Dilemma of concepts and strategies for the prevention of spread of HIV in relation to human behavior, law and human rights

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Abstract: The new prevalence data regarding the estimated global number of human immunodeficiency virus positive (HIV+) cases, i.e., including people who are either aware or unaware of their HIV infection in 2010, lead many to wonder why the increase in incidence has reached today’s unprecedented level and escalated within such a short time. This, in spite of prevention campaigns in countries affected by HIV/acquired immune deficiency syndrome (AIDS) with their urgent messages aimed at preventing HIV transmission by promoting changes in individual’s behavior. This article analyzes the background of the prevention strategies, in particular their political, social and legal concepts in terms of human rights, and reveals traits of human behavior not considered thus far. A radical reappraisal is necessary, at social and legislative levels, as well as options additional to current concepts. When ethical issues come up, they become blamed for outmoded moralistic positions. However, ignoring the reality has led to dire consequences from prioritizing individual human rights over society’s collective need to prevent the spread of HIV.

Key words: HIV, Prevention, Human rights, Fundamental rights, Jurisdiction, Decriminalization
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1 Introduction

We are prompted to write regarding the current prevention strategies in the context of the unprecedented ongoing human immunodeficiency virus/acquired immune deficiency syndrome (HIV/AIDS) pandemic (van de Laar and Likatavicius, 2009). Figs. 1 and 2 (UNAIDS, 2010) show the selected data on the dynamics of the spread of HIV. In view of the efforts undertaken thus far, and the increasing number of people infected with HIV, the questions are: what are the prospects for halting its further spread, and can it be stopped by the measures applied so far or by measures which cannot currently be countenanced in a liberal and open society? The urgent issue to be realistically addressed is: what is the impelling force driving the ongoing spread of HIV in different parts of the globe? The spread of HIV is not due to a community acquired epidemic like influenza or tuberculosis, but follows the mechanism of individual and intensive interpersonal sexual contact and needle sharing among injecting drug users (leaving aside the special cases of mother-to-child transmission, blood transfusion, and rare situations such as blood-to-blood contacts, e.g., due to biting). At present, AIDS is not curable and still poses a deadly threat to those infected. Ethical and human rights (HR) issues are
involved. In general, they impinge on the concept of the “interests of society” which is not generally seen as an object of legal protection. Essentially, here they mean the following issues:

1. Compliance with HR Article 3, “everyone has the right to life, liberty and security of person” (i.e., compliance with laws that are not specific to HIV but which are generally valid, e.g., “don’t harm other people”, “don’t kill other people”), and Article 29, duties to the community.

2. Bi-directional commitment of the members of the community.

3. Solidarity in both directions.

4. Self-determination, but within limits, i.e., respecting the need to maintain order in the community.

5. Social interdependence which requires mutual esteem of the community members and liability based on ethical aspects. The individual has to admit his/her responsibility to society.

Fig. 1 Dynamics of the spread of HIV, new HIV infections are declining (UNAIDS, 2010)

Fig. 2 Dynamics of the ongoing spread of HIV in selected global areas in 2009 and 2001 (UNAIDS, 2010)

Regional statistics on adults and children newly infected and living with HIV and AIDS-related deaths