



HIV AND DISABILITY

AUTHORS – MA Ramiro Avilés and P Ramírez Carvajal // **AFFILIATION** – Chair ‘Disability, Chronic Illness and Access to Rights’ and Legal Clinic, University of Alcalá (Spain)
CONTACT – catedradecade@uah.es & clinicallegal@uah.es

LEGAL CLINIC CASE: Male, 56, HIV infection and HAART treatment since 1998, asks to the Legal Clinic if according to Social Security Act, he could be candidate for early retirement, due to ageing caused by HAART treatment and co-morbidities.

BACKGROUND

Response to HIV must be based on two fronts «**through science and medicine** to prevent and treat and **through ethics and law** to prevent social injustice» (L Gostin, The Aids Pandemic, University of Carolina Press, 2004: 56).

«(...) **challenges related to ageing with HIV have emerged as a clinical, policy and research priority** (...)» (L Hopcroft et al. ‘My body’s a 50 year-old but my brain is definitely an 85 year-old. Journal of the International Aids Society 2013; 16: 18506)

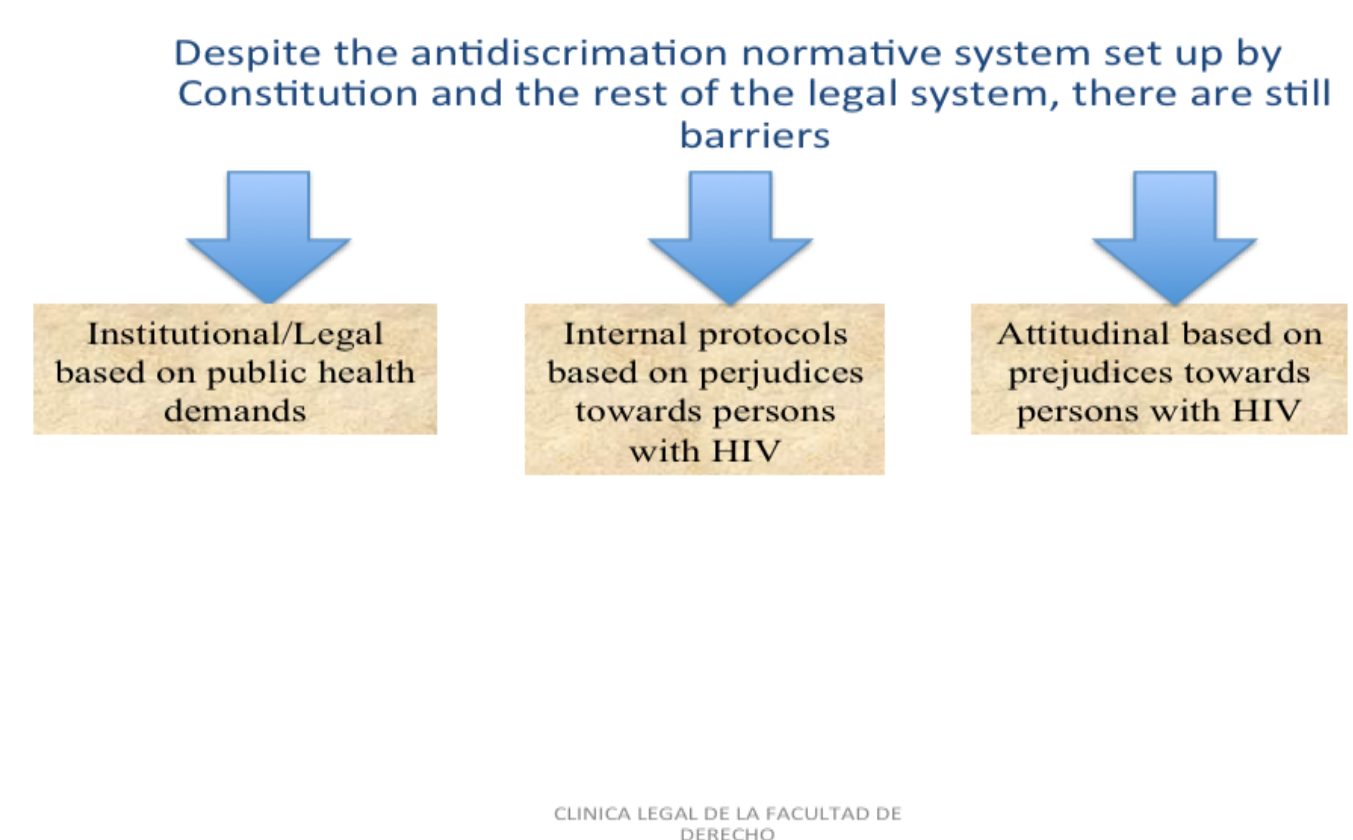
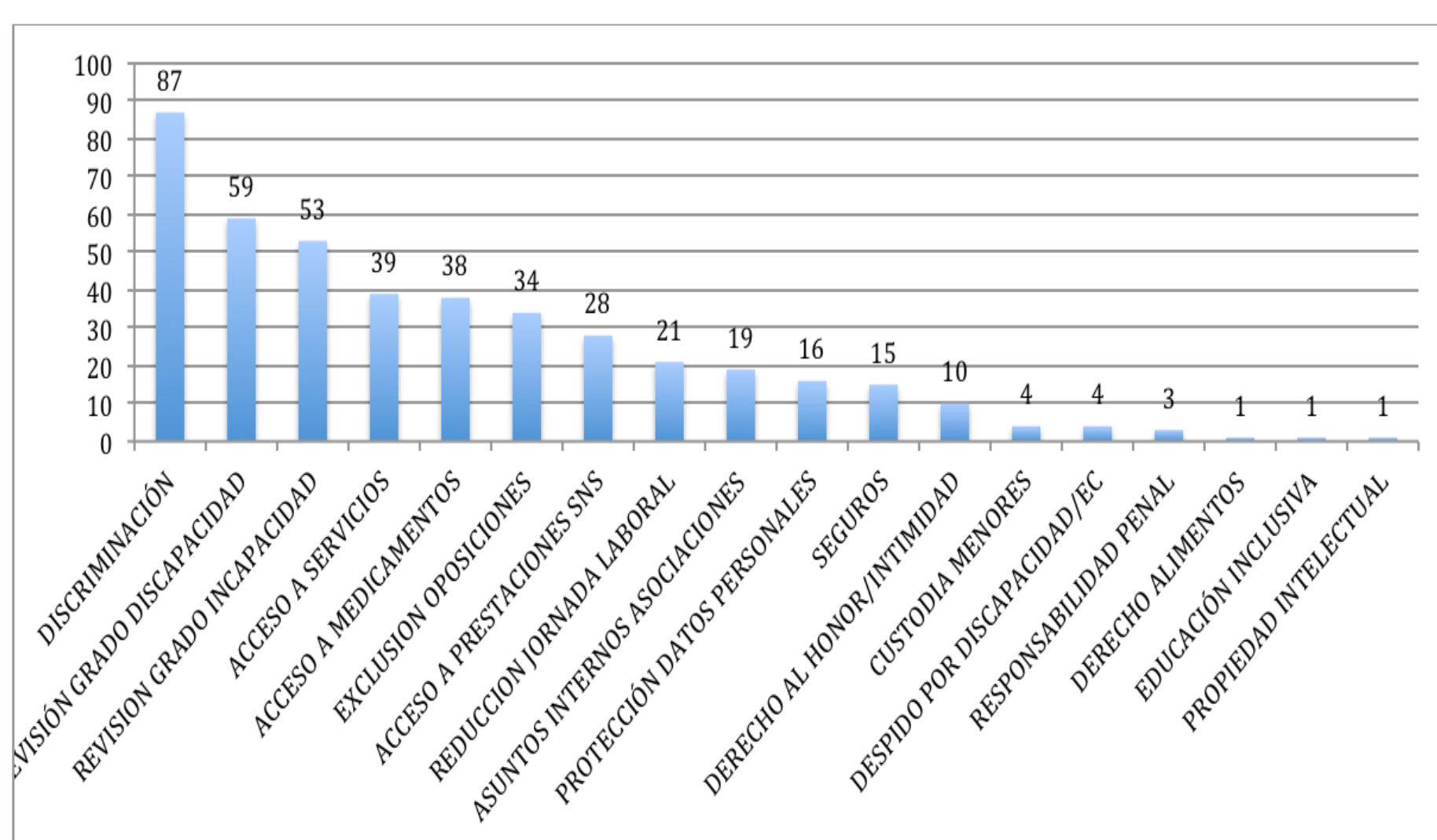
HIV Ageing is a medical problem...

Co-Morbidities
 HAART treatment
 Disabilities (medical model)

But also is a social problem

Persons with HIV aged over 50 is increasing (Spain 2014, 443 new HIV cases aged over 50)
 Social stigma and discrimination (direct, non-direct, by association)
 Disabilities (social model)

In 2015, University of Alcalá Legal Clinic received **227 queries** and up to 87 were cases of discrimination (**93 were HIV queries and 57% were cases of discrimination**)



METHODS

Analysis of the legal rules of (early) retirement

Social Security Act and Royal Decree 1851/2009

- Age equal to or greater to 56 y/o
- Social Security contribution for 15 years
- Degree of disability equal to or greater than 45 per cent
- Scientific evidence of reduction of life expectancy of the disability, which must be included in the legal catalogue

Analysis of the legal concept of ‘person with disability’

International Law: UN Convention on the Rights of Persons with Disabilities (2007), «Persons with disabilities include those who have long-term physical, mental, intellectual or sensory **impairments which in interaction with various barriers** may hinder their full and effective participation in society on an equal basis with others».

Comparative Law

USA, American with Disabilities Act (1990), «The term "disability" means, with respect to an individual a physical or mental impairment that substantially limits one or more major life activities of such individual (...) A major life activity also includes the operation of a major bodily function, including but not limited to, **functions of the immune system** (...)»
UK, Equality Act (2010), «Cancer, **HIV infection** and multiple sclerosis are each a disability»

National Law (Spain): Law 1/2013, On the Rights of Persons with Disabilities, «Persons with disabilities are those who have physical, mental, intellectual or sensory **impairments which in interaction with various barriers** may hinder their full and effective participation in society on an equal basis with others» **and** «have been **accorded degree of disability grade equal to or greater than 33 per cent**»

Analysis of the conditions to have accorded disability grade

Royal Decree 1971/1999

- medical evaluation of impairments
- social barriers evaluation (included only if impairments have a grade equal to or greater than 25 per cent)

- Analysis of scientific evidence about ageing of Persons with HIV

«As HIV-infected patients live longer they are experiencing diseases normally associated with ageing, sometimes at higher frequency and at younger ages than expected» (PW Mallon. Bone ageing and HIV. *Retrovirology* 2010; 7 (Supl. 1): 131)

«There is a perspective that HIV infection may accelerate the ageing process and it has been shown that co-morbidity prevalence in HIV-infected individuals is in line with the general population who are 10-15 years older» (F Cresswell, M Fisher. *HIV and the ageing patient. Medicine* 2013; 41(8): 456-60)

RESULTS

Disparity concerning the legal recognition of person with HIV as person with disability. In Spain, despite (social) barriers they have to face in daily basis, **Persons with HIV are not considered Persons with Disabilities** because they do not have an accorded degree of disability grade equal to or greater than 33 per cent based only in diagnosis

In Spain, **Persons with HIV over 50 y/o are under-protected and the equality of opportunities is affected** because they **cannot have access to early retirement due to premature ageing** because they **do not have the status of persons with disability** (most of them do not reach 33%) **& HIV is not included in the list of disabilities causing premature ageing and a reduction of life expectancy**