



Know Your Rights, Use Your Laws

Handbook for legal empowerment of people who live with or are at risk of HIV, their close ones, and service providers



Empowered lives.
Resilient nations.

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Foreword

This Handbook was not written in the offices of public officials, and it is not intended for lawyers. Rather, it is about the rights of people from different communities and vulnerable groups. It is about the rights of people who are despised and persecuted, who do not believe in themselves and who do not trust in the justice system. It is about their rights, which are infringed upon and violated time and time again in many aspects of life.

Everything in this Handbook comes from real life situations; it is thought over, tested and tried, step by step. This Handbook describes the actions that can help every person to believe in her/himself and defend her/his rights and help others when they get in trouble; it encourages people to overcome indifference and to attract the attention of the authorities, to find a way out and, quite possibly, to save someone from death. Everything you find here you can do yourself, even if you do not have paid lawyers or specialized education. It is realistic and achievable, regardless of your residence, color of your skin, private life, diseases, past experience and conflicts with the law.

For six years I lived like this, believing in my inherent guilt and that I somehow deserved it all. This is the personal conviction of thousands and thousands of people who use drugs (PUD). This phrase entails a long list of what people from 'vulnerable and marginalized groups' face in day to day life: living as an outlaw, criminal sentences and diseases, social contempt and the belief of the majority that drug use is all about dissipation, lack of will and self-indulgence. This conviction leads to hardheartedness, violence and widespread rights violations. These include refusals to provide employment, treatment and hospitalization and disclosure, as well as the deprivation of parental rights; also included are violence, unlawful detentions, lack of access to defense and fair trials. Keep in mind that this is not an exhaustive list of all violations, which take place every day and become systematic and almost normal. There are many of us in similar situations – crushed by the system, lacking the knowledge of our rights, believing that this is how it is supposed to be and faced with the daunting task of beating our addiction.

Six years ago I would not have believed that my life could change so drastically. As atypical representative of PUD community, I would not have believed that I would ever regard myself as a full-fledged and valued member of society.

But life gave me a chance – I met people who cared and were not indifferent. Desperately looking for legal aid, I came to an NGO, which helped me and resolved my problem. After that, I myself got involved in providing social support; I met Mikhail Golichenko and got acquainted with his first case, which he was supporting despite being two thousand kilometers away. With his help, I received answers to all of my questions and learned to evaluate the situation and react accordingly, including how to document violations, write complaints and appeals and submit requests. I also learned how to talk to lawyers, how to ensure quality defense and how to participate in courts. The first case grew into a new area of focus for my work: providing public defense and real, tangible help to other people. In this area, all my previous experiences came in very

handy – past criminal convictions, communications with the police and investigators, knowledge of the system and knowledge of the procedure all proved invaluable. This experience means that I will not become indifferent, as I see now others facing what I myself faced many times: prejudice and discrimination of those people from vulnerable groups, punishments disproportionate to the offense committed, rights violations and authorities acting with impunity – all things that I cannot tolerate and dedicate myself to fighting.

Today I can say with confidence that a great deal depends on our knowledge, convictions and persistence. We are able to stand up for ourselves and defend our rights. The instruments and instructions are all in this Handbook. Believe in yourself and never stop trying!

Larisa Solovyova

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Introduction

What does legal empowerment mean?

Legal empowerment is about people. It is not about services or even about national laws. Those who have a sense of entitlement to rights are more likely to have their rights respected than those who simply possess rights according to laws. This Handbook aims to give you information about you *having* and *exercising* your rights rather than merely knowing that they exist. Sometimes rights claimants need to establish legal precedents and change practices, or advocate for parliaments to adopt new laws, in order to protect their rights. People who have a sense of being in possession of legal rights can do this. If positive development only depended on those who blindly abided by the laws in the books, it would be hard to imagine pivotal moments in history such as the recognition of women's right to vote, the recognition of the universal access to AIDS treatment, or the recognition of equality rights for marginalized communities.

This Handbook does not delve into every detail of how to protect rights. It describes general principles of law and legal practice that everyone can and should use to protect their rights or the rights of marginalized communities. It is intended to inspire people to defend their rights, with the understanding that it is possible and that others are already immersed in this activism.

Why is legal empowerment important for HIV?

Why is legal empowerment important for HIV prevention, treatment, care and support, particularly in an environment with weak rule of law? Why not merely rely on lawyers to defend our rights?

The magnitude of the movement for human rights protection by people from key populations most at risk of HIV (people who inject drugs, sex workers, men having sex with men) shall correspond to the scale of human rights violations. Thousands of people who use drugs go to jail every year for victimless crimes punishable with disproportionately harsh penalties just because they are using drugs and commit crimes directly related to drug use, such as possession of small amounts of drugs for personal use. In some countries a person may go to jail for up to three years for possession of an amount of home-made acetylated opium as small as 0.05 grams. Most often these people are punished for nothing but their chronic health condition – drug dependence. Similarly sex workers are arguably criminalized and punished merely for exercising their right to work, right to have control of their life and body, right to freedom of expression and right to dignity. Many people living with HIV are denied their right to education, right to work and right to health simply because of their health condition. LGBT (lesbian, gay, bisexual, transgender) communities are exercising their freedom of choice in relation to their sexuality, which is at the core of the right to respect for private life, and the right to freedom of expression. Similarly to sex workers, they suffer simply because the state deemed their private lives immoral and illegal.

Laws and constitutions in particular in most countries in Eastern Europe and Central Asia¹ (EECA) provide adequate guarantees for human rights, including the right to non-discrimination (for example Art 19

¹ For the purpose of this Handbook, the region of Eastern Europe and Central Asia includes the following countries: Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Russia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan.

Article 19 of Constitution of the Russian Federation (official translation)

1. All people shall be equal before the law and court.
2. The State shall guarantee the equality of rights and freedoms of man and citizen, regardless of sex, race, nationality, language, origin, property and official status, place of residence, religion, convictions, membership of public associations, and also of other circumstances. All forms of limitations of human rights on social, racial, national, linguistic or religious grounds shall be banned.
3. Man and woman shall enjoy equal rights and freedoms and have equal possibilities to exercise them.

of the Russia's Constitution; Art 24 of the Ukraine's Constitution; Art 14 of the Kazakhstan's Constitution).

However, many of our countries experience constraints with the rule of law and this is the main reason as to why legal practice is often very different from what constitutions and laws guarantee. In such an environment, people must constantly advocate for their rights to be respected, protected and fulfilled at all levels, including in everyday life and particularly when rights violations occur. This is the core principle of the “bottom up” approach, whereby demand and leadership come from those who need services, not those who provide them.

This Handbook is intended to inspire communities and organizations working with people with HIV and key affected populations and to provide them with basic information about how to use legal tools to defend human rights. One activist can spark a flame; several activists can lead an entire community from marginalization and discrimination by openly

defending human rights and claiming due redress for rights violations.

Is it simply about ‘knowing your rights’ or ‘knowing your lawyer’?

Defending human rights is not just about knowing your rights or knowing your lawyer. Mere knowledge of laws or rights does not translate into action to protect those rights in case of violations. There must be knowledge of the means to defend rights in addition to the resilience to carry out this defense, often in the face of a more powerful adversary. Legal empowerment is about knowing how to actually defend your own rights — and just as importantly, being aware of strategic opportunities for action.

While many people cannot avail themselves of a lawyer's services, this does not necessarily mean one is unable to defend their rights. Practically all legal systems in EECA allow self-representation before authorities, including in courts.² Obtaining the services of a lawyer is but one means of human rights defence. Those who are aware of avenues to defend their rights can often find allies in human rights defence, including for instance by way of getting a public defender admitted to the criminal procedure (laws of many EECA countries provide for public defenders' participation in criminal procedures). Moreover, knowing rights and ways to protect them is very helpful in criminal cases for people accused who are represented by legal counsels provided by the state. In such cases a well-informed accused can apply significant pressure on the counsel who otherwise may act less proactively and effectively.

Why can't we merely rely on lawyers to defend our human rights? There are many reasons. Oftentimes, there are not enough lawyers who are willing to take human rights cases, and those who are willing may be expensive and beyond the financial reach of many people. Moreover, many lawyers do not have a strong understanding of HIV-related issues. People need

² With the exception of certain criminal charges where professional representation by attorneys is mandatory. There may be other cases of mandatory representation requirements as well, but these are exceptions rather than the rule.



to understand how to defend their rights in order to encourage more effective dialogue with lawyers, including lawyers assigned free of charge by the state as part of criminal procedures. This should be a process of mutual education all in aid of a stronger case.

What could legal empowerment look like?

Legal empowerment is not only about knowledge but also about skills and practice. That is why this Handbook offers practical suggestions for human rights defence. Every type of capacity building can be helpful as part of a holistic approach — one that can respond to diverse scenarios and adversaries. People can benefit from in-class training as well as learn how to implement their knowledge in practice. This Handbook is premised on the principle of “training through action,” meaning that the best training is practice. However, this shall not be understood as encouraging human rights violations to occur in order to “practice”. Rather, training through action means responding actively to rights violations even if no lawyer is available to do the legal job. This enables people to develop practical skills for human rights defence. While some experiences can be frustrating, they can still instill people with a sense of dignity when they use their opportunity to stand up and fight back.

What are the approaches to rights protection?

“**Routine**” human rights protection tackles infringements and sometimes human rights violations that occur in everyday life and may be addressed through mediation, negotiation or complaints to administrative bodies. Such infringements or violations can include discriminatory refusals of medical services based on HIV status, police ill-treatment of people who use drugs or other similar acts. On the whole, people who have been empowered to defend their rights are ready to demand that their rights are always respected.

Strategic litigation is an effort to bring about positive legal changes, including changes in legal practice, by way of bringing a complex issue to national or

C. needed to see a dentist, so she went to a state-owned dental clinic. The dentist refused to see her immediately after he learned that she was living with HIV. C. went to see another dentist at the same clinic and this dentist said that she would help her but only as she was the last patient in the queue (although she was not). C. was very disappointed and she knew that doctors’ behavior was against the law. Therefore with the help of outreach workers C. filed an official complaint to the clinic’s administration requesting it to inform the clinic’s doctors about the ways of HIV transmission and to address discrimination in the clinic. In its response the clinic’s administration apologized to C. and assured her that discrimination in the clinic would never happen again. C. received the necessary dental work without any problems.

The case of *Kiyutin vs Russia*, 2011, is an example of strategic litigation. In this case the European Court of Human Rights ruled that the authorities violated the right to non-discrimination when they refused to grant permanent residence permit to a foreign national living with HIV because of his HIV status. The judgment on this case has a legal effect not only in Russia, but in all other countries of the Council of Europe. Because of this judgment HIV status cannot be used as a basis to refuse a person to stay in a country as a permanent resident, especially when individual circumstances demonstrate strong ties with this country.

The judgment is available [in Russian](#). There are some very useful summaries and short commentaries to the judgment (including in Russian).

international courts or human rights institutions for resolution.

In November 2011, the Andrey Rylkov Foundation for Health and Social Justice conducted in-class training for 15 community activists from different cities in Russia, who were pre-selected on the basis of their willingness to engage in human rights defence, rather than their ability to do so at that moment. The training focused on basic principles of human rights and human rights protection.

At the end of the training, activists were requested to develop one-year plans identifying human rights issues and ways to address them. For nearly one year after the training, instructors remained connected with the group online and helped them put their plans into practice (i.e. “training through action”). Of the 15 activists, four brought their cases to the European Court of Human Rights and two won cases at the national level. All activists still remain actively committed to the cause of human rights protection, despite several years having passed since the training.

and/or witness human rights violations around them but do not feel equipped to address these abuses because they believe that only lawyers can promote and protect human rights. This Handbook aims to “demystify” human rights protection: everyone can fight for human rights and everyone should.

How is this Handbook structured?

The structure of the Handbook follows the logic of step by step instructions outlining the key progressive steps which any person can face during the process of defending her/his rights. However, the answer to the question of whether or not every step would be necessary for the right protection and redress depends on the circumstances of every case. In some cases there is no need to go to court; in other cases there is no need for mediation. Some steps, such as Step 1 or 2, are primarily the enablers for the whole process of rights protection. It is good to be aware of all steps and decide on their implementation on a case by case basis.

In some cases, especially those that concern rights which are explicitly protected by international treaties, “routine” human rights protection may evolve into strategic litigation. For that reason, this Handbook does not separate these two approaches to rights protection. However, this Handbook focuses primarily on “routine” human rights protection because at this time, the most strategic route for activists in EECA countries to take is to equip and empower marginalized groups in order to catalyze larger human rights movements and thus prevent, resolve or redress most violations that people face in everyday life.

Who is this Handbook for?

This Handbook is written for civil society activists, HIV service providers, and members of communities of people living with or affected by HIV in the region. In particular, this Handbook is for those who experience





Step 1 – Documentation

Documenting human rights abuse is an essential first step in holding individuals and governments accountable for human rights violations. While it is certainly helpful, it is not crucial to be familiar with the relevant laws in order to carry out human rights documentation. The critical details to be documented can be distilled into the “5W1H formula”:

1. **WHAT:** What occurred? What is the abuse that you are documenting?
2. **WHERE:** Where did the abuse occur?
3. **WHEN:** When did the abuse occur (time, date, year)?
4. **WHO:** Who is the victim? Who is the alleged perpetrator? Are there witnesses or other people with direct knowledge of the abuse (e.g. medical staff, police or outreach workers)?
5. **WHY:** Why did the abuse happen? Document the circumstances that led to the incident(s).
6. **HOW:** How did it occur?

By documenting the “5W1H”, you are laying the groundwork for a formal complaint that includes critical details of the abuse and ensures that details are not lost with the passage of time. Many people document human rights violations in writing and usually in the form of a report or a formal complaint, but there are numerous other mediums that you can employ. For example, activists can use audio, video, email, other forms of internet-based communication and photography to document human rights violations. Interviews can be conducted with various actors who have witnessed the abuse, audio- or video-recorded and transcribed. Activists can also convey important details of human rights violations to other individuals, who will be able to corroborate their testimony. This includes peers, lawyers, medical staff, outreach workers, other service providers or mere passersby who may witness the event. The very act of drawing attention

to abuse may prevent further ill-treatment and the escalation of conflict.

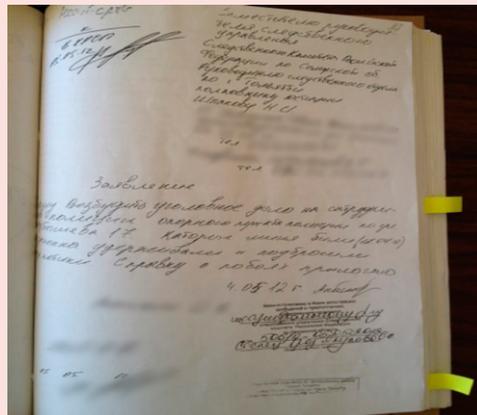
In order for documentation to be compelling, it is also important to describe the emotions of those who have suffered abuse. Often people have misconceptions regarding testimonies from close relatives and/or close friends, thinking that a court will not accept such testimonies. However from the legal point of view all witnesses shall be treated by the court in similar ways, provided that the court takes into account the relations between the witness and the accused when doing the assessment of evidence. Again, close friends and/or relatives can be witnesses.

As long as there is a record of abuse — be it written, emailed, posted online, audio- or video-recorded, photographed, transcribed or communicated to another person — there is a basis to hold perpetrators responsible for human rights violations.

In addition, representatives of vulnerable groups should be aware of certain practices of law enforcement agencies, such as ‘raids’ and ‘mystery shopping’. Knowledge of these nuances and how they are carried out may help avoid serious problems with the law.

Case Study #1: Police Abuse

I., a person living with drug dependence, HIV and Hepatitis C, was arrested for drug possession. Upon his arrival at the police station, police officers beat him in order to obtain a confession. During the beating, I. noticed a visitor at the station and shouted to draw his attention. Later, I. managed to ask the visitor his name and address. As soon as I. left the police station, he immediately sought medical help from a 24-hour walk-in clinic, and an examination revealed fresh bruises on his head, arms and legs, which was detailed in a medical report. Afterwards, I. approached the country's Investigation Committee (an authority which is mandated to investigate crimes committed by police officers) where he lodged a complaint against the police officers who beat him, providing the Investigation Committee with the medical report. I.'s lawyer also interviewed the visitor to the police station and his testimony corroborated I.'s allegations against the police. This evidence was sufficient for the Committee to launch an investigation into the incident.



I.'s complaint to the Investigation Committee

Lessons learned:

- ▶ If possible, draw attention to abuse when it occurs, involving bystanders if possible.
- ▶ If possible, seek medical help as soon as possible to document the consequences of a physical or sexual assault.
- ▶ Assemble evidence in an accessible medium (e.g. written report) to lodge a formal complaint with the appropriate investigating authority.
- ▶ Attach all supporting documents as annexes to the report.

A civil society organization providing support to sex workers developed a set of recommendations on how to behave in cases of 'mystery shopping', when plain-clothes law enforcement agents acting as clients negotiate intimate services with sex workers, and after giving the money carry out arrests. The recommendations include the following:

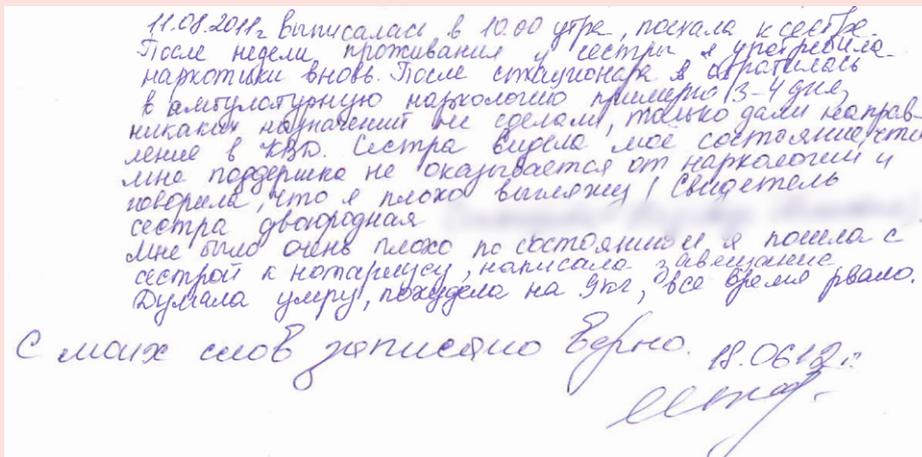
- ▶ Call an emergency number and inform the operator that someone claiming to be a police officer entered your apartment against your will; tell their details to the operator.
- ▶ Do not give away your colleagues. Do not point blame at the administrator. Administrators should not admit that anyone is involved in sex work.
- ▶ It is best to refuse giving explanations and refer to the rights envisaged by the Constitution.
- ▶ In case of videotaping, indicate in the written records (protocols) that you object to publicizing the footage on media and Internet.
- ▶ If you know a lawyer – call her or him.



Case Study #2: Discrimination by Medical Personnel

O. lives with HIV, hepatitis C and drug dependence. During her pregnancy, medical personnel discriminated against her on the basis of her HIV status and her history of drug use. As a result, O. was denied access to pregnancy related medical services and was coerced to interrupt pregnancy. This led her to a suicide attempt, relapse into injecting drugs, and premature birth. One year after her experiences of discrimination at the hands of medical personnel, O. informed a local community-based organization about her case. Because O. had not documented the abuse, the only evidence of the harm was her testimony. However, O. was willing to share her experience in order to prevent similar violations from occurring against women with similar health conditions.

The community project helped O. build a case for strategic litigation to address the lack of medical protocols regulating treatment of pregnant women with drug dependence. The organization interviewed O. about the details of each of her conversations with medical personnel, carefully documenting her emotions and her thoughts, including thoughts of contemplating suicide. An outreach worker was assigned to manage O.'s case, based on the power of attorney. This outreach worker verified the factual circumstances of O.'s case and spoke to those whom O. had identified as witnesses, including the victim's aunt, sister and girlfriends, who had been with O. during her pregnancy. The interview report was ultimately submitted as a case report and was the basis for a formal complaint to the local health authority.



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Душана умирал, похороны на это, все брело рвало.
С моих слов записано верно. 11.08.12
[Подпись]

O.'s notes about her case

As a result of the complaint, health authorities apologized to O. for the suffering they caused her. They did not deny a single fact listed in the complaint. In their defense, the health authorities claimed that medical help was provided to O. in line with current laws and regulations, neither of which deals with drug dependence during pregnancy or how to support pregnant women with drug dependence. Because they admitted all of the major facts described in the complaint, there was no further need to secure additional documents and the case was admitted by the court for consideration on the merits.

Lessons learned:

- ▶ Document in great detail the identities of all those involved in the abuse, as well as all interactions related to the abuse, including the emotional and physical suffering of victims of abuse.
- ▶ If possible, corroborate victims' testimony with witnesses.

Challenging cases for documentation

More often than not, human rights violations occur in circumstances when documentation is the last thing on people's minds. Victims of human rights violations may be under considerable stress, be suffering weak health, or feel disempowered — rendering them in no condition to meaningfully defend their rights. In particular, victims' vulnerability may be amplified by an array of health conditions, including drug dependence and pregnancy. Also, people may be threatened and pressured not to report on a rights abuse. Sometimes, civil society organizations learn of human rights violations long after the harm has been inflicted and there is no documentation confirming the victim's description of events. Yet, even such cases are not hopeless. One strategic approach is to employ an outreach worker or other service provider that the victim trusts to help carry out documentation of the abuse, applying the "5W1H" formula, via a power of attorney.

Securing evidences of physical bodily harm

The best way to secure evidences of beatings and other violent actions for further action is going to a doctor, or a medical institution. In most countries of EECA "traumatology wards" are open 24/7 and accessible to all free of charge. In case there is no such ward available the victim can see any doctor, or visit a service-providing NGO which may have a person with medical background as its staff member. Even if there is no person with a medical background the NGO can still be instrumental in securing evidence by conducting a set of very simple but effective steps:

1. Taking an interview with the victim and witnesses when it is possible;
2. With the victim's permission, making a report (5W1H) to the head of the NGO describing what harms the victim suffered, what marks have been left on the body (bruises, scratches), and what the victim's feelings were about the treatment he/she suffered;
3. When possible and with the victim's permission making high resolution photos of the marks on the body and enclosing photos alongside the report;
4. When possible such report and photos shall be signed by two NGO staff members in order to make sure that at least one witness will be available for possible legal proceedings;

5. Providing a copy of the application to medical personnel about the violation, usually in cases that concern the public health sphere, can be evidence of such violations as refusal of medical care, failure to provide free medicaments, etc.

The report should be submitted to the case-manager or head of the NGO for review and after being reviewed it should be numbered, stamped when possible, and become a part of the organization's case files. This can help with future possible legal actions on behalf of the victim.

Obtaining medical documents

In many countries in EECA public health laws stipulate the right of a patient to informed consent which includes the right of a patient to know about the conditions of her/his health (for instance Art. 6(e) of the Ukraine Law 19.11.1992 № 2801-XII "Fundamentals of Citizens' Health Protection"; Art. 91(4) of the Kazakhstan Code of September 18, 2009 № 193-IV "On People's Health and Public Health System", etc.). Following these laws every patient can request copies of their medical documents from health care facilities. The request could be in the form of a simple letter stating the name of the patient and the need to obtain copies of medical documents. There is no mandatory requirement to inform health care facilities about the purpose of obtaining the copies.

To read more about the right of access to information, including to medical records, see Step 4, "The laws on access to information".



Step 2 – Developing strategic partnerships



People from marginalized communities often deal with complex issues that require a holistic response. Clients may face both health problems and legal obstacles, and it is much more efficient to address both issues head-on so that health-related remedies are taken into account when planning a legal response and vice versa.

For example, in criminal cases related to drugs, lawyers may favour the option of a suspended sentence under the condition that the convicted person remains abstinent for up to five years (for instance according to Art. 82.1 of the Criminal Code of the Russian Federation a sentence can be suspended for a drug dependent person up to five years in order to provide this person with the opportunity to undergo treatment and rehabilitation). Often, this option is chosen without any consultation with medical practitioners or service providers who are familiar with the lack of drug treatment options. The lack of passport, residence registration and other similar obstacles can further obstruct access to drug treatment. As a result, a client is placed at risk of a relapse and committing a new drug crime, for which she or he would get the first sentence plus the second one, thus acquiring a longer term of imprisonment. However, some lawyers are not aware of all of the hardships and consequences of lack of access to drug treatment, and they do not realise that a minimal sentence with imprisonment (1.5 years for instance) is better than three or five years of a suspended or conditional sentence. Had they known about the drug treatment realities, they might have chosen a different defence strategy.

Service providers³ usually have a broader picture of community members' lives and interact with their

³ In context of this Handbook, "service provider" means NGOs providing social and medical services to people with HIV and key at-risk populations. Examples of large service providers could be such organizations as All-Ukrainian Network of PLHIV, the International AIDS Alliance in Ukraine, ESVERO, Humanitarian Action, the Andrey Rylkov Foundation in Russia. Organizations of this kind exist in every country in EECA.

clients more often than lawyers, though this obviously depends on when and to whom the client chooses to turn to in times of need. Many clients do not see service providers as those who can address their legal issues. However, there are many examples of service providers facilitating legal help by not only referring a client to a trusted lawyer but also by helping to mobilize the community, collecting necessary documents, contacting necessary experts, and even representing clients in courts, sometimes quite successfully.

One should not underestimate service providers and should draw service providers' attention to all the issues which obstruct their access to health care, including legal issues which may seem to be unrelated to health care. In many cases, service providers are in a position to help if they are informed of the situation in time and their help is sought. A number of strategies to facilitate such partnerships are outlined below.

A. Basic set of documents to outline terms of partnership

Often the initial encounters with a client would lead to a simple and rather informal consultation which would help with understanding the expectations of a service provider and a client, possible means to achieve expectations and risks to expect. At best the consultation shall lead to the creation of three types of documents which are very helpful to establish a partnership between a client and the NGO:

- a) Social support contract
- b) Power of attorney
- c) Interview

a. Social support contract

Why is the contract needed?

The purpose of the contract is to formalize the relationship between a client and an NGO so there is a clear framework for the work that the NGO is doing on behalf of the client and the NGO can also explain the basis on which it is engaged with a particular client. Signing a contract is a strong demonstration of commitment by both parties to the basic principles underlying the relationship between them, such as a respect for human rights⁴, pro bono services⁵, acting in a good faith and to the best interest of a client⁶, and confidentiality of personal data. As a relatively concise document, the contract helps clients and service providers understand the nature of their relationship with one another, so there are no false expectations on either side.

A clear framework for the relationship between the client and service provider is also helpful in other ways. For instance, if an outreach worker at an NGO must testify before court, it is easier for a judge to recognize the outreach worker's relationship with the client when there is a relevant contract. In some countries, NGO staff can be admitted as so-called public defenders in criminal cases at the request of the accused. A judge is much more likely to admit a layperson as a public defender in a criminal case when there is a contract outlining the reasons for, and parameters of, the relationship between the accused and the person who is requesting to be her or his public defender.

There is no single structure/content for this type of contract. Therefore, an NGO or outreach worker can vary the number and the content of the rights and responsibilities of each party, depending on the particular circumstances. You will find a sample of a contract in Annex I.

4 Human rights of a client should not be compromised by an NGO, even when protecting human rights of a client may put an NGO at risk of dispute with friendly state officials or health professionals.

5 This principle is further explained as part of the contract between an NGO and a client.

6 It is not possible to anticipate every possible challenge which an NGO may face when providing services for a client. However every action of an NGO shall be in good faith underpinned by the best interest of the client.

Possible outline of a contract

A contract could include the following parts:

1. **Subject matter and purpose of the contract:** This part of the contract describes the services that the NGO may provide to the client and what the client will get from the NGO. There should be precise wording in the description of the services being provided by the NGO, the scope of which may be limited depending on a country's specific laws and policies. For instance, in many countries medical services can only be provided by a person or organization that has a special license. Similarly, some countries only permit licensed agents to deliver certain kinds of training. In those contexts, it may be strategic to indicate in the contract that an NGO provides "social and health support services" rather than "medical services" or "shares health-related legal and life-skills information" rather than "delivers training".
2. **Rights and responsibilities of the parties:** Given the voluntary nature of the contract, the client tends to shoulder fewer responsibilities than the NGO. At a minimum, however, the client should be responsible for providing an NGO — to the best of her/his knowledge — with accurate information and informing the NGO of developments concerning the matter in which the client has agreed to the NGO's engagement. It should also be the responsibility of the client to inform her/his legal representatives about the NGO to enable coordination of possible legal action. The contract could delineate a list of the NGO's responsibilities or the contract may stipulate only the main principles underlying the NGO's responsibilities, such as the principle of acting in good faith and in the best interest of the client. The scope of services to be provided to the client should be described in order to make the client understand that the service provider can only offer such services that fall within its mission and serve the goal of social support. The contract should also specify that the relationship between the NGO and the client are voluntary and that it can be terminated at any point by the client or the organization.
3. **Personal data protection and consent to use the client's information:** It is important for an NGO to safeguard clients' personal data and NGO staff should abide by a personal data protection policy.



Most countries have laws concerning personal data protection. These laws may provide guidance to an NGO as it develops policy related to clients' personal data protection. Despite the fact that service-providing NGOs can handle and store some personal data of their clients, they are not "personal data operators" pursuant to the laws of some countries on personal data protection. However, the rights of a client can be violated if personal data, especially medical information, is disclosed to a third party without the client's consent. It is thus imperative that the contract includes a section stipulating instances and conditions when the client's personal data may be disclosed. This could take the form of a list of specific circumstances when personal data may be disclosed, or there could be principles underlying the NGO's disclosure (e.g., disclosing personal data only in the best interest of the client and only after informing her/him of such disclosure). The contract could stipulate that the NGO can/cannot use personal data (such as the name of a client) for mass media and internet publications, for applications to national and international human rights bodies, or for consultations with medical, legal and other professionals for the purposes of the case.

4. **Pro bono services:** This part of the contract shall clarify that the services are provided at no cost for the client and with no reward to the client for participation in programs run by the NGO. Taking into account that this Handbook is about helping people from marginalized communities, it is recommended that pro-bono legal help shall stipulate that no financial burden related to possible legal action would be on the client, including the legal fees, taxes, postal and other similar expenses.
5. **Power of attorney and other documents:** The contract may specify how the NGO could provide more effective services for the client, including via the power of attorney. There is often a need to obtain medical information on behalf of a client, for example when the client is in pre-trial detention. Therefore, it is advisable to discuss the power of attorney with the client early on and include it in the contract authorizing an NGO representative to obtain medical information on behalf of the client. Please see more information about the power of attorney below.

6. **Identity of a contact person:** The contract should refer to at least one person whom a client can contact, including in cases of emergency (arrest, hospitalization, etc.).

b. Power of attorney

It is not mandatory but it is highly recommended to obtain the power of attorney from the client to enable an NGO to provide legal support for the client. Having the power of attorney is critical in cases where a client is not ready, capable and/or stable enough to attend state and municipal agencies, including courts. This might be essential for people living with drug dependence during periods of relapse which can last for many weeks, or for people living with HIV who may suffer from periods of illness or disability. Having the power of attorney may also facilitate quick and vital support for clients in cases of arrest and detention. In the power of attorney a client should describe in detail the scope of authorization she/he gives to her/his representative. This helps avoiding future misunderstandings or abuses.

In the EECA region, there are two types of power of attorney:

► **Simple written power of attorney**

A simple written power of attorney is a signed manifest of a client indicating that he or she trusts a particular NGO or an NGO worker to act on her or his behalf and carry out actions, which do not require notarizing. This type of power of attorney does not enable an NGO to represent a client before state or municipal authorities, including courts. A simple written power of attorney is recommended when it is not possible to obtain a notarized one.

► **Notarized power of attorney**

A notarized power of attorney is the best option. Every notary can notarize a standard format document that authorizes any private person, including an NGO to represent a client before public authorities and a court of civil procedure. To ensure that the power of attorney is applicable to as many legal cases as possible, a client could request that a notary include in the text the rights to request and handle her/his medical information, to deal with penitentiary authorities, to deal with child care and to be a public defender in criminal procedures. Notaries are usually open to such requests. It should

be noted that in those countries where a judge can admit a layperson to act as a public defender in a criminal procedure (e.g. Russia, Uzbekistan, etc.), the law only requires that the accused make a motion to be represented by a layperson alongside a professional lawyer, including the lawyer assigned to the case. However, the power of attorney can further persuade a judge to admit a layperson to be a public defender in a criminal procedure. (For more about public defenders, see below in “Working with partners for the best interest of the client”). The main disadvantage of notarized power of attorney is the cost – even if the fees are not high for the general population, for some people in need they may be prohibitive. Another possible disadvantage is that notarized power of attorney requires an original passport to be produced and the client may not always have the original documents.

Notaries are not always the only designated persons who can certify the power of attorney. Typically this can also be done by the administration of a penitentiary facility (including a pre-trial detention center), by hospital administration, and by community real estate management organizations.

Legally, such power of attorney is equivalent to the notarized one. The main disadvantage to this type of power of attorney is the risk of resistance from the above-mentioned administrations or organizations to verifying a trustee’s signature. This is because some managers are simply not aware of their responsibility to facilitate the issuing of power of attorney. It is easier to obtain the power of attorney when its text is prepared in advance. A sample power of attorney is provided in Annex II.

c. Interview

An interview with the client should form part of the NGO’s documentation alongside the contract. If the interview is tape-recorded the transcription of the interview or at least a summary shall be attached to the contract. The interview offers an opportunity for the client to tell her or his story and provides information for the assessment and planning of action if necessary. It is an essential tool for documentation. Therefore, the interview between a service provider and a client should be as comprehensive as possible.

NGO staff members and volunteers working with clients should be trained to conduct motivational

interviewing, especially if the NGO deals with victims of torture or other forms of ill-treatment. Motivational interviews often bolster clients’ confidence to fight for justice through legal routes, including litigation. Attaching a transcript or a summary of the interview to the contract is likely to improve the relationship between the NGO and the client and the quality of the services rendered. In such cases the relationship does not depend on one NGO team member who regularly deals with the client and knows her/his story. An interview is also a good source of information when there is a need to inform external professionals about the case. This may be necessary, for example, when seeking advice from a lawyer, a social worker or a medical expert.

More information about interviews is in Step 1 – Documentation. A brief note for outreach workers regarding interviews is available in Annex III.

B. Working with partners for the best interest of the client

Many NGOs have connections with lawyers, doctors and other experts who may offer valuable advice on key issues concerning a particular case. However, these professionals are often busy and unable to devote much of their time to pro bono help. As a result, service-providing NGOs often complain that they have very limited or no access to pro bono lawyers and other experts, which restricts their ability to approach cases in a holistic manner and leaves many of their clients’ issues unresolved.

What is often neglected in such cases is the fact that much of the experts’ time is consumed by getting the story from the client and performing administrative tasks associated with the case, such as procuring documents, filling formal complaints, and performing other tasks, which outreach workers can easily do themselves. Preparing the case documentation minimizes additional efforts. It outlines a client’s case in a format that experts can easily understand and analyze so they can spend their limited time performing the tasks that only they can do, such as providing expert advice and drafting essential legal documents – for example formal complaints to courts or other authorities.



The interview with the client situates the service provider at the core of a strategic multifaceted partnership in the best interests of the client. Not only does it save experts' time but also can eliminate location barriers. With carefully prepared documentation, including interview transcripts or summaries, an NGO is not limited to nearby experts – it can build partnerships with experts in other cities and even other countries.

The Andrey Rylkov Foundation (ARF) has established strategic partnerships with several organizations in Russia and beyond which provide legal services for marginalized communities. One of its strongest partnerships is with the Canadian HIV/AIDS Legal Network, an organization based in Toronto, Canada which has a Russian-speaking lawyer on staff. Since 2010, the Canadian HIV/AIDS Legal Network has been working with ARF by providing technical legal help on strategic litigation and legal empowerment of people who use drugs. Thanks to skillfully conducted interviews with clients that ARF transcribes, a lawyer in Canada is able to direct cases of clients thousands of kilometers away from Russia.

a. Attorneys, legal clinics, human rights NGOs and academia

In most EECA countries people are allowed by law to represent themselves without professional lawyers, though it is very difficult for most laypeople, especially first-time human rights defenders, to act without legal advice.⁷ However, NGOs which provide health services usually have connections with legal professionals who

⁷ Self-representation (or representation by a non-lawyer) was typical for communist jurisdictions, where the competitive element in court procedures was reduced and judges had broader powers to guide the process. Even today, when EECA countries are no longer communist, these self-representation provisions remain. For civil society organizations they can be an asset, as they allow them to represent clients in an effective and cost efficient manner. There are certain limitations to the general rule, in particular for some criminal cases, where professional representation is mandatory. Responsible organizations also set limits to the scope of representation and train their personnel, in order to ensure high quality representation.

O. was a pregnant woman living with drug dependence. In 2011, she suffered lack of access to essential services and degrading treatment by medical doctors. (More details on this case are provided in Step 1 – Documentation). In this case an NGO managed to obtain a detailed interview with O. This interview was vital not only to convey critical information to a lawyer in another city but also to solicit expert opinions on opiate substitution therapy and pregnancy from world-renowned obstetricians and drug addiction experts from the UK, Canada and the USA.

are able to provide pro bono legal help, especially if such help does not require full engagement with the case (e.g., providing advice electronically, or drafting legal documents). Moreover, some NGOs have legal professionals in their staff and have resources for providing legal support.⁸

Attorneys (professional advocates)

Attorneys make their living from fees for the legal services they provide. While many attorneys accept cases pro bono and the pro bono movement in the EECA region is developing fast there are obvious limitations as to how many free services attorneys can provide.⁹ Attorneys are more likely to take a pro bono case when a client's story is well-documented (e.g. in transcripts of an interview) and the necessary supporting documents (such as medical history) are available. The less time an attorney needs to spend out of the office, the more likely the attorney is to agree to provide pro bono legal advice on a case. This should be taken into account when planning pro bono engagement with an attorney, regardless of how interesting the case might seem.

⁸ In 2012, a Regional HIV Legal Network was established in the EECA region that has a secure system for complaint submissions that is channelled to a free legal aid provider in Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Russia, Ukraine. The Network is expected to start covering more countries and to include more service providers per country. See more at <http://hiv-legalaid.org/en/>.

⁹ More information on pro bono legal aid in EECA is available on the site of the Global Network for Public Interest Law. See <http://www.pilnet.org/>

A leading attorney promised pro bono legal help in a criminal case related to drug use. For the first several weeks, the attorney provided help without charging any fees. After this, the attorney informed the client that her time would need to be compensated, at least partially. The suggested fee seemed very high to the client. She took the attorney's behavior as a personal offence and dismissed her from her case. In the client's conversations with NGO representatives, she accused the attorney of being greedy and unethical. In this case, the conflict between the attorney and the client arose from flawed assumptions on both sides: the client assumed that the attorney would act pro bono for her, irrespective of how much time the case required, and the attorney assumed that the client would understand that there are limits to pro bono engagement, such that the attorney would be at least partially compensated for her time if the case was very time-consuming.

Understanding the limits of attorney's pro bono engagement helps avoid unrealistic expectations and fosters healthy partnerships between NGOs and attorneys in order to serve the best interests of a client. For this reason, an NGO should outline its relationship with an attorney based on a memorandum of understanding, stipulating the rules of engagement. If no such memorandum exists, the client should request clarification about the attorney's engagement with her/his case from the outset, in order to avoid false assumptions.

In other regions and countries where pro bono is quite developed, for instance the United States and Canada, the lawyers carefully explain, in writing and narratively, the scope and limits of pro bono assistance. This is also due to possible future conflict of interest, which could make pro bono representation impossible. The client gives her/his informed consent and an agreement, very similar to the one with fee-paying clients, is concluded.

Attorneys assigned to a case by the state

Unlike pro bono legal help, representation by attorneys in criminal cases is often mandatory. Some EECA countries even have requirements about the required level of expertise of lawyers to be engaged in such cases. Very often, people from marginalized communities cannot afford paying for a defense lawyer. If this is the case, in all EECA countries the state provides a free, state-appointed defense attorney. However, there are often quality issues with state-subsidized criminal defense for many reasons, including the lack of incentives for attorneys to provide the best services, the numerous cases they handle and the time and capacity constraints associated with this as well as the potentially conflicting situation of these attorneys who, just like the prosecutors and judges, receive their payment from the state.

Nonetheless, there are also cases of extremely effective and efficient legal assistance provided by ex officio attorneys. This is especially the case when there is support and input from interested parties, including service-providing NGOs.

In December 2011, P., a member of a group of people who use drugs, was arrested for possession of a large amount of drugs for personal use. His brother informed an NGO via email of P.'s arrest, and the NGO contacted the Canadian HIV/AIDS Legal Network (Legal Network) for help. The Legal Network's Russian-speaking lawyer phoned P.'s mother and learned the name and telephone number of the attorney assigned to the case. [It is common practice that the police inform relatives of a detained person of the attorney assigned to her/his defense.] The Legal Network lawyer then contacted the attorney whose initial reaction was to persuade P. to plead guilty. Nevertheless, he agreed to send the Legal Network lawyer photos of some case files to evaluate the case. After additional telephone conversations, the attorney changed his mind, recognized the potential for an acquittal, and agreed to a defense strategy. After eight months of joint efforts, the case was closed, P. was acquitted and released from jail.



E., a man with drug addiction, numerous other diseases and a criminal record, was arrested after buying heroin together with a woman. This woman turned out to be a provocateur and a false buyer. As E. was suffering from abstinence syndrome and wanted to go home under the pledge not to leave pending the trial, he signed a confession that he was buying the drug with intent to sell, and regularly sold it. Later, based on his confessions, an indictment was prepared. Having left the police station under the aforementioned pledge, E. contacted an NGO, where his version of events was documented and he received assistance in preparing a complaint to the prosecutor's office. During the trial, he was represented by a state-appointed attorney and a staff member of the NGO, who together agreed on the defense strategy. During the trial, the attorney focused on the criminal charges – proving the provocation, multiplication of criminal episodes by investigators and inadmissibility of evidence. The public defender focused on health context, drawing the court's attention to the lack of medical assistance and E.'s abstinence syndrome, which led to a false confession. The defender also claimed that eight years of imprisonment, as requested by the prosecutor, would actually become a death sentence for a less serious crime. As result of the joint work, the charges were downgraded to complicity of the purchase of drugs, and the sentence – two years of imprisonment – was cleared in the courtroom, and therefore E. was immediately released.

As demonstrated in the above case studies, a state-appointed attorney can be instrumental in defending her/his client's human rights. The key factor is a service provider, a network of people who use drugs, a network of people living with HIV or other community organizations, who are able to receive first-hand information about an arrest, mobilize necessary resources, and connect experts (including lawyers from human rights NGOs, medical experts and media) and attorneys. Because some lawyers may

have strong prejudice against people from marginalized communities, service providers can also play an important role in helping the attorney assigned to the case to understand the different needs of marginalized communities, to question her/his own perceptions, and overcome stigma. Another important aspect of the partnership between NGOs and state-appointed attorneys is the oversight that the NGO provides when it engages with the case. When an attorney is being scrutinized, she or he is more likely to exercise her or his duties with greater care. One of the ways to deal with the attorney is to give him or her written requests. Such requests could additionally incentivize the attorney to deliver a high quality legal service (see sample request form in Annex IV).

Legal clinics

Clinical legal education has become very popular in countries of EECA. Many law schools run at least one legal clinic involving students practicing law under the supervision of their tutor. It is a strategic step for service-providing NGOs to approach law schools in their cities to establish working relationships with legal clinics. Legal clinics may vary in terms of the specific areas of law which they prefer to practice. Many legal clinics focus on civil rather than criminal law because the latter requires the engagement of a licensed attorney to act as defense counsel in criminal cases. Also, some universities do not allow clinics to take criminal cases as a matter of policy.

Students at legal clinics are helpful in evaluating legal documents, discussing possible strategies for legal action, and sometimes drafting legal documents. The added value of clinical legal work is that students dedicate a lot more time to research and documentation than an attorney would typically commit to. Students are also usually supervised by university professors, or assistant professors, and – in some cases – practicing attorneys. All these are factors that increase the quality of the services that clinics provide. Legal clinics can also facilitate pro bono legal training for service providers and their clients from marginalized communities. For some frequently encountered issues, legal clinics can provide NGOs with legal memorandums, explaining substantive and procedural peculiarities, as well as templates or guidelines to help laypeople initiate legal action or properly secure necessary evidence. Service

providers may wish to conclude a memorandum of understanding with a legal clinic outlining the scope of cooperation, duration of the agreement, contact persons and other rules of engagement.

Academia

Academics' views on a particular case or an issue can serve as strong argument for the court, especially when there is no opportunity to obtain experts'/practitioners'

In 2010, A. became the first patient in Russia who openly requested health authorities to provide him with opioid substitution therapy which remains under a legal ban in Russia since 1998. As no doctors in Russia ever prescribed opioid substitution therapy, A. approached a professor of psychiatry in Russia for his scientific view regarding the best options for drug dependence treatment for patients with similar medical history. This view was later utilized to prepare an application for the European Court of Human Rights.

S. is an HIV-positive young woman. After the death of her mother, authorities placed her underage brother in an orphanage and refused to allow S. to be his guardian because of her HIV-positive status, referring to legislation which does not allow HIV-positive people to become guardians. With help of a law firm that works closely with people with HIV and marginalized communities, S. filed a lawsuit against the decision of the authorities. Along with the suit, she submitted an opinion from a leading HIV doctor, stating that HIV is a chronic condition, which, with due medical care, does not prevent a person from carrying out duties related to guardianship. The opinion also pointed out that S. is a responsible patient, adherent to treatment, and that in her case there is nothing that makes her unable to be a guardian. The court accepted S.'s arguments and designated her to become the guardian of her brother.

opinions due to the lack of certain services or practices in a country. In such cases the opinions of both national and foreign academics and international experts can be used to build arguments for the case.

Human Rights NGOs

There are many human rights NGOs that are ready and willing to engage with marginalized communities and have the resources to facilitate a legal defense for people from marginalized communities. The challenge is finding and presenting these NGOs with a case in a way which corresponds to their particular mandate.

When looking for human rights NGOs, many people and service providers tend to limit their search to their own location — a potential barrier for those in rural areas. However, it is perfectly feasible to provide legal support via the internet, especially when it comes to civil cases or even in certain criminal cases for smaller offenses where there is established cooperation between a service provider/client, as well as an ex officio attorney. Although some human rights NGOs may refuse or be incapable of providing assistance on a particular case, they can still help broker relations

V. is an LGBT activist. She wanted to conduct two public events in her city advocating against homophobia and hate crimes against LGBT people. However, authorities did not allow her to conduct the events, justifying this by referencing the existing law prohibiting “public actions aimed at propaganda supporting homosexuality, lesbianism, bisexuality and transgenderism”. V. contacted a human rights organization. The organization's lawyers helped her to prepare a lawsuit against the decision of the authorities arguing that their decision violated her right to freedom of peaceful assembly. The court found the decision of authorities unlawful, saying that the justification used was formal and did not refer to any specific circumstances, which could lead to the conclusion that these events would actually represent “propaganda of homosexuality, lesbianism, bisexuality and transgenderism”.



with other human rights NGOs. It is best not to underestimate the potential of any human rights NGO.

As noted above, another aspect of finding the right human rights NGO to partner with is the NGO's mandate, which may sometimes seem too narrow to encompass issues corresponding to the needs of marginalized populations, especially those related

Due to the historical and political background of the region, the majority of human rights NGOs in EECA countries work in the area of civil and political rights. A strong factor in support of this work is the mandate of the European Court of Human Rights (ECHR), which stems from the European Convention on Human Rights, a treaty which does not specifically refer to a right to health. Another reason is the signing/ratification of the International Covenant on Civil and Political Rights and its First Optional Protocol which provide protection to civil and political rights in a way similar to the European Convention, with the UN Human Rights Committee having a mandate to consider individual complaints. However, for the past few decades the ECHR has managed to provide indirect but effective remedies for some violations of the right to health by way of widening the scope of its jurisprudence under Article 2 (right to life), Article 3 (prohibition of torture), Article 8 (respect to private and family right), Article 10 (freedom of expression) and Article 14 (prohibition of discrimination). The UN Human Rights Committee also provided indirect protection to the right to health by way of widening the scope of the right to life and the right to non-discrimination.

In some countries there are human rights NGOs which provide legal help to people living with HIV and at-risk populations. An example is the **Public Foundation "Legal Clinic "Adilet"** (Kyrgyzstan), which has a bureau for the protection of rights of people living with HIV and vulnerable groups.

to access to health services. To address this potential obstacle, it is important to widen the boundaries of a search by framing the issues in question within a broader legal spectrum rather than focusing on specific situations.

Another potential challenge for service providers and clients is the reality that some human rights NGOs sometimes stigmatize and discriminate against people with HIV and key populations most at risk of HIV, such as men who have sex with men, transgender people, sex workers and people who use drugs. Such prejudices are usually the result of social factors, lack of information and misunderstandings – all of which could be addressed with training, joint discussions, disseminating adequate information and by establishing clear rules of engagement.

b. Journalists and the media

Media coverage can significantly amplify the positive outcomes of legal undertakings and help to protect and promote human rights. Often, service-providing NGOs have some access to reporters who are capable of reporting on sensitive topics with respect to matters of privacy and confidentiality. In order to facilitate a transparent partnership between an NGO and a client, the contract should stipulate principles and possibilities of working with the media, as well as the scope of disclosing information in relation to the case. If a client consents to it and the case is not jeopardized as a result, a brief description of the case as well as other supportive materials should be available on an NGO's website to help garner media interest in the issue.

In order to facilitate contacts with mass media, service-providing NGOs could establish contacts with journalism schools, just as they could with legal clinics at law schools. Journalism students can provide pro bono help in drafting press releases, preparing case summaries for websites, creating press portraits for specific social issues and drafting text for blogs. The website of the **Andrey Rylkov Foundation** provides good examples of very interesting blogs which often are drafted by people who do not have professional backgrounds as writers or journalists.

In August 2011, a civil society activist I. was arrested by border police at the airport in her home town. A tablet of methadone was found among her personal belongings and a criminal case was initiated against her, as the country's laws included methadone in the list of controlled substances. There were strong indications that the tablet may have been planted to I. in retaliation for her advocacy for access to opioid substitution therapy for people living with opioid dependence. I.'s arrest and the subsequent criminal case led to a strong public outcry. Dozens of articles were published in print and online, in both Russian and English. In five days, the case was terminated by the Prosecutor's Service. The official cause for the termination was the numerous violations of criminal procedure committed by the border police.

Three main factors are believed to have led to the success of this case:

1. *Detailed narrative:* I.'s ability to quickly prepare a very detailed narrative of what happened to her, describing every single activity of law enforcement and customs officers, was the main source of information for lawyers to draft a legal complaint to the Prosecutor's Office. I. also managed to obtain a police report of the arrest and a personal search report which were also necessary for the complaint.
2. *Contact with NGOs:* I. immediately contacted service-providing NGOs which had connections to qualified lawyers at the local, federal and international level.
3. *Mass media response:* The compelling story prepared by I. and backed by her lawyers' complaint was quickly picked up by media and translated into powerful public reaction, which played a very positive role in persuading the authorities that the case was fabricated.

c. Government authorities

Public healthcare facilities

Cooperation with medical professionals and authorities is very important to ensure access to medical services. In some contexts, however, legal action against those very authorities may be necessary to defend patients' rights. Invariably, this causes tension and continuing cooperation against the backdrop of a lawsuit may be untenable. For this reason, many patients and service-providing NGOs avoid legal actions when they have some relationship with medical professionals and authorities, especially when the legal action might directly or indirectly concern the medical professional or institution with whom the NGO or the person has good relations. In some cases, these concerns are substantiated.

In some cases, a legal action can be undertaken without damaging good relations with medical professionals and authorities if some steps are undertaken prior to the legal action:

1. When possible, the action should avoid targeting specific people and focus on systematic faults which led to human rights violations;

In a case of M. against the regional ministry of health, a representative of the city's government-run AIDS center testified with an openly negative attitude towards M. After the trial, M. and his lawyer discussed the rationale for the lawsuit with the representative, including the fact that the litigation against the ministry challenged regulations which prevented doctors from prescribing necessary diagnostics to patients. After the conversation, the representative changed her mind and sincerely wished M. success in his case. M.'s case succeeded and he never experienced any retaliation from medical professionals or other authorities.



2. Prior consultation with medical professionals and authorities can be a very good idea in order to inform them that the intent of the action is not to attack a doctor or an official but rather to address systematic faults which may affect not only clients but doctors themselves. For instance, the absence of certain medications affects not only patients, but doctors because they have no means to address the needs of their patients.

Law enforcement

Engaging with law enforcement may be one of the most controversial and least favorable undertakings for service-providing NGOs, especially those working with marginalized communities whose experience with

law enforcement is, on the whole, negative. However, employing a strategic approach to engagement with law enforcement (e.g. through relevant training) could lead to a constructive working relationship.

There are numerous potential benefits to engagement with law enforcement:

1. Service-providing NGOs can educate law enforcement officers about the role that law enforcement agencies can play in preventing HIV and other health risks among most-at-risk populations;
2. Being duly informed about the needs of most-at-risk populations, law enforcement officers may

From 2006 to 2010, NGOs working with people who use drugs in six regions in Russia successfully collaborated with police as part of an initiative of the UN Office on Drugs and Crime aimed at piloting drug referral schemes. Local police departments concluded memoranda of understanding with service-providing NGOs whose designated staff members had access to people who use drugs in police custody. As part of their collaboration, the NGOs conducted many training sessions for police officers in order to inform them about the special needs of people who use drugs, as well as HIV and TB prevention.

Another example of police-NGOs collaboration is **Kyrgyzstan** where the Ministry of Internal Affairs issued a special order mandating police to ensure harm reduction services for people who use drugs. Worldwide there is a **Law Enforcement and HIV Network** which consists of police officers from all over the world who are supportive towards harm reduction.

And another example from Georgia: In December 2000, the Ministry of Health, Labor and Social Affairs of Georgia adopted a regulation, which mandated all healthcare workers to report to police about people with drug addiction coming to healthcare facilities with overdose or other problems related to drug use. As Georgian

legislation foresees criminal responsibility for repeated drug use, criminal cases were immediately opened against such patients. As a result, people who use drugs and their relatives refused to call an ambulance or seek medical assistance even in cases of overdose and abstinence syndrome, which led to deterioration of the drug users' health conditions and sometimes even to death. For several years, civil society organizations, including the NGO "Center for Protection of Constitutional Rights", a member of the Regional HIV Legal Network, have been advocating for amendments to legislation and the Ministry's regulations, and organized protests, media campaigns and negotiations with the authorities. As a result of this work, in August 2014 the Ministry adopted a new ordinance, which superseded the 2000 regulations. In addition, the Ministry of Health, Labor and Social Affairs, the Ministry of Probation and Execution of Punishments and the Ministry of Justice issued a joint statement. These documents envisaged implementation of a joint action plan, making amendments to the universal health care program, and that in cases of overdose program participants are guaranteed emergency medical assistance. Civil society organizations believe that their involvement in the development of the ordinance and the joint statement was a crucial step made by the government.

exercise greater discretion and avoid application of legal sanctions with regard to, for example, people who use drugs, for whom medical help is a far better way to prevent crime than judicial intervention;

3. Law enforcement officers view service-providing NGOs, and indirectly the marginalized communities they represent, through a more humane lens and within a framework of human rights;
4. Law enforcement officers who are aware of organizations and people who defend the human rights of marginalized communities may be less likely to abuse members of marginalized communities in police custody;
5. Collaboration with law enforcement may be crucial for addressing legal issues, such as lack of documents or residence registration. Partnership with law enforcement is also very important in preventing arrests and possible abuse of outreach workers who provide prevention or needle/syringe exchange services.

In order to avoid misunderstandings, engagement with law enforcement should be underpinned by principles of transparency and respect for human rights, which can be reinforced in a memorandum of understanding. Service-providing NGOs can offer law enforcement agencies awareness-raising sessions in order to inform them about the work of the NGO and the role of law enforcement in preventing communicable diseases such as HIV, HCV, tuberculosis and sexually transmitted infections. These sessions could be integrated into weekly training classes which most law enforcement units maintain. Service-providing NGOs should always emphasize that human rights, medical confidentiality and the best interests of their clients are matters of premier importance which cannot be traded away, even if this stance may potentially harm relations with law enforcement.

Ombudsman (National Human Rights Institutions)

In practice, national human rights institutions (NHRI) in EECA countries are often less functional than they appear to be on paper. For example, courts in the Russian Federation often ignore submissions from the Federal Ombudsman's Office concerning human rights violations on a particular case.

In 2001-2013 N., an HIV-positive person, was serving a prison sentence in Georgia and receiving antiretroviral treatment in prison. After being released from the penitentiary institution, he was unable to continue treatment under the government program. N. kept receiving medication based on a Global Fund permit, but due to grave financial circumstances he was unable to undergo diagnostic examinations. According to the country's 2012 HIV/AIDS State Program, the program is open for citizens of Georgia and for persons serving prison sentence in penitentiary facilities regardless of possessing identification documents envisaged by law. In May 2013, N. addressed the Public Defender of Georgia (the country's Ombudsman). Having considered N.'s case, the Public Defender addressed the Minister of Labor, Health and Social Affairs of Georgia with a recommendation to undertake the necessary steps to ensure that the HIV/AIDS state program is accessible for every individual residing in Georgia, regardless of their legal status (citizen of Georgia, stateless person, temporarily or permanently residing in Georgia).

There are certain limits as to when a complaint can be submitted to the ombudsman (e.g. only after judicial measures have been exhausted). However, it would not be right to discourage NGOs and victims of rights abuses to work with ombudsman offices and other human rights institutions. Getting a formal opinion from these institutions may add weight to the case, and there is a possibility to involve them more meaningfully – e.g. as experts – during the trial. In most countries ombudsman functions can be useful in the context of legal help. For example, the ombudsman office can provide pro bono legal consultations, initiate criminal proceedings, help take evidence through ombudsman's requests, visit places of detention, including closed hospitals, provide expert opinion, and even participate in court proceedings as an independent expert.



Step 3 – Bringing the issue to the attention of the appropriate authorities



The power of mediation

In legal terminology, mediation is a type of conflict resolution overseen by an independent mediator, who could be a trustworthy person able to settle the dispute by way of making parties listen to each other and respect each other's interests.

Mediation could be a useful way to initially address disputes with any person or institution, public or private, whose action or inaction influences the ability of a person to enjoy her or his rights. Parties to a dispute may feel some personal unreasonable dislikes or stigma and prejudice may be the reasons that some professionals exercise discriminatory treatment against people from marginalized communities.

For example due to the lack of training some doctors consider people who use drugs unsuitable for antiretroviral therapy, so they may deny access to treatment under the condition that the person stops using drugs first. Often people who use drugs, especially homeless people, are denied hospitalization due to the lack of documents. In such and many other similar situations, the engagement of an external player can be beneficial and can provide an easy and quick resolution of a dispute.

Service providers can perform the role of a mediator between their clients and other persons and institutions. Outreach workers¹⁰ from service providing NGOs are in a good position to act as mediators for several reasons:

In 2009, A., an HIV-positive person, addressed the proctology department of a public hospital. Having been informed that surgery would be required, A. told doctors that he has HIV. After that, he was denied the needed medical aid, allegedly because the hospital did not have the required medical tools (protective spectacles, as well as some “special instruments”) to perform surgery on HIV-positive patients. A. addressed an NGO specializing in providing legal services to people with HIV and marginalized populations. Together with a representative of the NGO, A. met with the head of the proctology department and had a constructive conversation. After the conversation, A. was admitted to the hospital and received the needed medical services.

- ▶ They are usually the first line responder to the client's situation and can develop trusting relations with a client;
- ▶ They often possess strong knowledge about the client's needs and hardships, and the potential ways through which to address them;
- ▶ Many outreach workers have some mediation skills simply due to the nature of social work which their NGOs deliver; and
- ▶ An affiliation with a service provider usually reinforces the credibility of outreach workers in the eyes of the client's counterpart, such as a doctor.

With minor practice oriented training, outreach workers can and should mediate disputes in order to facilitate their clients' enjoyment of their human rights. The training should include a legal component so that outreach workers are able to understand what the

¹⁰ The term “outreach workers” mentioned in this section refers to outreach workers, social workers, peer consultants and other similar NGO staff working with and providing services to rights holders.

clients' rights are and what legal measures are available to continue helping the client if mediation does not work. For example, a very helpful set of clients' rights related to health that outreach workers can easily learn can include:

- ▶ The right to free medical services in state and municipal (communal) facilities;
- ▶ The legal principle that doctors shall respect interests of a patient and treat patients in a respectful manner;
- ▶ The legal principle of informed consent;
- ▶ The legal principle of access to information, including the right to obtain a written refusal explaining the reasons;
- ▶ The legal principle of pre- and post- test counseling; and
- ▶ The legal principle of medical confidentiality.

Formalizing relations with clients by way of concluding a contract, procuring a power of attorney and recording an interview is also of help for mediation and further legal steps when necessary.

It is important to document the process of mediation because it cannot in all cases resolve the dispute and therefore an official complaint procedure and/or litigation may follow, which requires evidence. One of the ways outreach workers can do this is by writing brief reports to the head of the NGO, outlining dispute parties, possible reasons for the dispute, purposes of mediation, mediation activities and outcome, and a short plan for follow up. Such a report may further serve as a source of evidence, especially if similar disputes occur with the same doctor/official and there is a consequent need to demonstrate systematic problems.

In complicated cases, multiple steps of mediation can be employed. As outlined above, the first step is mediation by an outreach worker. The second step could be mediation by a case manager or outreach coordinator. The third step could involve mediation by a lawyer. Each step further in mediation may involve higher ranked professionals on the other side (e.g. doctor first, then the head of department, then the doctor in charge for the entire healthcare facility). Each subsequent step is built on the previous one, assuming

that a more experienced/trained mediator is taking over the case with the consent of a client.

The power of a formal complaint

In cases where mediation does not work, there might be a need to resort to an official complaint mechanism. There are several benefits of bringing an official complaint:

- ▶ A complaint is an effective way to document human rights violations and secure evidence for possible future legal action.
- ▶ In many cases, a complaint helps bring to light the official reasons for a certain position of a complainant's counterpart in a dispute (such as a doctor). It is easier to plan further action when the rationale for the official position of a counterpart is known in detail.
- ▶ Often, an official complaint is the first chance for the complainant's counterpart to realize that the complainant is serious in pursuing her/his rights. In some cases an official complaint could be enough for the counterpart in the dispute to stop violating rights.

There are no rules regarding the format of an official complaint. The format is flexible, but there are several items which should be present in the text of the complaint:

- ▶ **The name of the complainant, the year of her or his birth and the address for correspondence.** In some countries authorities enforce a rule of residential registration, meaning that every person has to be officially registered at the place of her or his location. Some people may not live at the same address as the address of their registration. In cases where a complainant is willing to provide a registration address, the complaint shall also clearly indicate the address for correspondence.
- ▶ **The name of the head of the organization where the complaint is to be sent and the address of the organization.** In cases of disputes with doctors, the first official complaint can be submitted to the chief doctor/head of a medical institution.



- ▶ **Brief description of facts.** The 5W1H formula can be of help for this part (see Step 1 – Documentation).
- ▶ **Brief description of laws.** Not many people know national laws. For this reason, they either fail to articulate the legal grounds of the complaint, or do not send an official complaint at all, thinking that it will be too weak without legal arguments. There are two points to keep in mind here: (a) it is better to bring rights violation to the attention of an official/head of an institution than to not do this at all. Even if completely rejected, the complaint serves as a tool to document rights violations; and (b) a national constitution is a great source for legal arguments, as the most important or basic rights are enshrined in the constitution, such as the right to health, the right to education, the right to work, the right to be free from ill-treatment, the right to freedom of movement, etc. Constitutions are usually available online and in many languages, and in many constitutions human rights are condensed in one chapter of a constitution, so it is not difficult to find an appropriate right to refer to.
- ▶ **Outline of what the respondent is requested to do** (what actions do you expect from authorities to which you complain).
- ▶ **Attached copies of relevant documents** (copies of all the documents that confirm facts set out in the statement of facts).

All of the above can be summarized into the following formula:

1. Specify whom the complaint is for and who it is from
2. State your complaint
3. Explain what you have just stated
4. State that you just explained your complaint

It is important to always bear in mind that, in all national legal systems, the constitution is the supreme law. No law is more important than the national constitution, and there are several important rules regarding human rights guaranteed by national constitutions of the region:

- ▶ Human rights must guide the actions of state authorities, including the legislative, executive and judicial powers. Consequently, this means that laws,

regulations, bylaws and other instructions from the authorities must respect, protect and fulfill human rights and facilitate an enabling environment for people.

- ▶ Human rights guaranteed by the constitution can be limited, but only as an exception and only if such limitations are: (a) stipulated in laws enacted by the national parliament; (b) for a limited number of purposes, such as national security, public health, and public order; and (c) proportional to the purpose of the limitation.

Taking into account the aforementioned points, it is helpful to read any response from authorities through the prism of a national constitution and then see if the laws quoted by the authorities facilitate the realization of constitutional rights. If they do not, one should assess whether such laws correspond to the permitted scope of limitation.

There are two ways to submit an official complaint:

- ▶ By visiting the respondent and delivering the complaint to her/him. It is recommended that a complainant request a stamp on a copy of the complaint, indicating that the complaint was received by a certain person on a certain date; or
- ▶ By sending the complaint via registered mail. This might be the best option because there is no need for a complainant to waste time and other resources to visit the institution/organization and the complainant does not risk confronting her/his rights violators who may belong to the same organization/institution.

In some cases, one initial complaint to the head of an institution/organization can resolve the dispute. Often, however, official responses contain references to laws and bylaws and in many cases the response is very hard to comprehend because of heavy references to laws or because of what people often call “bureaucratic language”. There are several easy tips on how to understand official letters of response to official complaints in order to plan further action:

- ▶ Start reading a response from the end to see the resolution. Keep in mind the resolution when reading the whole letter.

Constitutions of all EECA countries stipulate, in one way or another, that everyone has the right to health care (the right to health). Moreover, most EECA countries' constitutions provide for health services to be delivered free of charge in state and/or municipal (communal) institutions. In practice, however, many patients do not receive basic treatment free of charge. There might be many reasons for this given by the ministry of health, including the claims that some programs do not stipulate a particular treatment in the list of medications for procurement for the current fiscal year, that there are some ministerial orders which do not include a particular population for eligibility for a particular type of medical service free of charge or that there are no government/ministerial bylaws which would regulate the delivery of a particular type of medical service.

In these cases, despite all the possible reasons given by authorities, the simple question of, "Do I receive the medical service to which I am entitled by my national constitution?" still brings a simple answer: "No". However well-reasoned the rationale of the authorities may seem, they fail to uphold their constitutional obligations unless they provide treatment free of charge, especially in cases when treatment is essential for one's mental and physical well-being.

When the authorities attribute the lack of medication to financial constraints, it is important to ask oneself whether the constitution has any limitations of human rights for financial purposes.

- ▶ Ask yourself, have your rights been restored by the response to your complaint? A good test for this is answering the following question: "Have I received the services / medications I asked for?" It is important to simplify "bureaucratic language". Such language may be a smokescreen for responders' irrational and illogical explanations.

If the initial complaint fails to yield a response or the response is negative, the next step should be a complaint to the authorities, such as the ministry or the department of health, the ministry or the department of education, the labour Inspection department, and other similar state or municipal authorities.

These authorities are legally mandated to deal with cases of human rights violations when the case is relevant to their area of competence. For example, a case about a violation of the right to health shall in general be referred to the ministry of health. Sometimes, the complaint can be addressed to multiple agencies. For instance, a case of discrimination against a person living with HIV at school can fall under the mandate of both the ministry of education and the ministry of health. If in doubt as to where to submit a complaint, it is better to submit it to multiple agencies.

A patient requested that a chief doctor and the ministry of health provide him with certain medications free of charge as the constitution of his country stipulated that everyone has a right to free medical services in state or municipal institutions. In its response the ministry conceded that the patient did not receive the medications. However, the ministry launched into lengthy justifications for this, contending that the current laws and ministerial orders do not provide for state or municipal funding for the requested medications. The ministry concluded that because of this, the patient's right to health had not been violated.

Analysis: While the ministry confirmed in clear language that the patient did not receive treatment, it launched into convoluted logic (i.e. the fact that there is no money to provide for treatment) to justify why there is no corresponding rights violation. When asking whether the patient's rights have been restored by the response to the complaint ("Will I receive treatment after the ministry's response?") the answer is evident and can be challenged in subsequent complaints.



Sending a copy to the prosecutor's office and a national human rights institution may be a good idea as well. Whenever copies are sent to other agencies, they need to be indicated in the complaint.

In drafting a complaint to a higher governmental authority, the following additional points should be taken into account:

- ▶ There should be a reference to all the previous complaints; and
- ▶ There should be reasons given as to why the complainant does not agree with the response(s) to her/his initial complaints.

To conclude, the complaint procedure can be less frustrating if the complainant can simplify it.

1. Write concise complaints – no more than one or two pages. Remember that your task is to convey your message clearly and succinctly. Additional relevant information can always be appended as annexes to the complaint.
2. Always stick to the strongest points. Do not overwhelm respondents with multiple minor rights violations. Avoid emotional language even in cases when the counterpart to a dispute was offensive and provocative. Facts and laws are helpful; bypass stories and offensive language are not and only muddle the message with no positive effects.
3. In your arguments, always refer to national constitutional rights. Avoid making complicated legal arguments, especially if you do not understand the premise of those arguments.

Step 4 – Following up: legal tools available to obtain a response from the authorities



The laws on challenging the authorities

Often people are not willing to deal with authorities for two main reasons:

- ▶ People think that the authorities never respond and there is no legal way to put pressure on them to respond;
- ▶ People think that there are no legal ways to challenge the authorities' actions or omissions.

However, laws in most countries of EECA regulate ways to challenge the authorities. Typically there are two ways to do this:

- ▶ By submitting a complaint to the higher authority
- ▶ By submitting a complaint to the court (see Step 5 – Going to court)

Constitutions of all EECA countries stipulate the right to challenge authorities as part of the right to an effective remedy. The chapter in the constitution which contains human rights usually also includes the right to challenge authorities, the right to defend rights or the right to an effective remedy. In some cases, such a right is stipulated among the basic constitutional principles contained in the very first chapter of a constitution. So, when it is difficult to identify an appropriate law, one may simply refer to the constitution as constitutional rights are enforceable.

Laws on citizens' petitions exist in all states in the region. They are usually not difficult to find on the official website of the parliament. When the search function on a parliamentary website does not allow to find the needed documents, one can use another search engine (e.g. Google). Usually it is enough to search *law on citizens' petitions*. Such laws are easy to read

Article 55 of the Ukrainian Constitution (official translation on the website of the Constitutional Court of Ukraine)

Human and citizens' rights and freedoms are protected by the court.

Everyone is guaranteed the right to challenge in court the decisions, actions or omission of bodies of state power, bodies of local self-government, officials and officers.

Everyone has the right to appeal for the protection of his or her rights to the Authorised Human Rights Representative of the Verkhovna Rada of Ukraine.

After exhausting all domestic legal remedies, everyone has the right to appeal for the protection of his or her rights and freedoms to the relevant international judicial institutions or to the relevant bodies of international organisations of which Ukraine is a member or participant.

Everyone has the right to protect his or her rights and freedoms from violations and illegal encroachments by any means not prohibited by law.

and comprehend, and they are not voluminous (about 15-30 articles). Most laws which regulate procedures



to file complaints against the authorities stipulate the following important points:

- ▶ The limitation term is the period of time to file the complaint. Usually such time is not less than one month (and often more) from the moment when a person learns that her/his rights have been violated. The complainant is able to request to extend the term if the limitation term has been missed for good reasons (illness, postal services delay, change of address, or other similar reasons).
- ▶ Time for authorities to respond. Usually the time they are required to respond is within 15 to 30 days of receiving the complaint, with the right of authorities to extend this time in case the complaint requires additional activities. The main rule is: **AUTHORITIES MUST RESPOND**. There are two ways to safeguard a complaint and reinforce possible future arguments in case of no response:
 - (a) the complaint shall stipulate a certain time for a response. It is helpful when the complainant provides a very concise explanation as to why she/he needs the response in a short time. In many cases it is not difficult to provide such explanations, especially when the complaint concerns access to health services; and
 - (b) the complainant should check with the state/municipal body regarding the status of the complaint (this can be done by telephone). Authorities may respond quickly but because of postal services or other unexpected problems the response can be lost or delivered with significant delay. Checking the status of a complaint may help one learn faster about its results.

Usually laws on citizens' petitions mandate any state authority to respond even if a petition or a complaint does not fall under their area of responsibility. In this case the authority, which received the complaint, has to either forward it to the relevant authority or, if it is not clear from the text which agency is responsible, the complaint should be returned to the complainant with an appropriate explanation.

Apart from being timely, the response from authorities must be on the matter of the petition. Laws on citizens' petition in most countries of the EECA region explicitly stipulate such an obligation of the authorities.

In 2011, the Andrey Rylkov Foundation for Health and Social Justice sent a petition to the President of the Russian Federation regarding the urgent need to implement harm reduction programs as recommended to the country by the UN. At its core the matter of the petition was about the need to introduce a certain harm reduction measure because there was a clear and strong recommendation by the UN to do so, based on the country's obligations under international human rights treaties. Instead of considering the petition, the President's Office referred it to the Ministry of Health. In its response, the Ministry did not provide any comments regarding the country's international obligations, but indicated that the harm reduction intervention was not effective. Thus, the response was not on the subject of the petition. After another unsuccessful petition to the President's Office and trials in the national courts, the organization submitted a communication to the UN Human Rights Committee claiming a violation of the organization's right to receive an accurate response on the matter. More information about this case and copies of relevant petitions and responses are available at the [Andrey Rylkov Foundation's](#) website (in Russian).

As discussed below, such an obligation flows from the right to an effective remedy and the right to information.

The laws on access to information

The right to an effective remedy is closely connected to the right to information. In fact in many cases it is very hard to effectuate the right to an effective remedy without receiving appropriate information concerning activities of state or municipal bodies. In all countries of EECA there is a constitutional right to the freedom of expression, which includes the right to receive information, and most of the EECA countries have laws providing for citizens' access to information. These laws usually stipulate that any person or organization can

file a request for information concerning the activities of the official body, including information about laws, regulations concerning certain activities and information which the official body generates as part of its activities, unless the information is classified or there is another strong reason to prevent access of the public or a particular person to such information.

A request for information is a good option for cases when a person or an NGO plans an action to restore human rights, but is not certain about the state policy regarding a particular issue. For example the ministry of health can be addressed with a request for information about the availability and accessibility of a particular type of treatment, the legality of certain medical services and other similar issues. Information from law enforcement and penitentiary services can also be obtained through a request for information.

There is no standard form for a request for information. The request shall at least provide for the name and address of a requesting person, as well as the name and the address of the state or municipal body or official, as well as the information being requested.

The laws regulating the access of citizens to information usually provide for the terms during which authorities shall respond to the request for information. The official body has an obligation to respond even if the request concerns information that falls outside of its mandate. In such cases the response has to either inform the requesting person that her/his request was forwarded to an appropriate authority or that the request cannot be served due to lack of mandate of this particular body. In case the requesting person/organization cannot find the appropriate law stipulating the term for a response, it is helpful to specify a certain period during which the requesting person would like to receive information. If such time is short (e.g., less than a month), the request should contain a strong reason for the urgency.

A special type of information that can be requested is personal medical information. A country's law on public health usually stipulates that patients have the right to informed consent. This right shall include the ability to receive information about a particular medical service and medications, including the effects and side effects for human beings, costs and

A. visited a local hospital, where she was diagnosed with hepatitis C and received clear indications that she needed treatment. When she requested free therapy for hepatitis C, doctors told her that she was put in the queue for free treatment and that it could take up to two years to receive it, depending on the willingness and/or the ability of other people before her in the queue to receive treatment. As her health was deteriorating and she could not wait for such a long time, she sent a request for medical information to the chief doctor of the clinic and copied in the regional ministry of health. In the request, A. asked for information about the effects of “putting a person in a queue” for a medical intervention and the scientific validity of this practice. Instead of responding to her request, the doctor informed the patient that she could be admitted for treatment immediately. One of the possible reasons for such an action by the health authorities and doctors could be that the practice of putting people in queue instead of treatment is hard to justify. Therefore, in similar cases, the request for information could provide for the resolution of the dispute to the benefit of a patient.

possibilities to receive services and medications free of charge.

To conclude, challenging the authorities by sending a complaint/petition to higher authorities is possible in every country. Such an opportunity stems from the constitutional right to an effective remedy and in most countries there is a law providing for such an opportunity. The right to access information also complements the right to an effective remedy. Often they intermingle and effectuating one right can enhance the protection of another.



Step 5 – Going to court



Civil procedure to challenge actions/inaction of the authorities

The decision regarding the most suitable way to defend human rights depends primarily on the sphere of public life in which the violation took place. All possible violations can be divided into two major groups:

1. Violations in the sphere of public health, education, family life and other similar areas where state or municipal agencies can interfere with individual rights and freedoms;
2. Violations in the sphere of law enforcement (police, drug enforcement, execution of punishments), which usually occur during criminal or administrative procedures which provide for distinct procedural tools to address human rights violations.

The first type of violation is what many people from marginalized communities experience every day. The initial violators are not necessarily state officials but doctors, teachers, social welfare workers and other persons who do not exercise any statutory power over the client even if there is some degree of factual power over the client. For example, a patient usually follows a doctor's advice but this advice is not mandatory. In contrast a police officer's order or a decision of the ministry of health is mandatory by law. This is a very important distinction as disputes between private actors (such as a doctor and a patient) shall generally be subject to civil litigation procedures where the parties in the dispute are considered equal. This procedure is applicable to disputes between a vendor and a client, for example. In contrast, disputes between persons in a position of power (such as the minister of health or other state official) and private actors are subject to a special public procedure, which takes into account

A. was a woman who underwent sex-change surgery. According to the medical certificate, she had a diagnosis of high intensity transsexualism, and that the surgery itself was irreversible. However, when A. requested the vital records registry office (ZAGS) to make corrections in her birth certificate, she was denied this change, which ZAGS officials explained by the fact that A. could not provide a standard medical document on sex change. A. went to civil court challenging the refusal to register the sex change and requesting that the ZAGS be mandated to make changes in the birth statement and replace her female name with her male one. The court ruled that, even though changes in vital records can be made under the law based on submission of a standard document, the form and issuance procedure of such a document were not envisaged. Therefore, the court recognized that the medical certificate provided by A. objectively established the fact of irreversible sex change from female to male, and that there was no ground for any doubts of this fact. Therefore, the court ordered the ZAGS to make the following changes in the A.'s birth statement: to indicate "male" in the "sex" line and to change the female name and surname to male ones.

the fact that ordinary people are more vulnerable in comparison to persons in a position of power.

In many states of the EECA region, civil procedural laws (e.g., in Russia, Kazakhstan) or laws on administrative procedure (e.g., in Ukraine, Azerbaijan) stipulate special procedures which have some significant benefits for people who decide to challenge actions, omissions or decisions of authorities:

1. The authorities whose activities are challenged bear the onus to prove the legitimacy of their action.
2. The court can assume a role in requesting necessary evidence from public authorities, including the defendant.
3. The procedure is much shorter than ordinary civil procedure; it takes several weeks for a court to consider a case and render a judgment in comparison to several months for an ordinary procedure.
4. The procedure is either free or the complainant pays a fixed and relatively minor fee, usually the equivalent of 10-20 US dollars in national currency.
5. The complaint could be brought not only to a court at the location of the defendant as with ordinary civil procedure, but also to the court of the complainant. This is important for instance in cases when a complainant from a rural area challenges a ministry located in the national capital.
6. A prosecutor can represent the complainant in a trial against the state authorities.
7. In cases when the court adjudicates in favor of the complainant, the authorities must fulfill the judgment and report to the relevant court about this.

With this in mind it is very beneficial for a person, whose rights were violated, to transform any dispute concerning the rights to health, education, labor and other rights into a public dispute in order to engage special public procedure and mitigate the unequal position between the complainant and a representative of a public institution, such as a medical doctor.

K. is a man living with drug dependence. After he underwent 19 unsuccessful attempts at drug treatment in abstinence-based clinics he approached his doctor with a written request to prescribe him methadone or buprenorphine as opioid substitution therapy, because abstinence-based programs proved ineffective, at least in his case. The doctor refused, saying that such therapy is prohibited in the country and that abstinence-based programs are effective. K. immediately went to court with a complaint against his doctor. However, because the doctor was not an official in a position of power the court redirected the complaint to ordinary civil procedure, where the dispute deviated from the initial proposition that the state refused a particular type of treatment to an argument that abstinence-based programs are effective because the doctor was not in a position to prescribe something that is prohibited by law.

In order to correct the situation, K. filed a complaint against the doctor to the ministry of health. The ministry is a state agency whose mandate includes the responsibility to ensure human rights of medical patients. When the ministry responded negatively, K. took the ministry to court and the court accepted his complaint as part of the special procedure because in this case the ministry was a counterpart in a position of power.

As demonstrated in the example above, in general there are three phases to convert a dispute into a dispute with a public authority and thus subject the dispute to the public disputes resolution procedure (special procedure):

Phase 1: Official complaint against the counterpart either to the counterpart directly or to her/his supervisor. For example, in a case of a dispute with a doctor a complaint or a statement shall be filed either to the doctor directly or to a chief doctor of a clinic.



Phase 2: Official complaint to a respective public authority. When the first complaint does not yield a positive response, the person may further complain to a state body, which is mandated to regulate a particular area of public affairs, for instance a regional department or ministry of health.

Phase 3: Official complaint to the court. After receiving an official response from the state official, state body or any other authority and not being satisfied with the outcome, the complainant can bring the dispute to court under the public dispute resolution procedure (special procedure). Going to court requires at least some knowledge and understanding of the procedure. It is not difficult to find “the Code”, regulating a procedure on public dispute resolutions in court. In some countries district courts have official websites which feature the necessary extracts from the procedural codes. If a country’s courts do not operate websites, civil procedural codes or the codes of administrative procedures should be available on the parliament’s website.¹¹ If the procedure to challenge the acts of authorities is in the civil procedural code, such a procedure usually follows the civil suit procedure. The code of administrative procedures, where it exists, is entirely dedicated to disputes with public authorities.

In general, the procedure associated with public dispute resolutions is not difficult to understand. There are usually six stages of civil procedure in most countries of the EECA:

- Stage 1. Filing the complaint to court
- Stage 2. Preliminary hearings
- Stage 3. Trial
- Stage 4. Case resolution/judgment
- Stage 5. Appeal
- Stage 6. Enforcement of the judgment

Stage 1. Filing the complaint to court

Usually laws stipulate a limitation term for bringing a complaint against authorities to court. In most EECA countries, such a term expires three months from the moment when the person learns that her/his rights have been violated. Should a complaint be filed beyond

¹¹ If the country does not have separate administrative procedural code, procedures to challenge acts of authorities are typically regulated by an appropriate chapter of civil procedural codes.

the limitation period, exceptions can be made based on an appropriate motion stating good reasons for missing the term (e.g. illness). Template of a complaint is given in Annex V.

There is no official form for a complaint to the court. A complaint to court shall usually consist of all the points of the official complaint described in Step 3. It is important to remember that although the initial dispute could be with a doctor or any other person not in a position of power, the complaint to court shall be brought against the authority from whom the complainant received an official response. Most complaints to court should follow the following formula:

Introduction: Where (name of the court); from whom (name of the complainant); against whom (name of the defendant); title (for example a complaint against the ministry of health); real addresses of complainant and respondent.

Statement of facts: 5W1H. Concise, to the point, without bypassing facts, no offensive language. Include information about complaints to authorities and the results.

Statement of laws: constitutional rights, special law – if known, concise reasons why the complainant considers her/his rights to have been violated.

Claim: request for the court to order the public authority (e.g., the ministry) to provide an effective remedy, pointing what remedies are requested.

Annexes: copies of all the documents that confirm facts set out in the statement of facts, including copies of previous complaints and official responses. Proof of a fee payment should also be annexed.

Important: if the complaint is filed on behalf of the complainant under the power of attorney, a copy of the power of attorney should be attached to the complaint.

There is no difference between bringing a complaint to a court in person and sending a complaint via post. According to laws in all countries of the region, the date of filing a complaint is not when the complaint reaches the court but the date when the complaint

is handed over to the post office. For this reason the complaint should be sent via registered mail.

When a court receives a complaint, it has an obligation to decide on the following points:

- ▶ Whether or not the complaint includes all the necessary information, all the documents to which the complainant refers are attached and the fee is paid. If a court is not satisfied with any of these points the complaint is placed on hold and the court informs the complainant that she/he shall correct the faults within a given timeframe (usually 10 or 15 days). If the faults are addressed within the given time, the court admits the complaint. Thus a court cannot reject a complaint if there is some information or attachment missing.
- ▶ Whether or not the subject matter of the complaint corresponds to the court's mandate. If not, the court rejects the complaint. The complainant will receive the decision about this with reasons for the rejection. The decision is subject to an appeal (see Stage 5 below).

Stage 2. Preliminary hearings

If the court is satisfied with the complaint the preliminary hearing is set up in order to meet with dispute parties and decide how to better organize the trial. If nothing comes from the court within ten days of the day the complaint was sent to the court, the complainant shall call the court to inquire about the complaint's status to avoid missing the preliminary hearing and/or trial as sometimes postal services deliver notifications very slowly.

Stage 3. Trial

The trial is the core of a procedure where the case is considered and the dispute is to be resolved. There are several points to remember when a case is going to trial:

1. At the beginning of a trial the judge always asks about motions. This is a time to submit all the requests and ask questions if something is not clear. Regardless of the formality of the trial, there is nothing wrong with asking the judge about particular procedural rights and the ways to effectuate them. In fact, there is an obligation on the

M., a man living with HIV and Hepatitis C virus (HCV), addressed a regional AIDS center with a request to receive free HCV treatment. Though treatment was available on a free of charge basis, HCV diagnostics were not, even though it is an essential part of treatment. Having received negative responses from the AIDS center and then also from the regional ministry of health, M. brought the ministry to court. A professional lawyer helped him to draft legal documents, and it happened that this lawyer was also available at the time of M.'s trial. During the trial the lawyer presented the case in nearly perfect legal language with strong legal arguments and multiple references to many laws and bylaws. However, this did not seem to impress the judge. A different tactic was chosen at the court of appeal. M. attended court on his own and presented his case "from the heart" by telling his story in simple but strong words. From the outset M. said that he did not want to reiterate legal arguments as they were all perfectly presented in the text of the appeal, which was drafted by the professional lawyer. He chose to present something he was familiar with – his own story. He won the case: the court recognized actions of the regional AIDS center and the regional ministry of health as illegal. Presently, test systems of HCV are procured by the ministry of health and are available free of charge.

One of the possible reasons for this victory was the different way M. had chosen to present his case. Instead of reading his complaint and using dry legal language, M. presented his case in a very animated and understandable way. Because he was telling his own story, he was very confident and did not feel nervous.

- part of the judge to create an enabling environment for the parties during the trial.
2. The trial is not a place to be rude even if the other party does not behave well. Consider the trial a



chess game and try to participate from a distance. It helps to remain calm.

3. The claimant will have a chance to present her/his case and to question the defendant's position as well as the defendant's evidence. However, there is no need to read the complaint or try to present the case in legal language, especially if the complainant or her/his representative is a layperson (an outreach worker, for example). The strength of such a complainant is in her/his ability to know the facts, not necessarily the relevant laws. Telling the judge a story "from the heart" is often more compelling than the legal language which the judge hears every day.

Stage 4. Case resolution/judgment

At the end of the trial a judge issues a judgment. Every complainant has a right to receive a judgment as well as the record of judicial proceedings. Also, every complainant has a right to access the case file and make copies of all the documents. This is especially important when the complainant is not satisfied with the judgment and plans an appeal.

Stage 5. Appeal

When not satisfied with the judgment, the complainant can file an appeal.

It is important to remember that all countries have a limitation period to file an appeal. In some countries such a period could be quite short – up to 10 days. The limitation term in most of countries starts ticking from the time the judgment is proclaimed in the presence of complainant, not from the time the judgment is received by the complainant. Sometimes the complainant receives the judgment several days or even weeks after the judgment was delivered at the end of the trial. If this is the case, the complainant is at risk of missing the deadline for appeal. To be on the safe side the complainant should file a preliminary complaint saying "I disagree with the judgment as I consider it not to be in line with law and does not correspond to the facts of the case. I will file the full appeal as soon as I receive the full judgment". Such a preliminary complaint shall be filed to the court which issued the judgment. Upon receiving such a complaint the court will put the appeal on hold and give the complainant time to file a full complaint, usually 10-15 days.

There is a fee to file an appeal which is usually a fraction of the fee for bringing an initial complaint. The proof of payment of the fee shall be attached to the appeal.

There is a chapter regarding appeal procedures in the civil procedural or the administrative procedural code of every country. The chapter is usually not long and is easy to comprehend.

The appeal shall follow similar logic to any other complaint (see Step 3). In addition, when drafting an appeal it is good to keep in mind that there are three main grounds on which to challenge the judgment. These are usually listed in one or two articles regulating the appeal procedure in the procedural code under the name "The grounds for cancelling the judgment". There are three groups of such grounds.

1. Factual

In summary, the factual grounds mean that when delivering the judgment the court did not assess the exact facts which were brought to the trial by the complainant but assessed some other facts. For example the complainant may argue that she/he is entitled to receive a particular type of antiretroviral therapy, but the court assessed facts that the complainant is addicted to drugs and hence cannot receive the medication because of her/his "instability".

2. Substantive law

These grounds are related to the legal core of the issue of consideration at a trial. If the complaint was about the right to health, the substantive law grounds to cancel the judgment by the court of appeal should demonstrate that when passing the judgment the trial judge either relied on the wrong law, did not rely on the appropriate law or misinterpreted the law. For example in cases about the right to free medical services a judge may justify the denial of free services with reference to some ministerial orders that do not provide for the financial means for this type of therapy to be available for every patient. However, at the same time, the court ignores the fact that the constitution is the supreme law of the country and no ministerial order can contradict it. In this case the substantive law ground for the court of appeal is the failure of the trial judge to implement the Constitution.

3. Procedural law

These grounds concern violations of procedures at a trial, including failures of the court to inform parties about the trial, ensure that all evidences are assessed and all circumstances of the case have been taken into account by the court before adopting a final decision. Often in negative judgments in favor of authorities judges tend to justify their decisions through the arguments of authorities, ignoring the arguments of a complainant. Such judgments violate a fundamental principle of an adversarial procedure,¹² because any judgment must be well motivated and contain reasons given by a judge as to why she/he rejected some arguments, facts and evidence but accepted others.

Stage 6. Enforcement of a judgment

Judgments against authorities are sent to public authorities for implementation. In most countries the authorities shall inform the court about the implementation of the judgment in a month. If for some reasons the judgment is not fulfilled the complainant may inform the court about this and file a complaint to higher authorities claiming violation of the right to an effective remedy. However, cases when the judgment is not fulfilled are rare.

Violations in the sphere of law enforcement (police, drug enforcement, execution of punishments), which usually occur during criminal or administrative procedure, may be challenged with procedures under the code of criminal procedure or the code on administrative misdemeanors.

The compensation for moral/material damage caused by a public official (e.g. in cases of disclosure of status, offending the person in public, discontinuation of employment because of the status, illegal prosecution, etc.) can be claimed as part of an ordinary civil procedure.

¹² Adversarial procedure means a set of rules which provide equal opportunities for opposite parties to present their case before independent and impartial tribunal.

Criminal procedure

There are several points to keep in mind when dealing with criminal procedure:

1. The procedure is a set of logical steps where every movement of police, prosecutors, or a court shall be documented. Therefore it is important to keep all the documents obtained during pre-trial procedure as these documents may become a vital source of evidence to challenge police or prosecutors. When the pre-trial stage is over (the end of an investigation) an accused shall have the right to review the case file and make copies of all the documents in the case file. In some countries this right is limited to the right to make “write-outs” (for example Art. 376 of the Criminal Procedural Code of Uzbekistan). Never underestimate this right. Always make copies or “write-outs” of all the documents in the case file or ask your lawyer to do so. These documents are the only source of information for the accused to use to prepare for the trial and file appeals when necessary.
2. Most EECA countries provide free access to legal counsel for those accused who cannot afford to pay for one. Unfortunately, there are cases when legal counsels provided by the state are fulfilling their job formally and are not genuinely interested in conducting a real defense. However there are also examples of when such counsels do provide top quality legal services, especially when there is help from outreach workers/case managers who can help with collecting necessary medical documents, drafting motions and complaints, looking for witnesses and helping with other evidence. A contract with a service providing NGO and/or outreach worker and the power of attorney are very important tools to enable outreach workers to help on the criminal case in cooperation with a legal counsel provided by the state. It is very important to request access to a legal counsel during the early stages of criminal proceedings, starting from the moment the person is stopped by police or questioned as a witness.
3. In every state there is procedure to challenge authorities which conduct an investigation. Usually there are two or three articles on this topic in the criminal procedural code. There is not any specific form for the complaint. However the complaint



shall describe the nature of the violation. When the accused suspects that some investigative activities have been conducted in violation of the law, it is better to file the complaint to the court even if the accused is in doubt that the court will take her/his side. Such a complaint is effective at least as a tool for documenting violations.

4. It is important to keep in mind that any evidence which was obtained with violations of laws should be unacceptable for the court. Therefore it is in the interest of the accused not to leave violations of her/his rights unattended. Any violation is worth documenting. In drug-related crimes, pay attention to how the prohibited substance was seized and sealed, who were attesting witnesses and the accuracy of a particular item's description.
5. The general rule is that the procedure must be adversarial so the defense shall have an effective set of rights in order to counterbalance the rights of police and prosecutors during the pre-trial investigation, trial and appeal. As laypeople, many accused do not know their rights and police may not point them out. Therefore it is important to keep in mind that there is nothing wrong in asking police, prosecutors or a judge questions about your rights.
6. The right to remain silent is very important; do not be afraid to exercise it at least for the first several hours after an arrest. Often people say many things during the first moments after their arrest and later regret it. For example, many people who use drugs try to defend themselves by saying that they did not sell narcotic drugs, but rather they just lent it or gave it as a gift. However, laws do not distinguish selling from giving and lending.
7. The defense has the right to collect evidence and present them to the court, including alternative forensic experts' reports (for instance in drug cases).
8. In some countries (e.g. Russia, Kazakhstan, Ukraine, Uzbekistan) criminal procedural laws provide for the right of laypeople to become so-called public defenders along with professional lawyers. This might be a good opportunity for an NGO/outreach worker or a relative of the accused to enter the case and work in close cooperation with the defense lawyer, especially when the accused is in pre-trial detention.

It is important to remember that criminal procedure is not only about bringing people from vulnerable groups to responsibility. In cases of most serious human rights violations – e.g. of right to health, right to freedom from torture or right to life – criminal court is the place to seek justice, and perpetrators of crimes against representatives of key populations may get the deserved punishment.

T., a sex worker with a drug addiction, was beaten by a client; she died as a result of the internal damage she suffered, and her body was left in a desolate place. V., a former police officer, was arrested on suspicion of committing this crime. During the entirety of the investigation and trial, a lawyer representing the victim worked closely with an NGO that offers social support to sex workers. As a result of the joint work of the lawyer and the NGO during the trial, where V. was charged with severe beatings leading to death, the court sentenced V. to eight years of prison and to the compensation of moral damages to T's mother in the amount equivalent to 25 thousand US dollars.

Procedure under the code of administrative misdemeanors

In most EECA countries the procedure on administrative misdemeanors¹³ is a sort of simplified criminal procedure. Similar to criminal procedure, some authorities prosecute a suspect on behalf of the state for committing some illegal activity. However under the codes of administrative misdemeanors there is no serious investigation and the final decision can be taken by an administrative body (police, traffic police, food control agency, fire marshals, etc) and/or a court. The main document is a charge sheet (protokol) which outlines elements of an offence and points to evidence in support of the charge.

¹³ "Administrative misdemeanor" is an unlawful act, which is less serious than a crime.

An accused shall have the right to defend his position even if the case is considered by some administrative body (police for example). The hearing (trial if the case is considered by the court) is based upon similar principles as those of a criminal trial.

An accused can challenge activities of authorities. In some countries the procedure to challenge final decisions about administrative offences is regulated by codes of administrative misdemeanors (e.g. Russia, Tajikistan, Uzbekistan); in other countries this procedure is regulated by administrative procedural codes which are separate from codes of administrative misdemeanors (e.g. Azerbaijan, Belarus, Ukraine).

To conclude on this chapter, procedural laws provide all necessary grounds for a layperson to self-defend her/his rights. Understanding the aforementioned basic points of procedure will help to see the court in a more friendly light as a place where a dispute could be brought to a logical and just resolution. Think of a court as one of the possible ways to defend rights even if at the beginning the relations with authorities and/or medical, educational and other professionals look promising. *Si vis pacem, para bellum* (Latin) – if you want peace, prepare for war.



Step 6 – International Human Rights Procedures

Overview of long-term advocacy cycles through different human rights bodies¹⁴

¹⁴ International human rights institutions (IHRI), such as the UN treaty bodies or the European Court of Human Rights have certain limits in their ability to influence the decisions of domestic authorities. NHRI and IHRI are helpful for amplifying the voice of civil society organizations and activists in their dialogue with state authorities. Longer-term legal advocacy in particular, including strategic litigation, could be a useful avenue to engage with NHRI and IHRI.

Most EECA countries have signed and/or ratified international human rights treaties and most EECA countries' constitutions recognize supremacy of international treaties, ratified by the country, over the country's national laws. Countries which have ratified the European Convention of Human Rights are required to, and do, respect judgments of the European Court of Human Rights, even when judgments are not about a matter related to that particular country. This context provides strong incentives to use international human rights mechanisms in order to develop human rights practices which can potentially bring about

Table of treaties ratification

Human Rights mechanisms available for the countries of EECA

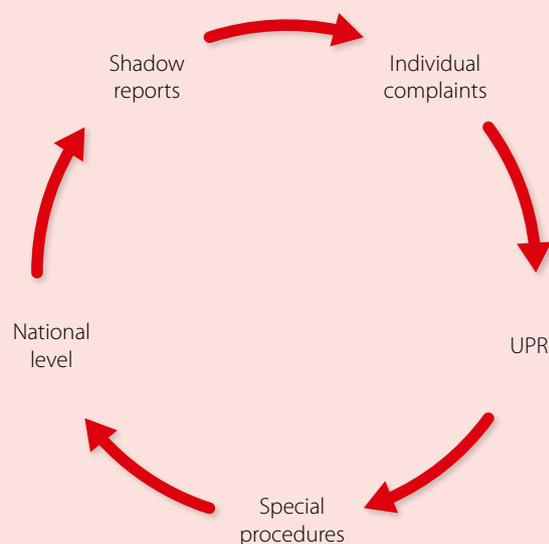
Country	European Court of Human Rights (individual complaints)	Committee against Torture (individual complaints + enquiry procedure)	Human Rights Committee (individual complaints)	CEDAW (individual complaints)
Armenia	✓		✓	✓
Azerbaijan	✓	✓	✓	✓
Belarus			✓	✓
Georgia	✓	✓	✓	✓
Kazakhstan		✓	✓	✓
Kyrgyzstan			✓	✓
Moldova	✓	✓	✓	
Russia	✓	✓	✓	✓
Tajikistan			✓	
Turkmenistan			✓	✓
Ukraine	✓	✓	✓	✓
Uzbekistan			✓	

In considering access to a particular type of evidence-based drug dependence treatment in a particular country, the first step to carry out in advocacy is planning. When the country prevents access to such drug dependence treatment, it can be considered as a violation of a host of human rights, from the right to life, to the right to be free from ill-treatment, the right to private life, the right to be free from discrimination, the right of women to reproductive health service and the right to health, among other rights. Advocacy may include many steps that can frame the issue of access to a particular type of drug treatment from different angles.

For example, individual complaints can be submitted to:

- ▶ UN Special Procedures (e.g., UN Special Rapporteurs on the right to health, on torture, on violence against women, etc.). A list of Special Procedures can be found on the website of the [Office of the High Commissioner for Human Rights](#);
- ▶ UN Human Rights Committee;
- ▶ UN Committee on the Elimination of Discrimination Against Women;
- ▶ UN Committee against Torture;
- ▶ UN Committee on the Rights Persons with Disabilities; and
- ▶ European Court of Human Rights.

Shadow reports can be submitted by NGOs to virtually all of the UN Human Rights bodies. Shadow reports can be joint statements from coalitions of NGOs on a broad range of human rights issues and may replicate country reports in terms of structure. Another type of shadow



report is a report on narrow issues, for instance on particular rights or a policy issue. Individual cases of human rights violations can be included in shadow reports as examples of particular types of violations. Sometimes international human rights bodies refer to individual cases in their concluding observations, which are adopted after consideration of the country and alternative reports and dialogue with national delegations. This provides yet another opportunity for individual rights protection as countries are obliged to follow up on the recommendations given as part of concluding observations. The recommendations of the UN treaty bodies can be enforced by submitting a report to the UPR. By taking advantage of the various human rights mechanisms available, international human rights advocacy can evolve into a mutually reinforcing cycle, whereby responses from different bodies can reinforce one another and exert a great deal of international pressure on a government.

effective changes not only for a particular individual but at a national policy level.

Each of these aforementioned international treaties has at least one of the following treaty monitoring mechanisms:

1. Country report review procedure
2. Individual complaint procedure
3. Inquiry procedure

The country report review procedure is a treaty monitoring procedure whereby a special human rights body reviews how countries fulfill treaty obligations.



On average every country undergoes a review of at least one human rights body every 4 to 5 years.

The individual complaint procedure mandates a treaty monitoring body to consider individual complaints from individuals who claim that a certain state which is a party to a treaty has violated her/his rights as guaranteed by the treaty. An individual does not need to be a national of that state in order to be able to file an application against it. The most important factor is that the human rights violation happened on the territory of a particular state or a particular state is responsible for a human rights violation that happened outside of its territory.

The inquiry procedure mandates a treaty monitoring body to conduct an independent investigation based on requests from individuals or groups of individuals who claim systematic and very serious violations of human rights guaranteed by a particular treaty.

The main international treaty is the UN Charter which is the basis for the UN Human Rights Council, the main human rights body of the UN system with a general human rights mandate relating to all rights stipulated in the UN Declaration of Human Rights and other UN human rights treaties. The UN Human Rights Council has the following two human rights mechanisms:

1. **Universal Periodic Review (UPR)** – a mechanism which subjects all 193 UN member states to the scrutiny of the UN Human Rights Council every four years;
2. **UN Special Procedures** – a number of Special Rapporteurs and UN working groups that are mandated by the UN Human Rights Council to oversee and advocate for the promotion and protection of particular human rights.

Taking into account the number of human rights bodies, every state is in the spotlight of one or more human rights bodies at least once per year. Thus, every government experiences at least some international human rights pressure. If properly planned, the intensity of international human rights pressure can be very strong and effective.

UN Human Rights Bodies

The UN Human Rights bodies (e.g., Committees) operate in line with their rules of procedure which share the following common principles:

When considering country reports:

1. Committees review country reports and make recommendations to improve countries' compliance with international human rights treaties. Each treaty has its own committee, which consists of a panel of international independent experts.
2. The review procedure consists of three steps:
Step 1. Committees send a "List of Issues" prior to reporting to brief countries on what to report. The country report structure follows the structure of human rights treaties and countries usually inform Committees about progress made, including with respect to items outlined in the List of Issues.
Step 2. At their sessions, Committees engage in dialogue with countries' delegations in order to clarify responses provided by the countries in their reports. Delegations may consist of ministers, executive officers, and other state officials who may present relevant parts of the report.
Step 3. Committees adopt Concluding Observations with recommendations for the countries. These recommendations usually flow from deliberations with delegations during the dialogue. During the next reporting stage, the Committee usually inquires about the progress in implementing the Concluding Observations from the previous session, and the government has to respond.
3. Civil society organizations are welcome to present shadow reports to inform committees about the human rights situation in a particular country. In all cases civil society organizations which submit timely shadow reports to Committees will have an opportunity to attend a Committee session, have meetings with some Committee members and present during a dialogue with a country delegation.

The individual complaints procedures of the UN Committees are similar to those of the European Court, with some differences in time limitations. Most

Committees have a rule laying out a reasonable time period during which to file complaints following the exhaustion of domestic remedies.

The Office of the High Commissioner for Human Rights is an executive branch of the UN Secretariat, which serves UN Human Rights Bodies. This Office produced a Handbook with clear descriptions of how to work with the United Nations Human Rights Programme. The Handbook is available in **English** and **Russian**.

There is also a Practical Guide for civil society organizations describing how the UN Human Rights Council works in **English** and **Russian**.

The website of the **ECHR** is quite informative and provides clear instructions on how to send a complaint to the Court. The website itself is in English and French, the working languages of the Court. All necessary instructions for applicants are available in **all languages** of the countries of the Council of Europe, including in **Russian**.

Many websites of human rights NGOs and activists provide comprehensive and clear instructions on how to file an application to the ECHR.

The following points are illustrative of how the Court works:

1. The ECHR is not a superior authority to national courts. It can proclaim a violation of the Convention but it cannot overrule judgments of national courts as appellate courts do, for instance.
2. As the Court is a complementary body to national human rights and judicial systems, a core principle is that an applicant must exhaust all domestic remedies before submitting an application to the Court. In most countries this means that an applicant shall have at least completed a trial and an appeal before submitting anything to the ECHR.
3. There is a limitation period of six months to apply to the Court. This period starts running from the date the applicant has exhausted the last domestic remedy — which is in most cases the

European Court of Human Rights

The European Court of Human Rights (ECHR) is a treaty monitoring body for the *European Convention for the protection of human rights and fundamental freedoms* (European Convention). The ECHR can review individual complaints and issue judgments which are binding for member states.

EECA countries which are part of the Council of Europe

Flag	State	Date joined
	Armenia	25 January 2001
	Azerbaijan	25 January 2001
	Georgia	27 April 1999
	Moldova	13 July 1995
	Russia	28 February 1996
	Ukraine	9 November 1995



date a judgment is rendered by an appellate court. It is important to consider preparations for filing an application to the Court immediately after the judgment of the court of appeal. Along with making an application to the ECHR, the applicant is advised to continue filing complaints to higher courts and informing the ECHR on their progress and outcomes. This approach allows the Court and applicants alike to ensure that the requirement of exhaustion of domestic remedies was fully observed.

4. In a majority of cases, applicants never attend ECHR sessions in person as the initial application as well as further possible correspondence occurs via post. The Court asks to send them copies of documents, not originals.
5. There is no requirement to have a lawyer to prepare a complaint to the Court. A lawyer may be required at later stages of proceedings and the Court may provide financial support for a lawyer if an applicant cannot afford it.
6. The Court can only consider cases of violations of human rights guaranteed by the European Convention and protocols to the Convention, such as the right to life (Art. 2), the right to be free from torture, inhuman or degrading treatment (Art. 3), the right to be free from slavery and forced labor (Art. 4), the right to be free from arbitrary detention (Art. 5), the right to fair trial (Art. 6), the right not to be punished without law (Art. 7), the right to respect for private and family life (Art. 8), the right to freedom of thought, conscience and religion (Art. 9), the right to freedom of expression (Art. 10), the right to freedom of assembly and association (Art. 11), the right to marry (Art. 12), the right to an effective remedy (Art. 13), the right to be free from discrimination (Art. 14), the right to protection of property (Protocol 1), the right to education (Protocol 1) and the right to freedom of movement (Protocol 4). The right to health is protected by the Convention indirectly through other rights, such as the right to be free from ill-treatment, the right to respect for private and family life and the right to be free from discrimination.
7. Applications can be sent in any of the languages of the Council of Europe member countries.
8. The Court rejects applications in cases where an applicant has already used another effective international human rights procedure. However,

the Court does not consider the UN Special Procedures, with the exception of the UN Working Group on Arbitrary Detention, as an effective international procedure; therefore, applications can go to both the ECHR and any of the Special Procedures, except for the Working Group on Arbitrary Detention.

The UN Human Rights Committee has the same requirements for application, with the exception of the six month deadline. They just ask that applicants send their individual communications in a reasonable period of time. The International Covenant on Civil and Political Rights has the same catalog of rights as the European Convention with exception of right to property.

International human rights mechanisms can be effective complementary tools to promote and protect individual rights and to advance national human rights advocacy. These mechanisms are available for and accessible to all, and laypeople are totally capable of understanding proceedings and undertaking preliminary steps in order to prepare for litigation at an international level.

Step 7 – Implementation of national and international human rights decisions



Most national and international judgments consist of a set of measures to address human rights violations. These measures can be divided into two main groups:

1. Individual measures – those which provide for the restoration of the rights of a particular complainant. These measures may include court orders for compensation of damages, orders to provide some measures of restoration of violated rights or making steps that the applicant requested, for instance providing a particular individual with access to a certain medical service; and
2. General measures – those which strive to prevent the reoccurrence of similar future violations, extending this protection to a large group or an unspecified number of people. These measures may include a court order to the authorities to repeal unconstitutional laws or an order to set up an administrative framework to prevent acts of ill-treatment.

The domestic procedural laws of most ECA countries oblige courts to prevent the reoccurrence of rights violations. This is important to know, especially for those who plan strategic litigation, as one judgment has the potential to provoke systemic change. International human rights treaties also stipulate — both explicitly and implicitly — obligations of national authorities to prevent human rights violations.

Individual measures

Judgments of domestic courts concerning the obligations of authorities must be fulfilled by the responsible authorities. In ECA countries, domestic laws often stipulate that the responsible authorities shall report to court within a specified period of time regarding the implementation of a judgment. This

allows a complainant to enforce a judgment by way of official complaints.

Individual measures ordered by international human rights bodies usually include an order to pay a specified amount of money to cover pecuniary and other loss, as well as orders to restore a complainant's rights to the fullest extent possible. For example, such orders may include an order to release a person from jail or an order to reconsider a case in line with the principles of a fair trial and fundamental justice.

The implementation of individual measures stipulated by a judgment of an international human rights body depends on national legal framework. For instance, in most of countries under the jurisdiction of the ECHR, domestic laws mandate the immediate execution of ECHR judgments concerning individual measures. Implementation is often more difficult for the judgments of other international human rights bodies.

General measures

The implementation of general measures is a longer, more complicated process for the following reasons:

1. International human rights bodies rarely articulate the exact measures that executive authorities must adopt in order to prevent human rights violations. Rather, they set up goals, leaving the issue of how to achieve them the responsibility of executive authorities.
2. It is more difficult for executive authorities to establish measures to prevent future human rights violations, particularly those of a systemic nature, than to restore the rights of just one or two individuals.



For instance, the ECHR may order authorities to compensate a victim of torture 20,000 Euros as an individual measure to restore his right to be free from torture. This is not particularly challenging for national authorities to execute. In contrast, the need to prevent acts of ill-treatment at a national level may require the establishment of training programs and monitoring bodies as well as the adoption of new laws and other measures (among other possibilities) which are far more time-consuming and expensive to implement.

Advance planning

It is absolutely necessary that complainants and advocates plan for means for implementation prior to submitting a complaint to national or international human rights bodies. A set of measures for implementation should be articulated in the complaint itself to provide a human rights body with a better understanding of what the complainant expects from

the body and how her/his rights could be redressed. For example, a complainant may urge a human rights body to order the government to make sterile injection equipment available to people who use drugs by amending or passing a law or regulation authorizing their distribution, funding existing harm reduction service providers and training police to respect the rights of people who use drugs and service providers.

Some international human rights bodies explicitly encourage applicants to advise them of possible measures to redress particular violations of human rights. International human rights bodies often allow for follow-up procedures which provide complainants with an opportunity to report to an international human rights body about the status of implementation of their judgments. After such reports, international human rights bodies may again approach a national government with questions regarding the implementation of particular judgments.

Annexes



Annex I

PRO BONO SOCIAL SUPPORT CONTRACT

City _____

Date ____ / ____ /20__

Parties

Performer

Client

[Name of the organization]

Address:

*[Full name, address (if the Client wishes to indicate it),
telephone number, email]*

Subject of the Contract

This Contract regulates relations between the Parties in context of social support aimed at removal of barriers hampering the Client's access to healthcare services, and of ensuring favorable environment for prevention, treatment and care. Such barriers include explicit refusals to provide medical help, and violations of the Client's rights by law enforcement agencies, social welfare services and other public authorities and institutions.

Rights and Obligations of the Parties

Social support is carried out in the interests of the Client.

The Performer undertakes the following obligations:

- to carry out social support in consultation with the Client and being guided by best interests of the Client;
- to be guided by the aims of protection and promotion of human rights and restoring social justice;
- not to request any remuneration, reimbursement of costs related to possible appeals on the Client's behalf to state bodies and institutions (fees, duties, etc.) or other payments from the Client within the framework of this Contract;
- for the purpose of social support, to address human rights bodies in _____ *[indicate country]* and international human rights bodies, including European Court of Human Rights *[if human rights violation in question was committed under jurisdiction of a State party to the European Convention on Human Rights]* and UN bodies.



The Client undertakes the following obligations:

- to inform the Performer about changes related to her/his health and circumstances affecting her/his access to prevention, treatment and care services and programs;
- not to request from the Performer any remuneration or compensations within the framework of this Contract.

To facilitate the work of the Performer under this Contract, including for representation of the Client's interests in courts and other bodies, the Client has a right to issue a power of attorney for representatives of the Performer.

Disclosure of information

The Client allows / does not allow *[choose]* the Performer to use mass media, Internet resources, including the website of the Performer and other similar organizations, to attract attention of the public to issues of public healthcare and human rights. For this purpose, the Client allows / does not allow *[choose]* to use the information from the interview and other information about measures being taken to protect her/his rights, to be published on the website of the Performer, to be submitted to national and international human rights bodies and mass media. The Client allows / does not allow *[choose]* to publish these materials under her/his name.

Term of the Contract

The Contract is concluded for an indefinite term. When necessary, the Contract may be terminated unilaterally by either Party with mandatory notification of the other Party in any form.

Signatures of Parties

On behalf of Performer

Client

Annex II

POWER OF ATTORNEY

I, _____ [full name of principal],
born on _____ [date of birth], passport No _____ issued on
_____ by _____ [name of issuing authority],
residing at _____

hereby authorize

_____ [full name of agent],
born on _____ [date of birth], passport No _____ issued on
_____ by _____ [name of issuing authority],
residing at _____

to act as my public defender as envisaged by _____ [indicate the provision of the Criminal Procedure Code on involvement of a public defender, e.g. art. 49.2 of the Criminal Procedure Code of Russian Federation], to act on my behalf in courts and all agencies, institutions and organizations, both public and non-governmental, including

[list all relevant organizations, e.g.: in courts, agencies of internal affairs, prosecutor's office, departments of court enforcement service, agencies of national or state security, customs offices, penitentiary departments and institutions, tax offices, civil register offices, healthcare institutions, insurance organizations and other institutions and organizations] on issues related to civil, administrative and criminal cases, thereat exercising the rights afforded by law to plaintiff, respondent, third party and victim, complainant, debtor and person being subject of administrative offence procedure, to act as my defender or representative, including with the right to pass the case for consideration to an intermediate court, filing a cross-claim, full or partial withdrawal of a suit, reduction of the amount of claim, cognovit, review of the size, ground or subject of claim, entering into a settlement agreement or reconciliation, entering into agreement on factual circumstances, appealing against judicial decision and actions/inaction of an officer of the court, appealing against judicial acts, withdrawal of recovery as per writ of execution and entering into agreement within executor process, without the right to receive awarded property or money.

For this I authorize the agent to sign documents on my behalf, including any complaints or appeals; to submit applications and claims, including statements of claim, with the right of signature and filing to the court; to file requests for security of a claim; to sign response to claim; to sign requests for review of the case due to newly discovered circumstances; to receive necessary references and documents, including those containing medical and other information constituting medical secrecy, and other information containing my personal data; to receive post; to receive judicial decisions and other documents; to familiarize her/himself with case materials and to make copies; to produce evidence; to participate in examination of evidence; to make motions; to make oral and written explanations to the court; to voice arguments and opinions on any issues being considered during trial; to object against motions, arguments and opinions of other participants of the trial; to file exceptions; and to make any actions and formalities related to carrying out this assignment.

The Power of Attorney is issued for a period of three years.

The signature of the Principal is attested: _____
_____ [indicate the date and full name and position of the attesting officer]



Annex III

Interview as part of the social support contract

After the initial assessment of the client and once there are grounds to believe that her/his case will be taken, the following two documents need to be prepared:

1. Social support contract
2. Power of attorney for representing interests of the client in state bodies

The transcription of the interview with the client is annexed to the social support contract. The interview helps to correctly assess the needs of the client, to involve lawyers in the virtual space and to correctly document every social support intervention. Besides, when correctly structured and organized, an interview may itself be considered as the first intervention, which allows the client to assess her/his own situation and get ready to fight for her/his health and rights.

The interview consists of two components – **factual and motivational** – which should accompany every legally and practically meaningful act addressed by social support (e.g. failure to provide medical help, police abuse, etc.). The client should not feel that the interview is turning into interrogation. Rather, an interview is a conversation, carried out by a trained interviewer in a way to make sure that both the factual and motivational components are sufficiently addressed.

The factual part includes information on six major questions: WHAT, WHERE, WHEN, WHO, WHY, and HOW. These are not difficult to remember: the first three questions are the name of a popular TV show (“*What? Where? When?*” is a very popular TV program in the countries of the former Soviet Union), and the last three questions just need to be memorized.

The motivational part runs through the entire interview and is aimed at not only making it a useful source of information, but also turning it into the first intervention, encouraging the client to fight for his health and rights. During the interview, the conversation should be steered in a way that, in addition to simply listing the facts of her/his life, the client is enabled to feel inner resistance to the violations he/she faced. The motivational part ignites the client’s willingness to begin an active struggle for her/his health and rights. With strong motivation, the client can continue challenging external barriers to her/his health and rights, and social support will be there to help the client in this quest.

The interview must include obtaining informed consent of the client so that the results of the interview are used for the work on protecting and restoring the client’s rights while the best interests of the client remain top priority.

Annex IV

To defense attorney (full name): _____

From: _____

Dear _____ *[name of the attorney]*,

I am addressing you as my attorney by assignment in connection with your carrying out my defense under the criminal case against me. To ensure the best defense of my rights and legitimate interests, I request that you start working with _____ *[full name and contact details of the person recommended as a public defender]*, who has rich experience in _____ *[e.g. drug addiction and social support to people using drugs]* as well as practical knowledge and skills, which may help you in carrying out my defense. In particular, I would like to ask you to coordinate your position with him (her), provide him (her) with assistance in gaining access to the proceedings as a public defender as per _____ *[indicate relevant provision of the Code of Criminal Procedure regulating engagement of public defender, e.g. art. 49.2 of the Code of Criminal Procedure of Russian Federation]*, to assist him (her) in studying all criminal case materials, help him (her) in making motions upon his (her) request, assist him (her) in obtaining evidence that he (she) proposes to support my defense.

Please consider this request in view of the provisions of _____ *[indicate the law on advocacy and advocates activity, e.g. the Law of Russian Federation of 31 May 2002 No. 63-FZ "On Advocates Activity and Advocacy in Russian Federation"]*, according to which a defense attorney must honestly, reasonably and in bona fide uphold rights and legitimate interests of the client using all means that are allowed by law; and the requirements of professional ethics, which do not allow the defense attorney to maintain a position that is different from the position of the client or act against the client's will and to perform the duties related to legal aid while working by assignment in the same manner as if these duties were performed while working for an honorarium.

Please get in touch with _____ *[full name of the public defender]* by telephone _____ or email _____, of which you can notify me thereafter.

Date: ____ / ____ /20____

Signature _____

Received _____

Defense attorney _____



Annex V

To: Minister/Head of Department of Healthcare of _____ region

[full name, if known]

Address: _____

From: _____

[full name of the complainant]

[date of birth]

[address of the complainant]

STATEMENT

Dear _____ [name of the addressee],

[1. Indicate the facts about your health condition, with a reference to medical documents if possible. For instance: During the past _____ years I have been living with drug addiction (intravenous injection of opiates). I tried two times (from _____ to _____ and from _____ to _____ [specify dates]) to go through treatment in a narcological dispensary. In 2011 I went through long-term rehabilitation in _____. I have tried to quit on my own more than 10 times. All of my attempts to recover led to a short remission with a consecutive relapse and another long period of drug use. As a result of long-term injecting drug use, I have such diseases as Hepatitis C and HIV. I am not employed. In _____ I was tried and sentenced for crimes related to my addiction. In connection with my HIV infection, I receive antiretroviral therapy. Due to my lifestyle being affected by drug use, I am at constant risk of forgetting to take the therapy, which is inadmissible and may have severe consequences. In 2011 I almost died because of problems related to desomorphine use. While in the rehabilitation centre in _____ my health improved slightly, but after returning to the city of _____ I resumed using desomorphine. My health condition has deteriorated quickly. I have grounds to be worried about my life.

2. Provide information about required treatment. For example: I know that many foreign countries, including those of the former USSR (Ukraine, Belarus, Latvia, Lithuania, Estonia, Kyrgyzstan, etc.) successfully implement opioid substitution therapy with the use of methadone or buprenorphine. In these countries, opioid substitution therapy helped many people to return to normal life or even to completely quit using drugs. Substitution therapy contributes to the continued adherence to HIV treatment, stability of life, discontinuation of illegal behaviors and improvement of patients' health.

3. If possible, give a reference to legal provisions that justify your request to be prescribed requested treatment. You may refer to the respective article of the Constitution, which guarantees the right to health.

4. Describe your attempts to receive the requested treatment and include the dates and outcomes of your requests.

5. Briefly state the request to restore your right to health by providing access to the specified treatment in some of the institutions.]

Date: _____ Signature: _____

To district court of _____ district of _____ [indicate city or region],

Address: _____

Complainant:

[full name, date of birth]

Address: _____

Respondent:

[name of the authority, name and title of the official]

Address: _____

COMPLAINT

against action(s) / inaction / decision(s) [choose appropriate] of an authority / public official [choose appropriate] as per _____ [e.g. chapter 25 of the Code of Civil Procedure of Russian Federation]

1. Briefly state the facts of circumstances of the case.

For example: In response to my request of 11 January 2011, the Ministry/Department of healthcare of _____ district refused to prescribe me the following treatment: _____. The refusal on behalf of the Ministry/Department of healthcare was stated in the letter signed by Deputy Minister/Head of Department of healthcare dated _____ No. _____, which cites lack of funding as the reason for refusal.

2. Briefly state the substance of the complaint against the authority/public official.

For example: I believe that this refusal represents an obstacle to the enjoyment of my right, envisaged by art. _____ of the Constitution, which is supported by the following.

3. Give the statement of facts:

a. Facts of circumstances of the case (information about the complainant's health condition, whether there is a threat to life and health due to non-provision of access to effective treatment, whether the obstacle to treatment is a factor affecting private life, whether the complainant suffers strong pains, has physical, psychological and emotional suffering in view of lack of access to the treatment, whether the complainant has faced certain fears and humiliation because of lack of access to treatment, etc.).

b. Information about requested methods of treatment. For instance, which positive consequences are expected from application of the requested treatment.

c. Information on the actions that the complainant has undertaken in order to receive the treatment. For example, provide dates and outcomes of requests to doctors and healthcare institutions to prescribe the required treatment.

d. Information on the actions of the respondent, which violate the rights of the complainant.



2. Give the statement of law:

a. Indicate the provision(s) of law that was violated by the action/inaction/decision of the authority/public official. For example, provisions of the Constitution, which guarantee the right to health.

b. Indicate the provisions of law, which oblige the respondent as a public agent to protect the complainant's rights. For instance, in case of violation of the right to health, the responsibility is with healthcare agencies. Therefore, it is necessary to point either to the provisions of the Public Health Law, or to a respective provision of the Regulations on the healthcare agency (e.g. the Regulations on the Ministry of Healthcare). Such regulations may be found on the official website of the agency.

3. State your claim to the court. This part of the complaint has to begin with words "I HEREBY REQUEST THE COURT". As an example, this part may look as follows:

I HEREBY REQUEST THE COURT:

To make a decision on the responsibility of the Respondent – i.e. the Ministry (or Department) of Health of _____ region to remove the obstacles to the exercise of my right, envisaged by art. _____ of the Constitution, and to take measures to ensure the prescription of the required treatment (_____).]

Annexes:

1. Copies of documents: communication with doctors, healthcare institutions/authorities
2. Copies of medical documents
3. Copy of the receipt on payment of the state duty
4. Copies of other documents
5. Copy of a power of attorney (in case the complaint is filed by a representative, acting on the basis of a power of attorney)



*Empowered lives.
Resilient nations.*

