other means have been exhausted or ineffective.

Crime is the result of impunity, or the belief in institutions that restrain criminality. Therefore, effective preventive public policies should constitute the basis of the solution for this problem, considering: current context of the risk society, implementation of preventive measures, and the liability of victim in penalization. Everything according to the theory of objective imputation and the theory of risk, mischaracterizing criminal features of the approach or considering it in regard to the defendant using the argument of “right to love” to exclude illegality in the state of necessity, or culpability in the state of unenforceability of divergent conduct, to the extent of consensual affective-sexual relations. In order for that to occur, information must be fully accessible by all the society.

The line of reasoning presented here is oriented by NT 350/2009. This technical paper addresses the need to establish a public policy of prevention universalization, underlying the lack of measures for dissemination of information about many factors contributing with the HIV/AIDS epidemics by the authorities and the people.

The item 1, 2, 12 and 13 of this NT alert to the need to avoid criminalization of transmission and the use of penalization to do justice and prevent it<sup>(4)</sup>, in the name of human rights and the principles of secrecy and confidentiality, in order to impede that such measures be borne by people based on their serologic status; item 3 emphasizes universal access to prevention, to treatment, to care and support for HIV patients; item 4 underlies widening of access to diagnosis in view of unawareness of serologic status; item 5 draws attention to the “window period”, the time period between infection and detection of HIV antibodies in the blood that can last over 30 days and is of great risk of transmission; item 6 reinforces the status of the disease, which goes from death sentence to treatable illness upon early diagnosis and proper treatment; item 7 addresses the reduction of transmission risk by a subject under treatment; items 8 and 9 point out the use of condoms as preventive measure within a policy of assistance and prevention; items 10 and 11 bring about preventive measures in the fields of information and transmission co-liability.

Nowadays, the Brazilian society cannot be seen as totally intolerant to particularities and differences; maybe disguised. When this disease is understood as transmissible only to groups that

are already excluded, a road to wider contamination is opened, once there is no general, common or frequent knowledge, nor a concern about the vulnerability of all to infection, as feminization and heterosexualization of the disease is currently seen:

The behavioral feature should be understood according to standards of the relationships people maintain, where the risk is a consequence of their behaviors and depend on the other and on the social context they are both inserted (p. 38)<sup>(5)</sup>.

The level of misinformation remains, even though some changes can be seen, once the civil society takes two stances — especially shown by the Media. On one side, little emphasis is given to the risk of contamination as a means of avoiding generalized and directed discrimination to stigmatized groups; on the other side, silence results in an open road to transmission, especially between the young, and therefore lack of information about the exact number of infected people, the effects of antiretroviral therapy — which improves quality of life, but is not able to cure — the use of condom as prevention measure, and the “window period”, where transmissibility is very high.

## DISCUSSION

The definition of a preventive-repressive public policy should be based on spreading more information and education, as mentioned in items 1, 2 and 11 of NT 350/2009, moving away from the idea that criminal law may be the solution of the problem by criminalizing the transmission of a disease. This view is comprehended by the following perspective:

Environmental health appears as social priority in health promotion, as institutionalization, by the Health Ministry, of the National Environmental Management System, whose main objective is to know and stimulate interaction between health, environment, and development, aiming at strengthening the people’s participation in health promotion and quality of life (decree 3.450, May 10, 2000) (p. 147)<sup>(6)</sup>.

Therefore, the confrontation of the problem of HIV/AIDS transmission seems to be through interdisciplinary understanding, beyond criminal law, firstly being recognized the fact that all live in a risk society. One of the perspectives is the search for ethics in the modern industrial society, considering the references of Environmental Law such as the “principle of responsibility”, the “precautionary principle”, the “principle of common but differentiated responsibilities”.

The “principle of responsibility”<sup>(7)</sup> focuses on the reflection about the so-called Ethics of Respect, once the technology in modernity has become a threat, and understands that society is living inside a bubble of values and that the guide to survival goes beyond physical living, predicting danger. Human affairs are indissolubly linked, and one cannot avoid their acting to affect the other’s acts and destiny; therefore, when an individual puts their goods to risk, they are also putting to risk something over which they have no right, belonging to the other. This is the reflection of the instruments of

International Environment and Quality of Life Law, presented at the Stockholm Convention, in 1972, when addressing the “precautionary principle”, the “principle of common but differentiated responsibilities”, or the sustainability paradigm criticized since Eco-92, which defends “meeting the present needs, without compromising the needs of future generations”.

The reasons of the risk society are not external to it; its ailments and threats are inherent to post-industrial society, whose problems are related to shortage and wealth, the fear of risks other than historical ones, once current risks are global and cross-border, i.e. radioactivity, pollution, research on transgenics<sup>(8)</sup>. This society also produces other “immunossuppressed” factors that favor the development of diseases, i.e. unemployment, social inequalities, individualism, visible and invisible risks of many dimensions such as drugs, medication, irradiations, pollution, stress, and hunger<sup>(9)</sup>.

Created by society itself, risks and damages must be faced with a notion of social contract, modernization of political, state, social and familial life. Going beyond on these issues, public policies must prevent disease causes ahead of the matter of virus, reaching the modern society behavior in various dimensions, as stated by Fleck:

The WHOQOL was developed from the principle of quality of life as a comprehensive matter that may be applied to many diseases and non-medical situations [...]. The first module of WHOQOL developed was HIV/AIDS in view of its medical relevance, impact on quality of life, social stigma and the specificities of contagion. First, experts from eight nationalities gathered (including countries with high rate of cases such Brazil, United States, Zambia, Zimbabwe and India). Specific issues relating to peculiarities of HIV/AIDS patients were raised, comprising their assessment of quality of life. For example, social rejection, social assistance system overload, reasons for this overload, impact on sexuality, fear of infecting other people and many other aspects were addressed (p. 37)<sup>(10)</sup>.

The choices in criminal Law are guided by political-scientific rules, according to the reality and influences of social bodies in relation to criminal phenomenon. Punitive logic is preferred in certain social sectors and, therefore legislative inflation never goes out of fashion, especially because the population is not well educated or informed. Notwithstanding, the explanatory statement of the general part of the new Criminal Procedure Code, Law 7.209 from July 11th, 1984, item 23, about criminal imputability, points that the readjustment of the process of character formation must be imputed to education, not to law.

Unfortunately, HIV/AIDS transmission is not out of this trouble. To exit this situation, population should be educated about quality of life in a healthy environment as prevention premise, a kind of “ecopedagogy”, the knowledge of the individual as protagonist in his context, underlying that any person may transmit the virus and any person can be infected (item 11, NT 350/2009), also considering that the main transmission route is sexual intercourse or affective-sexual relations, as HIV may be present in the blood, semen, vaginal discharge, and also in breast milk.

Ironically, the true demonstration of universalization and socialization of human rights has been the idea that, being sexual relation the leading transmission route, among others, it is a condition in which all individuals may find themselves.

Recognizing the HIV/AIDS epidemics must be the starting point of public health policies. Therefore, we must not disseminate the perspective of pointing a scapegoat nor the perverse logic of choosing criminal law as the main response to it, especially considering the reaching of media. By nature, this is a flawed, violent, contradictory instrument, once it is related to the past suffering of the weak. Criminal law is not a preventive or educational solution, neither a tool for social peace, as the current guarantee penal theories support that there must be the *ultima ratio*, which means the criminal law is an instrument of public policy to be used in limit situations, thus in conjunction to public health policies.

There is a covering up of the epidemics in the absence of information, being lost the access to prevention universalization, indicated in NT 350/2009, item 3. The lack of information is seen in many aspects of the problem. Dissemination of knowledge is essential in the following situations:

- a) Antiretroviral therapy along with early diagnosis and adequate treatment has made AIDS a treatable chronic disease, not a death sentence anymore; however, once in treatment, the individual has the wrong idea of wellness in very little time, facing the success of medication. Having a good perception of well-being, this individual maintains his/her affective-sexual relations. This is a serious problem; caution must be taken not to transmit HIV, but also to avoid other STD infections, as reinfection increases viral load and the risk of acquiring other viral illnesses, thus hindering the efficacy of treatment. Important to note that studies reported that “individuals started presenting metabolic changes such as dyslipidemia, insulin resistance, glycemic changes and others, as well as HIV lipodistrophy” (p. 233)<sup>(11)</sup>.
- b) The need to inform the population about the window period, according to NT 350/2009, item 5, the time period between the infection with HIV until the body produces enough HIV antibodies to be detected in the blood, lasting even more than 30 days, with high risk of transmission.
- c) The need to inform the population about the disease aiming at changing the picture of individuals aware of their serologic status, and the need to use condoms, considering research and items 4, 7, 8, 9 and 10 of NT 350/2009, pointing out the increase of AIDS in certain regions, among the young, and the feminine and heterosexual character of the epidemics. Recent studies have brought this information and the following (report of increasing rates in the North and Northeast of the country):

Incidence among the homosexual youth and young females is increasing; the raise in new cases among women aging 15–24 years caused an intervention aiming at male ratio, as the number of women diagnosed in this age group exceeds the number of men in the same age (p. 227)<sup>(12)</sup>.

Nevertheless, similar data were found in a research performed in 2006:

In the first half of the 1980s, identification of new cases was restricted to the States of São Paulo and Rio de Janeiro, large urban centers. The epidemiological profile of patients was: males, high socioeconomic status, homosexuals or bisexuals. At the end of the decade, the disease reached other regions of the country, so there was a progressive change in this profile to increasingly heterosexual: females, low income, medium and small cities (p. 2369)<sup>(13)</sup>.

Sadala and Marques completed the picture: “the change in prevalence per gender is an example of this transformation: 25 men for each woman in 1991 to 2 men for each women in 2000” (p. 2369)<sup>(13)</sup>. Maliska *et al.* point another aspect of the disease related to the disease “impoverishment”:

Many issues have been raised in Brazil concerning AIDS epidemics: it has been characterized by microregional sources with different increasing rates; progressive increase in cases among women by heterosexual transmission; drop in mortality rates due to the implementation of retroviral therapy in 1996; progressive impoverishment of the disease, reaching areas that are distant from large urban areas, smaller and poorer; proportional increase among people with low educational levels and precarious labor market position (p. 86)<sup>(14)</sup>.

d) Therefore, HIV/AIDS is not actually an object of information dissemination for clarification not because society is tolerant, but ignorant by fear, not understanding; people have fear towards the other, not for the other<sup>(15)</sup>. Society is caring in fear. Society itself helps misinformation by the worship of beauty, esthetics, body health, and youth in an attempt to avoid discrimination, lacking relevant knowledge about real facts and conditions.

Some considerations emphasize one’s liability over their own health (p. 2575)<sup>(16)</sup>:

Although the literature on the relation men-health care tries to highlight the non-liability of individuals over their health (constant references of female mediators in male health care is a clear example), the transposition of this cultural dimension of care to assistance and health professionals’ work must consider the cultural dimension, but not reinforce it, in order to develop subjects’ autonomy in health. The focus of individual liability to reduce risks of diseases must not forget structural factors, including social and economic status, ethnicity and sexual orientation, which directly impacts health.

Along with the individual’s valuing of their own health, the thesis on penal liability must go through changes when it comes to the victim. Issues of self-endangering and consensual risk taken would be considered, as stated by the theory of objective imputation<sup>(17)</sup>, situations where the victims are responsible for their own behavior, including not

using condoms, that is, having unprotected sexual relations<sup>(18)</sup>, sharing of needles and syringes, not being able to chose partners or women’s overtrusting their partners and therefore exposing to the virus<sup>(19)</sup>. In such a case, criminal law may consider the following:

- a) self-endangering can only be used for individual legal goods and only in cases where the victim is older than 18 years and with preserved mental faculties;
- b) in order for that to occur, the victim must have acted voluntarily and been aware of the risks to which is being exposed;
- c) in self-endangering, free and conscious behavior of the victim is determinant for a harmful result that was not wanted by any of the parties at first (p. 166)<sup>(20)</sup>.

The potential victim must therefore understand the importance of education and information to population, once they are victim of themselves, of their free will, being responsible for their own acts and for their importance in society. Liberalism is the theoretical basis of human rights that praises free choice and free will; therefore the person is free to practice not only their rights and freedoms, but also their duties and wills. Once “desire is not an order”, according to Gikovate (2010), “The desire is part of the human voluntary domain, while the need is obligatory.” (p. 27). “[...] free is the man who can say yes and also no to an erotic situation”. [...] “In order for us to think in freedom, we must long for an active reason interfering and deciding more than biology, and not blindly respecting rules and beliefs of the culture we live in, what we usually do by fear of rejection or lack of courage to make mistakes, choosing the same mistakes made by most people” (p. 202-3). [...] “being free is not being like this or that; it corresponds to the intimate joy resulting from coherence, when we are capable of acting the same way we think” (p. 203)<sup>(21)</sup>.

So, the principles of liability, prevention and precaution should be part of the pedagogical public policy, once HIV/AIDS transmission brings a complex social response with it, as the defendant in the criminal procedure is also a victim of the disease.

These arguments are the merits of the contingent of HIV/AIDS infected homosexuals, who claim the “right to love” and, finding themselves fragile by this condition, need understanding to turn the situation around, also stating that they need to hid the information from their affective-sexual partners. This has also been pointed out in this research<sup>(22)</sup>. The right to love is a legal interpretation used to exclude illegality in the state of need or to exclude the guilt in the state of unenforceability of diverse conduct when it comes to consensual affective-sexual relations.

The matter of silence, that is, when one does not warn their sexual partner about their condition with HIV/AIDS is the current reason for non using condoms, for the person understands that by not using it, their partner will not identify them as virus carrier, which would in turn prevent them from the “right to love”. It not only shows the affectionate needs of this person that should be assisted with psychological care, but also the lack of information about the risks of reinfection due to increase in viral load and of being affected by other viral diseases, which can hinder the efficacy of antiretroviral therapy.

Not to mention that, although people have defined behaviors when facing risk situations, it is not possible to identify them as virus carriers, showing the real problem and the need to disseminate information to the entire population. There is also the risk of “window period”— the time period between the infection with HIV until the body produces enough HIV antibodies to be detected in the blood, and which can last more than 30 days, with high risk of transmission.

Notwithstanding, sexual relations without the use of condoms without direct intention, for the aforementioned reasons, must not presume volition to endanger one’s life (chapter III of the Penal Code) or to body injury (chapter II of the Penal Code); therefore, it’s no presumption of blame, but object of interpretation for the right to exercise intimacy, that must be related to the perspective of victim liability. This is the notion of intimacy:

Intimacy is related to the exclusivity people reserve to themselves, without any social repercussion, not even their private life that, even being isolated, is lived with others (family, work colleagues, leisure) (p. 77)<sup>(23)</sup>.

Besides the right to intimacy, to honor, to privacy and to image, fundamental, inviolable rights according to the Federal Constitution in item 5th X, “rights relating to personality of the social being”<sup>(24)</sup>, facing public interests, the principle of reasonability is also considered. One of the dimensions of the right to intimacy complies with jurisprudential decision RO 623003520065070012, which states the following: according to the World Health Organization (WHO) and the International Labor Organization (ILO), in the scope of employment, general professions are not risky to HIV transmission; seropositive and asymptomatic people must be treated as any other employee; people presenting symptoms or illnesses must be treated as ill employee, and the employer does not bear the right to demand the worker to participate in investigative procedures or to inform the employer about their condition, aiming at non-discrimination<sup>(25)</sup>.

## CONCLUSION

The privileged path for the confrontation of HIV/AIDS transmission should not be criminal law, but must go through demystification of the disease, surpassing the idea of looking for the guilty for its transmission, a measure that benefits manufacturers of chemical reagents, appliances and drugs. We must privilege the undermined, malnourished organisms that have been affected by many infections, transforming the immunosuppressed into “immunoinefficient” people, so that they do not be prone to tumors and infections.

This problem must then be faced with a universally preventive Medicine that can be accessed in a non-discriminatory way and with other public policies aimed at adequate nutrition, healthy environment and well-being, prophylaxis for healthy people against any viruses through vaccination campaigns, thus making “immunoinefficient” subjects and especially eliminating hunger, unemployment, diseases, poverty, waste, and disrupted families.

To sum up, references made by NT 350/2009 must be considered, for it constitutes an instruction containing research results underlying the importance of preventive measures for health universalization, chiefly the wide use of information about the disease and behaviors that may lead to it, including condom use, alerts about the “window period”, and the liability of the victim in HIV/AIDS transmission in order to avoid criminalization of HIV transmission by the indiscriminate use of criminal law.

## Conflict of interests

The author report no conflict of interests.

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