

# HIV CRIMINALISATION IN THE EU

a comparative 20-country report  
April 2023

**European HIV**  
**LEGAL FORUM**



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# INTRODUCTION

The mission of AIDS Action Europe's European HIV Legal Forum (EHLF) is to develop effective means of improving access to HIV prevention, counselling and testing, treatment, care and support for all those who have limited access to HIV services due to legal obstacles, through the united efforts of legal and policy experts with the aim of bringing into effect a rights-based approach to health as endorsed by the European Commission.

In 2012, following growing interest within the AAE Steering Committee and the broader AAE network for mutual support and joint action on legal issues related to HIV, AAE developed the first steps towards the EHLF, which began with a pilot project initiated by five AAE member organisations (the 'EHLF partners') in Hungary, Italy, the Netherlands, Switzerland and the United Kingdom.

The pilot focused on the legal situation affecting the access to healthcare of migrants in an irregular situation (also known as 'undocumented migrants') living with HIV since it was felt by all five EHLF partners that there was an urgent need to act on this issue. A survey was devised by the EHLF partners and rolled out in the partners' countries. The results provided valuable insights into the differences in health systems in the five countries and their effects on access to treatment and services for irregular migrants.

By documenting the legal situation, providing a comparative analysis of each country's laws and how they were applied, the survey report identified good practices and innovative solutions consistent with international human rights framework, acting as a catalyst for change where the practice remains poor. Following the pilot phase, the EHLF was enlarged and the latest report covered 16 European countries' legal situation and level of access to HIV- and co-infection services for migrants in an irregular situation.<sup>1</sup> In the project phase 2018–2019, EHLF partners with coordination from the AIDS Action Europe office produced a 10-country report on access to HIV-, viral hepatitis-, and TB-services for people in prisons and other closed settings and the present 10-country report on HIV criminalisation in European Union countries.

In the project phase of 2021–2022, the AIDS Action Europe office focused on the topic of discrimination of PLHIV in healthcare settings and produced an 11-country report on discrimination of PLHIV in healthcare as well as a 6-country report on discrimination of PLHIV working in healthcare.

In the Strategic Framework for 2022–2026 AIDS Action Europe member selected the issue of criminalisation of HIV non-disclosure, exposure and transmission as one of the core thematic areas of work. And in 2022, AIDS Action Europe worked on an update of the 2018–2019 10-country report on HIV criminalisation by updating it and with adding 10 new countries that are presented in this report.

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1 <https://www.europeanhivlegalforum.org/>

# BACKGROUND

The Steering Committee of AIDS Action Europe identified the criminalisation of HIV-non-disclosure, -exposure and –transmission (HIV criminalisation) as a core thematic area that the network should address and work on in the 2018–2021 strategic period.

In 2020, after consultations with AIDS Action Europe members, the Steering Committee re-confirmed AAE's commitment to work on HIV criminalisation by including it as a core thematic area in the AIDS Action Europe Strategic Plan for 2022–2026 "Working together to end inequalities".

Despite the progress of scientific evidence and recent positive developments in the practice of investigations and prosecutions in some European countries, HIV criminalisation remains a key issue both for PLHIV and preventative measures across Europe. According to data from HIV Justice Network, 16 countries in the WHO European region have specific HIV criminalisation laws, and 33 countries have prosecuted PLHIV.<sup>2</sup>

HIV criminalisation laws undermine the human rights of PLHIV and key affected populations and are widely recognised as discriminatory. There is no data to support the idea that these laws help to prevent new HIV-infections; on the contrary, it harms HIV prevention efforts as it increases stigma and deters people, particularly those in key populations, from getting tested and knowing their status.

HIV criminalisation cases also have negative effects on both parties involved as both the defendant and the complainant are forced to share private information about their lives, including their sex lives, and the lengthy and often inhumane investigations and sensational media coverage impose additional emotional burden on everyone involved.

AAE was invited to join the Steering Committee of HIV Justice Worldwide in 2017 and since then has been increasingly involved in anti-criminalisation advocacy activities. In 2020, AAE published a comparative 10-country report on HIV criminalisation, which provided a basis for future advocacy activities on the issue. The current report builds upon the 2020 report, while adding the data from new 10 EU Member states.

"HIV criminalisation" refers to the use of criminal law to penalise alleged, perceived or potential HIV exposure; alleged nondisclosure of a known HIV-positive status prior to sexual contact (including acts that do not risk HIV transmission); or non-intentional HIV transmission.<sup>3</sup>

2 Alison Symington, Edwin J Bernard, et al. Advancing HIV Justice 4: Understanding Commonalities, Seizing Opportunities. HIV Justice Network, Amsterdam, July 2022, p 11. And 12

3 [https://www.aidsunited.org/data/-les/Site\\_18/AW2015-Criminalization\\_Web.pdf](https://www.aidsunited.org/data/-les/Site_18/AW2015-Criminalization_Web.pdf)

# METHODOLOGY

The EHLF on HIV criminalisation (This further referred as study) covered the following 20 European Union Member States, chosen to represent the epidemiological, political, geographical, and economic diversity of the region, as well as a variety of history with HIV criminalisation. The selected countries included Austria, Belgium, Bulgaria, Cyprus, Czechia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, and the United Kingdom.<sup>4</sup>

The study was conducted in two phases using a standardised and comparable survey to maintain consistency in data collection. The first phase was conducted in 2018–2019 and the data was collected from 10 countries: Austria, Czechia, Finland, Germany, Greece, Ireland, Italy, Portugal, Romania, and the United Kingdom. In the second phase conducted 2022, their data from initial 10 countries was updated and new information was collected on the impact of legislation introduced during the COVID-19 pandemic, along with the latest trends, developments and expected changes regarding the criminalisation of HIV. Additionally, data was newly collected for 10 additional new countries: Belgium, Bulgaria, Cyprus, France, Hungary, Latvia, Poland, Slovakia, Slovenia, Spain. These countries were chosen because they are considered representative of the epidemiological, political, geographical, and economic diversity of the European Union and represent a variety of history with HIV criminalisation.

The partners from each country were chosen based on their previous and ongoing work on HIV criminalisation through the AAE membership. The AAE member organisations provided the information in the country profile section, and based on a standardised questionnaire. The organisations included all available information and cases known to them, reflecting the state of affairs during the data collection period of 2022.

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<sup>4</sup> The United Kingdom officially left the European Union on January 31st, 2020 but used to be an EU Member State during the project period of 2018-2019

# EHLF PARTNERS

AAE would like to acknowledge its members who were partners in the project and provided information on their national legislation relevant to HIV criminalisation, researched and summarized known HIV criminalisation cases, and gave insight into the national context and roles of different stakeholders, such as media, play in HIV criminalisation.

Our partners that provided invaluable information and input to this report are:

**AGIHAS, Latvia**

**AIDS Solidarity Movement, Cyprus**

**AIDS-Hilfe Wien, Austria**

**APOYO POSITIVO, Spain**

**ARAS, Romania**

**Association Legebitra, Slovenia**

**Centre for Life, Greece**

**Conseil national du sida et des hépatites virales and AIDES, France**

**Czech AIDS Help Society, Czechia**

**Deutsche Aidshilfe, Germany**

**Fondazione LILA Milano, Italy**

**Foundation for Social Education, Poland**

**GAT, Portugal**

**Háttér Society, Hungary**

**Health Without Borders Association, Bulgaria**

**HIV Ireland, Ireland**

**National AIDS Trust, the United Kingdom**

**Odyseus, Slovakia**

**Positiiviset ry, Finland**

**PRAKSIS, Greece**

**Sensoa vzw, Belgium**

# MAIN FINDINGS

The twenty countries covered in this report, despite all being EU Member States, are different from each other in terms of legislation used for HIV criminalisation and their number of HIV criminalisation cases. However, they all share common characteristics, which will be summarised in this section of the report. Please check the following sections for detailed country profiles with country-specific information on HIV criminalisation in the twenty countries represented in this project of the European HIV Legal Forum on HIV-criminalisation.

## **The actual number of HIV criminalisation cases**

The number of HIV criminalisation cases reported by the EHLF partner organisations is the number of those cases known to each organisation. Legal databases containing information on HIV-related cases are typically restricted for the public, and obtaining access to court files is nearly impossible. As a result, EHLF partner organisations rely on media coverage of HIV criminalisation cases as their primary source of information. However, not all cases are reported in the media, and people accused of HIV criminalisation do not always contact the EHLF partner organisations. As a result, some cases remain unknown. This implies that the actual number of HIV criminalisation cases is higher in each of the countries covered by this report, as it is in the rest of the region and globally.

## **Lack of training and guidance on HIV criminalisation for police, prosecutors, and judges**

Although the application of the criminal code in cases of HIV criminalisation raises complex issues, and so does the investigation process, most countries do not have HIV-specific training or guidelines/guidance developed for the police, prosecutors, or judges.

Of the twenty countries covered in this report, only one, the United Kingdom, has guidance for Prosecutors and the Police for cases of HIV-criminalisation. Unfortunately, this reflects the global situation; very few countries and jurisdictions in the world have developed such guidelines.

In its 2013 Guidance note<sup>5</sup>, UNAIDS reinforced its call on governments to “issue guidelines to limit police and prosecutorial discretion in application of criminal law” and emphasized the importance of these guidelines being supported by implementation mechanisms and made accessible for people living with HIV (PLHIV) and the general public, as well as service providers (paragraph 68 – 70).

Although relevant scientific and medical evidence - such as the fact that having an undetectable viral load means that there is no risk of transmission - is becoming more frequently used in HIV criminalisation cases in most of the countries covered by the report, there is still a substantial gap in the scientific knowledge and understanding of judges, prosecutors and the police. These gaps include lack of or outdated

<sup>5</sup> Ending overly broad criminalization of HIV non-disclosure, exposure and transmission: Critical scientific, medical and legal considerations  
[http://files.unaids.org/en/media/unaids/contentassets/documents/document/2013/05/20130530\\_Guidance\\_Ending\\_Criminalisation.pdf](http://files.unaids.org/en/media/unaids/contentassets/documents/document/2013/05/20130530_Guidance_Ending_Criminalisation.pdf)

information regarding HIV transmission, prevention, and treatment options, as well as how scientific methods should be used, and their limitations when they are used to establish proof.

In 2018, twenty scientists from regions all over the world developed and published an Expert Consensus Statement to address the use of HIV science by the criminal justice system.<sup>6</sup> The aim of the Statement was to give an expert opinion based on the latest scientific and medical research data on:

HIV transmission – i.e. the possibility of HIV transmission during certain acts;

- treatment effectiveness – i.e. how modern antiretroviral therapy has substantially improved the life expectancy and what the actual harm of an HIV-infection is;
- and the issues with phylogenetic analysis – i.e. whether it can be used as proof of ‘who infected who’.

The authors stated that *“The possibility of HIV transmission during a single, specific act was positioned along a continuum of risk, noting that this possibility varies according to a range of intersecting factors, including viral load, condom use, and other safer sex practices. Current evidence suggests the possibility of HIV transmission during a single episode of sex, biting or spitting ranges from no possibility to low possibility”*. They added in connection with HIV-therapy that *“Modern antiretroviral therapies have improved the life expectancy of most people living with HIV who have regular access to them, to the point that their life expectancy is similar to that of HIV-negative people, thereby transforming HIV infection into a chronic manageable health condition”*. They also expressed concerns of the use of scientific evidence in court cases based on

*phylogenetic analysis, as it “cannot conclusively prove, the claim that a defendant has infected a complainant with HIV. However, they emphasized the importance that “phylogenetic results can exonerate a defendant when the results rule out the defendant as the source of a complainant’s HIV infection”*.

The statement suggests that if up-to-date scientific evidence is applied in criminal cases, it will limit unjust prosecutions and convictions. It also recommends being cautious when considering prosecution, and encourages governments and policy makers and the police, prosecutors and judges to follow and apply the most up-to-date findings of HIV science in criminal cases related to HIV.

### **The role of media**

As mentioned earlier, the media can be a useful source of information when it comes to learning about cases of HIV criminalisation. Some of the organisations providing information for this report have had positive experiences with journalists who have been sensitive to the issue and thus provided professional coverage of the cases, focusing on facts and evidence in their reports.

Unfortunately, most media coverage focuses on the sensational elements of HIV criminalisation cases, thus further stigmatising PLHIV and other key affected populations while spreading misinformation and reinforcing myths related to HIV and AIDS.

The reporting period, which coincided with the COVID-19 pandemic and the MPOX outbreak, revealed a similar pattern. In Cyprus, the COVID-19 regulations sparked discussions about criminalisation of its transmission in the media, leading to the stigmatisation of COVID-positive individuals using similar language as with PLHIV.

<sup>6</sup> <http://www.hivjusticeworldwide.org/en/expert-statement/>

In 2022, the media in Spain attacked GBMSM (Gay, Bisexual, and all Men who have Sex with Men), implying they were to blame for the new MPOX outbreak.

At the same time, a good practise was reported from Belgium, where a sexual health expertise centre created a media linguistic guide on sexual health and HIV. At the same time, the centre maintains close relationships with the media and guides journalists on HIV-related publications.

The experience of working with the media on HIV criminalisation cases is very mixed in the countries covered by the report, and numerous organisations expressed their need for training on how to engage with the media on this issue.

### **Discriminatory application and use of the legislation**

HIV criminalisation has always disproportionately affected those most marginalised in society. Depending on the national context, women, people of colour, migrants, sex workers, gay men and other men who have sex with men, trans people, people who use drugs or the poor and homeless have always been overrepresented in HIV criminalisation cases.<sup>7</sup>

### **The impact of the COVID-19 regulations on people living with HIV**

Despite some member organisations' concerns, the COVID-19 regulations did not appear to have a significant impact on people living with HIV, with the exception of Cyprus and Poland. In Cyprus, the COVID-related restrictions hindered access to HIV treatment and care. Particularly, during the lockdown, medical resources were primarily focused on COVID patients. Limited movement made accessing HIV treatment difficult, particularly for those who relied on the one state HIV clinic

providing treatment and were unable to cross between the north and south sides. In Poland, the laws regarding HIV exposure were revised during the COVID-19 pandemic. The government increased the punishment for violating regulations related to the prevention of COVID infections, which in turn led to an increase in the punishment for HIV exposure. These changes were introduced in a questionable manner and some were deemed unconstitutional.

### **Priorities in relation to HIV criminalisation**

Despite differences in political and legal approaches to HIV criminalisation, these twenty countries share common priorities in this regard. Some of them are listed below:

- The importance of advocating for the decriminalisation of HIV and PLHIV;
- Sensitising media professionals on accurate, judgement-free language when referring to PLHIV and reporting on HIV criminalisation cases;
- Raising awareness among general public and the media on scientific knowledge and concepts such as U equals U;
- Increase the knowledge of the police, lawyers, prosecutors, and judicial authorities on the current science related to HIV, such as U equals U, treatment as prevention (TasP), and others, and ensure that this knowledge is systematically integrated into practise.
- Working to repeal criminalisation laws that fuel stigma and discrimination and undermine human rights of PLHIV and key populations.

<sup>7</sup> <https://williamsinstitute.law.ucla.edu/williams-in-the-news/hiv-criminal-laws-affect-marginalized-communities/>

# AUSTRIA

HIV is not notifiable in Austria, so an HIV positive person is not obliged to disclose their status. Certain occupations, however, require the disclosure of HIV status. In some special cases, HIV is a barrier to entry into an occupation, for example police service. Exposure to and transmission of HIV can be criminalised as intentional or negligent exposure to a communicable disease. In addition, the Criminal Code article regulating the act of causing personal injury and health damage can be applied to HIV transmission. These articles are not HIV-specific and are applicable to other communicable diseases. Recently, courts have used an undetectable viral load as scientific evidence of zero exposure, acquitting people living with HIV (PLHIV) on effective treatment or dropping their cases before trial.



## COUNTRY STATISTICS

Austria has a population of 8.917 million (2020), with an estimated 10.000<sup>8</sup> people living with HIV. According to official data<sup>9</sup>, 94% of all PLHIV were diagnosed (7655), 95% were on treatment (7182), and 85% had an undetectable viral load in 2019. (6507). It is estimated that nearly 10% of people living with HIV are unaware of their infection because they have not yet been tested and are therefore not receiving treatment.<sup>10</sup>

Epidemiological trends in Austria remained stable over several years: the distribution of modes of transmission and the number of new diagnoses. According to the Austrian cohort study, the most common modes of transmission were: 53.70% among gay and bisexual men and other men who have sex with Men (GBMSM), 9.26% among people who inject drugs (PWID), an increase from 2019, and 25.93% through heterosexual transmission. Around a quarter of heterosexual infections (27.9%) occur among migrant populations from high-prevalence countries. As a result, GBMSM and migrant populations are the most vulnerable groups in Austria.<sup>11</sup>

The number of new HIV diagnoses in 2021 was 376, slightly higher than in 2020. However, when compared to the previous 12 years, this number demonstrates a decline. COVID-19 pandemic regulations and exit restrictions seemed to have influenced 2021 statistics. The Centre for Virology reported fewer HIV tests during the pandemic year of 2020.<sup>12</sup> In the coming years, it will be possible to determine whether the decrease in new HIV infections in 2021 was caused by the reduced test volume. Another reason behind this decrease can be attributed to a number of factors, including the effects of treatment as prevention (TasP) and the use of pre-exposure prophylaxis (PrEP).

8 According to the ECDC modelling tool, 7655 PLHIV are living in Austria. This number shows the new diagnosis in the clinics taking part in the AHIVCOS, but not in medical practices.

9 Austrian Cohort Study – 2019 by AHIVCOS

10 Center for Virology, Medical University Vienna (2020)

11 41st Report of the Austrian HIV Cohort Study (2021)

12 Center for Virology, Medical University Vienna (2020)



## RELEVANT LEGISLATION USED IN CASES OF HIV CRIMINALISATION

### Non-disclosure of HIV status

There is no general obligation to disclose one's HIV status in Austria. There are certain occupations where one's HIV status is considered relevant. For instance, if a person has a particularly injury-prone job (e.g. in surgery), it is justifiable, according to the legal theory, to inquire about their HIV status. In such cases, employees are obliged to disclose their HIV status to their employers and failing to do so can be a reason for a justified termination of employment.<sup>13</sup> However, this does not constitute a ground for dismissal from the e.g. surgical job. Admission to the police service, on the other hand, is completely prohibited if a person has HIV. It is important to mention that in the most cases, employers do not have the right to inquire about HIV status.

### Exposure to HIV

Exposure to HIV and other communicable diseases can be criminalised under § 178 (intentional exposure) and 179 (negligent exposure) of the Austrian Criminal Code (Strafgesetzbuch, StGB). These legal provisions define health as a "public good" that has to be protected. Therefore, the theoretical risk of spreading a disease that has to be reported is penalised, even if an actual transmission has not taken place. § 178 of the Austrian Criminal Code imposes criminal liability even if an HIV-positive individual informs their partner of their status and the partner consents to a condomless sexual intercourse. Since the regulation is primarily concerned with the legal interest of "the health of the population as a whole", consent cannot "nullify" criminal liability.

### Transmission of HIV

In addition to the paragraphs applied for exposure, §83 of the Austrian Criminal Code – causing personal injury and health damage – can be applied to cases of transmission. The abovementioned provisions of the Austrian Criminal Code are not HIV-specific and can be and have been applied to other communicable diseases.

## CASES OF HIV CRIMINALISATION



AIDS-Hilfen Österreich are aware of 74 convictions under the above criminal laws for the period of 1990 – 2009. In the period between 1990 and 2001 there were 36 convictions under § 178 and 6 under § 179. In the period between 2005 and 2009 there were 52 prosecutions and 38 convictions under § 178. 15 out of the 52 cases was on HIV while 37 was due to other communicable diseases. 8 people were prosecuted under § 179, 3 of whom due to HIV and 5 of whom due to other communicable diseases.

Court cases in Austria are open to the public, but closed hearings can be requested if the issues discussed are personal and can have an effect later on the lives of the parties involved. Recently courts have been using an undetectable viral load as scientific evidence of zero exposure thus PLHIV on effective treatment get acquitted or their cases dropped before going into court. AIDS-Hilfen Österreich is aware of one additional case since 2019, which supports the aforementioned statement. A court of second instance declared the male HIV-positive defendant not guilty for having a sexual encounter, as he was on effective HIV therapy and had an undetectable viral load.

<sup>13</sup> [https://ooe.arbeiterkammer.at/service/broschuerenundratgeber/arbeitundgesundheit/B\\_2010\\_Aids\\_HIV\\_Arbeitsplatz.pdf](https://ooe.arbeiterkammer.at/service/broschuerenundratgeber/arbeitundgesundheit/B_2010_Aids_HIV_Arbeitsplatz.pdf)



## GUIDELINES AND TRAINING ON HIV CRIMINALISATION

AIDS-Hilfen Österreich are not aware of any police or prosecutorial guidelines on HIV criminalisation in the country. However, they offer personalized, HIV-specific trainings to nurses, physicians, and staff of state institutions such as the police and prison staff. AIDS-Hilfen Österreich is aware that there are optional courses at Vienna University for Medicine for Medicine students. AIDS-Hilfen Österreich discussed § 178 and 179 of the Criminal Code with the Ministry of Justice and proposed trainings for prosecutors.

## THE ROLE OF MEDIA



AIDS-Hilfen Österreich report a mixed role of media when reporting about HIV criminalisation cases. Most reports are focusing on the sensational elements of the cases, further increasing unjustified fears of transmission and increasing stigma around HIV in the public. However, some media coverage focusses on factual informing and promoting the scientific progress in HIV-treatment such as U=U and others.

## INFORMATION ON HIV CRIMINALISATION TO PEOPLE LIVING WITH HIV



AIDS-Hilfen Österreich offer legal counselling on several legal topics to PLHIV, including HIV criminalisation.

## KEY POPULATIONS MOST AFFECTED BY HIV CRIMINALISATION AND OTHER DISCRIMINATING LEGISLATION AND POLICIES

### Sex work

In Austria there is the so-called AIDS-Law ("AIDS-Gesetz") that is designed to forbid PLHIV to engage in sex work. In Austria, an official, registered sex worker has to get tested for HIV every six weeks. If diagnosed, they are not allowed to work in sex work any longer. This law does not take into consideration safer sex options such as condom use or treatment as prevention (TasP) but imposes a lifelong ban on sex work for those diagnosed with HIV.

### Migrants

Additionally, Austria has a system of compulsory, state health insurance. However, there are people in Austria (e.g. EU citizens with no insurance in their country of origin, refugees who have not received asylum, migrants in irregular situations) who cannot access the health system and life-saving HIV-care and treatment services. The presumption that the compulsory state health insurance system covers everyone in Austria, leave some people behind and further marginalises them, limiting their right to health by not providing free HIV treatment and care for them, at the same time disregarding the interest of public health i.e. people on effective treatment and undetectable viral load are not transmitting the virus.



## THE IMPACT OF THE COVID-19 REGULATIONS ON PEOPLE LIVING WITH HIV

AIDS-Hilfen Österreich feared that the COVID-19 pandemic would lead to a stronger focus on the provision of §§178, which are also applied for COVID-19 related violations, but this was found not to be the case.

### PRIORITIES IN RELATION TO HIV CRIMINALISATION

AIDS-Hilfen Österreich advocates for the decriminalisation of PLHIV. They wrote to the Justice and Health Ministry in 2021, arguing that HIV infections should no longer be criminally liable under §§178, and that, if this is the case, then medical research should be considered by courts.

Another claim is that police and public prosecutors should not file charges or indictments against individuals who have engaged in safe sex.

Furthermore, AIDS-Hilfen Österreich campaigns for the lifting of the ban on sex work for HIV-positive sex workers as they are prohibited from sex work activities, even if their viral load is below detection.

# BELGIUM

There are no explicit criminal legislation in Belgium regarding HIV transmission, exposure, or non-disclosure. General criminal laws have been used to prosecute HIV non-disclosure, exposure and transmission. However, prosecution is rare.

## COUNTRY STATISTICS



In January 2022, the population of Belgium was 11,584,008.<sup>14</sup> Of the total estimated number of people living with HIV (19,177), 94% were diagnosed with HIV (17 622), 89% of these people were receiving HIV treatment, and 97% had an undetectable viral load. This means that 81% of all persons living with HIV had an undetectable viral loads.<sup>15</sup>

Over the years, there has been progress at all stages of the continuum of care, most notably in the number of people on antiretroviral therapy (until 2019) and those with an undetectable viral load. The antiretroviral coverage is significantly high, and the margin for improvement is, therefore, limited. In comparison to previous years, treatment uptake did not increase considerably in 2020. Yet, the extraordinary situation of the COVID-19 pandemic should be taken into account.

Since the start of the HIV epidemic in Belgium, gay and bisexual men and other men who have sex with men (GBMSM) of Belgian nationality, as well as heterosexual men and women from Sub-Saharan African countries have been disproportionately affected. Diagnoses have been declining in the aforementioned groups, while there has been a slight increase in diagnoses among people of other nationalities, both GBMSM and heterosexuals:

In general, the community of people living with HIV in Belgium is getting older. In 2020, 44% of people receiving HIV therapy were over the age of 50.



## RELEVANT LEGISLATION USED IN CASES OF HIV CRIMINALISATION

### **Non-disclosure of HIV status, Exposure to HIV and Transmission of HIV**

Belgium has no specific (criminal) laws on HIV transmission, exposure or non-disclosure. Yet, existing articles of the Penal Code have been applied to criminalise HIV exposure, non-disclosure, or transmission. There is a precedent of a person being convicted to a prison sentence according to article 402 of the Belgian Penal Code, for “voluntarily administering, without the intention of killing, substances that can cause death or seriously alter health”.

<sup>14</sup> Source: Bevolking | Statbel (fgov.be) consultation 14/07/2022

<sup>15</sup> Epidemiologie van aids en hiv-infectie in België. Toestand op 31 december 2021 | sciensano.be Epidemiologie van aids en hiv-infectie in België. Toestand op 31 december 2020. | sciensano.be consultation 2514/17/20232, Hiv in België: feiten en cijfers | Sensoa consultation 2514/017/20232



## CASES OF HIV CRIMINALISATION

The Flemish expertise centre on Sexual health, Sensoa gathered information on HIV criminalisation cases based on media reports as there is no data collection on the court cases related to HIV transmission, exposure, or non-disclosure. In general, Belgian courts appear reluctant to apply criminal legislation in HIV cases.

Date	Case	Sentence
2007	A 52-year-old man took his ex-boyfriend to court because he concealed his HIV infection. No transmission took place. The ex-boyfriend did take medication but attributed it to diabetes. When, after their breakup, it came out that his ex was HIV positive, the man from Oostende claimed he lived in uncertainty for a long time, until the tests were negative. In 2007, he filed charges of "attempted murder". This was later downgraded to "attempted manslaughter".	The public prosecutor's office wanted to dismiss the charges because there was no intention and no transmission. The judge followed the public prosecutor.
2011	An HIV-positive Angolan man at an advanced stage (AIDS) had non-disclosed his serostatus to his wife as "he believed he was cured by faith and prayer".	Sentenced to 3 years in prison (2 of which were suspended) under article 402 of the Belgian Penal Code.
2012	A 31-year-old gay man was sentenced after proceedings by a 19-year-old man (who was 17 at the time) for HIV infection through unprotected sex under duress and non-disclosure.	Sentenced to 6 months imprisonment for unintentional assault and battery.
2015	The client, who had requested SM sex, accused a sex worker of "attempting to administer a substance which causes death or serious health risk". HIV was not transmitted. The sex worker was undocumented and eventually left Belgium.	A sex worker in Belgium was sentenced to 18 months in prison under the qualification "poisoning".
2018	A 41-year-old gay man concealed his HIV infection during his relationship with a 44-year-old man and had unprotected sex with him. The couple was together between December 2009 and December 2010. He never informed his partner infection about his status.	Had to pay the legal costs of EUR 12,456.



## GUIDELINES AND TRAINING ON HIV CRIMINALISATION

There are no HIV criminalisation guidelines available in the country. When contacted, the police and the prosecutor's office staff mentioned that they do not believe such regulations are necessary. In practice, prosecutors are known to be hesitant to refer allegations of HIV transmission to the court.

Over the years, several police districts received few specialised information as a part of in-service training; after a couple years, this information was cut from the curriculum.

## THE ROLE OF MEDIA



Some mediatisation of HIV-related cases was observed in 2011 – 2012, but this appears to have diminished. Sensoa developed a linguistic guide on sexual health and HIV for the Dutch-speaking media. The expertise centre has good contacts with the media and supports journalists on framing articles, reports, or programmes on HIV-related topics.

## INFORMATION ON HIV CRIMINALISATION TO PEOPLE LIVING WITH HIV



Sensoa and partner organisations have publications on the law and HIV that are freely accessible to everyone.

Unia, which is an independent public institution, informs about rights, supports actions or records facts to alert the appropriate authorities. Unia, moreover, provides free, confidential legal advice and can file court cases related to discrimination. Sensoa and Unia work closely on HIV discrimination and criminalisation.

## KEY POPULATIONS MOST AFFECTED BY HIV CRIMINALISATION AND OTHER DISCRIMINATING LEGISLATION AND POLICIES

Belgium has an explicit anti-discrimination policy. Same-sex marriage has been recognized since 2003. Discrimination is prohibited and punishable by law.

### Sex work

In June 2022, Belgium became the second country in the world to decriminalise sex work. Prior to this reform, Belgian law was intended to make sex work as difficult as possible in order to discourage or eliminate sex work. As a result, all service providers (accountants, insurers, website developers, landlords) to self-employed sex workers were criminalised. After the decriminalisation, any involved party, including service providers, will no longer be prosecuted for their services as long as they do not exploit the self-employed sex workers. The government and sex workers' organisations are currently working on an employee statute that would grant sex workers employee benefits.



## THE IMPACT OF THE COVID-19 REGULATIONS ON PEOPLE LIVING WITH HIV

The respondent is not aware of any impact of the COVID-19 regulations on PLHIV and HIV criminalisation cases.

### EXPECTED LEGAL CHANGES AND DEVELOPMENTS

The proposal for an amended Penal Code in 2019, including Article 276 on "intentional spread of pathogens," alarmed Sensoa. All of the explanatory notes, in particular, focused solely on HIV. In 2022, the government was negotiating the proposal of the new Penal Code. Following Sensoa's concerns and the support of various associations, there is a political inclination to remove all references to HIV from the explanatory notes. Sensoa recommended that conviction should only be possible in cases of "pathogen transmission" where the special intent of "malice" has been sufficiently proven. Sensoa concludes, based on a review of the positions and statements of political and legislative actors, that there are no intentions to criminalise HIV transmission through the development of HIV-specific laws. The most recent information regarding the proposed penal code indicates that it would be a step in the right direction, as it would only criminalise the intentional transmission of HIV.

# BULGARIA

HIV exposure and transmission are regulated by the respective articles of the Criminal Code that apply to all infectious diseases. Exposure to HIV is punishable by imprisonment for up to six months or a fine. HIV transmission is penalized by up to three years in prison and a fine. Penalties vary further depending on the character of the defendant's intention. Despite the fact that there had been 13 pre-trial proceedings in the last decade, only one case was presented to the court.

## COUNTRY STATISTICS



Bulgaria had a population of 6 838 937 people in December 2021. According to data from the Ministry of Health, in 2020, there were 3483 people diagnosed with HIV; 1808 people were reported to be on treatment, and 1519 people have an undetectable viral load.

HIV incidence over the last five years has been relatively steady, ranging between 200 and 300 new cases per year. New infections disproportionately affect gay and bisexual men and other men having sex with men (GBMSM). New infections are concentrated among the 30-39 age group the most, followed by the 20-29 age group.



## RELEVANT LEGISLATION USED IN CASES OF HIV CRIMINALISATION

### Non-disclosure of HIV status

The non-disclosure of HIV status itself is not a crime under Bulgarian criminal law. Yet, there are cases when the law requires the disclosure of HIV status:

- in the application process for a foster family (people with AIDS<sup>16</sup> can't apply for a foster family);
- a person who wishes to adopt a child shall submit a written application with an HIV/AIDS test result attached;
- a patient is obliged to notify the treating physician and the medical staff of medical conditions that pose a risk to the team (AIDS, syphilis, hepatitis B and C), especially when the patient is subject to dermatosurgical interventions. A patient's failure to fulfil this obligation could be considered an exposure crime in cases of imminent infection danger.

### Exposure to HIV

Exposure to HIV is criminalised by Article 135, §4 of the Criminal Code, which defines that a person who through sexual intercourse or in another manner puts another person in danger of being infected with venereal disease<sup>17</sup>, shall be punished by imprisonment for up to six months or by a fine of up to EUR 100.

U equals U is relevant in criminal cases of exposure to HIV. Exposure to HIV will not be considered a crime if the medical finding in the court case indicates that the perpetrator has an undetectable viral load.

### Transmission of HIV

According to Article 135, § 1 of the Criminal Code, a person who is aware of their status of a venereal disease, and infects another person, can be punished by imprisonment for up to three years and by a fine of up to EUR 100. If the act is committed through negligence, the punishment is up to one year in prison and a fine of up to EUR 100. In the case of intentional HIV transmission, Article 135, § 2 provides for a qualified crime in the case of multiple victims, according to which a person is punished by imprisonment for up to five years **or**<sup>18</sup> a fine of up to EUR 250.

16 Statement of the Ministry of health of the Republic of Bulgaria reg. No 15-00-202/01.02.2018 (available only in BG) explains that Art. 32, item 8 of the CPA refers to HIV carriers who have established AIDS.

17 The concept of venereal disease in the context of criminal law should be understood as a STIs/STDs as informed by the Health Without Borders Association.

18 The text is "or a fine" only, that is why "or" is bold. This has been commented by scholars as an imperfect legal technique when amending the provision. Such an obvious oversight by the legislator would lead to a paradox in the literal interpretation of the text (which is the principle of interpretation of criminal law norms) to impose a lighter punishment for a more serious crime.

## CASES OF HIV CRIMINALISATION



There were 13 pre-trial proceedings initiated between 2012 and 2022. In 2015, one case was presented in court, and one effective sentence was imposed the same year.

It is worth noting that in a prosecution for sexual acts with two minors, the court acknowledged the victim's infection with venereal disease (syphilis) as an aggravating circumstance. Because the offence was committed under conditions of high recidivism, the accused was sentenced to 12 years in prison. It is reasonable to anticipate that in a similar scenario, the court would consider HIV infection to be an aggravating factor.



## GUIDELINES AND TRAINING ON HIV CRIMINALISATION

In Bulgaria, there are no HIV criminalisation guidelines for prosecutors, police, or clinicians. There is, nevertheless, training for judges called “Body injuries – controversial moments in practice”, which covers the issues related to the investigation of venereal disease crimes. Although there is training for police officers, that covers HIV criminalisation, but it is focused on the procedural criminal law aspects.

## THE ROLE OF MEDIA



As evaluated by the Health Without Borders Association, the media is in general analytically oriented and competent in terms of civic participation, nonetheless there are certain stigmatizing publications.

## INFORMATION ON HIV CRIMINALISATION TO PEOPLE LIVING WITH HIV



Health Without Borders Association reported that the lack of a state policy on HIV criminalisation inevitably led to limited access to HIV-specific information. Although HIV counsellors from NGOs and doctors provide relevant information but their capacity is insufficient. In the previous five years, several HIV service-provider organisations have closed or are operating with inadequate funding.

## KEY POPULATIONS MOST AFFECTED BY HIV CRIMINALISATION AND OTHER DISCRIMINATING LEGISLATION AND POLICIES

### Drug use

People who use drugs (PWUD) are de facto criminalised in Bulgaria, as drug possession has been a criminal offence since 1975. The actual enforcement of the law began around the year 2000, when the number of drug-related offences considerably increased. In practice, the legislation allows for up to six years in prison for merely possessing any amount of any illicit substance. This legal framework and overall punitive attitude lead to regular police harassment of PWUD, as well as their high incarceration rates.

### Sex work

Sex work is neither criminalised nor legalized or regulated in Bulgaria. It remains in the "grey area" of the law. Providing sex services is not illegal, however, some activities around sex work could be punishable in line with the Penal Code, and be qualified as 'systematically providing space for sexual activity' or "acquiring income in an immoral way". Moreover, street sex workers report high levels of police harassment, including extortion for money, expulsion from the place of practice, unjustified incarceration, and sexual abuse.

Regardless of the legislation, it is crucial to note that all three key populations - PWUD, sex workers, and GBMSM - experience a range of discriminatory practises and attitudes that limit their access to health services and HIV prevention and care programs.



## THE IMPACT OF THE COVID-19 REGULATIONS ON PEOPLE LIVING WITH HIV

The legislative measures linked to COVID-19 have had little or no impact on people living with HIV. It is possible that it contributed to increased stigma against PLHIV.

## EXPECTED LEGAL CHANGES AND DEVELOPMENTS

Bulgaria has been in a serious economic and political crisis for the past two years. Since 2021, the country has been governed primarily by temporary governments. These negative factors have a direct impact on the implementation of new legislative reforms in all domains. Yet, the respondents do not anticipate new developments relevant to HIV criminalisation.

# CYPRUS

HIV is still criminalised in the Cypriot judicial system. Medical professionals are obliged to report PLHIV to the government and can face criminal charges if they fail to do so. Furthermore, both HIV exposure and transmission fall under the same provision of the criminal code (Art. 190) that covers situations in which if someone acts in a way that could infect another person with a disease that is dangerous to human life, the person is punished by imprisonment or a fine. The actual transmission is likely to be considered a weighing element, resulting in a harsher penalty. However, until now, this article has been applied solely once. In trials involving HIV-positive defendants, the decisions were inconsistent: some regarded HIV status as a mitigating factor, while others considered it as an aggravating factor. Additionally, in the last 20 years, over 30 complaints had been reported where PLHIV face discrimination in accessing health and other public sector services based on their HIV status.

## COUNTRY STATISTICS



Cyprus has a population of 1,300,000 people, with 918,000 living in territories controlled by and 382,000 living in areas not controlled by the Republic of Cyprus.<sup>19</sup> As of 2021, there were approximately 1354 diagnosed with HIV. The Ministry of Health reports that in 2021, 91,6% of people had been diagnosed with HIV, 93,7% were on treatment and 96,6% had an undetectable viral load.<sup>20</sup>

HIV incidence rose from 11.8 to 16.5 per 100,000 people in 2021, compared to 2020. Transmission increased among gay and bisexual men and other men who have sex with men (GBMSM) and through heterosexual contacts in 2021, while remaining relatively stable among people who inject drugs (PWID).



## RELEVANT LEGISLATION USED IN CASES OF HIV CRIMINALISATION

### Non-disclosure of HIV status

The Quarantine Law (Cap. 260) and its regulations establish an obligation on any medical practitioner who may know or suspect “any person to be suffering from HIV/AIDS” to report it to the government. In line with Article 7 of the Quarantine Law, failure to comply is punishable with up to 1 year in prison and/or a fine of up to EUR 50.000.

Failure of people who live with HIV/AIDS (PLWHA) to reveal their status to other private individuals may or may not be a violation of Article 190 ‘Negligence in the transmission of diseases dangerous to human life’ of the Criminal Code.

### Exposure to HIV

Article 190 of the Criminal Code (Cap. 154) states that: “Whoever illegally or through negligence acts in a way that is likely (or may)... to infect another person with a disease dangerous to human life, is guilty of the offense”, which is punishable with up to 2 years in prison and/or a fine up to EUR 2.550. The article does not specify the actions that constitute ‘negligence’, so there is a lot of room for interpretation.

### Transmission of HIV

In theory, regardless of whether HIV is actually transmitted, one violates Article 190. The fact that it was transmitted will probably be regarded as a weighing factor, resulting in a more severe penalty. In judicial practice, it appears that Article 190 was applied only once.

<sup>19</sup> Cypriot statistical services, <https://www.cystat.gov.cy/el/default>

<sup>20</sup> Republic of Cyprus, Ministry of Health, Reference No. for data requested: “Αρ. Φακ. 5.24.01.3.91

## CASES OF HIV CRIMINALISATION



Since 2004, there have been 30 registered complaints concerning HIV-positive people, and particular difficulties they faced in accessing basic public goods. Four of the complaints were related to the deprivation of access to relevant health services. In addition, 27 people (13 men, 11 women and 3 trans people) complained they faced discrimination against their positive HIV status.

In 2010, there were three court cases that were not related to HIV –criminalisation but involved HIV positive and migrant defendants. In two of these cases, the court took a person-centred and human rights based approach and considered:

- HIV status as a mitigating factor;
- that deporting a person based on their health status is prohibited discrimination that goes against the principle of equality.

On the contrary, in the third case, the court decided to deport an HIV positive migrant on the basis that he was an illegal immigrant, who was also considered a threat to public health.

In 2020, the court reviewed an incident of physical violence committed by a male immigrant against another man and considered the defendant's positive HIV status to be an aggravating element.



### GUIDELINES AND TRAINING ON HIV CRIMINALISATION

There are no guidelines for prosecutors, judges or lawyers. Yet, there is a 1.5-hour HIV/AIDS training for police officers, as well as a session on PLWHA prisoners.

### THE ROLE OF MEDIA



People working in the media have a significant lack of knowledge as well as up-to-date and scientific information about HIV/AIDS. Terminologies and wording used in the public media are frequently replicating and re-projecting fear. There is a small group of journalists who use their wording carefully and make an attempt to shift the public narrative. However, there is no relevant training or instruction accessible for journalists and/or media professionals.



### INFORMATION ON HIV CRIMINALISATION TO PEOPLE LIVING WITH HIV

The AIDS Solidarity Movement (or “the Movement”) is unaware of such information being available.

## KEY POPULATIONS MOST AFFECTED BY HIV CRIMINALISATION AND OTHER DISCRIMINATING LEGISLATION AND POLICIES

### Drug use

Drug possession, cultivation, as well as selling and/or buying are illegal according to Articles 6 and 7 of Law 29/1977. Since 2016, driving under the influence of drugs has been an offense, according to Article 11B of Law 174/1986. Additionally, in line with Article 11C of Law 174/1986, police officers may request any driver to undergo a drug test if they have reasonable suspicion to believe they are driving under the influence of substances.

**Sex work**

Sex work is not technically illegal. However, related actions, such as the operation of brothels, the promotion of a woman to prostitution, living off the earnings of another person made due to prostitution, and other acts, are criminal offences under the law.

**Migrants**

In 2021, a non-European student living with HIV was informed by their University that the Civil Registry and Migration Department requested their departure, due to their positive HIV status. The student stated they had access to antiretroviral treatment from their home country, had an undetectable HIV viral load (VL) and all they wanted was to complete their studies in the Republic of Cyprus. The student conducted the VL test and the results confirmed the student's undetectable VL. After securing written consent from the student, the Movement contacted both the University and the Migration Department. The Migration Department did not reply to the written request, on the contrary, it proceeded with an official letter requesting the student to leave the country. The Movement was forced to issue a public complaint, both locally and internationally, and in close cooperation with European and International Networks, such as AIDS Action Europe and European AIDS Treatment Group, denouncing the discrimination based on HIV status, and demanding from all relevant authorities the immediate change of the decision. The public complaint was sent to the European Commissioner for Health and Food Safety, and the European Commissioner for Equality. 24-hours after the public complaint, and after the issue went viral on public and social media, on March 25th, 2022 (public holiday in the Republic of Cyprus), the Ministry of Interior announced a new decision that allowed the student to continue their studies, under the condition that they would accept a VL test every year.



## THE IMPACT OF THE COVID-19 REGULATIONS ON PEOPLE LIVING WITH HIV

The criminalisation of COVID-19 transmission was even discussed in the media. COVID-positive people were stigmatized and marginalized, while the terminology that was reproduced in the media was similar to the verbal stigmatization used in the case of PLHIV.

Throughout the lockdown, medical attention was concentrated on COVID patients. Almost all health services were closed or underutilized as health professionals, particularly HIV epidemiologists, were transferred to COVID-related roles, leaving HIV care in a bad state. Cyprus has only one State HIV Reference Clinic. Since transportation and movement were limited and, in some circumstances prohibited, access to treatment became increasingly difficult. Furthermore, the crossing points from/to the north side to/from the south side were forcibly closed. People who lived in the north but received treatment in the south faced extreme difficulties in accessing HIV healthcare.

**EXPECTED LEGAL CHANGES AND DEVELOPMENTS**

The AIDS Solidarity Movement remains concerned about the island's difficult political situation and its future, which have a direct impact on the lives of people living with HIV, and continues to advocate for legal reforms that will not treat HIV or other infections from the lens of criminality.

# CZECHIA

It is mandatory to disclose the HIV status to healthcare providers. Failure to do so can result in a fine of up to EUR 400. According to the Criminal Code, the exposure and transmission of HIV can be considered a criminal offense, referred to as "dissemination of a contagious human illness" or "serious bodily harm". Approximately 20 cases of HIV criminalisation, predominantly involving gay and bisexual men and other men who have sex with men (GBMSM) and one case of vertical transmission, have been reported in the last 10 years. The Supreme Court has recognised viral load as a factor in determining criminal liability, but this is not widely known among legal professionals.

## COUNTRY STATISTICS



Czechia has a population of 10.7 million. As of the end of 2022, 4,366 people have been diagnosed with HIV, the estimated number of PLHIV might be higher by around 15%. 4,173 PLHIV were reported to be on treatment and 4016 had an undetectable viral load.

Since the beginning of the HIV-epidemic, there has been a steady increase in incidence (mostly among gay men and other men who have sex with men), however, the speed of the increase has been slowing down since 2018, due to the application of the “test and treat” guidelines and the increased easier access to PrEP.

The main epidemiological trend for 2022 is an increase in the number of PLHIV as a result of the arrival of 578 PLHIV refugees from Ukraine. Aside from that, GBMSM remain the most severely affected population, although the transmission speed appears to be decreasing.



## RELEVANT LEGISLATION USED IN CASES OF HIV CRIMINALISATION

### Non-disclosure of HIV status

There is an obligation to disclose one’s HIV status to health care providers in Czechia. Failure to do so constitutes an administrative offence for which a fine up to CZK 10,000 (approx. EUR 400) can be imposed, but no criminal liability should be applied. However, the Czech AIDS Help Society is aware of one court case where an individual was found guilty of the crime of “dissemination of a contagious human illness” for conduct consisting of non-disclosing their HIV status to a doctor. Unfortunately, the individual did not have proper legal representation and did not appeal the decision of the court of first instance.

### Exposure to HIV

Exposure to HIV and other communicable diseases can be criminalised under Sections 152 and 153 of the Czech Act No. 40/2009 Sb. – Czech Criminal Code. These provisions cover the “dissemination of a contagious human illness” and “dissemination of a contagious human illness by negligence”.

### Transmission of HIV

Besides the aforementioned provisions of the Czech Criminal Code, Section 145 the crime of “serious bodily harm” of the same Act can also be applied. The above provisions of the Czech Criminal Code are not HIV-specific and can be and have been applied to other communicable diseases.

## CASES OF HIV CRIMINALISATION



There are no available statistics regarding the number of HIV criminalisation as it is included with all other crimes under the same provisions of the Czech Criminal Code.

In the past 10 years, the Czech AIDS Help Society is aware of about 20 HIV criminalisation. A vast majority of these cases were on sexual exposure/transmission and involved GBMSM. They are aware of one case where vertical transmission was criminalised.

HIV can be used as an aggravating factor. In some court cases, in addition to HIV exposure or transmission, other crimes (such as rape, abuse of a child under the age of consent, etc.) were investigated. The criminal authorities would investigate both aspects of the crime in a single proceeding and impose a common sentence.

In Czechia, while the process of investigations is usually private and the personal data of individuals is protected from disclosure, criminal proceedings in front of the court are public. During court hearings, the participation of individuals not involved in the case can be restricted, however, sentences are always delivered publicly.

There are several issues with the court cases. These include the lack of knowledge about HIV among justice professionals (judges, prosecutors), meaning that much depends on the quality of the defence and their ability to present all available medical arguments. There is also an insufficient number of HIV experts in the pool of court appointed experts. It has happened that the court-appointed psychiatrists or other medical professionals provided outdated or even prejudiced information as expert statements and these were accepted by the court. There is also the issue of the lack of protection of the accused against medialisation of the case. Some of the HIV criminalisation cases have been followed by the media, which has shared sensitive details about the health state and sexual life of the accused.

In a case where the person living with HIV was represented by the Czech AIDS Help Society, the Czech Supreme Court has acknowledged that viral load must be taken into account when determining criminal liability. Unfortunately, this decision is not yet widely known among legal practitioners, but since the decision was issued and can be referred to, the organisation has been successful in using this argument in the defence of all PLHIV with undetectable viral load.



## GUIDELINES AND TRAINING ON HIV CRIMINALISATION

There are no official guidelines or trainings on HIV criminalisation in the country. The Czech AIDS Help Society have had several ad-hoc attempts to provide training to selected journalists but the interest was very low so this has not developed into any sustainable project or programme



## THE ROLE OF MEDIA

Cases involving HIV transmission have always been interesting for the media, especially when they could report about sensational elements of the cases, such as details of the sex life of the person(s) in the case. The media reports usually focus on the statements of the prosecutor and the judge, paying less attention to the arguments of the defence. The fact that a PLHIV was charged with HIV transmission gets far more attention by the media than the fact that the case ended in acquittal.

The Czech AIDS Help Society has seen examples of stigmatising and sensationalising articles with the actual facts hidden and overshadowed by the sensational content and wording of the article.

Nevertheless, there have been some successful attempts to present the disadvantages of criminalisation of HIV transmission in the media and there are also examples of professional media approach and reporting of the cases.

## INFORMATION ON HIV CRIMINALISATION TO PEOPLE LIVING WITH HIV



Since 2017, the Czech AIDS Help Society has been providing free-of-charge legal services to any person living with HIV. This includes on-line and telephone counselling, providing legal support and representation in court cases (including cases of HIV criminalisation).

They also publish information on the issue, including newsletters, leaflets, and recommendations. They have often been approached in cases of HIV criminalisation.

## KEY POPULATIONS MOST AFFECTED BY HIV CRIMINALISATION AND OTHER DISCRIMINATING LEGISLATION AND POLICIES

There are no discriminating laws against PLHIV, however, there are significant issues in practice. PLHIV are often discriminated against due to their HIV status, especially in their access to health care services.

According to the Criminal Code, the manufacture and possession of illegal substances constitute a criminal offense. Sex work is not criminalised. (TasP) but imposes a lifelong ban on sex work for those diagnosed with HIV

## PRIORITIES IN RELATION TO HIV CRIMINALISATION

The Czech AIDS Help Society aims to increase the visibility of current HIV knowledge (U=U, etc.) among criminal authorities. It advocates for a change in the law to exempt PLHIV with an undetectable viral load from criminal prosecution. It strives to improve the language of notification letters sent to newly diagnosed PLHIV, which may affect their criminal liability, which was very recently changed to the detriment of PLHIV.

# FRANCE

There are no specific HIV criminalisation laws, but cases of HIV exposure and transmission are legally regulated by existing articles of the Penal Code that are primarily focused on the infliction of physical harm, disability, or incapacity to work. Penalties range from imprisonment to fines, and frequently determined by the degree of physical harm and aggravating circumstances. In recent years, there have been two to three court cases per year. In 2019, the highest court in France established a precedent based on the evidence behind “U equals U”.

## COUNTRY STATISTICS



France has a population of 67.8 million. According to the most recent data available from UNAIDS, in 2021 there were an estimated number of 192,500 people living with HIV (PLHIV); of them 88% were diagnosed, and 98% were on treatment. As registered by the national public health agency in 2018, 74% of those living with HIV had an undetectable viral load in 2018.<sup>21</sup>

The HIV epidemic is concentrated, both in terms of population and location. Data from 2020 reveals that 43% of people who discovered their HIV status in that year GBMSM, 38% were foreign-born heterosexuals, 16% were French-born heterosexuals, 1.5% were injecting drug users, and 1.5% were trans people, all of whom were infected through sexual intercourse.

The number of new HIV-positive infections registered in 2020 is 22% lower than in 2019, a trend that can be observed across different key populations. However, this decrease is largely due to the decline in HIV testing caused by the SARS-CoV-2 pandemic. Moreover, the pandemic context also hampered the mandated case-reporting, making the estimate for 2019 and 2020 uncertain.



## RELEVANT LEGISLATION USED IN CASES OF HIV CRIMINALISATION

### Non-disclosure of HIV status

Non-disclosure of HIV status is not penalised as such in France, but it is the driving force behind many court cases, as it is often the reason why plaintiffs decide to file a complaint.

### Exposure to HIV

There are no HIV-specific laws, but Article 222-15 of the Penal Code related to the "administration of harmful substances that have damaged the physical or psychological integrity of others" has been the legal basis for prosecutions related to HIV transmission or exposure.<sup>22</sup> This article applies in combination with other articles of the Penal Code, which determine a gradation of the damage caused and the corresponding penalties.

Exposure to HIV without actual transmission of the virus can be prosecuted under Article 222-15 if it has caused

psychological damage to the plaintiff. It is punishable as an infraction defined by Article 222-13 of the Penal Code as "violence resulting in an incapacity to work of less than or equal to eight days or resulting in no incapacity to work".

Depending on the levels of "incapacity" and aggravating circumstances, the punishment can vary from a fine of EUR 750 to 5 years of imprisonment and a fine of EUR 75,000.

In judicial practice related to exposure to a risk of transmission, in March 2019, the Court of Cassation, the highest court in France, established a precedent, recognizing the concept of treatment as prevention (TasP). The Court defined that if a person had an undetectable viral load for several years and had sufficient evidence (regular monitoring, and good treatment compliance) then their "body fluids cannot be held harmful to the date of the actions that are accused".

21 UNAIDS, 2021; Surveillance data (DO HIV, Santé publique France), back-calculation model (INSERM U1136), 2018.

22 The first final conviction under this legal classification for exposure to the risk of HIV transmission case was pronounced in 2011 but it was a case involving several complainants and at least one of whom had been contaminated. The first final conviction involving only an exposure to HIV transmission occurred in 2018.

### Transmission of HIV

Actual HIV transmission involves a physical damage. In this case, Article 222-15 refers to Article 222-9, which defines the infraction of "violence resulting in permanent mutilation or disability," and is punishable by 10 years in prison and a fine of EUR 150,000. In the case of aggravating circumstances (for example, being in a relationship with the person exposed or if there was premeditation), the penalty increases up to 15 years imprisonment

## CASES OF HIV CRIMINALISATION<sup>23</sup>



### Number of complaints filed for alleged HIV transmission

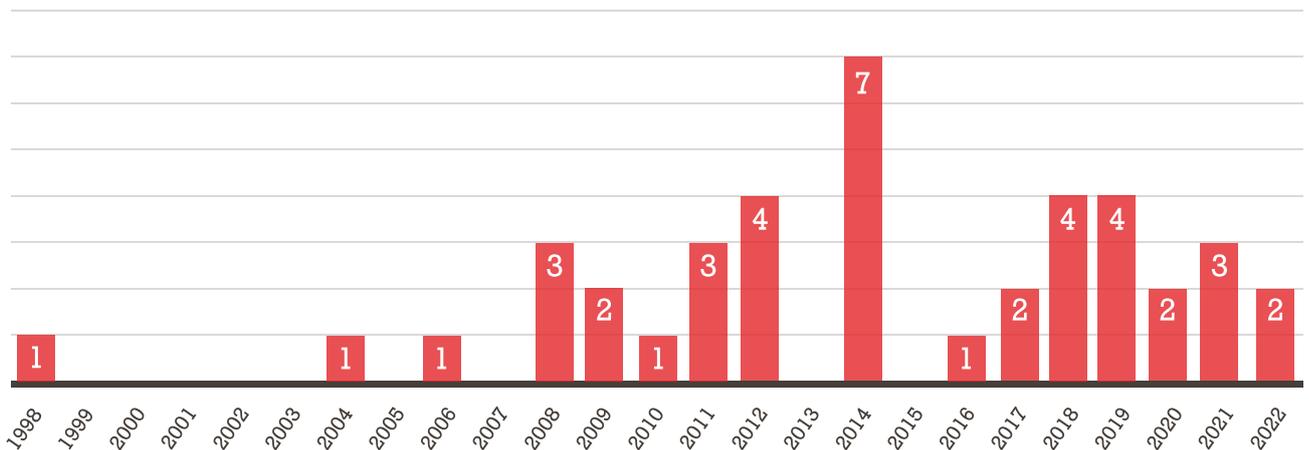
In 2014, the overall number of complaints filed by PLHIV since the beginning of the HIV epidemic against the individuals they believed infected them was roughly estimated between 1,500 and 2,000. These numbers are not derived from administrative data records; they are rather estimates.

### Number of cases taken to court

Below, you can see a graph with the number of cases taken to court. The difference between the estimated number of filed complaints (mentioned above) and the number of cases that resulted in a trial, suggests that the majority of complaints did not result in criminal prosecutions.

Graph 1

**Number of cases tried in France**  
by years of judgement in the first instance  
(1998-2022\*), n=41



\*2022: first half year  
DATA: CNS

In France, the criminalisation of HIV-transmission started late and remained rather uncommon and exceptional until the late 2000s. Complaints of HIV transmission were filed in France beginning in the late 1980s, but the first case was brought to court in 1998. Between 1998 and 2007 no more than three cases were brought to court. One major reason for this is that judges

23 All data presented in this section provide from the research conducted by the French National AIDS and Viral Hepatitis Council (CNS):1) Period from 1998 to 2014 2) 2015 to 2022

struggled in the 1990s to find a strong legal basis in existing criminal law for prosecuting HIV transmission. Some attempts to bring cases to court based on charges such as poisoning or failure to assist a person in danger were unsuccessful. Furthermore, at a time when effective HIV treatments were not yet available, the length and complexity of the legal proceedings, which took many years, were often not compatible with the deteriorating health condition or even the death of the plaintiffs or defendants. The use of Article 222-15 brought a judicial breakthrough. It established a strong and clear jurisprudence after one of the first court decisions taken on this legal basis was upheld by the Court of Cassation in 2006.

The rapid increase that started in 2008 and culminated in seven cases brought to court in 2014 did not continue. As can be seen, a consistent figure of two to three cases in court per year has been maintained until now.

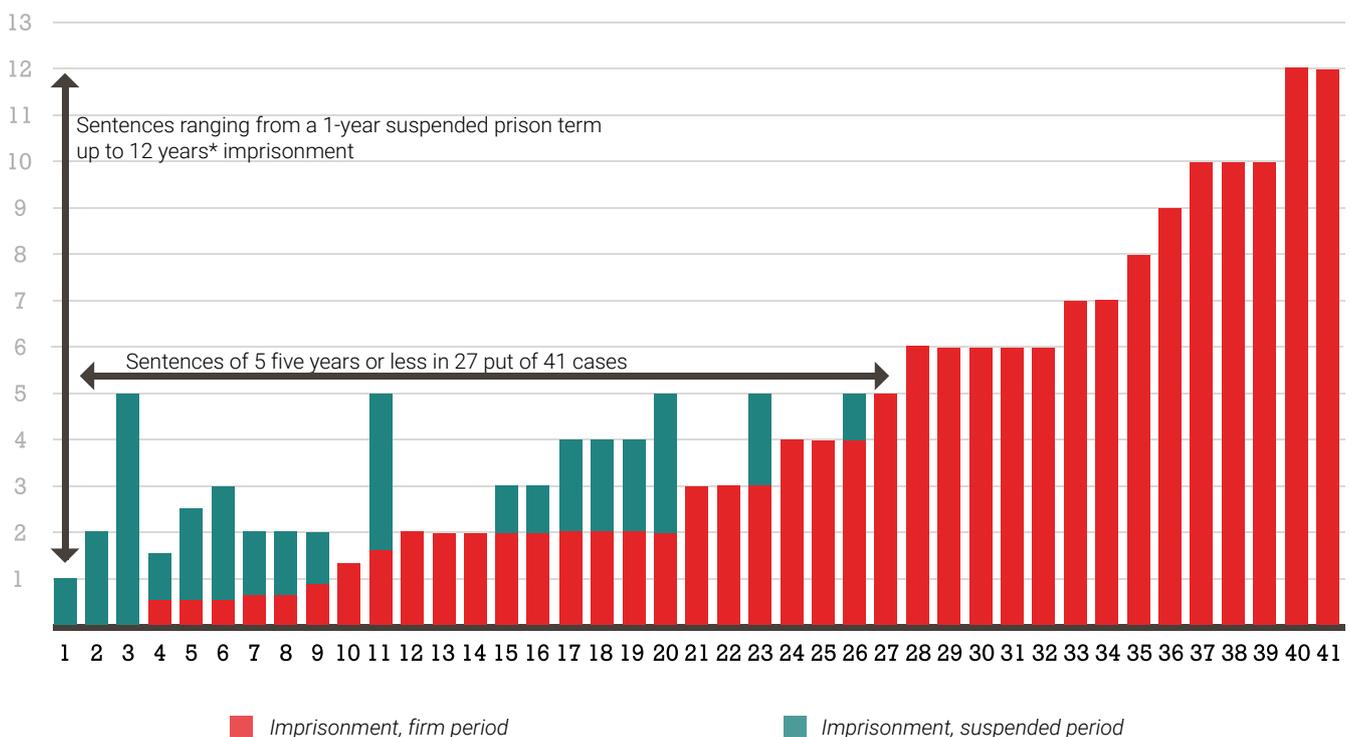
### Number of convictions handed down by courts and sentences ordered by the courts

So far, all court proceedings have resulted in the defendant's conviction, for a total of 41 convictions against 40 defendants (one case of a repeat offender convicted twice). In all but one case, convictions were made for the actual transmission of HIV to at least one of the victims.

The sentences presented below vary widely depending on the case, from a minimum of 1 year's imprisonment suspended up to 12 years' imprisonment.

Graph 2

**Type and length of sentences**  
by increasing length of imprisonment (firm periods)  
(1998-2022\*), n=41

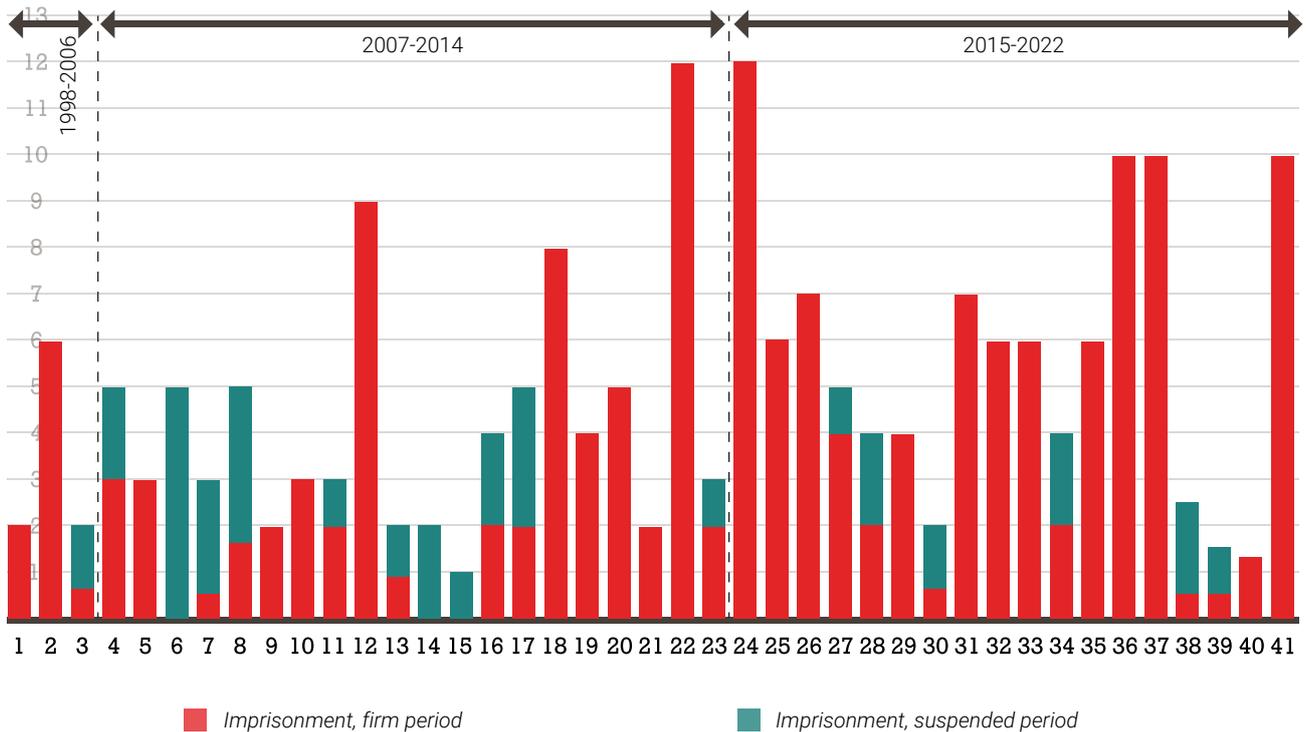


\*2022: first half year  
DATA: CNS

It can be observed that the proportion of sentences longer than 5 years has increased since 2014 (10/18 in the period 2015-mid 2022 vs. 3/20 in the period 2008-2014, see graph 3). However, it remains difficult to assess whether this evolution corresponds to an increase in the severity of sentences handed down by judges or to a significant number of particularly serious cases.

Graph 3

**Type and length of sentences**  
by chronological order of judgement  
(1998-2022\*), n=41



\*2022: first half year  
DATA: CNS

**Socio-epidemiological characteristics of the people involved in trials**

People in the trials have different profiles based on the main socio-epidemiological characteristics of the HIV population in France (Graph 4), as well as on whether they are offenders (Graph 5) or victims (Graph 6):

- 34 (83%) of the 41 cases brought to court involved heterosexual HIV transmission, compared to 7 (17%) homosexual HIV transmission. Heterosexual transmission is thus massively over- and homosexual transmission underrepresented among cases taken to court compared with their share in the French epidemic (56% heterosexual men and women and 44% GBMSM among sexually infected PLHIV in 2011).
- The gender distribution is extremely unbalanced between offenders and victims in cases of heterosexual transmission: almost all offenders are men (30/33) and the victims, conversely, are women (52/55).
- Even if their proportion has increased in the recent period (2015 to mid-2022), immigrants from sub-Saharan Africa remain strongly underrepresented in proceedings, given the significant share of this group among heterosexual PLHIV.

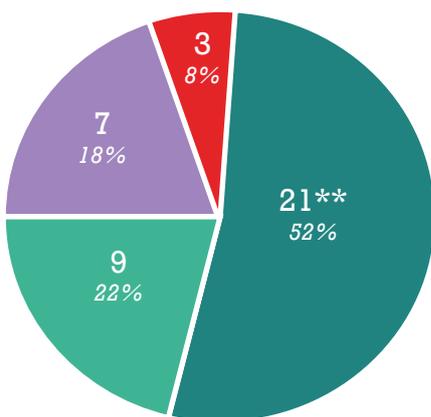
Graph 4

**Sexually infected PLHIV in France**  
by main socio-epidemiological groups (2011)



Graph 5

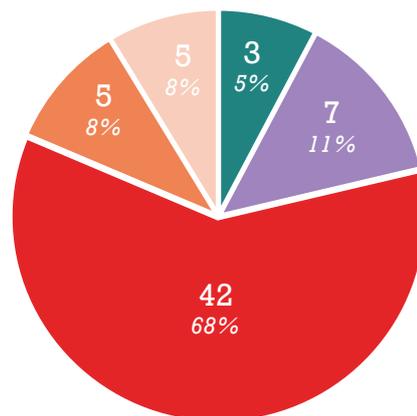
**Socio-epidemiological characteristics of offender**  
(1998-2022\*, n=40\*\*)



\* 2022: first half year  
\*\* one repeat offender convicted twice  
DATA: CNS

Graph 6

**Socio-epidemiological characteristics of victims**  
(1998-2022\*, n=62)



\* 2022: first half year  
DATA: CNS

## Investigations

Police investigations frequently lead to the disclosure of personal information. For example, the initiation of an investigation frequently results in the confiscation of the defendant's computer and/or cell phone. The police then contact everyone on the contact list, asking them if they had any intimate contact with the accused and if they were aware of their HIV status. Depending on the officer, these investigative methods are used with varying degrees of discretion. Furthermore, medical examinations can be performed to compare the viruses of the complainant and the accused.



## GUIDELINES AND TRAINING ON HIV CRIMINALISATION

There are no specific guidelines or trainings on HIV criminalisation. However, access to medical data in the context of a judicial investigation is strictly regulated. It is restricted to the seizure of medical files upon the request of an investigating judge. Only a mandated expert physician is authorised to examine the file in order to produce a report, which is added to the proceedings. Doctors, on the other hand, may be unaware of the rigorous regulations restricting access to medical information in the context of a criminal investigation, which may lead them to reveal information to the police and thereby violate medical confidentiality.

## THE ROLE OF MEDIA



In general, the media's coverage of criminal cases is "leading to the dissemination of approximate or misleading information on HIV and the exacerbation of the stigmatization of infected people. The media coverage of trials most often favours emotion over analysis and leads to a simplification of situations. ...and tend to generalise and project a very negative image on all PLHIV."<sup>24</sup>

However, most cases are reported only in local media and do not reach a national audience. Moreover, at least in recent years, the media has refrained from revealing the names of the convicted.

## INFORMATION ON HIV CRIMINALISATION TO PEOPLE LIVING WITH HIV



The only document available on this subject is an opinion followed by recommendations on the criminalisation of HIV sexual transmission published in 2015 by the French National AIDS and Viral Hepatitis Council (CNS). Although this document is not widely known to the public. There was a special feature in the REMAIDES journal published by AIDES, disseminating information about prosecutions for HIV exposure or transmission.<sup>25</sup>

<sup>24</sup> Avis suivi de recommandations sur la pénalisation de la transmission sexuelle du VIH en France - Conseil national du sida et des hépatites virales, 2015.

<sup>25</sup> REMAIDES, n°94, 2015, pages 42-48

## KEY POPULATIONS MOST AFFECTED BY HIV CRIMINALISATION AND OTHER DISCRIMINATING LEGISLATION AND POLICIES

### Drug use

The legal framework that regulates drug use is repressive and has a severe impact on the lives of people who use drugs (PWUD).

The law related to health measures to fight against drug addiction and the repression of trafficking and illicit use of poisonous substances, known as the "1970 law", governs French policy in the fight against drugs and their use. The French legal framework has constantly reinforced this very repressive legal framework by creating new offences linked to the use of drugs and introducing additional penalties. During the years 2018 – 2022, the justice reform bill introduced a fixed fine for drug consumption in order to relieve the courts. In practice, this is a health countermeasure, which puts law enforcement agencies on the front line. As such, users of psychoactive substances are arrested, fined, and face the possibility of a criminal record.

### Sex work

Sex work is not prohibited in France. However, the legal texts that regulate it hinder its practice. Two national legal instruments, in particular, are part of a repressive approach to sex work, such as the law from April 13, 2016, or "client penalization law", and the law against pimping. The criminalisation of clients resulted in fewer clients. Additionally, it reduces the power of sex workers to negotiate their rates and working conditions. This leads to income loss, difficulty imposing condom usage, and refusal of risky practices: these implications are disastrous in terms of quality of life, access to health, and HIV prevention. The law against pimping prohibits sex workers from organizing to protect themselves and hinders their access to housing, financial autonomy and health care.



## THE IMPACT OF THE COVID-19 REGULATIONS ON PEOPLE LIVING WITH HIV

The respondents did not observe the impact of the COVID-19 regulations on PLHIV.

# FINLAND

Non-disclosure of HIV status is formally not a criminal offense. The provisions of the Criminal Code apply to both exposure and transmission of HIV and other communicable diseases, while differentiating between intentional or negligent exposure/transmission.

Undetectable viral load is increasingly used in court proceedings and most cases are dropped if the person can prove that they have an undetectable viral load. The most recent Supreme Court ruling shifted the practice of HIV criminalisation, stating that being on ART, using condoms, and having a viral load of less than 200 copies/ml excludes the use of punishment.

## COUNTRY STATISTICS



The population of Finland is 5.542 million (2022) and by mid-2022 4,612 people have been diagnosed with HIV. During the reporting period, 90 % of people were on treatment and there was an estimated 95% of those receiving treatment have an undetectable viral load.

The number of new cases in Finland has been stable in the past few years. In 2018 there were 153 new HIV diagnoses reported, almost the same as in the previous year (158). The new cases are concentrated in the Helsinki and Uusimaa Hospital District (56%). The highest incidence is reported from the South Karelia hospital district (5.4 / 100,000).

The number of new infections among Finnish citizens have been steadily low since the 2000s due to effective prevention programmes and good coverage of HIV medication. Vertical transmission due to comprehensive HIV screening and HIV treatment in pregnant women are very rare in Finland, totally 1% since the beginning of the epidemic.

People of foreign origin account for slightly more than half of all HIV infections. Since 2013, this figure has risen above 50%, reaching 73% in 2021. In 2021, sex between men was the mode of transmission in 24% of new cases. Immigrants are increasingly aware of their HIV status and are already on treatment when they arrive in Finland, but they are classified as new cases. There are clearly challenges in developing prevention programmes that can reach migrants and other foreigners living in or visiting Finland.

For many years, new HIV-diagnoses among people who inject drugs were limited to one or two cases per year. However, this has changed, with 20 new cases reported in the last couple of years. Despite that, the number of new HIV cases in Finland remains low. The number of new HIV cases registered in Finland as a result of Ukrainian refugees reached a record high in 2022.



## RELEVANT LEGISLATION USED IN CASES OF HIV CRIMINALISATION

### **Non-disclosure of HIV status**

Non-disclosure of HIV status is not criminalised nor is there an obligation to disclose one's status in any situation in Finland. However, courts have interpreted the failure to disclose, in combination with unprotected sex, as exposure others to HIV, which can be criminalized under the Finnish Criminal Code.

### **Exposure to HIV and transmission of HIV**

Both for exposure and transmission chapter 21 (homicide and bodily injury) of the Finnish criminal code applies to those who expose others to the risk of HIV infection. The Supreme Court has recently applied section 5 (assault), section 6 (aggravated assault), and section 13 (imperilment) in cases of exposure. The law differentiates between intentional or negligent exposure/transmission. The above provisions of the Finnish Criminal Code are not HIV-specific and can be and have been applied to other communicable diseases.

## CASES OF HIV CRIMINALISATION



The court cases are closed from the public. As cases of HIV criminalisation are not public in Finland, there are no official statistics on the issue. Positiiviset, HivFinland are aware of the cases when they were contacted. There is an estimated number of a total of 20-25 cases that has taken place in Finland. The Supreme Court of Finland has had rulings in a total of five cases since 1993.

Since the last report in 2018-2019, there have been three additional cases: one in the Supreme Court in 2021, a further case of hepatitis transmission, and another of genital herpes criminalisation in 2023. There has been a shift in HIV criminalisation practice in Finland. Undetectable viral load is used more and more in prosecutions and in court proceedings, most cases where the person can prove with a medical certificate that they have undetectable viral load are dropped during investigation. For example, exposing someone at risk for HIV is punishable by law. Being on ART (and/or using condoms) and having a viral load of less than 200 copies/ml excludes the use of punishment, as showcased by the Supreme Court on September 15, 2021.

Despite the progress in the HIV criminalisation practice, in the most recent case, in January 2023 the District Court of Central Finland has convicted a man who, according to the court, infected his sexual partner with genital herpes. The man in his thirties and the victim had undisputedly discussed sexually transmitted diseases prior to the first sexual encounter. The man stated that he had been tested and had no STIs. The man, however, did not inform the victim that he had previously had sexual relations with a person who had genital herpes. The man stated that he had not been tested for herpes because he had no symptoms. According to the district court, genital herpes must be considered a serious disease under the Criminal Code. The district court sentenced the man to fines and compensation to the victim, including compensation for permanent damage, totalling more than 15,000 euros.



### GUIDELINES AND TRAINING ON HIV CRIMINALISATION

HIV-clinicians are informed by community organizations about HIV criminalisation on different occasions, mostly connected to relevant new scientific information or when a case is happening, but there is no organized training or official guidelines for any professions in Finland.

The national HIV expert group has been discussing HIV criminalisation on some occasions during the past approximately 12 years. A professor of criminal law has also been invited to present the current situation.

### THE ROLE OF MEDIA



Media reports covering HIV criminalisation cases are generally seeking for the sensational elements of the cases. The media has also been known for helping the police find further "victims" in HIV criminalisation cases, posting new with questions as "Have you had sex with person XYZ?" often also publishing photos of the person in the case. The most recent cases have been either reported factually or not at all. Positiiviset, HivFinland highlighted that the role of the media in HIV criminalisation cases has evolved over the years and improved significantly since the last reporting.

## INFORMATION ON HIV CRIMINALISATION TO PEOPLE LIVING WITH HIV



HIV clinicians inform their patients that it would be wise to disclose their HIV status to their sex partners even though having an undetectable viral load means one cannot transmit HIV. The situation of criminal liability in case of non-disclosure however, remains unclear.

### KEY POPULATIONS MOST AFFECTED BY HIV CRIMINALISATION AND OTHER DISCRIMINATING LEGISLATION AND POLICIES

Generally HIV criminalisation is harmful for all people living with HIV in Finland.

Drug possession, as well as drug use is illegal. Sex work is legal, but you must own the apartment where you sell sex and can only provide your own services. Pimping and purchasing sex from a human trafficking victim or a minor are also illegal.

Finland does not fully recognise transgender people's rights.

Migrants who do not have a permanent address are not eligible for HIV treatment.

### PRIORITIES IN RELATION TO HIV CRIMINALISATION

Positiiviset and HivFinland are working to raise public awareness of recent developments and the U=U message. They also aim to ensure that people whose viral load is not undetectable (under 200) for any reason are not prosecuted for HIV exposure.

# GERMANY

Non-disclosure of the HIV status is not criminalised. However, the exposure to and transmission of HIV are criminalised when a person living with HIV has not disclosed their status to their sexual partner. Exposure is considered as an attempt of and transmission as a bodily injury or assault. These provisions also apply to other communicable diseases. If the accused has an undetectable viral load, charges may be dropped during the investigation process.

## COUNTRY STATISTICS



Germany has a population of 84 271 000 people. Germany has been very close to reaching the first 90 of the UNAIDS treatment targets: the estimated number of all people living with HIV is around 90,800, by the year 2021. 82.200 people have been diagnosed; and have already reached the second and third 90 targets: 78.912 (96%) were on treatment and 75.755(96%) had an undetectable viral load.

The number of new diagnosis has been stable and showed a slight decrease in the last few years due to effective prevention programmes and the upscale of treatment. In the future, further decrease is expected due to the national rollout of PrEP in Germany.



## RELEVANT LEGISLATION USED IN CASES OF HIV CRIMINALISATION

### Non-disclosure of HIV status

Non-disclosure of HIV status is not criminalised nor is there an obligation to disclose one's status in any situation in Germany, however, when it comes to the criminalisation of exposure to HIV and transmission of HIV, the relevant provisions of the German Criminal Code apply only in case of non-disclosure.

### Exposure to HIV

Exposure to HIV is criminalised under §223 (bodily injury) and §224 (assault) of the German Criminal Code as an attempt and if the person living with HIV has not disclosed their status to their partner. Other relevant provisions are found under §22 and §23 of the German Criminal Code which define attempt and criminal liability.

### Transmission of HIV

Transmission of HIV is criminalised under the same provisions as exposure to HIV when the actual transmission of the virus took place and if the person living with HIV has not disclosed their status to their partner.

The above provisions of the German Criminal Code are not HIV-specific and can be applied to other communicable diseases. The proof of disclosure relies on the accused.

## CASES OF HIV CRIMINALISATION



Deutsche Aidshilfe are aware of 54 court cases between 1987 and 2016. 34 cases of the criminal cases ended in conviction, 7 in acquittal in 8 cases the proceedings were closed before reaching the court.

Prison sentences have been imposed between 1 year and 10 years, some of them with suspension. Most of the criminalisation cases were against gay and bisexual men and other men who have sex with men (GBMSM) (21), while there were further 19 cases against heterosexual men and 5 against women. Migrants have been accused in 4 and sex workers in 2 cases during this period.

Court hearings are open to the public. Courts are taking into consideration the use of condom and increasingly the adherence to treatment and undetectable viral load. Charges are often dropped during investigation when the accused have an undetectable viral load.

No negative trends in terms of HIV criminalisation cases have been observed in recent years. On the contrary, in most cases, untransmittability due to therapy is recognised as an adequate form of protection. As a result, disclosure of HIV status is no longer required.

There is no available information regarding criminal proceedings at present. In several federal states, police records are still labelled with the abbreviation 'anst' (infectious) if police become aware of an HIV or HCV infection. However, this does not necessarily result in criminal proceedings but is meant to provide protection for officers during interactions with PLHIV. The Deutsche Aidshilfe believes this to be an ineffective procedure and raise concerns about data protection.



## GUIDELINES AND TRAINING ON HIV CRIMINALISATION

There are no guidelines or training provided to professionals involved in HIV-criminalization in Germany. There are few defence lawyers who have expertise in the topic and NGOs such as Deutsche Aidshilfe and its member organizations provide information and support in cases when they are contacted.

## THE ROLE OF MEDIA



The media are often on the side of the supposed victims of HIV-exposure and transmission. Reports also like to highlight the sensational elements of the cases, especially when a known person is under investigation or in court.

In recent years, however, there have also been increasing reports about science and the consideration of the viral load.

## INFORMATION ON HIV-CRIMINALISATION TO PEOPLE LIVING WITH HIV



The Deutsche Aidshilfe provides legal information and information on HIV criminalisation in its brochures and on their websites.

### **KEY POPULATIONS MOST AFFECTED BY HIV-CRIMINALISATION AND OTHER DISCRIMINATING LEGISLATION AND POLICIES**

The possession of drugs is illegal, with different regulations by federal states.

Migrants with irregular status have no access to health services, including HIV-treatment and care services. In some of the federal states of Germany, migrants applying for stay or asylum are mandatorily tested for HIV.

The police keeps records of the HIV and hepatitis status of people when they acquire such information. The files of the person from then on is marked with 'ANST' short for contagious in German.

### **PRIORITIES IN RELATION TO HIV CRIMINALISATION**

The DAH defines its priority work areas as the prohibition of mandatory testing, the elimination of the labelling of files with the abbreviation 'ANST' for infectious individuals, and a liberal drug policy.

# GREECE<sup>26</sup>

Non-disclosure of HIV status is not criminalised. Exposure to HIV can be prosecuted under the Criminal Code, but this has not been used in HIV exposure cases due to specific conditions that should be fulfilled. Transmission of HIV is criminalised under the Criminal Code and is based on various factors such as the offender's knowledge of their status, relationship with the victim, and viral load. These provisions are not HIV specific and can apply to other communicable diseases. In 2018, a court for the first time in the country decided that a person with an undetectable viral load cannot transmit HIV.

## COUNTRY STATISTICS



The population of Greece in 2021 was approximately 10.64 million.<sup>27</sup> It is estimated that there are 16,743 people living with HIV, 11,563 have been diagnosed.<sup>28</sup> 11,129 are receiving treatment. Since the HIV outbreak among People who inject drugs (PWID) in 2011 and the change of the treatment guidelines in 2015, treatment has been available after diagnoses. Particularly in 2021, 90% of the diagnosed GBMSM got treatment, 80% of the diagnosed people on the move got treatment and 74% of the diagnosed PWID got treatment. In 2021, the average period of getting treatment after being diagnosed is forty days (GBMSM: 36; People on the move: 45; PWID: 67).

In general, a total of 14.337 of the people diagnosed (74.4%) were Greeks, 4,045 (21%) were foreigners of known nationality and 883 (4.6%) diagnoses were of unknown nationality. The age group of 30-39 years old has been the predominant age group in diagnoses over the last twelve (12) years. In people aged  $\geq 50$  years old, there has been a slight increase in the percentage of incidence since 2016.

It seems that the cases infected through unprotected heterosexual contact are diagnosed at a higher median age compared to men who have sex with men (MSM) and people who inject drugs (PWID), with an exemption for the years 2018 and 2020. Greece has experienced a rise in HIV diagnoses from 2011 to 2012, especially among PWID. A decline in the annual rate of HIV diagnoses has been observed since 2013. In 2021, new diagnoses approximated the pre-epidemic number of cases. During 2019 - 2021, the total number of new diagnoses was stabilised.

However, data from the HIV/AIDS reporting system should be cautiously interpreted, because they may not reflect the incidence of HIV and depend on patterns of HIV testing, such as timeliness and delayed reporting. The decrease in the number of new diagnoses should be cautiously interpreted also due to restrictions imposed by the COVID-19 pandemic.

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26 This report has been conducted from PRAKSIS NGO in Greece and the valuable contribution from organizations from the civil society sector, the public sector and experts in the field of discussion. The methodology followed included the fulfillment of the questionnaire from each participant at their level of expertise as well as from PRAKSIS multi-disciplinary team, the analysis and discussion from PRAKSIS and the finalization of the outcomes using a synthesis of a desk review and all information provided from all participants. The multidisciplinary team of PRAKSIS that provided information according to their expertise and also combined all information from all actors involved were: Marianella Kloka (Advocacy Officer), Maria Moudatsou (Forensic Psychologist), Eleni Dimopoulou (Psychologist), Dimitris Varadinis (Lawyer), Nicky Voudouri (Psychiatrist of Children & Adolescents).

- The participants from other entities, that provided information from their expertise were: Chara Papageorgiou (Lawyer), Chrysoula Botsi (MD, Pulmonologist-Tuberculologist, Infectious Diseases Unit, Hospital "A. Syggros"), Evangelos Mallios (Lawyer), Konstantina Stergiatou (Police Officer A, Hellenic Police, Psychiatric Forensics), Konstantinos Farmakidis-Markou (Lawyer), Nikolaos Dedes (Positive Voice).

27 The World Bank, 2021

28 EODY on the 10th National Meeting on HIV and Hepatitis, September 22-24-2022



## RELEVANT LEGISLATION USED IN CASES OF HIV CRIMINALISATION

### Non-disclosure of HIV status

In Greece, non-disclosure of HIV status is not criminalised nor is there an obligation to disclose one's status in any situation.

### Exposure to HIV

Under national legislation, exposure to HIV is prosecuted under the provision of Article 285 of the Criminal Code (Breach of disease prevention measures). According to this provision, whoever violates the measures ordered by law or the competent authority to prevent the invasion or spread of a contagious disease shall be punished: a) by imprisonment for up to three (3) years or a fine if the act may result in a common danger to animals, b) with imprisonment and a fine if the act may result in a risk of transmission of the disease to an indefinite number of people.

### Transmission of HIV

The transmission of HIV is prosecuted under the provision of Article 310 of the Criminal Code (serious bodily harm).

To the best of PRAKSIS NGO's knowledge, criminal courts have only addressed the transmission of HIV through sexual contact. The jurisprudential criteria, as they have been developed so far, vary depending on:

- whether the offender knew of their seropositivity,
- the type of relationship they had with the alleged victim.
- whether the perpetrator was consistently receiving antiretroviral treatment and whether he had a detectable viral load that he could transmit.

(c) whether they proposed/ somehow imposed unprotected sexual intercourse on the alleged victim and whether the alleged victim accepted this and had intercourse with them without the use of a condom.

In 2015, the Criminal Division of the Supreme Court made a significant ruling when it overturned a conviction by the Athens Court of Appeal. The appellant-accused had been sentenced to one year in prison for attempted aggravated bodily harm by negligence on consecutive occasions. However, the Supreme Court found that the defendant had raised a plea of factual error immediately after the opening of the evidentiary procedure. Specifically, the defendant argued that based on assurances from her doctors, she believed that there was no risk of transmitting the HIV virus for which she was being treated, as a result of her antiretroviral treatment and the use of condoms during sexual intercourse.

## CASES OF HIV CRIMINALISATION



According to PRAKSIS NGO's records, the known cases of HIV criminalisation are as follows:

- In 2007, a decision was made in a case involving a Greek heterosexual man who was convicted of a felony for HIV criminalisation. However, the exact start date of the prosecution is unknown to PRAKSIS NGO. Additionally, it is unknown whether the first instance decision was appealed and overturned.

- The decision was issued in 2013, while the prosecution started in May 2012. It concerned three Greek women, drug users, who were prosecuted for the offence of attempted grievous bodily harm with intent to inflict grievous bodily harm and for illegal prostitution. They were acquitted of all charges.
- The decision was issued in 2013, while the prosecution started in May 2012. It concerned five women, drug-users, who were prosecuted for the offence of attempted grievous bodily harm with intent to inflict grievous bodily harm and for illegal prostitution; they were acquitted of all charges. One of the acquitted persons was a minor EU-national, but the court rejected the claim as insufficiently proven and tried her as an adult.
- The decision was issued in 2016, while the prosecution started in May 2012. It concerned three Greek women, drug-users, who were prosecuted for the offence of attempted grievous bodily harm and for illegal prostitution. They were acquitted of all charges.
- The decision was issued in 2016, while the prosecution started in May 2012. It concerned eleven women, drug-users, who were prosecuted for the offence of attempted grievous bodily harm and for illegal prostitution. Unfortunately, at the time of the trial 4 of the accused had died. The others were acquitted of the charge of attempted grievous bodily harm while their prosecution for the offence of illegal prostitution was dropped due to the statute of limitations.
- The decision was issued in 2017, while the prosecution started in May 2012. It concerned one foreign woman who was a drug-user, prosecuted for the offence of attempted grievous bodily harm and for illegal prostitution. She was acquitted of the charge of attempted grievous bodily harm while their prosecution for the offence of illegal prostitution was dropped due to the statute of limitations. The accused was convicted twice before the Court of Cassation overturned the second instance conviction for insufficient justification. The Court of Appeal finally found the accused innocent.
- The decision was issued in 2017. It concerned a foreign woman, born in the 1980s, a victim of trafficking. Her prosecution started in 2012. The defendant was convicted at the first instance and acquitted at second instance.
- The decision was issued in 2017 while the defendant's prosecution started in July 2012. He was prosecuted for the offence of attempted grievous bodily harm with intent to inflict grievous bodily harm and was unanimously acquitted.

According to the civil society actors, it is worth stating that in addition to the criminal dimension (criminalisation), there have been cases of discrimination in the labor and medical field. For example, there have been at least five (5) instances of PLHIV being dismissed solely due to their diagnosis (2009, 2013, 2015, 2019, 2019). Additionally, there was one case in which an HIV-positive individual was persecuted for unknowingly donating blood (in 2006), but ultimately acquitted.

Whereas the Greek trials are public, article n. 330 of the Greek Code of Criminal Procedure predicts the possibility of a private of trial when there are special reasons for the protection of the private or family life of the person. The law allows the accused to request that the hearing take place behind closed doors, without the presence of third parties.

The Greek Court ensures the protection of sensitive personal data by maintaining the secrecy of the criminal procedure and respecting the presumption of innocence, as per civil liberties. During the investigation process, the police must comply with the law and regulations regarding the protection of general and sensitive personal data. However, in the 2012 case, this

legal protection was not upheld, as the public prosecutor disclosed the full personal details, including names, addresses, places and dates of birth, photos, criminal prosecution data and medical health data of women involved, without their consent. This decision was explained as being a matter of *"life and death"* and *"protection of public health"*. Such disclosures were made on the police website with the stated purpose of *"helping the ongoing investigation"* and *"protecting the public"*, despite no permission from the Data Protection Authority being sought. Women who were found positive for HIV without their consent had their names and photos published on the website, with the stated intention of informing men who had engaged with them, who could then be tested for HIV. The NGO, PRAKSIS, filed complaints against this decision, but they were dismissed without any reasoning. The duration of this publicizing was infinite, and as a result, the media widely reproduced women's names and faces. Even after the acquittal and revocation of all decrees of personal publicizing, the removal of all photos from sites and blogs has proven to be almost impossible. Despite the outcome being acquittal on all charges, the impact on the women's personal lives has been significant.

Moreover, in September of 2018, LGBTQI+ activist was brutally killed in plain view in the center of Athens. During the trial, the HIV status was used by the defendants as an aggravating factor, to portray the person in a negative manner and imply that the person was about to die sometime soon, regardless of the outcome of the case (namely the unjustified killing).

It is worth noting that Greece does not have HIV-specific penal provisions, and instead national Penal Law provisions, specifically Articles 308-314 which concern bodily harm/ injury (sections 308 to 314) are applied. It should be noted that until 2015, the Ministerial Decision 39A/2012 was applicable, entitled *"Regulations regarding the restriction of infectious diseases"*. Under this regulation, health examination, and where considered appropriate, hospitalisation and treatment were mandatory for people who had confirmed infectious diseases including HIV patients. This could lead to forcible quarantine, arrest and potential deportation of irregular third-country nationals who were HIV patients. This development was met with strong opposition from scientists and human rights advocates, leading to its abolishment in 2015 (Ministerial Decision 24834/2015).

In a significant development, decision No.1083/2017 from the Joint Penal Court of Athens acknowledged that at the time of the trial, *"the viral load was consistently below the detectable limit (<20copies /ml), which makes the transmission of the virus unlikely, while, in any case, according to scientific studies, when receiving treatment, transmission of the virus is reduced by 96%"*. This landmark decision has had a positive impact on potential prosecutions, as it effectively acknowledges that people living with HIV who receive treatment and maintain an undetectable viral load can live long and healthy lives and will not transmit the virus to their HIV-negative partners during sexual intercourse.



## GUIDELINES AND TRAINING ON HIV CRIMINALISATION

PRAKSIS NGO is not aware of any existing guidance for prosecutors, police officers, or HIV clinicians in Greece regarding HIV criminalisation. There is no regular training in HIV criminalisation for police officers, judges, lawyers, and the media. While ad hoc workshops are sometimes organised through specific actors in civil society or public organizations, there is no consistent training available.



## THE ROLE OF MEDIA

The role of the media in HIV criminalisation cases is crucial. The discourse of the media in cases of HIV criminalisation is usually negative, highlighting or promoting stereotypes. The media plays such an important role in how these cases are handled, the reports are usually sensationalising, stigmatising and scapegoating people living with HIV and other key populations. Most references fuel the stigma around HIV in the public. From a general point of view, the media presents people living with HIV as dangerous people; who endanger public health. The most common stereotypes found in related publications are:

- An "infected" person who endangers public health...
- The "foreign" infected person who endangers public health...
- The disruption of family stability. The institution of the family is endangered by sex work...
- Usually "infected" sex work is considered as a bomb for the foundations of the family...
- Homosexuality is used as a stereotype...

Because there is no special training for journalists and the media to deal with such situations, there have been incidents such as those in 2012. For example, the 2012 "witch-hunt" was reported in light of a public health threat and "disorderly conduct".

## INFORMATION ON HIV CRIMINALISATION TO PEOPLE LIVING WITH HIV



The National Public Health Organization (NPHO) has been providing support services for HIV/AIDS, including a Counseling Station and a psychological support hotline, since 1992.<sup>29</sup> The NPHO also runs the Office of HIV/AIDS & Sexually Transmitted Diseases, which offers a range of services.

Moreover, there is available information in C. Politis, HIV/AIDS PUBLIC HEALTH AND HUMAN RIGHTS, Athens, 2002 and Circular of the Ministry of Health with no. Y1/3239/4.7.2001. Additionally, to the public bodies, there are civil society organisations that work with and support people living with HIV/ AIDS, providing services and advocating for their rights (such as Positive Voice, Centre of Life, PRAKSIS etc.).

## KEY POPULATIONS MOST AFFECTED BY HIV CRIMINALISATION AND OTHER DISCRIMINATING LEGISLATION AND POLICIES

There are laws that cultivate the discriminations against PLHIV in some professional fields such as the military, sex work, healthcare.

### Drugs

Drug possession (and trafficking) is criminalised in Greece. The Greek legislation distinguishes between drug possession/acquisition for personal use and for commercial use, and the punishment varies accordingly.

29 <https://eody.gov.gr/tilefoniki-grammi-symvoyleytikos-stathmos-gia-to-aids/>, <https://eody.gov.gr/disease/aids/>

Law No 4139/2013, introduced in 2013 and is still applicable, stipulates that individual using drugs or obtaining or otherwise processing drugs for personal use only, in quantities to satisfy their own needs, or cultivating cannabis plants in numbers and areas justified for personal use only, can be sentenced to no more than 5 months in prison, subject to suspension. An acquittal is also foreseen in cases where the use of drugs was only on occasional basis. The above Law removed the definitions of all quantities of substances for personal use in contrast to the previous law; this decision is now left to judges, based on the substance, its quantity and purity, and the needs of the offender. Those convicted of drug supply may be sentenced to up to 3 years' imprisonment if addicted and they are using drugs for their personal needs. Drug trafficking is punishable with sentence of at least 8 years, and a fine up to 300,000 Euros.

### **Sex work**

Sex work is not criminalised; however, sex workers must meet an exhaustive list of criteria in order to be able to offer their services legally, so sex workers in Greece are most of them practically illegal.

Sex work in Greece is regulated by Law 2734/1999.

According to national law, sex workers need to possess a legal certificate issued by the competent local authorities, subject to many requirements. Only 10% of women have a license to legally work.

Sex work is highly regulated and only allowed in state-licensed brothels. Municipalities determine the number of licensed brothels allowed in their local area. There are a number of criteria that must exist (especially for the distances from church, squares, school etc.) that make the license for a place almost impossible.

Furthermore, sex workers must be tested for STIs every 15 days, HIV every 3 months, and syphilis every month. According to the 2734/1999 legislation, sex working is forbidden to people living with any kind of transmitted or infectious diseases, such as HIV.

For those who work without possessing a license or outside a regulated brothel, the law provides a two-year imprisonment plus a fine. In cases of sex workers who engage in sexual acts knowing they have infectious disease, the relevant provision of Law 2734/1999 up to one year.

### **Other**

Another forbidden zone for people who have hepatitis B, C, or HIV is the work in the chronic hemodialysis units. The presidential decree 225/2000 (article 13 par.4) does not permit doctors, nurses or auxiliary staff to work in this field if they test positive to these diseases, contradicting the legislation 4443/2016 against any kind of discrimination.

Concerning blood donation: Many countries have laws, regulations, or recommendations that effectively prohibit donations of blood or tissue for organ and corneal transplants from men who have sex with men (MSM), a classification of males who engage or have engaged in sex with other males, regardless of their sexual activities with same-sex partners. Greece was one of these countries for many years. On the 10th of January 2022, Health Minister and his deputy, signed a ministerial decree. It will come into force upon publication in the Government Gazette.<sup>30</sup>

<sup>30</sup> Υπογράφηκε η Υπουργική Απόφαση για το νέο έντυπο Αιμοδοσίας" (in Greek). 10 January 2022. Archived from the original on 10 January 2022.



## THE IMPACT OF THE COVID-19 REGULATIONS ON PEOPLE LIVING WITH HIV

As far as PRAKSIS NGO is aware, no similar PLHIV and HIV criminalisation cases affected by regulations or new legislations due to COVID-19 have approached the structures. However, there seemed to be a lack of access to health care system during the lockdown period. PRAKSIS NGO is unable to state to what extent something like that affected groups with vulnerable and multi-vulnerable characteristics, however, we can assume that there has been a negative linkage. If there is a connection of the regulations or new legislations with PLHIV and HIV criminalisation cases, it could be indirect. Due to the difficulty of accessing the health system and the initiation of antiretroviral treatment and by extension delaying its support will delay reaching the undetectable status, and then the untransmissible status (U=U).

### PRIORITIES IN RELATION TO HIV CRIMINALISATION<sup>31</sup>

PRAKSIS NGO identifies as key priorities the followings:

- Broadening knowledge and awareness at different levels of the population: general public population; security Forces: Police/ Army, judicial body (Prosecutors, Judges, Lawyers); media; academic institutions; health care professionals, people living with HIV/AIDS (PLHIV).
- Dedicated trainings lifelong learning and adult learning updated with new medical information
- Work/employment

Advocacy for the prohibition of a negative HIV test certificate requirement during the recruitment processes for all professions where this is not needed. Currently such demands are not legal either, but the lack of a law that explicitly prohibits these procedures would ensure that such cases eclipse.

- Blood donation

Legislative amendment on laws, regulations, or recommendations that effectively prohibit donations of blood or tissue for organs and corneal transplants from men who have sex with men (MSM). Greece was one of these countries for many years. On the 10th of January 2022, Health Minister and his deputy, signed a ministerial decree. It will come into force upon publication in the Government Gazette.

- Need for legislative amendment on Sex-work/ Drug possession
- Health-related transmission/Stigma
- Legal counselling and judicial defense of HIV-positive people.
- Accommodation
- Free legal aid from a specialist.

<sup>31</sup> \*In the response framework of the survey, organizations were approached that work with and support people living with HIV/AIDS, providing services and advocating for their rights, in order to include all the responses, the question is answered at the country level, and not at an organization level.

## EXPECTED CHANGES AND DEVELOPMENTS

In July 2019, Greece developed a national strategy for HIV/AIDS for the period of 2019-2025. The strategy was developed through the cooperation of various actors. The strategy includes four main objectives:

- reducing new infections,
- access to treatment and quality of life for people living with HIV,
- protecting the human rights of those living with HIV and key affected populations,
- and promoting cooperation and implementation of the strategy.

Some aspects of the strategy are transferred into laws, like the right to blood donation for people who had homosexual activity and the access to PrEP for some key populations, though need to be further defined. Also, the Ministry of Health submitted an amendment to the Hellenic Parliament, which establishes the availability of the prophylactic treatment for HIV, PrEP (Pre-Exposure Prophylaxis), in Greece.

In the draft law for the establishment and organisation of the Association of Radiology Technologies-Radiotherapy and in particular, Article 6 of the amendment of the Ministry of Health, establishes the procedure for preventive provision of antiviral/antiretroviral drugs ("Pre-Exposure Prophylaxis", PrEp) to HIV negative individuals who are exposed to a high-risk infection.

Another important step in the legal protection and combating of discrimination faced by PLHIV in their working environment. On 06/10/2022, in the framework of rationalizing insurance and pension legislation, strengthening vulnerable social groups and other provisions, Article 40 Prohibition of discrimination in access to work against HIV-positive people was posted for consultation. The consultation will be completed on 20/10/2022. However, the adoption of the strategy as a whole, is a vivid advocacy effort for the ad hoc Commission and particularly from the civil society engaged in this process. Therefore, we need to evaluate after a specific period in order to see whether the adoption and then the applicability of them has taken place.

# HUNGARY

There is no explicit provision that criminalises the non-disclosure of HIV status. The intentional or negligent exposure of someone to HIV constitutes a crime: this act may be prosecuted as causing bodily injury resulting in permanent disability or severe deterioration in health. Even if the offender does not transmit HIV, they may face charges for attempting to commit the crime.

## COUNTRY STATISTICS



In 2022, Hungary's population was 9 689 010 million people. In 2018, an estimated 10,000 people were living with HIV (PLHIV).<sup>32</sup> Based on the governmental source, in 2022, there were 4564 people diagnosed with HIV.<sup>33</sup>

Both the incidence and prevalence of HIV in Hungary is relatively low. Every year, the National Public Health Centre registers around 200-250 new infections. The highest incidence rates are recorded among GBMSM: 2670 people (1985 – 2022). The second highest incidence rate is found in the heterosexual group: 599 people (1985 – 2022). The new infections are concentrated in Budapest and the central part of the country.



## RELEVANT LEGISLATION USED IN CASES OF HIV CRIMINALISATION

### Non-disclosure of HIV status

There are no specific laws that criminalise the non-disclosure of HIV status.

### Exposure to HIV and transmission of HIV

In line with the Criminal Code, "if someone exposes another person - intentionally or negligently - to HIV during sexual intercourse, they can be charged with the crime of causing bodily harm resulting in permanent disability or severe deterioration in health. If the perpetrator does not intend to infect the other person but fails to anticipate the effects of their action because they did not act with "the expected attention and caution," the offense is considered negligent. (Act no. C of 2012 on the Criminal Code, Section 164 (6) d)). It is left to the discretion of the judge to decide what fulfils the requirements of "expected attention and caution". In theory, if the perpetrator intends to transmit HIV, even if another person does not contract it, the perpetrator may face criminal charges for attempting to commit the crime.

32 Dr. János Szlávik, 2018

33 nnk.gov.hu



## CASES OF HIV CRIMINALISATION

Date	Case	Sentence
1994	A process against a man for the attempt to cause bodily harm resulting in severe deterioration in health. It was confirmed that no transmission happened and all the partners were aware of the man's HIV status.	No charges were brought against the person.
1998	A process against an HIV positive monk who, despite knowing about his HIV status, allegedly transmitted HIV to his younger partner. The suspect was aware of his HIV status, he received information from his doctors on preventing transmission.	He was in detention for months but did not testify in the procedure, thus there was only indirect evidence against him. The prosecution service did not press charges.
2000	A proceeding against a porn actor for bodily harm with intent to endanger life. The investigation failed to find out to whom he passed the infection.	The case was dropped because there was no criminal offence.
2008	A man who transmitted HIV to his wife and ex-girlfriend was charged with causing bodily harm resulting in severe deterioration of health. He learned about his HIV status in 2000. Later, his wife was also informed but she reported the case to the police only in 2006.	In the first instance, the court acquitted the defendant due to insufficient evidence. In the repeated procedure, the defendant was sentenced to 10 months' imprisonment.
2009	A man had an altercation with the security guards. When he tried to run away, he tripped and bruised his face and his mouth and was bleeding. The security guards took him to provide first aid but he tried to run away once again. One of the security guards tried to stop him when the perpetrator spit his saliva mixed with blood on the face of the security guard who accidentally swallowed it. The victim was not infected as a result of the act, but according to the court, the defendant's act was capable of causing that.	The court found that the perpetrator was aware of the fact that the infection could be transferred by spitting blood into the victim's mouth. The court found the perpetrator guilty of the attempt to cause bodily harm resulting in severe deterioration in health. In the second instance, the court upheld the decision.

There was no case where HIV status was considered an aggravating factor. On the contrary, the Háttér Society identified a few cases in which "AIDS-diagnosis" was considered a mitigating factor. In these cases, the court considered the defendants' health status when applying a more lenient punishment.

The HIV status of the victim(s) is a legitimate ground for restricting the provision of information on the procedure.<sup>34</sup> The court, the prosecution service and the investigating authorities are obliged to handle such case documents confidentially, and to ensure that such data may be inspected only by the court, the prosecution service, or the investigating authority.<sup>35</sup>

<sup>34</sup> Section 109 (1) b CCP

<sup>35</sup> Section 99 (3) CCP



## GUIDELINES AND TRAINING ON HIV CRIMINALISATION

There are no guidelines on HIV criminalisation in the country.

### THE ROLE OF MEDIA



HIV criminalisation cases are rare in Hungary, thus, they always attract significant media attention. Some of the cases mentioned above received extensive media attention and coverage. The news articles and media coverage of HIV criminalisation-cases were rather sensational, resulting in clickbait pieces, and the tone at times lacked the required objectivity and was judgmental.

Reporting on HIV criminalisation cases generally follows the patterns of reporting on high-profile criminal cases, the discussion of the fact pattern is detailed. They include information that is not relevant to the legal issue concerned, and it contains every personal information allowed by data protection laws, and a detailed description of the act, and the individual's personal circumstances (e.g. their profession, relationship status, sexual orientation). While neither of the news items reviewed mentioned the defendant's name, those who know them may be able to identify them.

### INFORMATION ON HIV CRIMINALISATION TO PEOPLE LIVING WITH HIV



In 2007, the Háttér Society published an information booklet "HIV and the Law", focusing on the rights of PLHIV.<sup>36</sup> It provided a detailed, yet accessible overview of the applicable laws focusing on data protection and confidentiality, testing, the basic rights of PLHIV, rights at work and in the health care system, families and children, and criminal law. The rights of PLHIV in the health care system are also addressed in a recent edition of Pozitív Szemmel (With a positive eye)<sup>37</sup>. Both publications were / are available in print and online, but they might not have reached all PLHIV.

### KEY POPULATIONS MOST AFFECTED BY HIV CRIMINALISATION AND OTHER DISCRIMINATING LEGISLATION AND POLICIES

#### Drug use

Section 178 of Act C of 2012 on the Criminal Code states that "anyone who manufactures, acquires, possesses, imports or exports, or transports narcotic drugs in transit across the territory of Hungary is liable for a felony punishable by imprisonment ranging from 1 to 5 years." The penalty increases in proportion to the amount of narcotic substance involved. Drug-related offences committed with the involvement of a minor or near an educational institution entail harsher penalties (Criminal Code, Section 179). Section 180 permits the prosecution to drop charges if the defendant solely manufactured, acquired, or possessed a small quantity, admitted guilt, and demonstrated participation in a rehabilitation program.

36 Available at: <https://hatter.hu/sites/default/files/dokumentum/kiadvany/hivjog.pdf>

37 Available at: <https://hatter.hu/sites/default/files/dokumentum/kiadvany/pozitiv-szemmel-2020-www.pdf>

### Sex work

Sex work is not criminalised in itself; nonetheless, the Criminal Code punishes pandering (Section 200), procuring for prostitution or sexual act (Section 201), and living on prostitution earnings (Section 202). In the event of a 'mass emergence of sex work', municipalities are obliged to designate areas where sex workers can offer their services. If a sex worker provides sexual services outside of the legal sex work zone, they may face misdemeanour charges under Act II of 2012. Underage offenders are not subject to prosecution (Section 172).

### People in prisons

People in prisons living with HIV are detained separately in a unit designated for that purpose in one of the penitentiary institutions.<sup>38</sup> Prison officials argue that segregation protects inmates living with HIV from discrimination by their peers and their life expectancy is higher than that of non-incarcerated PLHIV.<sup>39</sup>

In 2000, the Commissioner for Fundamental Rights found that a defendant's rights to the highest attainable standard of health were violated because nurses in a prison hospital refused to provide treatment that involved getting into contact with the blood of an HIV-positive prisoner. The ombudsman emphasized that medical staff have no right to object to such treatment.<sup>40</sup>

### Migrants

Applications for residence permits contain a question about whether or not a person has any contagious diseases, such as HIV/AIDS, tuberculosis, hepatitis B, syphilis and others. Although HIV status does not automatically result in rejection, it complicates and lengthens the procedure.



## THE IMPACT OF THE COVID-19 REGULATIONS ON PEOPLE LIVING WITH HIV

Laws enacted in response to the pandemic do not appear to have an impact on PLHIV or HIV criminalisation cases.

### EXPECTED LEGAL CHANGES AND DEVELOPMENTS

The Háttér Society is unaware of any particular changes.

38 Tököl

39 Szilávik János - Kincsné Bak Erika: HIV és drog - HIV fertőzött elítéltek, Börtönügyi Szemle 2010/3

40 OBH 907/2000

# IRELAND

Non-disclosure of HIV-status is not criminalised. There are no specific HIV laws that criminalise exposure to or transmission of HIV. In cases of HIV transmission, existing laws that regulate the crime of causing serious harm can be applied. There has been one reported criminal prosecution for transmission of HIV.

## COUNTRY STATISTICS



Ireland has a population of 5,072,443. There have been 6,276 HIV diagnoses and the estimated number of PLHIV in 2021 is 8,800.<sup>41</sup> The latest available figures<sup>42</sup> indicate that of 95% of people who are receiving treatment for HIV have achieved an undetectable viral load.

There were 401 HIV diagnosis in 2021 – with a rate of 8.4 per 100,000 population. The number of newly notified cases of HIV decreased by 8% in 2021 compared to 2020 and by 17% in 2020 compared to 2019. The significant decrease in cases in the period is likely due to the impact of the COVID-19 pandemic on the availability of services, including restrictions on access to testing. Provision data from the Health Protection Surveillance Centre Data suggests 874 newly notified HIV cases in 2022, a 118 % increase over the same period in 2021.

78% of new cases in 2021 were among men. 39% were between the ages 25 and 34 years, while 25% were aged between 35 and 44 years. In 2021, at least 31% of people diagnosed with HIV in Ireland had been previously diagnosed with HIV in another country. 44% of known transmission rates are among gay, bisexual men and other men who have sex with men (GBMSM). Data from 2021 also indicates that at least 31% of newly notified cases had been previously diagnosed in another jurisdiction.



## RELEVANT LEGISLATION USED IN CASES OF HIV CRIMINALISATION

### Non-disclosure of HIV-status

Non-disclosure of HIV-status is not criminalised in Ireland.

### Exposure to HIV

There are no specific HIV laws that criminalise the risk of exposure of HIV transmission. Exposure to HIV can be criminalised under Section 13 of Non-Fatal Offences against the Person Act 1997 - Endangerment.

### Transmission of HIV

There are no specific HIV laws that criminalise the transmission of HIV, that is, which makes it a criminal offence to transmit HIV to a person. However, existing laws, under the Non-Fatal Offences Against the Person Act 1997 (such as 'Endangerment' or 'Causing serious harm') can and have been used. There has been at least one successful prosecution for transmission of HIV under this law.

41 UNAIDS – Country Factsheet Ireland

42 2017

## CASES OF HIV CRIMINALISATION



HIV Ireland is only aware of 1 case which has reached the courts. In 2018, a 28-year-old man was convicted under Section 4 Non-Fatal Offences against the Person Act 1997 of causing serious harm to the two women with whom he had unprotected sexual intercourse. Both women were reported to have subsequently acquired HIV and been unaware of the man's HIV status. Upon conviction, the man was sentenced to 10 years in prison. The case is the only known conviction to date concerning deliberate transmission of HIV in Ireland.

In 2022, two appeals, one on the grounds of the conviction and the other on the severity of the sentence were dismissed. The appellant challenged the use of non-HIV specialist expert witnesses and a failure to conduct a phylogenetic test to determine probable route of transmission. The court rejected these arguments. The appellant had also sought to challenge the severity of the sentence given the finding of 'reckless' transmission when passing sentence. The Court of Appeal found that the trial judge had not erred in the interpretation and upheld the sentence.



## GUIDELINES AND TRAINING ON HIV CRIMINALISATION

There are no guidelines or training provided to professionals involved in HIV criminalisation in Ireland. However, HIV Ireland has published guidelines for reporting on HIV for the media, which contains a section on The Irish Law and HIV. The guidelines are available to view and download from HIV Ireland's website at: [Media-Reporting-Guidelines-HIV-final.pdf](#) (hivireland.ie)

## THE ROLE OF MEDIA



The above case involving a man, originally from Africa but living in Ireland was deemed to have been presented relatively objectively in the Irish media. The story hit the headlines for a day or two at the time of the verdict and then again at the time of the sentencing. This was the extent of media reporting of the case. Media reporting of criminal cases is permitted in Ireland. Reporting of names and identifying information is subject to the discretion of the courts. Courts may and have directed that the media refrain from reporting names and identifying information of parties to a trial including the defendant, prosecution and defence witnesses, victims / alleged victims and others. During the recent appeal of the abovementioned case, the court directed the media not to publish or otherwise disclose the names or identifying information in the case to prevent the identity of victims becoming known.



## INFORMATION ON HIV CRIMINALISATION TO PEOPLE LIVING WITH HIV

HIV Ireland continues to work with Positive Now (the All-Ireland Network of People Living with HIV) to educate their 400+ affiliates on this issue and we have included information on this topic in our 'Living with HIV in Ireland: A Self-Help Guide' which is distributed to HIV clinics around Ireland. There would still be people living with HIV in Ireland who would not know their rights/responsibilities.

## KEY POPULATIONS MOST AFFECTED BY HIV CRIMINALISATION AND OTHER DISCRIMINATING LEGISLATION AND POLICIES

### Drug use

The primary legislation under which criminal charges for drugs offences is brought is the Misuse of Drugs Act 1977 and the Misuse of Drugs Act 1984. This legislation has been further amended by the Criminal Justice Act 1999, the Criminal Justice Act 2006 and the Criminal Justice Act 2007.

The Misuse of Drugs Regulations 1988 lists the various substances to which the legislation applies. The Criminal Justice (Psychoactive Substances) Act 2010 covers substances which are not specifically proscribed under the Misuse of Drugs Acts, but which have psychoactive effects.

The main drug offences under which criminal charges are brought are offences of drug possession and possession for the purpose of supply. For example, passing drugs among friends constitutes a supplying offence. Allowing your house or premises to be used for drug misuse is also illegal.

A conviction under the Misuse of Drugs Act can affect future employment prospects and many countries refuse visas to people with drug convictions. Misuse will often invalidate insurance policies, including holiday, vehicle and health coverage.

### Sex Work

The Criminal Law (Sexual Offences) Act 2017 criminalises the purchase of sex and is intended to decriminalise those engaged in sex work. The Act does not decriminalise instances of sex workers working together (so called brothel keeping provisions). This law is due to be reviewed in 2020.

## PRIORITIES IN RELATION TO HIV CRIMINALISATION

- HIV Ireland would like to see an end to any prosecutions relating to HIV transmission or risk of HIV transmission under the criminal law Non-Fatal Offences Against the Person Act 1977 in all circumstances and that no law is enacted criminalising same.
- Guidance should be produced for courts, legal practitioners, prosecuting authorities and An Garda Síochána on the prosecution of cases in relation to HIV transmission or HIV acquisition, U=U, effective treatment, prevention, etc.
- HIV Ireland advocates for the reform of the Criminal Law (Sexual Offences) Act 2017 to ensure no criminalisation of sex workers and has submitted its views to the ongoing review of the legislation (review ongoing since 2021).
- Guidance on legal rights should be produced for PLHIV.

# ITALY

Non-disclosure of HIV status is not a crime. Exposure to and transmission of HIV can be criminalised under the Penal Code, in cases where the accused is aware of their HIV positive status, has a detectable viral load, and engages in unprotected sexual activities or other high-risk behaviours. These articles are not HIV-specific. A significant number of cases never make it to court. Since 2010 five cases known to have gone to court. Notably, the concept of an undetectable viral load is considered in investigations of HIV exposure and transmission.

## COUNTRY STATISTICS



As of April 2021, the population of Italy is estimated to be 58,893,000, according to the ISTAT report. The estimated number of individuals living with HIV (PLHIV) is 140,730. In 2021, it was reported that 132,098 people were diagnosed, 123,359 PLHIV were on treatment, and 113,430 people had an undetectable viral load.<sup>43</sup>

The Italian government has identified three key populations that are the most important in terms of focusing the HIV response: gay and bisexual men and other men who have sex with men (GBMSM), people who inject drugs (PWID), and migrants. There have been declines in new diagnoses among GBMSM and PWID, but data on migrants is not available.

Data reported in 2020 has been affected by the COVID-19 pandemic. In 2020, there were 1,303 new HIV diagnoses, with an incidence of 2.2 per 100,000 residents. This is lower than the incidence reported in the European Union, which is 3.3 new diagnoses per 100,000. Since 2018, there has been a decrease in the number of new HIV diagnoses, with no significant differences by transmission mode. In 2020, 42% of reported cases were attributed to heterosexual transmission, 46% were attributed to sex between men, and 3% were attributed to injecting drug use.

Data on AIDS cases has been collected since 1982. In 2020, 352 AIDS cases were reported, with an incidence of 0.7 per 100,000 residents. 80% of these individuals were discovered to be HIV-positive within the six months prior to their AIDS diagnosis.



## RELEVANT LEGISLATION USED IN CASES OF HIV CRIMINALISATION

### Non-disclosure of HIV-status

Non-disclosure of HIV-status is not criminalised in Italy.

### Exposure to HIV

Exposure to HIV is criminalised under Articles 56, 582, 583, and 575 of the Italian Penal Code (bodily harm, aggravated bodily harm and culpable homicide, in the case that exposure to HIV causes the infection and death of the infected partner).

There are certain conditions that need to be present for criminalisation for exposure to HIV. The accused must know their HIV status and have a detectable viral load and not use methods of protection (e.g. condoms) or incur in other risky behaviour (e.g. sharing needles).

In one case a person living with HIV was prosecuted also for culpable HIV epidemic (art. 438 CP), but he was not judged guilty of such a crime.

### Transmission of HIV

Similar to exposure to HIV, transmission of HIV is criminalised under Articles 582, 583, and 575 of the Italian Penal Code (bodily harm, aggravated bodily harm and culpable homicide, in the case that transmission causes the death of the infected partner).

Same conditions as per exposure to HIV need to be present for criminalisation for HIV transmission. The accused must know their HIV status and have a detectable viral load and not use methods of protection (e.g. condoms) or incur in other risky behaviour (e.g. sharing needles).

None of these legislations is HIV-specific and can be applied to other infectious diseases.

43 [https://www.ecdc.europa.eu/sites/default/files/documents/2022-Annual\\_HIV\\_Report\\_final.pdf](https://www.ecdc.europa.eu/sites/default/files/documents/2022-Annual_HIV_Report_final.pdf)

## CASES OF HIV CRIMINALISATION



No detailed information is available concerning data on prosecutions for transmitting HIV, since data specifically related to HIV are not kept separate from those of other crimes that are prosecuted under the same laws.

There is certainty about 14 convictions, since the sentences were recorded:

- 03/05/99 - imprisonment of a woman (sex worker)
- 14/10/99 - 4 years imprisonment of a man for infecting his partner
- 03/07/00 - 14 years imprisonment of a man for infecting his wife who subsequently died
- 21/07/00 - 8 years imprisonment of a man for unprotected sex
- 30/06/04 - 4 years imprisonment of a man for serious bodily harm
- 28/09/05 - 4 years imprisonment of a man for serious bodily harm
- 11/01/06 - 4 years and 8 months imprisonment of a man for grievous bodily harm
- 20/01/06 - 6 years imprisonment of a man from Senegal (the only known foreigner) for unprotected sex and grievous bodily harm
- 06/12/07 - 4 years imprisonment of a man subsequently reduced to 3 years imprisonment and a fine of € 250,000
- 08/04/08 - 7 years imprisonment of a man for grievous bodily harm and a fine
- 26/03/09 - final conviction for a transmission between 2 men with only one anal intercourse
- 23/02/10 - first instance sentence for a heterosexual transmission
- 30/10/19 - third instance sentence for a man found guilty of having had unprotected sex with at least 57 women and having infected at least 33 (22-year imprisonment)
- 26/11/19 - second instance sentence for a man found guilty of having transmitted HIV to 2 women - one of them died of AIDS. The man was sentenced to 16 years and 8 months imprisonment; he is an 'HIV denier'.
- 21/09/2021 - a priest was arrested and is under investigation for attempted aggravated bodily harm: two men over 30 years old had sex at chemsex parties and tested positive for HIV.
- 15/12/2021 – second-degree sentence rejected the appeal of the 38-year-old man accused of having infected his former partner and his girlfriend with HIV.

In Italy, it is acknowledged that a significant number of cases do not make it to court. Typically, court proceedings in Italy are open to the public. However, both the defendant and the accuser can request a closed court case through their lawyers. There is currently no specific policy in place to protect the personal data of those involved in investigations related to the prosecution of HIV exposure and transmission.

It is important to note that during investigations of HIV exposure and transmission, the concept of undetectable viral load is taken into account.



## GUIDELINES AND TRAINING ON HIV CRIMINALISATION

In Italy, no guidelines or training are provided to professionals involved in HIV criminalisation. Although judges and lawyers have to undergo regular training updates, there is no information available whether these training updates include issues around HIV criminalisation. Training for media is only provided by Fondazione LILA Milano, according to their knowledge.

## THE ROLE OF MEDIA



Media play a very negative role as they continue maintaining a sensationalistic/scandalous approach to these cases, despite the fact that over the course of time, they have been invited to use a politically correct language and to give scientific, evidence based information about HIV transmission and people living with HIV.

## INFORMATION ON HIV CRIMINALISATION TO PEOPLE LIVING WITH HIV



NGOs working on HIV issues provide information and counselling to PLHIV on legal issues and their implication of exposing others to the HIV infection.

## KEY POPULATIONS MOST AFFECTED BY HIV CRIMINALISATION AND OTHER DISCRIMINATING LEGISLATION AND POLICIES

No key populations are disproportionately affected by HIV criminalisation, the majority of the convictions concerned heterosexual contacts and men.

## PRIORITIES IN RELATION TO HIV CRIMINALISATION

The organization LILA remains committed to educating media professionals on how to appropriately and accurately report on news related to HIV. This includes utilizing correct language and avoiding sensationalistic coverage. Recently, LILA launched a project called "Comunicare "correttamente" l'HIV per raggiungere gli obiettivi ONU 2030" which includes three seminars for journalists in three different regions (Veneto, Lazio, and Campania). In addition, LILA will distribute brochures to journalists across the country that provide guidelines on the appropriate language to use when writing and speaking about HIV cases.

# LATVIA

There is a specific article in the Criminal Code of Latvia (Section 133: Infection with a dangerous infectious agent: Infection with human immunodeficiency virus and hepatitis B and C)<sup>44</sup> that criminalises deliberate HIV transmission. This act is punishable by a range of penalties, including either imprisonment for up to 5 years or temporary deprivation of liberty, or probationary supervision, or community service, or a fine. Despite the severity of the sentencing guidelines, no criminal cases involving Section 133 of the Criminal Code have been recorded in Latvia (including those that did not reach courts) or logged with the police data base as of today.

## COUNTRY STATISTICS



Latvia is a country with a population of 1.89 million people. Annually, there are 212 – 330 people newly diagnosed with HIV. As of October 2022, 6130 people alive were registered living with HIV.<sup>45</sup> 3238 people, which is around 54 – 62% are estimated to be receiving treatment, and 70% are estimated to have an undetectable viral load. However, there is no viable centralised HIV registry in the country, and the Latvia data bank, which is accessible for licenced HIV infectologists and clinicians, does not provide a comprehensive view of the epidemiological trends (the 70% undetectable benchmark is an approximation only).

HIV/AIDS cases have been registered in Latvia since 1987. Until the mid-1990s, the infection spread exclusively through sexual contact, and relatively few new cases of HIV were detected each year. The year 1997 marked a new turning point, when HIV infection entered the group of people injecting drugs (PWID). The highest number was registered during the year 2001: 807. Since 2001, the number of cases detected among PWID has declined proportionally every year, while the number of new infections in other key groups, especially among men through heterosexual sexual contacts has increased.



## RELEVANT LEGISLATION USED IN CASES OF HIV CRIMINALISATION

### Non-disclosure of HIV status

Non-disclosure of one's HIV status is not explicitly criminalised, as there is no specific legislation on that. However, if a person becomes infected as a result of another party's failure to disclose their HIV status, such non-disclosure may be considered "deliberate infection." As a result, if sued, the offender may face criminal charges.

In addition, when patients register with the Latvian Infectology Centre for antiretroviral (ARV) treatment, they are presented with a non-disclosure agreement that requires them to disclose their HIV status to potential sexual partners. While this agreement is not officially part of the Criminal Code, it serves as an internal document that confirms the patient has been informed about their legal responsibilities. To date, no one has been charged with violating this internal disclosure document.

### Exposure to HIV

Exposure to HIV is not criminalised under the Criminal Code.

### Transmission of HIV

In line with Article 133 of the Criminal Law, the deliberate infection of a person with HIV or hepatitis B or C virus is punishable by deprivation of liberty for a period of up to 5 years or by temporary deprivation of liberty, or by probationary supervision, or by community service, or by a fine.

44 Section 133. Infection with Human Immunodeficiency Virus and Hepatitis B and C Virus. For a person who knowingly commits infection of a person with human immunodeficiency virus or hepatitis B or C virus, the applicable punishment is the deprivation of liberty for a period of up to five years or temporary deprivation of liberty, or probationary supervision, or community service, or fine

45 The number of deaths in the HIV and AIDS stage includes both those who died from AIDS and other causes of death. 8580 is the total number, out of that 2450 died. Therefore the actual number of PLHIV on 10. 2022 was 6130.

## CASES OF HIV CRIMINALISATION



There has not been a recorded case of the criminalisation of HIV in the country.



### GUIDELINES AND TRAINING ON HIV CRIMINALISATION

There are no state guidelines regarding HIV criminalisation. The Infectology Centre has protocols for HIV clinicians working with minors. If an underage person is found to be HIV positive and both parents are HIV negative, physicians must call the police to investigate whether the minor was involved in human trafficking or sexual exploitation.

### THE ROLE OF MEDIA



The media did not report any cases of HIV criminalisation.

## INFORMATION ON HIV CRIMINALISATION TO PEOPLE LIVING WITH HIV



Once HIV positive patients are registered with the Latvian Infectology Centre, which will provide ARV therapy, they are informed of their rights and responsibilities, which include informing a sexual partner of their HIV status as well as general health care providers. Yet, the monitoring of the implementation of the responsibilities the patients sign off on is non-existent, and in the real-world setting, there is no data on how and where the patients comply with the laws.

### KEY POPULATIONS MOST AFFECTED BY HIV CRIMINALISATION AND OTHER DISCRIMINATING LEGISLATION AND POLICIES

#### Drug use

Drug possession of Class A drugs and marijuana is criminalised by the Law on the Legal Circulation of Narcotic and Psychotropic Substances and Medicines, and Precursors.

#### Sex work

Sex work is prohibited if performed in public within 100 meters of schools or churches. The Law of Prostitution Restriction Regulations regulated illegal sex work.

## **PRIORITIES IN RELATION TO HIV CRIMINALISATION**

Although the understanding of human rights in Latvia has significantly improved, the issues related to discrimination against people affected by HIV are still not fully understood and sufficiently explained to both decision-makers and people living with HIV.

The priorities in relation to HIV-criminalisation for AGIHAS remained the same, namely, limiting HIV stigma in the country and repealing Articles 133 and 133.1 of the Criminal Code. For that purpose, the next meeting with the Ministry of Health officials will occur on April 5, 2023, where the residuals of the work with AIDS Action Europe and the data from the European HIV Legal Forum (EHLF) Survey will be disseminated and discussed, as well as the mapping of actions with respect to limiting HIV stigma will be drawn.

# POLAND

Non-disclosure of HIV status is not mentioned in the Criminal Code. Exposure to HIV is a criminal offence and is punishable with 6 months to 8 years in prison if a person is aware of their HIV status and intentionally exposes another person, or is aware of such exposures but ignores the risk.<sup>46</sup> Transmission of HIV is a criminal offence, punishable with 1 to 15 years in prison if the person is aware of their infection and causes serious harm, and up to 3 years in prison if they are unaware. The COVID-19 pandemic regulations have had a negative impact on the laws surrounding HIV criminalisation cases.

## COUNTRY STATISTICS



Poland has a population of 40 million people. As of 2021, the cumulative total number of reported HIV cases was around 27 000, 17 943 people living with HIV (PLHIV) were reported to be on treatment. Approximately 95% of PLHIV on treatment have an undetectable viral load. According to the ECDC, the predominant mode of HIV transmission is through sex between men (more than 60%), followed by heterosexual men and then women. One-third of the total number of new diagnoses occur among individuals under 30 years of age.<sup>47</sup>



## RELEVANT LEGISLATION USED IN CASES OF HIV CRIMINALISATION

### Non-disclosure of HIV status

There is no mention of non-disclosure in the Criminal Code, though some believe that HIV exposure is only criminalised if the person does not disclose their HIV status (i.e. if a person discloses that they are HIV positive, they cannot be responsible for the crime of exposure to HIV). This, however, is incorrect.

A physician who diagnoses a patient with HIV is required by law to inform the patient that their sexual partners must also see a physician (in order to get tested and treated, if needed). This provision does not impose a requirement on the patient to provide this information, and there is no penalty for failing to do so.

### Exposure to HIV

Article 161.1 of the Criminal Code criminalises exposure to HIV.

Anyone who, knowing that they are HIV positive intentionally exposes another person to the disease faces a 6-month to 8-year prison sentence. According to this article, anyone who: a) is HIV+ and b) is aware of it, can be responsible for this crime.

It is a so-called offence with criminal consequences, which means that criminal liability is possible only if such a criminal consequence occurs. In other words, a person commits the crime of exposure to HIV only when there was a real possibility to pass on HIV, but this did not happen.

If: a) an HIV positive person is on treatment and is undetectable, b) a condom is used during a sexual intercourse from the beginning until the end, and it has not been damaged, there is no crime of exposure to HIV. Informing another person of their HIV-positive status does not eliminate their criminal liability.

However, it may result in a lack of fault, which is required in Poland for criminal liability (without fault there is no crime).

<sup>46</sup> These are two types of guilt in the Polish law, a person is responsible if: they want to expose to HIV; or are aware that certain action will expose another person to HIV and ignore the risk (e.g. I don't want it, but I accept the outcome)

<sup>47</sup> Joint report with the WHO Regional Office for Europe on HIV/AIDS surveillance – 2021 data

## Transmission of HIV

Article 161.1 of the Criminal Code criminalises transmission of HIV.

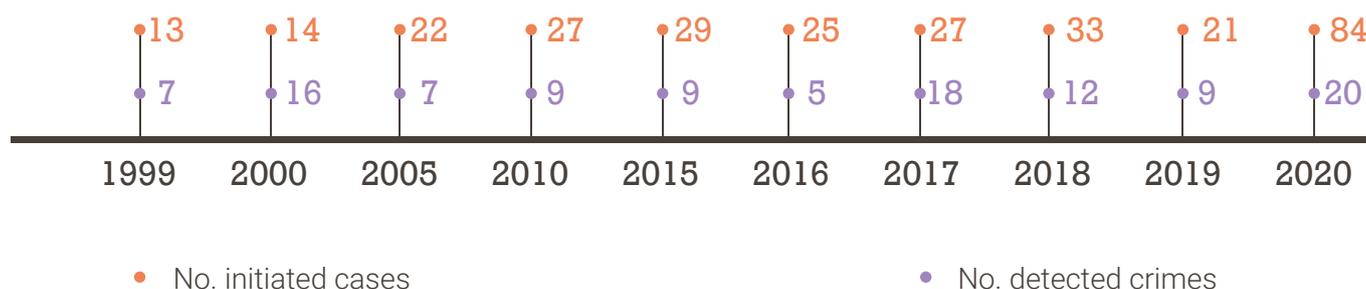
If HIV transmission occurs, it will be considered a crime: grievous bodily harm (article 156 of the Criminal Code). According to this article: "1. Anyone who causes grievous bodily harm in a form that: 1) deprives a person of their sight, hearing, speech or the ability to procreate, or 2) inflicts on another person a serious crippling injury, an incurable or prolonged illness, a potentially fatal illness, a permanent mental illness, a permanent total or significant incapacity to perform a profession, or a permanent serious bodily disfigurement or deformation, is liable to imprisonment for between one and 10 years. 2. If the offender acts unintentionally, he or she is liable to imprisonment for up to 3 years." If a person is aware of their infection, they may face imprisonment for 1 to 15 years. If the person is unaware, the punishment could be up to 3 years in prison.

It is worth noting that, due to other general provisions of the Criminal Code, the penalty for all of these criminal offences (apart from intentional grievous bodily harm) may also include restriction of liberty (for up to 2 years) or fines. It is also possible to combine imprisonment and liberty restriction.

## CASES OF HIV CRIMINALISATION



The graphic below presents the trend in the number of initiated criminal proceedings and the number of detected crimes related to exposure to HIV and other diseases. It should be noted that the data only represents exposure to HIV and not actual transmission, as the article in the Criminal Code applies to all forms of grievous bodily harm and not just HIV, so it is impossible to provide such statistics for cases of actual transmission. Additionally, the data is mixed with another type of crime, exposure to venereal or contagious diseases, a serious incurable disease or a potentially fatal disease, which carries a lesser penalty than exposure to HIV.



### GUIDELINES AND TRAINING ON HIV CRIMINALISATION

There are no guidelines known to the respondent.



### THE ROLE OF MEDIA

The media often publish information on cases of HIV exposure while using highly discriminatory language.

## INFORMATION ON HIV CRIMINALISATION TO PEOPLE LIVING WITH HIV



Such information is provided by local NGOs on their web pages. It is worth noting that at HIV diagnostic points (anonymous and free of charge), counsellors are required to inform any diagnosed person about Criminal Code article 161.1.

### KEY POPULATIONS MOST AFFECTED BY HIV CRIMINALISATION AND OTHER DISCRIMINATING LEGISLATION AND POLICIES

#### Drug use

Possession of any amount of illegal drugs is a criminal offence in Poland, while drug use is not. It's not unheard of for a prosecutor to drop criminal charges if the amount involved is small, but this situation is exceptional. People who use drugs may be reluctant to seek support out of fear of facing criminal charges. Fortunately, needle exchange programmes are legal, but they lack funding and awareness.

#### Sex work

Sex-work is not recognised by the law, so it exists in a legal grey area. Sex-workers do not commit crimes when offering or providing their services, but any income is problematic because there is no legally recognised source of such income, which means that in the event of a tax audit, a person must disclose their activity as a sex-worker and provide proof that their income is derived from this type of work.

Certain activities related to sex work, on the other hand, are criminal under the Polish laws. First of all, it is illegal to subject another person to practise sex work. According to the Criminal Code, anyone who subjects another person to sex work by force, illegal threat or deception, or by abusing a dependency relationship or by taking advantage of a critical situation faces up to 10 years in prison. Second, it is a crime to derive material benefits from another person's sex-work (article 204.2 of the Criminal Code), as well as to induce or facilitate another person's sex-work in order to derive material benefits (article 204.1 of the Criminal Code). The penalty is imprisonment for up to 5 years.

#### Other

- HIV positive people are sometimes denied access to most uniformed services (i.e. military, police, and border control). The common rule is that candidates with a positive HIV-status are eligible for service, but those diagnosed after admission may serve if their health allows.
- Hate crimes against LGBTQI+ people are not tracked in official statistics because there are no special provisions in the Criminal Code;
- There is no specific protection in the national law for victims of hate speech because of their sexual orientation or gender identity, making it difficult to stop many homophobic comments in the media through legal proceedings.



## THE IMPACT OF THE COVID-19 REGULATIONS ON PEOPLE LIVING WITH HIV

The Polish Criminal Code has provisions for the punishment of individuals who expose others to HIV, as outlined in articles 161.1 and 161.2. Previously, article 161.1 carried a punishment of imprisonment for up to 3 years, while article 161.2 carried a punishment of fine, restriction of liberty, or imprisonment for up to 1 year. However, during the COVID-19 pandemic, the government attempted to enforce the regulations related to the prevention of COVID infections through article 161.2 by increasing the punishment to a range of 3 months to 5 years in imprisonment. As a result, to maintain consistency, the punishment for exposing others to HIV under article 161.1 was also increased to a range of 6 months to 8 years of imprisonment. It is important to note that these changes were introduced in questionable ways and some were said to be unconstitutional. Nevertheless, it is clear that the COVID-19 pandemic and the regulations introduced to curb its spread have had an impact on the laws surrounding HIV criminalisation cases in Poland.

# PORTUGAL

Non-disclosure of HIV status or exposure to HIV is not criminalised. The transmission of HIV could lead to prosecution if it falls within the scope of article 283 the Criminal code, which covers the penalties for spreading contagious/infectious diseases. To be prosecuted, it must be proven that the defendant knew they were HIV positive, had the intention of infecting the victim, and actually transmitted the virus to the victim. However, prosecution for HIV transmission can also occur under the articles 143 and 144 of the Criminal Code on offences against someone's physical integrity, but it must be proven that the defendant infected the victim. These provisions are not HIV specific and are applicable to other infectious diseases. There have been three known<sup>48</sup> HIV criminalisation cases.



## COUNTRY STATISTICS

Portugal has a population of 10,344.802<sup>49</sup> people. According to the 2021 data, the estimated number of PLHIV is 41,305<sup>50</sup>, of whom is diagnosed 38.496. 31,000 people were on treatment and 28,007 had an undetectable viral load.

The analysis of time trends in the national epidemic shows a 47% decrease in the number of new HIV diagnoses in the last decade and a 65% decrease in cases that have reached the AIDS stage.

Although Portugal continues to present the highest rates of new diagnoses of HIV infection and the incidence of AIDS registered in the European Union (EU), these rates show a decreasing trend, which, in a comparative analysis of the number of cases diagnosed in 2007 and 2016, was 40% in cases of HIV infection and 60% in new cases of AIDS. In cases of HIV infection, however, this decrease is more marked in female (50%) than in male (35%), with the opposite situation in cases of AIDS (61% in the male and 51% female).

Recent trends also reveal an increase in the proportion of male cases, as well as in the median age at diagnosis, with the exception of gay and bisexual men and other men who have sex with men (GBMSM) cases, which occur more frequently in young people.<sup>51</sup>

The new diagnoses in 2019 occurred mostly (50.4%) in residents of the Lisbon Metropolitan Area, with a diagnosis rate of 13.7 cases/100 thousand inhabitants. Most (69.3%) were registered in men, the median age at diagnosis was 38 years, the highest rate of new diagnoses was observed in the 25-29 age group (22.1 cases/100,000 inhabitants), among men at these ages the diagnosis rate was 33.3 cases/100,000 inhabitants;

In 97.3% of the cases, transmission occurred via sexual intercourse, with 57.8% reporting heterosexual contact. Cases in GBMSM accounted for 56.7% of diagnosed male cases and had a median age of 30 years. Injecting drug-associated infections accounted for 2.1% of new diagnoses where the route of transmission is known.



## RELEVANT LEGISLATION USED IN CASES OF HIV CRIMINALISATION

### Non-disclosure of HIV-status and exposure to HIV

Non-disclosure of HIV status or the exposure to HIV is not criminalised in Portugal.

### Transmission of HIV

HIV transmission could lead to prosecution if it falls within the scope of article 283 of the Portuguese criminal code, which mentions the penalties for spreading contagious/infectious diseases.

48 GAT believes there were more cases, but they are not informed, and the first instance decisions are not published in the Attorney General office website.

49 [https://www.ine.pt/scripts/db\\_censos\\_2021.html](https://www.ine.pt/scripts/db_censos_2021.html), census from 2021.

50 <http://www.insa.min-saude.pt/relatorio-infecao-vih-e-sida-em-portugal-2020/>, information from 2020.

51 Departamento de Doenças Infecciosas. Instituto Nacional de Saúde Doutor Ricardo Jorge Infeção VIH e SIDA/Programa Nacional para a Infeção VIH, SIDA e Tuberculose. Direção-Geral da Saúde (colab.). Infeção VIH e SIDA: a situação em Portugal a 31 de dezembro de 2017 - A situação em Portugal a 31 de dezembro de 2017, 2018

However, in order to be prosecuted for that, it must be proved that

- (i) the defendant knew he/she was HIV+;
- (ii) the defendant has the malicious intention of infecting the victim;
- (iii) that the virus was actually transmitted to the victim by the defendant.

Less likely to happen but still possible in the Portuguese criminal legal framework is to prosecute someone for transmitting HIV on the basis of articles 143 and 144 of the Portuguese criminal code, regarding the crime of offences against someone's physical integrity. Since the scope of this article is, by its nature, much wider than the aforementioned, it is easier for HIV transmission to fall within the scope of this article. Nonetheless, it must be proven that it was the defendant that infected the victim.

These provisions of the law are not HIV-specific and can be applied to other infectious diseases.

## CASES OF HIV CRIMINALISATION



Court decisions and trials are public in Portugal, so everyone could attend a criminal trial and understand who is being prosecuted and what for. Furthermore, judicial decisions are published in a public website from the Attorney General's Office and everyone could search and read those decisions.

However, only decisions by higher courts are published on that website (Courts of Appeal, Supreme Court of Justice and Constitutional Court). That leaves aside most judicial decisions, judged by all the courts of first instance who receive all the judicial proceedings in first place. Only in case of appeal or in very specific and rare legal cases can a judicial proceeding be judged by superior courts. This means that there is only access to HIV criminalisation decisions if those decisions come from superior courts.

There have been three HIV criminalisation cases judged in Portugal, one is quite old while the second one was decided on the court of Appeal on March 2020.

The first one happened in 1998, the first time an HIV criminalisation case was judged by a superior court in Portugal. In that case, it was considered proven that the defendant (i) was aware of his HIV status, (ii) intentionally wanted to transmit the virus to others and that (iii) he succeeded in transmitting HIV to some of his partners. In this case, the Court of Appeal confirmed the first instance court decision that all the requirements of article 283 of the Portuguese criminal code, which mentions the penalties for spreading contagious/infectious diseases, were fulfilled and the defendant was considered guilty and sentenced to three and half years in jail. (process no. 989/00 from 03/10/2000).

The second case started its proceedings in 2019, in a first instance court in the south of Portugal (usually known for being quite conservative when it comes to decide on controversial matters).

The Public Prosecutor accused the defendant for spreading contagious/infectious diseases, namely, HIV. The only data mentioned in the decision regarding both parties is that defendant is a heterosexual man and the assistant/victim is a heterosexual woman. No more information is given regarding their ethnicity or migration status but, considering their full names, they are both native Portuguese.

The court decision considered proven the following facts:

- a) defendant was diagnosed with HIV in 2005 and he immediately started ART, becoming undetectable a few months later;
- b) in 2007, defendant and his previous partner, who was also living with HIV, had two children who were born HIV negative;
- c) from 2015 until present times, the defendant did not attend some of the routine medical appointments with his infectologist doctor and, therefore, he could not have access to ART for those periods;
- d) from 2016 to 2017 he dated the assistant, who was HIV- before she met him;
- e) the defendant and assistant were monogamous in their relationship;
- f) some months after they broke up, she felt very sick and went to the hospital, where she was diagnosed with HIV.

During trial, the assistant claimed there were some times when condom was not used, although defendant claims that condom was used every time they had sex.

After the judging was over, the court decided to convict the defendant but not for the crime of spreading contagious/infectious diseases. The court considered that there was wilful misconduct by the defendant, since he knew he was HIV positive and did not attend the medical appointments nor took the ART on a daily basis which are necessary to keep an undetectable viral load. That said, the first instance court convicted the defendant of the crime of serious offence to physical integrity (article 144 of the criminal code).

The defendant has appealed the decision and the decision of the Court of Appeal decided to maintain the decision of the court of first instance, and the defendant was convicted to four years and six months suspended imprisonment, and to pay a compensation of 30.000 € due to psychological injuries.

In 2021, the Anti-Discrimination Centre of GAT was informed about a trial court resulting in a 5-year prison sentence for HIV criminalisation and sexual abuse. The HIV positive defendant was a young man with a theft and drug history. The defendant testified that he told his partner he was HIV positive with an undetectable viral load. However, hospital reports showed that he had a detectable viral load. She claimed she was sexually abused, even though there was no HIV transmission. The court sided with the victim and sentenced the defendant to five years. The crime of sexual abuse was aggravated because the defendant was HIV positive, even if there was no transmission.

Investigation process in Portugal is under judicial secrecy thus all sensitive personal data of involved parties are secret and only judicial authorities and the police may have access to them.

Criminal procedure in Portugal is only under judicial secrecy during the investigation phase. That is to say, that reached the trial stage, criminal procedure happens on open doors in a public trial. This is one of the most important Portuguese criminal procedure principles where only in very specific situations the judge might decide to subject the trial stage under judicial secrecy.

Therefore, there is no general rule regarding HIV criminalisation, it might or might not be subjected to judicial secrecy depending on the case.



## GUIDELINES AND TRAINING ON HIV CRIMINALISATION

There are no guidelines or training provided to professionals involved in HIV criminalisation in Portugal.



## INFORMATION ON HIV CRIMINALISATION TO PEOPLE LIVING WITH HIV

Information is available if PLHIV seeks for it from organizations that work with HIV and with PLHIV. There is no online or public information regarding their rights and legal responsibilities in relation to HIV criminalisation.

## THE ROLE OF MEDIA



Media is usually respectful and data conscious while reporting HIV criminalisation cases as well as reporting HIV scientific and medical findings. Although HIV criminalisation cases rarely end on media reports, whenever it happens, identification data is usually omitted.

Nevertheless, some tabloids are not so respectful and data conscious and frequently violate special personal data of targeted people.

## KEY POPULATIONS MOST AFFECTED BY HIV CRIMINALISATION AND OTHER DISCRIMINATING LEGISLATION AND POLICIES

Key populations are not criminalised nor disproportionately affected by HIV criminalisation.

However, drug possession and consumption is only legal in Portugal if the drug user has the quantity considered by law as a daily dose. If a drug user has more quantity than permitted by law, the possession and consumption are criminalised.

## PRIORITIES IN RELATION TO HIV CRIMINALISATION

It is critical for GAT(<https://www.gatportugal.org/en/>) to continue raising awareness and educating the general public about HIV-related topics, as well as sharing the most recent scientific information and studies about HIV, particularly those resulting from U=U. To repeal stigma and criminalisation laws that predate U=U, health officials and political leaders must be persuaded.

The GAT Anti-Discrimination Centre has received more privacy complaints in the past year. These are mostly complaints from PLHIV who see their HIV status being shared (often maliciously) by partners, ex-partners, friends, and co-workers who are unaware they are breaking the law (aggravated by the fact that health information is considered sensitive personal data). Given the impact these events have on PLHIV, official bodies and civil society organisations should work together to address this issue.

Scientific knowledge should be used equally to eliminate laws and procedures that promote unequal health status-based treatment and lead to discrimination and stigma. GAT opposes HIV criminalisation and their motto is "support, don't punish."

## **EXPECTED CHANGES AND DEVELOPMENTS**

In 2021, the Portuguese Parliament and President of the Republic passed a bold, innovative law that enshrines the right to be forgotten in insurance companies, preventing people who have overcome serious illnesses like cancer or mitigated situations of aggravated health risk or disability, such as HIV from being discriminated against in credit or health insurance. This law prevents insurance companies from collecting or processing health information about PLHIV, preventing them from raising premiums or denying contract guarantees.

If PLHIV have been in continuous and effective therapeutic protocol (meaning undetected viral load) for over 2 years, insurance companies cannot collect this type of health personal data and cannot use it to propose insurance policies. Although this law is new, it marks a turning point in the highly discriminatory insurance market.

# ROMANIA

Non-disclosure of HIV status is not a criminal offense. An attempt of HIV exposure is a criminal offence. Actual exposure to and transmission of HIV can be criminalised under the Criminal Code. The articles criminalising HIV/AIDS were updated in 2014 to encompass all methods of exposure or transmission, not just sexual transmission. The updated Criminal Code recognises two categories of HIV transmission offences, based on whether a person was aware of their HIV-positive status or not.

## COUNTRY STATISTICS



The population of Romania is 19,659,267 and UNAIDS estimates the number of PLHIV to be 20,000. Since 1985, 26,554 people have been diagnosed with HIV, with 17,536 still alive (CNLAS). In 2020, 13,379 PLHIV were receiving treatment and 6,678 had an undetectable viral load. The majority of new HIV cases are among gay and bisexual men and other men who have sex with men (GBMSM) (31%), while injecting drug use accounts for 6.8% of new cases in the first half of 2022. This marks an increasing trend among GBMSM since 2019 (27% in 2020 and 30.6% in 2021).



## RELEVANT LEGISLATION USED IN CASES OF HIV CRIMINALISATION

### Non-disclosure of HIV status

Non-disclosure of HIV-status is not criminalised in Romania.

### Exposure to HIV and transmission of HIV

Article 354 of the Romanian Criminal Code is HIV/AIDS specific and can be used for both exposure and transmission cases. The earlier version of the law was restricted to sexual transmission of the virus, while under the updated law (2014) all means of exposure or transmission can be criminalised. Exposure (attempt) is criminalised under Section 5 of Article 354.

### Transmission of HIV

Transmission of HIV is criminalised under Section 1 (the person knows their HIV-status) or under Section 2 (the person did not know their HIV-status).

Article 354 of the Romanian Criminal Code addresses HIV/AIDS and encompasses both exposure and transmission offenses. The previous legislation was limited to sexual transmission, but the updated law in 2014 criminalises all methods of exposure or transmission. Article 354 distinguishes between two types of transmission offenses: section 1 covers instances where the person knew their HIV-positive status; section 2 covers instances where the person did not know they were HIV-positive. Additionally, Section 5 of Article 354 of the Criminal Code criminalises an attempt to expose someone to HIV.

## CASES OF HIV CRIMINALISATION



Based on media reports over the last decade, ARAS is aware of seven cases of HIV criminalisation. All 7 individuals were convicted and imprisoned. No additional official information regarding the cases or the sentences has been made available.

The investigation process remains unclear as the information is not accessible. Court cases in Romania are typically open to the public, but can be closed upon request.

In Romania, the U=U concept is not officially recognised. Infection disease specialists do not discuss this openly, although some do acknowledge it with a word of caution.



## GUIDELINES AND TRAINING ON HIV CRIMINALISATION

There are no guidelines or training provided to professionals involved in HIV criminalisation in Romania.

## THE ROLE OF MEDIA



The media is very active in cases of HIV-criminalisation and has a negative influence on public opinion on HIV/AIDS, by presenting persons living with HIV as criminals. One of such examples is a recent article that was published in one of the major cities of Romania about a possible HIV transmission, in which the journalist used the following language - "she practised prostitution even though she knew she was HIV positive - tens of men should go and get tested!"

ARAS tries to express its opinion in the media in cases related to HIV-criminalisation, but these attempts are not always successful. Nevertheless, ARAS is permanently active in providing information to the media about HIV/AIDS transmission, U=U, harm reduction, etc.



## INFORMATION ON HIV-CRIMINALISATION TO PEOPLE LIVING WITH HIV

The information is available on different websites, including the website of the National Union of Organisations of People Living with HIV/AIDS. Regardless of these efforts, unfortunately, still many PLHIV are not aware of their rights and legal responsibilities.

## KEY POPULATIONS MOST AFFECTED BY HIV CRIMINALISATION AND OTHER DISCRIMINATING LEGISLATION AND POLICIES

### Drug use

Drug possession is criminalised in Romania. Hepatitis C treatment is available only for people having medical insurance and unfortunately most people who inject drugs do not have one.

## **PRIORITIES IN RELATION TO HIV CRIMINALISATION**

In relation to HIV criminalisation, ARAS priorities wide information/education about HIV (prevention, treatment, U=U); decriminalisation of drug possession for personal use; media training related to HIV transmission, drug use, legal issues, as well as anti-discrimination campaigns related to all categories of vulnerable persons.

## **EXPECTED CHANGES AND DEVELOPMENTS**

A proposal to increase the penalties for drug possession, in terms of years of imprisonment, is currently under consideration by the Chamber of Deputies (having already been approved by the Senate). ARAS is concerned that if this proposal is passed, it may set a precedent for harsher treatment of vulnerable populations and further increases in penalties.

# SLOVAKIA

Although there is no such legal requirement, a Ministry of Health regulation requires people living with HIV (PLHIV) to inform their sexual partners and primary care doctors of their status. The Criminal Code contains HIV-specific provisions that criminalise HIV exposure and transmission. These provisions distinguish between negligent and intentional HIV exposure and transmission and set different punishment depending on that.

## COUNTRY STATISTICS



Slovakia had a population of 5 431 306.<sup>52</sup> According to the Public Health Office data, the cumulative number of PLHIV was 1072 in December 2021, of whom more than 90% were on treatment.<sup>53</sup> Slovakia has one of the lowest HIV incidence rates in the WHO European region. HIV incidence has increased over the last ten years, reaching a peak in 2021 with 110 new cases. Since 1985, the majority of cases (85 – 90%) have been men, and the main transmission route is sexual contact.

Since 1985, there have been 1143 cases among Slovak citizens, or 1394 cases in total, including Slovak citizens and foreigners. The majority of transmission occurs through intercourse among GBMSM (70%), followed by heterosexual intercourse (20%), and intravenous drug use (1.2%). There was one case of blood transfusion transmission (0.05 percent of cases).<sup>54</sup>



## RELEVANT LEGISLATION USED IN CASES OF HIV CRIMINALISATION

Slovakia has HIV-specific provisions in the Criminal Code. HIV-related cases can be regulated under the Civil Code, and the Law on Health Care Providers. Furthermore, the Ministry of Health has issued regulations: the HIV specific "Expert guidance to ensure the prevention of HIV infection in the Slovak Republic No. 5650/99" (further referred to as "Expert guidance") from 1999, and the "Standard Procedure for Ensuring Comprehensive Management of HIV Infection," adopted in 2020 (hereinafter referred to as "Standard Procedure").

### Non-disclosure of HIV status

In general, there is no legal obligation to inform someone about one's HIV status. However, according to the "Expert Guidance," an HIV-positive person is required to disclose their sexual partners and primary care physician of their status and failure to do so may result in criminal prosecution.<sup>55</sup>

### Exposure to HIV

§§ 165 and 166 of the Criminal Code criminalise exposure and transmission of HIV. These provisions do not explicitly distinguish between exposure and transmission. The distinction between these two articles is in the intention: §165 applies when someone behaves intentionally, while §166 applies when someone acts negligently. According to §166(1), negligent exposure can be punishable by a prison sentence ranging from 1 to 5 years, while under certain circumstances stated in §166(2) (e.g. acting in more serious manner, or if the victim is a minor), this prison term can be increased ranging from 4 to 7 years. In line with § 165(1), intentional exposure is punishable by a prison term of 3 to 8 years. While under certain circumstances as of §165(2), the prisons term can be increased ranging from 7 to 12 years.<sup>56</sup>

<sup>52</sup> The data for March 31, 2022, Statistical Office of Slovakia.

<sup>53</sup> The data for December 31, 2021, Public Health Office of Slovakia. „Incidence of HIV infection in the Slovak Republic as of 31.12.2021.“

<sup>54</sup> The data for December 31, 2021, Public Health Office of Slovakia. „Incidence of HIV infection in the Slovak Republic as of 31.12.2021.“

<sup>55</sup> "Analysis of the chosen aspects of the rights and obligations of the persons infected by HIV", p. 8, 15 (further as „Analysis“). This analysis was elaborated by the law students for Odysseus, civic association, in 2021.

<sup>56</sup> Analysis, p. 22.

## Transmission of HIV

While §§165 and 166 do not use the word “transmission”, both articles cover HIV transmission in paragraph 3 (§165(3) and 166(3)). These sections consider HIV transmission as a form of grievous bodily harm. If an individual becomes infected with HIV, the conduct that resulted in HIV transmission is considered a criminal offence, namely the infliction of bodily harm. The penalty for intentional HIV transmission ranges from 10 to 15 years in prison, while the penalty for negligent HIV transmission ranges from 4 to 10 years.

## CASES OF HIV CRIMINALISATION



As per Ministry of Interior statistics, there were 19 criminal cases registered between 2010 and 2021, with 13 of them being completed. From 2014 to 2016, there were three cases, and in each of these cases, the defendant was always charged with a sentence, which was usually imprisonment.



## GUIDELINES AND TRAINING ON HIV CRIMINALISATION

There are no specific guidelines on the matter, and the only relevant documents are the "Standard Procedure" and the "Expert Guidance". Yet, neither of these documents contains legal information related to HIV criminalisation. The only relevant element is that the "Expert Guidance" outlines clinicians' confidentiality as a requirement.

## THE ROLE OF MEDIA



Since there are not many HIV criminalisation cases, there is consequently little media coverage on the subject. However, as reported by Odysseus, the ones that exist appear to be objective.

## INFORMATION ON HIV CRIMINALISATION TO PEOPLE LIVING WITH HIV



The web page [www.hivaid.sk](http://www.hivaid.sk) contains relevant information on the matter.

## KEY POPULATIONS MOST AFFECTED BY HIV CRIMINALISATION AND OTHER DISCRIMINATING LEGISLATION AND POLICIES

### Drug use

Drug possession is a crime in Slovakia. People who use drugs face discrimination since they are unable to seek hepatitis treatment because of the requirement of a one-year drug-free period.

Moreover, within the Slovak healthcare system, people might accumulate health insurance debts, limiting their access to health care (with an exemption for saving their life). As a result, a person who has health insurance debts cannot receive HIV or HCV therapy. However, this will change in 2023, when people who have debts on their health insurance will be able to receive treatment for infectious diseases. Odysseus is still waiting to see how this will work in practise.



## THE IMPACT OF THE COVID-19 REGULATIONS ON PEOPLE LIVING WITH HIV

The COVID-19 regulations did not have an impact on HIV criminalisation.

### **EXPECTED LEGAL CHANGES AND DEVELOPMENTS**

The Slovak national HIV/AIDS prevention programme for the years 2022 – 2025 was recently developed. There has been a strong push from civil society to include in the programme developments such as U=U, PrEP, and others, but state institutions were resistant. In addition, this document should include chapters on funding because there is currently no specific public funding for HIV prevention.

# SLOVENIA

The Criminal Code does not contain specific HIV-related articles. However, general Criminal Code provisions can be used to charge intentional HIV exposure as an attempt and HIV transmission as aggravated bodily harm. HIV exposure is punishable by a three-year prison sentence, whereas HIV transmission is charged with a six-month to five-year prison sentence. So far, one case of HIV exposure has been documented.

## COUNTRY STATISTICS



Slovenia has a population of 2,100 million. The ECDC estimate tool reveals that in 2022 there were 807 people living with HIV; out of whom 730 were diagnosed with HIV; 708 were reported to be receiving treatment, and 677 had an undetectable viral load.<sup>57</sup> The incidence rate has been continuously decreasing: in 2016, there were 56 HIV diagnoses; by 2020, this number had declined to 27.<sup>58</sup>



## RELEVANT LEGISLATION USED IN CASES OF HIV CRIMINALISATION

### Non-disclosure of HIV status

The respondent is unaware of specific criminal laws related to non-disclosure.

### Exposure to HIV

Article 34 §1 of the Criminal Code is applicable in cases of intentional HIV exposure as an attempt of aggravated bodily harm and provides for a 3-year prison sentence. When an HIV-positive person has condomless sex with an HIV-negative person, the exposure to HIV can be prosecuted. In Slovenia's first and only case of criminalisation, undetectable viral load was not considered a factor of protection or safe sex.

### Transmission of HIV

Article 123, §1 of the Criminal Code of Slovenia can be used in cases of HIV transmission as aggravated bodily harm. The sentence is determined as imprisonment for not less than six months and not more than five years.

<sup>57</sup> Data received verbally from the National Institute of Public Health of Slovenia, Department of Infectious Diseases

<sup>58</sup> Data from Annual Reports on HIV infection, National Institute of Public Health of Slovenia, link: <https://www.nijz.si/sl/epidemiolosko-spremljanje-nalezljivih-bolezni-letna-in-cetrletna-porocila>

## CASES OF HIV CRIMINALISATION



There was one recorded case of HIV exposure, the details of which are presented below.

Date	Case	Sentence
2018-2019	<p>The defendant was a male, bisexual, Slovenian citizen, white, and around 38-39 years of age. The defendant has lived for years with another man (a person with a mental disability) whom he apparently sexually abused, pimped to other men and women, filmed during sexual encounters, and gave him illegal drugs. He organized sex parties at which he allowed attendees (for a fee or free of charge) to have sex with the injured party.</p> <p>Throughout the years, he repeatedly had sex with him without using a condom. He did have, however, a low or undetectable viral load, though it is impossible to determine from the judicial documentation how low it was or whether he was undetectable at the time when he was having sex with the injured party. This, therefore, was not just a case of HIV exposure criminalisation but a case in which the defendant was charged with serious crimes, and the charge for HIV exposure was just one of them.</p>	<p>He received the following punishment at the first instance trial: 3 years in prison for human trafficking, 1 year for the rendering opportunity for consumption of narcotic drugs, 3 years for unlawful manufacture and trade of narcotic drugs, 1 year for sexual abuse of a defenceless person, 1 year and 6 months for attempted aggravated bodily harm (exposure to HIV), and 3 months for unlawful visual recording.</p> <p>In the end, because of the concurrence of criminal offences, the court gave him a combined prison sentence of 8 years. The Higher Court (second instance) confirmed the sentence.</p>



### GUIDELINES AND TRAINING ON HIV CRIMINALISATION

Association Legebitra is not aware of any professional guidelines on HIV criminalisation.

### THE ROLE OF MEDIA



During the one court case described above, the media covered every detail of the case exhaustively, with a tendency to be sensationalist. The defendant's name was made public after the end of the first instance trial.

### INFORMATION ON HIV CRIMINALISATION TO PEOPLE LIVING WITH HIV



This information is available at clinics and NGOs.

## **KEY POPULATIONS MOST AFFECTED BY HIV CRIMINALISATION AND OTHER DISCRIMINATING LEGISLATION AND POLICIES**

### **Drug use**

Purchasing drugs for personal use is not considered a criminal offence. The law distinguishes between illicit drug possession, possession of a small quantity for personal use, and possession for medical or social treatment. Small quantities of illegal drugs for personal use can result in a fine ranging from EUR 42 to EUR 209. Offenders may face lenient punishment if they voluntarily enter drug treatment or social security programmes approved by special units of the Ministry of Health or the Ministry of Labour.

### **Sex work**

In Slovenia, sex work is not illegal, but pimping is, according to Article 175 of the Penal Code.

# SPAIN

The failure to disclose one's HIV status is not considered a crime. In the jurisprudence, HIV exposure and transmission are considered injuries that undermine physical or mental integrity and are criminalised when committed deliberately. There have been no documented court cases of HIV criminalisation to date.

## COUNTRY STATISTICS



Spain has a population of 47.35 million people. An estimated 140.000 to 170.000 people are living with HIV. As of 2019, 87% of whom are diagnosed with HIV, 97.3% are reported to be on treatment, and 90.4% to have an undetectable viral load.

The main epidemiological trends are represented by the following findings:

- The average age of PLHIV is 36 years.
- Gay and bisexual men, and other men who have sex with men, account for 89.9% of new cases.
- There is a high number of late diagnoses, which constitutes 45.9% of the cases. This number is even higher among women.
- There is a high percentage of migrants living with HIV, which constitutes 36.1% of the cases, there is an even higher ratio among migrant women.



## RELEVANT LEGISLATION USED IN CASES OF HIV CRIMINALISATION

### Non-disclosure of HIV status

It is not mandatory in Spain to disclose your serological status to anyone, including sexual partners.

### Exposure to HIV

The legal regulation of exposure to HIV is framed as a crime of intentional injuries (including eventual fraud) in Article 149 of the Criminal Code, or as a crime of reckless injuries in Article 152 of the Criminal Code, in both cases for causing a third person a severe somatic disease.

### Transmission of HIV

HIV transmission is regulated by Criminal Code articles 147.1, 149, and 150. According to these articles, HIV transmission is regarded an injury that undermines physical or mental integrity and is punishable when intentional.

## CASES OF HIV CRIMINALISATION



Although there have been no HIV-related criminalisation trials, the case below demonstrates the application of the law regarding HIV status disclosure.

The Supreme Court's decision 528/2011, issued on June 6, establishes that having sexual relations without informing the stable partner about the serological status is not a crime. This is due to the fact that no one is required to inform a third party that they have HIV, even if that third party is their stable partner. The sentence, on the other hand, requires the person with HIV to take responsibility in two ways: 1) they must take all necessary precautions to avoid transmission, and 2) in the event of a risk situation, they must declare their serological status so that post-exposure prophylaxis (PEP) measures can be implemented, or make it clear that the sexual partner assumes the risk of virus infection.

In general, the documentation on court proceedings is available to anybody. The Judicial Documentation Centre (Cendoj) is responsible for official jurisprudence publication, as well as other documentation and knowledge management.



### GUIDELINES AND TRAINING ON HIV CRIMINALISATION

There are no guidelines in the country on HIV criminalisation.

### THE ROLE OF MEDIA



In most cases, the media lacks up-to-date information regarding HIV and tends to use xenophobic and even homophobic attitudes. Sometimes the media uses sensationalist and prejudiced language toward PLHIV and LGTBIQ. One news article, for example, accused GBMSM of being responsible for the new MPOX outbreak. In another example, it was reported in 2020 that several firefighters burned an armchair in a store because a PLHIV had bled from an accident.



### INFORMATION ON HIV-CRIMINALISATION TO PEOPLE LIVING WITH HIV

PLHIV have access to knowledge about their rights and legal responsibilities, but many do not use it. They have to visit an NGO or a community centre to find out more. Often, they are reluctant to seek the information independently.



### THE IMPACT OF THE COVID-19 REGULATIONS ON PEOPLE LIVING WITH HIV

APOYO POSITIVO did not observe any specific impact.

## **KEY POPULATIONS MOST AFFECTED BY HIV CRIMINALISATION AND OTHER DISCRIMINATING LEGISLATION AND POLICIES**

### **Drug use**

In general, drug possession and trafficking are punishable in Spain. The penalties are determined by the substance and amount used. They can range from financial sanctions to 18 years in prison.

### **Sex work**

Sex work is not specifically prohibited by law, but some related activities, such as pimping, are. There are also laws that protect minors and people with mental disabilities from this type of activity.

## **EXPECTED LEGAL CHANGES AND DEVELOPMENTS**

Since 2018, the Spanish government has been working on the Social Pact of Non-discrimination and Equal Treatment in HIV, which aims to improve the social conditions of people living with HIV in a way that is equitable to the rest of the citizens.

# UNITED KINGDOM

Non-disclosure of HIV status is not criminalised in the United Kingdom. In England, Wales, and Northern Ireland, exposure can only be prosecuted if there is evidence that the person intended to transmit HIV. In Scotland, a person can be prosecuted for recklessly putting someone at risk of infection, even if the infection is not transmitted.

In England, Wales, and Northern Ireland, there are two laws that can be used to prosecute HIV transmission: reckless transmission and intentional transmission. The maximum sentence for reckless transmission is five years in prison, and the maximum sentence for intentional transmission is life imprisonment. In Scotland, there are culpable and reckless conduct laws and assault laws. None of the above laws are HIV-specific and can be applied to the transmission of any sexual infection that could have 'serious' consequences for the infected person's health. The UK is the only country in Europe that has guidelines on HIV-criminalisation for prosecutors.

## COUNTRY STATISTICS



The population of the UK is estimated at 67.5 million (approximately 56.5 million in England; 1.9 million in Northern Ireland, 5.5 million in Scotland; 3.1 million in Wales).

In 2020 an estimated 97,700 people were living with HIV infection in the UK (England). Of these, 93,000 had been diagnosed, 92,100 people diagnosed were receiving treatment, and 89,400 of people receiving treatment were virally suppressed. This means that of all the people living with HIV in the UK, 92% are virally suppressed and therefore unable to pass the virus on.

The main epidemiological trends in the UK are:

- Excluding 2020, pre-pandemic trends in the decline of new HIV diagnoses were sustained into 2021. There was a small increase in HIV diagnoses between 2020 and 2021 among gay and bisexual men and other men who have sex with men (GBMSM) possibly due to deferred tests from 2020 due to the COVID-19 pandemic;
- HIV diagnoses in heterosexual men and women have plateaued, in the context of sub-optimal test coverage;
- People exposed by vertical transmission and injecting drug use, a very small proportion of all people living with HIV, continue to display significantly lower levels of viral suppression;
- The National AIDS Trust (NAT) is concerned about people (patients) who are lost to follow up, and sees a pressing need to address this problem.



## RELEVANT LEGISLATION USED IN CASES OF HIV CRIMINALISATION

### Non-disclosure of HIV-status

Non-disclosure of HIV-status is not criminalised in the United Kingdom.

### Exposure to HIV

In Scotland, under the law of 'Culpable and Reckless Conduct' (see 'Transmission of HIV' for full prosecution criteria) a person can be prosecuted for recklessly putting someone at risk of infection, even if the infection is not passed on. While recognising the potential criminality of such an act, the COPFS (Crown Office and Procurator Fiscal Service) states that 'where there has been no resultant transmission of the infection, prosecution for the crime of culpable and reckless conduct would only be contemplated in exceptional circumstance.' In practice, exposure has only been prosecuted in cases that also involved transmission.

In England, Wales and Northern Ireland exposure can only be prosecuted if there is evidence that the person intentionally (as opposed to recklessly) set out to transmit HIV. In this instance, it is possible to be charged with attempting to intentionally transmit a serious sexual infection under the Criminal Attempts Act 1981. There has only ever been one such prosecution.

## Transmission of HIV

In England, Wales and Northern Ireland there are two laws, which can be used to prosecute HIV transmission:

1) Section 20 of the Offences Against the Person Act 1861 – this is described as reckless transmission. In this context, recklessness means that a defendant foresaw that the complainant might contract an infection via sexual activity but still went on to take that risk. You can be prosecuted for reckless transmission if all of the following points applied in relation to the alleged offence:

- you knew you had HIV;
- you understood how HIV is transmitted;
- you had sex which risked HIV transmission (i.e. you did not use appropriate safeguards);
- you transmitted HIV to the sexual partner;
- that the sexual partner did not know you had HIV when the HIV was transmitted.

If the sexual partner did know that you had HIV and consented to the risk, this would be a valid defence. The maximum penalty is 5 years imprisonment for a Section 20 Offence, though multiple complainants can result in multiple sentences being delivered to run consecutively.

2) Section 18 of the Offences Against the Person Act 1861 – this is described as intentional transmission.

The criteria for prosecution are the same as for reckless transmission, except that the prosecution must prove that the accused acted with intent to transmit HIV. In such circumstances, the consent of the complainant to sexual activity in the knowledge that the defendant is infectious does not amount to a defence for the defendant. Section 18 carries a maximum sentence of life imprisonment.

In Scotland, there are two laws that can be used to prosecute HIV transmission:

1) Culpable and Reckless Conduct – this common law offence is used when there is evidence that a person displayed ‘criminal negligence and indifference’ as to whether they could pass HIV on.

In other words, they understood the risks but behaved ‘recklessly.’ You can be prosecuted for reckless HIV transmission if all of the following apply:

- you knew you had HIV;
- you understood how HIV is transmitted;
- you had sex which risked HIV transmission (i.e. you did take appropriate safeguards in accordance with advice given by a medical professional);
- you transmitted HIV to the sexual partner.

Consent is not a defence to culpable and reckless conduct under Scots law; however, there is a strong presumption against prosecution in circumstances where the victim gave their informed consent to sexual activity in the knowledge of the risk of transmission of infection.

2) Assault Laws - if there is evidence that a person intentionally set out to transmit HIV to another person, assault laws could be used to prosecute them. This has so far never occurred.

None of the above legislation is HIV-specific and can be applied to the transmission of any sexual infection that could have ‘serious’ consequences for the infected person’s health. In England, there has been one case of reckless herpes transmission and one case of reckless Hepatitis B transmission. In Scotland, one person has been convicted of transmitting both HIV and Hepatitis C. All other cases have involved HIV.



## CASES OF HIV CRIMINALISATION

In England, since 2003 (when the first HIV-criminalisation case took place) there have been 32 prosecutions: 29 for reckless HIV transmission (24 convictions, 4 acquittals, 1 death during proceedings), 1 for intentional HIV transmission (conviction), 1 for reckless herpes transmission (conviction), and 1 for reckless Hepatitis B transmission (conviction).

In Scotland, there have been 5 prosecutions: 2 for reckless HIV transmission (1 conviction, 1 not guilty due to insanity), 2 for reckless HIV transmission AND reckless HIV exposure (conviction), and 1 for reckless HIV and Hepatitis C transmission (conviction).

There have been considerations of how developments in case law, regarding deception and whether it may vitiate consent, could apply to STI diagnoses and in particular HIV status. Relevant case law was around gender identity (McNally) and condom use (Assange). It was the view of prosecutors that it was potentially open as to whether this may be applied to status deception, and NAT is aware of occasions where the Crown Prosecution Service or the Police were considering such charges. Case law has since clarified that this would not apply in circumstances where the deception is not closely enough linked to the act itself (Lawrance case) and therefore it is clear that HIV status deception, as well as non-disclosure, is not prosecutable as rape.

Court hearings are public in the UK.

Compared to the overall population of people living with HIV, white women are overrepresented as complainants in prosecutions, and black African men are overrepresented as defendants. NAT maintains a record of all known prosecutions detailing names, ages, dates, genders, and sentences.

For cases of sexual assault or rape in England and Wales it is possible for risk of HIV transmission to be considered an aggravating factor in the sentencing. NAT has observed other cases of assault where it has been reported that a person's HIV status was taken into consideration by the judge in sentencing.

With regards to the investigation process, NAT has previously worked with the Police to produce guidance aimed at ensuring that investigations are conducted in a way which is:

- consistent with CPS prosecution policy;
- appropriately informed about HIV from both a clinical and a social perspective;
- respectful of human rights and confidentiality;
- and which does not prolong an investigation longer than necessary.

Since this guidance was produced there has not been analysis of how well investigations have been handled in practice, but an earlier review of police investigations identified the following areas of good practice:<sup>59</sup>

- police tend to handle information sensitively and be respectful of confidentiality;
- inappropriate disclosure is avoided;

<sup>59</sup> <https://www.tht.org.uk/sites/default/files/2018-02/Policing%20Transmissions.pdf>

- police often seek specialist advice to support their investigations;
- police showed particular discretion when a case involved juveniles.

The same review identified the following areas of concern:

- poor institutional understanding of HIV can lead to stigmatising and inappropriately handed investigations;
- investigations are sometimes drawn out far longer than necessary and cause undue anxiety;
- phylogenetic analysis is complex and nuanced, and police may misinterpret results or not know how to properly handle requests for medical records.

In the course of their work, NAT has found that some police forces are good at reaching out to organisations such as NAT for advice, while others are not. Sometimes investigations that should have been immediately ended have instead gone on for long periods of time because of poor understanding of the law and/or a pursuit of the wrong evidence in the wrong order.

However, NAT also know of investigations that have been handled very well, and hope that this is improving in general as their Investigation Guidance becomes more widely known. NAT is currently developing a survey for people living with HIV (in the UK) who have experienced criminalisation, which will include questions about how investigations were handled.



## GUIDELINES AND TRAINING ON HIV CRIMINALISATION

The UK is one of the few countries globally and the only one in Europe that has guidelines on HIV-criminalisation for prosecutors.

The Crown Prosecution Service of England and Wales has produced legal guidance for prosecutors.<sup>60</sup> NAT advocated for and were consulted in the initial development of this guidance, and are presently involved in an ongoing update/review.

In Scotland, the Crown Office and Procurator Fiscal Service has produced legal guidance for prosecutors.<sup>61</sup>

NAT has worked with the Association of Chief Police Officers (ACPO) to produce 'Investigation Guidance relating to the Criminal Transmission of HIV: for police forces in England, Wales and Northern Ireland' The Guidance is available to all police officers in England, Wales and Northern Ireland via the College of Policing website, and can also be found on NAT's website.<sup>62</sup> The guidance provides best practice advice to guide police officers through these investigations. It includes:

- investigation and evidential flowcharts;
- key information about HIV;

<sup>60</sup> <https://www.cps.gov.uk/legal-guidance/intentional-or-reckless-sexual-transmission-infection>

<sup>61</sup> [https://www.copfs.gov.uk/images/Documents/Prosecution\\_Policy\\_Guidance/Guidelines\\_and\\_Policy/Prosecution%20policy%20on%20the%20sexual%20transmission%20of%20infection%20-%20July%2014.pdf](https://www.copfs.gov.uk/images/Documents/Prosecution_Policy_Guidance/Guidelines_and_Policy/Prosecution%20policy%20on%20the%20sexual%20transmission%20of%20infection%20-%20July%2014.pdf)

<sup>62</sup> [https://www.nat.org.uk/sites/default/files/publications/ACPO\\_Guidance.pdf](https://www.nat.org.uk/sites/default/files/publications/ACPO_Guidance.pdf)

- specific guidance for when the accused is Under 18;
- advice on disclosure, confidentiality and how to ensure that investigations are not stigmatising;
- and guidance on communications and media reporting.

The British HIV Association (BHIVA) and British Association of Sexual Health and HIV (BASHH) have produced guidance on 'HIV Transmission, the Law and the Work of the Clinical Team.'<sup>63</sup> This guidance is aimed at those working in the field of HIV medicine, especially clinicians.

### **Trainings on HIV criminalisation**

NAT has provided training on HIV-criminalisation to police forces, HIV support services, and peer support groups of people living with HIV on an ad-hoc, occasional basis for a number of years. They are now delivering a one-year 'police training' pilot project in partnership with the Terrence Higgins Trust (the UK's largest HIV and sexual health charity), which involves training police forces in 3 UK cities. If this project is successful, NAT will explore the possibility of delivering police training on a wider basis.



## **THE ROLE OF MEDIA**

The media approach to these cases tends to be stigmatising and insensitive. This is sadly consistent with the UK media's reporting on HIV in general, in which people with HIV are often othered and blamed.

Unsurprisingly, the notion that people living with HIV are either victims or villains is particularly applied to HIV-criminalisation stories. Reporting is frequently inaccurate, with the terms 'recklessly', 'knowingly', 'intentionally', and 'deliberately' used interchangeably and without regard to the specifics of the case. Non-disclosure and material deception are often confused, with defendants described as 'concealing' or 'lying' about their status, with no acknowledgement that that vast majority of people living with HIV in the UK are undetectable and that in any case you are not obliged to disclose your status to anyone.

NAT's Communication Officer frequently intervenes to request that language is changed and information is corrected. Such interventions are often successful but depend on the goodwill of the relevant journalist.

## **INFORMATION ON HIV CRIMINALISATION TO PEOPLE LIVING WITH HIV**



NAT have produced the following resources: 'PROSECUTIONS FOR HIV TRANSMISSION: A guide for people living with HIV in England and Wales' was produced in partnership with Terrence Higgins Trust and can be found on each of their respective websites.<sup>64</sup>

<sup>63</sup> <https://www.bhiva.org/file/iDIGMpCZwyuNV/Reckless-HIV-transmission-FINAL-January-2013.pdf>

<sup>64</sup> [https://www.nat.org.uk/sites/default/files/online-guides/May\\_2010\\_Prosecutions\\_for\\_HIV\\_Transmission.pdf](https://www.nat.org.uk/sites/default/files/online-guides/May_2010_Prosecutions_for_HIV_Transmission.pdf)

'PROSECUTIONS FOR HIV & STI TRANSMISSION OR EXPOSURE: A guide for people living with HIV in Scotland' was produced in partnership with Terrence Higgins Trust and HIV Scotland, and can be found on each of their respective websites.<sup>65</sup>

'POLICE INVESTIGATION OF HIV TRANSMISSION: A guide for people living with HIV in England, Wales and Northern Ireland' can be found on NAT's website.<sup>66</sup>

## KEY POPULATIONS MOST AFFECTED BY HIV CRIMINALISATION AND OTHER DISCRIMINATING LEGISLATION AND POLICIES

The populations most affected by HIV in the UK are gay, bisexual and other men who have sex with men (MSM), and the black African population. There is also elevated prevalence amongst Black Caribbean communities, people who inject drugs, prisoners, and people born in high prevalence countries.

### Drug use

Under the Misuse of Drugs Act 1971, possession of illegal drugs is criminalised. Penalties are most severe for Class A drugs like crack cocaine and heroin, for which possession carries a maximum sentence of 7 years imprisonment. In recent years, Government policy has focused almost exclusively on abstinence, and harm reduction initiatives have been de-prioritised. There are some harm reduction interventions still in place (Needle and Syringe programmes, opioid substitution therapy) but they are underfunded and insufficient to meet need.

NAT is campaigning for a renewed focus on harm reduction, including the opening of Drug Consumption Rooms in areas of highest need and funding for heroin assisted therapy. The current government however is very resistant to drug policy reform, and continues to take a regressive approach.

### Migrants

Undocumented migrants are criminalised as they are left without legal status in the UK, making their presence in the UK unlawful, and prohibiting them from accessing employment and a wide range of welfare services. 'Hostile environment' policies are administrative and legislative measures designed to make staying in the UK without legal status difficult and works to ensure it is harder for undocumented migrants to access employment, education, healthcare, and housing. Due to regressive legislation, in most settings access to healthcare is only afforded to undocumented migrants if they can pay for it, meaning many migrants forgo it. HIV treatment is currently exempt from charges regardless of immigration status. Despite this exemption, many migrants are deterred from accessing healthcare altogether, impacting outcomes such as prompt HIV diagnosis.

### Sex work

In the UK, sex work itself (the exchange of sexual services for money) is legal, but a number of related activities, including soliciting in a public place, kerb crawling, owning or managing a brothel, pimping and pandering, are crimes. This forces sex workers to work alone and exposes them to violence. A major study led by the London School of Hygiene & Tropical Medicine last year found that sex workers who had been exposed to repressive policing were twice as likely to have HIV and/or other sexually transmitted infections (STIs) compared with sex workers in countries without repressive policing practices.

65 [https://www.nat.org.uk/sites/default/files/online-guides/scottishprosecutions2013\\_0.pdf](https://www.nat.org.uk/sites/default/files/online-guides/scottishprosecutions2013_0.pdf)

66 <https://www.nat.org.uk/sites/default/files/online-guides/May-2011-Police-Investigation-of-HIV-Transmission.pdf>

## **PRIORITIES IN RELATION TO HIV CRIMINALISATION**

NAT identifies the following priority areas:

- Bring Police and Crown Prosecution Service guidance up to date with the current scientific and epidemiological reality of HIV in the UK today.
- Improve knowledge and practice among the Police and the Crown Prosecution Service. This is to ensure that the law is correctly understood and is implemented in a way that minimises harm to both individuals and the wider community of people living with HIV.
- Share knowledge and understanding across the HIV sector to develop a common understanding of and approach to criminalisation, supporting improved knowledge and practice.
- Identify and 'upskill' and educate key individuals in the UK parliament and civil service with responsibility for HIV and for criminal justice in the UK, to initiate conversations on more progressive approaches and possible reform.

## **EXPECTED CHANGES AND DEVELOPMENTS**

The Crown Prosecution Service's (CPS) guidance has included references to viral suppression for some time. However, the CPS is due to update its guidance to give a more unequivocal statement of risk if a person is undetectable. NAT is currently working with the CPS on the wording of this section of the guidance. Before pursuing other lines of investigation, NAT believes that police and prosecutors should be establishing early on in a process whether a person was in fact virally suppressed or believed themselves to be so (also a defence to recklessness). The CPS guidance is expected to be published imminently.