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**Alternative report**

**on the Implementation of the CEDAW concerning women living with HIV**

**by the Russian Federation**

**for the 80th session**

**of the UN Committee on the Elimination of Discrimination against Women**

**Geneva, Switzerland,**

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Submitted by the Eurasian Women's Network on AIDS

**Introduction**

1. The Eurasian Women's Network on AIDS brings together activists and women-led organizations from 12 countries of Eastern Europe and Central Asia to improve access to healthcare services for women living with HIV and vulnerable to HIV, to protect them from violence, and provide inclusive involvement of them in public debate, on which their lives and health depend[[1]](#footnote-1).
2. This Alternative Report focuses on two issues - the criminalization of women living with HIV (criminalization of HIV exposure, non-disclosure, and transmission) and violence; and the impact of COVID-19 restrictive measures on access to health services and the situation of violence.
3. As of June 30, 2021, altogether 1,528,356 people were living with HIV among citizens of the Russian Federation, including 1,122,879 Russians living with HIV and 405,477 who died. In 2021, the proportion of women out of the total number of firstly identified HIV-positive persons was 38.2%.

**Article 1. Definition of discrimination**

1. In 2020, 92 of the 151 countries that submitted data to UNAIDS continue to criminalize the threat of HIV transmission, the transmission of HIV to another person, and non-disclosure of HIV status[[2]](#footnote-2). Such laws violate human rights, including the rights to equality and non-discrimination, and undermine efforts to prevent new cases of HIV-infection[[3]](#footnote-3).
2. The Criminal Code of the Russian Federation contains Article 122, which imposes punishment for both the HIV exposure and transmission. According to the global monitoring of HIV Justice Worldwide, Russia ranks high in the number of people punished under this article during the 39 months from 2015 to 2018[[4]](#footnote-4).
3. Criminal prosecution related to HIV status is a source of structural discrimination against people living with HIV. Women, being more socially and economically vulnerable, are disproportionately suffered from this norm and face a broader range of negative consequences, including violence. According to the monitoring of data regarding sentences, the percentage of women convicted of putting other persons at risk of HIV transmission was nearly 50% over the period 2017-2020.
4. Criminalization reinforces stigma based on HIV status, identifies HIV-positive people as potential criminals, and thereby supports discrimination in all areas of life.
5. Moreover, Article 6.1 of the Administrative Code penalizes the concealment of the source of HIV infection, venereal disease, and contacts that pose a risk of infection. This means that a person living with HIV must inform the doctor at the AIDS Center of all people with whom he or she has had contacts. Only when all the contacts have been reported, the person living with HIV will be exempted from the liability under this article[[5]](#footnote-5).
6. The Russian Federation remains one of the few countries in the world that deports migrants living with HIV. Therefore, they face a serious choice: return home losing their income, or stay in the country illegally, risking deportation, and without HIV treatment. Foreign nationals living with HIV cannot legally buy or receive antiretroviral therapy (ART) in the Russian Federation. The study has shown that migrant women are at higher risk of HIV infection - they often have less access to HIV-related information, are often dependent on their spouses, are at higher risk of sexual exploitation, and are more stigmatized. Pregnant migrant women living with HIV, who have residence permits in the Russian Federation, have the right to receive ART, but this treatment stops immediately after delivery. Migrants without documents are not eligible for treatment. According to a study by the Regional Expert Group (REG) on Migration and Health, lack of information, legal uncertainty, language barriers, stigma and discrimination, gender inequality, and inability to return to their country of origin for various reasons prevent migrants in the Russian Federation from accessing HIV prevention and testing services, as well as necessary information about HIV infection. Discrimination against HIV-positive migrants affects their access to health services, including life-saving antiretroviral therapy[[6]](#footnote-6),[[7]](#footnote-7).

**Case 1. S. is a participant in an interview within the REG research series[[8]](#footnote-8)**

*S. moved from Uzbekistan to the Russian Federation to earn money to pay for her children's education. In Russia, S. lived and worked in her relative's shop until the relative discovered that S. was HIV positive* *. She was thrown out of her home, leaving her not only homeless but also without work and support.*

1. In 2015, based on the Decision of the Constitutional Court of the Russian Federation of March 12, 2015, amendments in Russian legislation stipulated that state authorities did not have the right to make decisions on deportation or decisions entailing a ban on entry or loss of the right to temporary or permanent residence in the RF for HIV-positive foreigners, who had in Russia close relatives (spouse, children, and parents) - citizens of the RF. Among the problems associated with the implementation of this right for HIV-positive foreign nationals is the fact that decisions on the undesirability of stay (entry ban, deportation decisions, and cancellation of temporary or permanent residence documents) of migrants in Russia are made by Rospotrebnadzor and internal affairs agencies in large numbers and almost automatically based on data from AIDS centers. Thus, if there are decisions on foreigners, even without their participation, of the undesirability of stay, prohibition of entry, or cancellation of a temporary residence permit or residence permit, these foreign nationals, who have the above-mentioned legal immunity, had to challenge such decisions in court[[9]](#footnote-9).

**Article 5: Gender roles and stereotypes**

1. In 2021, Russia was 129th in the gender equality ranking, moving down by 7 places from 2020. A law on domestic violence has not yet been passed. In February 2017, the so-called law on decriminalization of beatings was adopted and it provides for administrative liability instead of criminal liability for injuries caused by “close persons” (spouses, parents, and relatives)[[10]](#footnote-10),[[11]](#footnote-11).
2. In 2019, the Federation Council published a draft law on domestic violence prevention. This version of the draft law diverges from the position of the initiators:

*“We and co-authors have read the Federation Council's proposed version. I, for example, am utterly horrified. Starting from the purpose of the law, ‘to preserve the family,’ rather than protect the victim, to ‘promote reconciliation of the parties’[[12]](#footnote-12).”*

1. In April 2021, the Supreme Court introduced a draft law to the State Duma on public charges of domestic violence. Law enforcement agencies will be required to take statements of victims and conduct investigations[[13]](#footnote-13),[[14]](#footnote-14). The draft law is currently under review.
2. The criminalization of HIV transmission reinforces and exposes the issue of gender inequality. Women are more likely to be prosecutedmbecause they are usually the first in relationships who learn their status through regular HIV testing during pregnancy, but they are less likely to be able to safely discuss safer sexual practices and disclose their HIV status to a partner without fear of violence[[15]](#footnote-15). HIV-positive women are subjected to violence and blackmail by men because of their HIV status. There are also numerous testimonies of women living with HIV who have been blackmailed, threatened with police involvement, and violence subjected to Article 122.

**Case 2. Application of Article 122 of the Criminal Code**

*A 17-year-old young woman living with HIV was accused of putting a 31-year-old man, with whom she had sexual contacts (including forced ones) and who refused to use a condom, at risk of HIV transmission. For pressure and blackmail, he disseminated her photo and information about her HIV status on social networks. As part of the investigative measures, the young woman was interrogated without her legal representative, and important details were missing from a case file, such as the fact that she offered to use a condom. The investigation dragged on for two years[[16]](#footnote-16).*

**Article 7. Participation in political and public life**

1. The Foreign Agents Law has been in force since 2012. NCOs that receive funding from abroad and participate in political activities must notify the Ministry of Justice and place information about their “foreign agent” status when publishing materials. Failure to provide information is punishable by a fine of up to 500,000 rubles (~6900 USD). The law is regularly amended. One of the most recent amendments in 2020 gave the “foreign agent” status to individuals and unregistered public associations.
2. Organizations that provide assistance to women who face with violence have also found themselves in the crosshairs of this law. For example, in 2020, the Ministry of Justice recognized the Moscow-based Center for Work with the Problem of Violence “NASILIU.NET” as a “foreign agent”. Among the grounds for recognizing the center as a “foreign agent” is the advocacy for the law on domestic violence[[17]](#footnote-17).
3. In 2021, a website started working providing a list, descriptions, and photos of “foreign agents”, including many HIV-service and human rights organizations, as well as organizations supporting women who survived violence[[18]](#footnote-18).
4. Any NGO advocating for the solution of acute social problems is at risk of being subject to this law. Abilities to provide help and support to women living with HIV are extremely limited, but they can also be lost, if an NGO is openly pushing for changes in policy and legislation.

**Article 11. Employment**

1. HIV-related stigma and discrimination in the workplace are widespread. According to supporting organizations, many cases of illegal dismissals can be challenged in court, but HIV-positive women rarely initiate legal action against their employers for fear of publicity and lack of resources to defend themselves. Another problem is illegal HIV testing of people without their knowledge when hiring[[19]](#footnote-19).

**Case 3. February 2021. Illegal HIV testing. Dismissal because of positive HIV status. Disclosure of diagnosis in the workplace**

*E. worked as a secretary at a private clinic. In February 2021, she was referred for a scheduled medical examination at the clinic where she worked. A blood draw was performed. No one warned E. and asked for her consent when they took the test for HIV as well. E. was HIV-positive for several years, and she knew about it. After E. received a positive result, a deputy head of personnel came to offer her to accept the resignation. E’s colleagues also got to know about her positive HIV status. This place of work was of great importance for E., it was her first official workplace after serving her prison sentence. As a result of the incident, E. experienced great stress; her colleagues learned about her diagnosis.*

**Article 12. Health care and family planning**

1. HIV criminalization creates barriers to accessing health care, including sexual and reproductive health services. General Comment No. 22 (2016) on the Right to sexual and reproductive health (Article 12 of the International Covenant on Economic, Social and Cultural Rights) indicates States’ obligations to review laws that restrict the right to sexual and reproductive health, and criminalize non-disclosure of HIV-positive status, and create a risk of HIV transmission[[20]](#footnote-20).
2. The threat of criminal punishment may also discourage women from seeking HIV testing and for HIV- or drug-related healthcare or other services, including sexual and reproductive health services, or discussing their HIV or drug use status with health service providers, as well as HIV or drug dependence treatment and prevention. They fear that this information may be made public and put them at risk of criminal penalties[[21]](#footnote-21).
3. The fear that private, confidential medical data, including about HIV status and drug use or dependence, may be disclosed to law enforcement may compromise women’s relationships with healthcare providers, and deter them from sharing relevant information or seeking healthcare services altogether[[22]](#footnote-22).
4. HIV criminalization also negatively affects health care workers. Forcing them to disclose private medical information is incompatible with their duty to respect medical confidentiality and the Hippocratic Oath (“Do No Harm”), and makes it impossible to have a relationship of trust with the patient, which is a prerequisite for providing health care[[23]](#footnote-23).
5. HIV criminalization supports the stigma and discrimination that women routinely face in healthcare settings.

**Case 4, May 2021. The discriminatory attitude of maternity hospital staff because of HIV-positive status**

*A. was hospitalized at Vladivostok Maternity Hospital No. 4, waiting for labor. During her stay, she repeatedly heard discriminatory remarks about her HIV-positive status from the medical staff (nurses and nurse's assistants), namely: “It is necessary to prohibit people like you, who are contagious, from giving birth”, “You are dangerous to society”. The staff openly spoke about the need to isolate HIV-positive people, prohibit women with such a disease from giving birth. But after discharge from the maternity hospital, the woman refused to take further measures, explaining that she wanted to forget the difficult period in her life and concentrate on taking care of her child.*

1. The issue of access to timely HIV testing and ARV-treatment is particularly acute for women from small towns. The factor of weak and ineffective communication becomes a barrier to pregnant women receiving timely prophylactic ART to prevent mother-to-child HIV transmission.

**Case 5, 2021. Failure to report HIV test results to a pregnant woman**

*An HIV-positive woman, 37 years old, lives in the town of Yemba. She has six children, four minors. Her husband is in prison. Being pregnant with her last child, she did not know about the diagnosis. While registered in the women’s consultation clinic, the obligatory HIV tests were sent to the Syktyvkar laboratory. The results were to be reported to an infectious disease doctor. But the results did not come to the women’s clinic during the entire pregnancy. In the maternity hospital, she was tested by a rapid HIV test which showed a positive result. The baby was born with an HIV infection. Later she found out that she had been registered in the AIDS Centre on 29 October 2020, i.e. before she gave birth. The infectious disease doctor provides the ARV therapy not regularly. The woman had to go to Syktyvkar to receive it.*

1. The CEDAW Committee recommended starting substitution therapy programs for women in 2015 (p.36c). Such programs are still prohibited in Russia.
2. **Impact of COVID-19.** The introduction of measures aimed to counteract the coronavirus disease pandemic has affected the work of many AIDS centers. In Kaliningrad, departments of AIDS centers have been converted into “covid” hospitals. In other cities, such as Novosibirsk, AIDS centers were closed because, among other things, infectious disease specialists of AIDS centers provided care for patients with coronavirus disease at other healthcare facilities, or the number of admitting specialists was reduced, as in Samara:

*“They canceled HIV departments, explaining that they couldn't risk HIV-positive people with weak immune systems who would be near patients with COVID-19. But we saw that people with weakened immune systems and HIV infection were ‘successfully’ getting infected in regular hospitals. So, closing the department didn't do much to protect our patients from COVID.”[[24]](#footnote-24)*

1. Access to sexual and reproductive health services (SRH) was virtually non-existent:

*“The situation has significantly deteriorated because so many hospitals were repurposed for COVID-19. Many women’s consultation clinics worked only with pregnant women. I can tell you that all SRH issues have practically stopped since the end of March [2020][[25]](#footnote-25).”*

*“There were a lot of problems to place a woman who needed an abortion. We [NGOs] referred her to conduct paid abortions, and we paid for these services[[26]](#footnote-26).”*

**Article 15. Equality before the law**

1. Women living with HIV are more likely to be prosecuted for HIV eposure, non-disclosure or HIV transmission because they are often the first who learn their HIV-positive status within perinatal care, but they are less likely to disclose it to their partners because they are economically dependent on them or because they fear violence, blackmail or other forms of retaliation[[27]](#footnote-27).
2. **The results of monitoring based on court decisions under Article 122 of the RF Criminal Code**: many people living with HIV are convicted under the first part – “Putting another person at risk of HIV infection ” – although actual HIV transmission does not occur. According to the statistics of the department of the Supreme Court of the Russian Federation[[28]](#footnote-28), 1,069 guilty verdicts were announced from 1997 through 2020, of which 601 (56%) were for putting at risk of HIV transmission (Part 1, Article 122). Between 2017 and 2020, 247 people were convicted, including 82 women (33%). Moreover, the proportion of women convicted under Part 1 was 50% (91 in total, of which 45 were women).
3. Sentences ignore scientific evidence about HIV transmission modes. In 2018, 20 of the world's leading HIV scientists developed a consensus statement[[29]](#footnote-29) on the science of HIV in the context of criminal law because prosecutions are not always guided by the best available scientific and medical evidence. In particular, there is no possibility of HIV transmission through contact with the saliva of an HIV-positive person, including through kissing, biting, or spitting.

**Case 6.** **A young woman, aged 16, in 2018 was convicted under Article 122, Part 1 (HIV exposure)**

*A young woman, a student of a children's home, escaped from this specialized institution. She was found in a state of alcoholic intoxication on one of the streets of the city. While trying to escape she scratched and bit the hand of a policeman, physically hurt the representative of the authorities, and, in the opinion of the court, created a threat of HIV transmission. The court sentenced the girl to 1.5 years of suspended imprisonment with a probation period of two years. During this time, she is obliged to report once a month to the criminal-executive inspection. In addition, the girl is not allowed to change her place of residence without notification of the inspection. She also must not allow violations of public order, entailing administrative responsibility. The adolescent was charged 10000 rubles in favor of the affected police officer.*

1. Collection of information on the number of cases initiated under Article 6.1 of the Administrative Code (failure to report contacts) in 2015-2017 showed an increase from 125 in 2015 to 205 in 2016. Sixty-eight cases were reported in the first half of 2017. A total of 398 people were punished under Article 6.1 of the Administrative Code in 2016-2107. A person becomes an offender if he or she fails to provide healthcare workers with the information necessary to conduct an epidemiological investigation. It is necessary to keep in mind that an HIV-positive person may indeed often not know the time and source of infection[[30]](#footnote-30).

**Article 16. Marriage and family life**

1. Russia has made progress on adoption and guardianship for people living with HIV. On June 20, 2018, the Constitutional Court of the Russian Federation declared that the practice of authorities and courts denying adoption to citizens living with HIV is unconstitutional. A married couple obtained this judgment in an adoption denial case which the Constitutional Court ordered to review. The Constitutional Court emphasized that the possibility of adoption in Russia must take into consideration the requirements of international legal acts[[31]](#footnote-31).
2. On July 11, 2020, the Government of the Russian Federation adopted Decree No. 1023[[32]](#footnote-32) that changed the list of diseases that can prevent a person from adopting a child, taking it under guardianship (custody), or adopting into a foster or adoptive family. Being under clinical observation by an infectious disease doctor for less than a year, detectable viral load and CD4+ lymphocyte count of fewer than 350 cells/ml is the basis for the rejection of adoption and guardianship. Thus, **people living with HIV** who have been observed by a doctor for more than a year and have a successful course of HIV infection have **acquired the right** to adopt children, take them under guardianship (custody), or into foster or adoptive families.
3. In its 2018 report, the Global Commission on HIV and the Law recommends the following (Recommendation 20, page 9) [[33]](#footnote-33): “Governments must prohibit the prosecution— under laws on HIV, drug, or child abuse and neglect — of women living with HIV for choices they make during and after pregnancy, including breastfeeding children”. At the same time, the existence of criminal liability in the Russian Federation for HIV transmission is used to deprive parental rights.

**Case 7. Deprivation of parental rights for breastfeeding**

*In May 2019, an HIV-positive woman breastfed her newborn baby at a maternity hospital. The administration of the maternity hospital reported it to the child protection service and police. The woman was charged under Article 122 of the Criminal Code for a threat to infect her child with HIV and separated her from her baby. The authorities of the child protection service started depriving the mother of her parental rights. The woman was not legally married to the child's father and paternity was not legally confirmed. After separation from its mother, the child stayed in the children's hospital and children's home. Paternity was judicially established only in September 2019 and the lawsuit to transfer the child to the father was granted. In November 2019, the court decided not to deprive the woman of her parental rights. All charges against the woman were dropped only in June 2020. The defense proved that there was no direct intent in her actions. The criminal case was stopped due to a lack of corpus delicti[[34]](#footnote-34).*

**General Recommendation #35. Gender-based violence against women**

1. In 2018, a study was conducted within the “No excuse for violence” campaign in 12 countries of the EECA region[[35]](#footnote-35). Altogether 113 women living with HIV residing in Russia participated in the study[[36]](#footnote-36). The main results are the following:
	1. 78% of respondents reported experiencing psychological violence;
	2. 71% said they experienced economic violence;
	3. Slightly less than half of the women (42%) indicated that their children were used for putting psychological pressure on them;
	4. 40% of women experienced physical violence since being diagnosed with HIV infection, of which 7% experienced it consistently in the past year, and 14% of women connected violence to HIV infection;
	5. One in four women (24%) in the survey experienced sexual violence;
	6. 70.6% of women who have experienced violence, according to the responses received, were not informed about crisis centers and shelters.
2. Facing violence, women were unable to receive protection and help, even when they repeatedly contacted law enforcement agencies:

**Case 8, July 2021. A district police officer refused to accept a statement about repeated beatings due to a HIV-positive status and refused to issue a referral for a forensic medical examination to confirm the damage to health**

*Z. has been HIV-positive for several years. At the time when she met her future husband, she already had one child. Her husband knew about the HIV status of Z. He was HIV-negative when planning her pregnancy and at the time of her registration for pregnancy. He was considered to be a contact, according to her medical records. During Z.'s pregnancy, her husband was diagnosed with HIV infection. From that period on, he began beating her severely, accusing Z. of passing HIV infection to him. The beatings continued after the birth of the child, becoming more frequent and violent. Z.'s husband understood that he had no grounds to prosecute his wife under Article 122 of the Criminal Code for HIV transmission since he had been warned that his wife was HIV-positive. Z. repeatedly called the police, but they did not take her statements and ignored her calls. The district police officer supported her husband's position; the officer did not see anything illegal in his actions, and his inaction supported her husband.*

1. Women do not have the resources to confront violence, which is institutionalized. In such situations, the support of civil society organizations, which are at risk of being branded as “foreign agents”, is very important.

**Case 9. Deprivation of social assistance and protection from violence**

*“A woman from Togliatti recently applied. She has a husband, two small children. She is pregnant, and her husband just kicked her out of the house. He drank, beat her, kicked her out, and took all of her children's benefits. Even though they are officially divorced, he is not deprived of parental rights. The woman did not even have social assistance. She applied to the pension fund; they told her that he had the right. No one even helped her. I referred her to a local [non-governmental] organization. They found her a good lawyer and provided her with services in a center, where she could get help and live for a while. She is going to give birth any day now, and she's afraid that her children will be left on their own; she has no one to help her children during her absence, when she gives* *birth. And the children's services [children's protection services] are not friendly at all. They can take the children away without going into details[[37]](#footnote-37).”*

1. **Impact of COVID-19.** The COVID-19 pandemic has triggered a new outbreak of violence against women. This is confirmed both by official statistics in some countries and by monitoring conducted by the community. For example, there were a huge number of appeals to the St. Petersburg Crisis Center, but at the same time, this was only an indirect indicator of the scale of violence. Many women do not know where to turn, and measures in connection with COVID-19 limit their possibility to seek help from the police to be protected from violence. For example, a woman was fined for violating her self-isolation regime - for going to the police after being beaten by her partner:

*““Here is a case, when the woman came to the police, and she was fined. When I read about cases like this, I will start thinking if I should even bother going to the police or not. And, in general, where I could go in such a situation [[38]](#footnote-38).”*

**Recommendations**

* + 1. Decriminalize HIV transmission. Any use of criminal law against people living with HIV must be strictly limited to cases of truly intentional HIV transmission. Do not apply the criminal law in the following cases:
1. There is no significant risk of HIV transmission;
2. A person did not know that he/she was HIV positive;
3. A person did not understand routes of HIV transmission;
4. A person disclosed his or her positive HIV-status to another person who was at risk of HIV transmission;
5. A person did not disclose his/her positive HIV status because he/she was afraid of violence or other serious negative consequences;
6. A person took reasonable measures to reduce the risk of HIV transmission;
7. A person negotiated a mutually acceptable level of risk with another person.
	* 1. Not to provide special components of crime in cases of intentional HIV transmission, but to use ordinary law in such cases. Be based on the latest scientific evidence while considering cases of HIV transmission.
		2. Ensure legal guarantees to protect the confidentiality and privacy of HIV-positive women, protect confidential health information from unwarranted access, and severely prosecute the disclosure of information.
		3. It is necessary to repeal the norm of deportation and prohibition of entry for foreign nationals living with HIV.
		4. Ensure coordination between the authorized government agencies responsible for the legalization of foreign nationals living with HIV, who have the right to family reunification under current law.
		5. Develop a legal framework and ensure access to the full range of health services for migrants living with HIV.
		6. Adopt legislation that prohibits all forms of violence against women; protect women who were disproportionately affected by domestic violence.
		7. Stop applying the foreign agents’ law, which restricts the registration and functioning of civil society organizations and prevents them from receiving funding. Create conditions and adopt laws that provide favorable conditions for the activities of organizations that provide assistance and support to women.
		8. Ratify the Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence.
		9. In the conditions of the COVID-19 pandemic, designate women living with HIV in a separate category of socially vulnerable citizens to provide targeted social assistance, ensure the multi-month dispensing of ARVs in accordance with WHO recommendations. Ensure women's access to assistance and protection in cases of violence.
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 [↑](#footnote-ref-6)
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8. Ibid [↑](#footnote-ref-8)
9. Ibid [↑](#footnote-ref-9)
10. Amendments have been made to article 116 of the Criminal Code: <http://kremlin.ru/acts/news/53834> [↑](#footnote-ref-10)
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12. <https://www.bbc.com/russian/news-50602295> [↑](#footnote-ref-12)
13. The Supreme Court introduced a draft law on public charges for domestic violence. April 7, 2021. <https://pravo.ru/news/230744/> [↑](#footnote-ref-13)
14. Draft law No. 1145531-7. On Amendments to the Criminal Procedure Code of the Russian Federation. <https://sozd.duma.gov.ru/bill/1145531-7> [↑](#footnote-ref-14)
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18. Committee to protect national interests <https://inagenty.ru/wiki> (in Russian) [↑](#footnote-ref-18)
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