

No Criminalisation of People with HIV!

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Summary

In Germany people with HIV are still being convicted for sexual transmission of the virus. Even the mere possibility of transmission can result in a conviction, without any actual transmission having occurred ("HIV exposure").

Deutsche AIDS-Hilfe disapproves of any criminalisation of HIV exposure or transmission in cases of self-determined sexual activities. Such a criminalisation not only imposes the responsibility on people with HIV alone but also harms HIV prevention.

Thus HIV transmission is not being prevented but promoted.

HIV exposure and transmission are considered to be criminal offenses namely "bodily harm" or "attempted bodily harm". Current interpretation of criminal laws requires people with HIV to either insist on using condoms or to disclose their HIV status to their partners. (For detailed information see: <http://www.aidshilfe.de/en/living-hiv/law/criminal-law>)

This interpretation of prevailing law is by no means mandatory, often it is just based on the assumption that these laws could prevent HIV infections. Deutsche AIDS-Hilfe calls upon the judiciary to reconsider the application of said laws and henceforth refrain from the resulting criminalisation of people with HIV.

As long as HIV exposure and transmission are being criminalized, courts must at least take into account that effective HIV therapy prevents HIV as effectively as condoms do.

**The criminalisation
of HIV exposure
and transmission
promotes the spread of HIV.**

No one-sided allocation of responsibility

It is not the HIV infection itself which results in transmission but sexual activities being consensually performed by two or more people, all of them being fully responsible for their actions and therefore for protecting themselves against HIV transmission.

The logic of offender vs. victim in criminal law does not apply for consensual sexual encounters. It re-determines a mutual situation into a one-sided action of HIV-positive people, thus disregarding the responsibility of their partners.

**All partners
are fully responsible
for the protection
against HIV transmission.**

Criminalisation harms prevention

Allocating responsibility primarily to HIV-positive people undermines the general principle of Germany's successful prevention strategy: Everyone can protect themselves, provided that they have the necessary education and means, and that there are no inhibiting external circumstances.

Allocating all responsibility to HIV-positive people may lead to the illusion that state is in control of HIV. People may rely on people with HIV being solely responsible for protection. This can be especially harmful because many transmissions emanate from people who are unaware of their infection.

**Criminalisation
leads to
a false sense
of security.**

Since usually only a person who is aware of his or her HIV positive status can be convicted, criminalisation may keep people from taking an HIV-test. This is counterproductive: HIV transmissions can effectively be prevented, if as many people as possible know about their infection and get timely treatment. Effective HIV treatment also protects their partners against HIV transmission (see below: "Take Into Account the Impact of Viral Load").

Some people argue that the threat of punishment will motivate HIV-positive people to protect their partners. There is no evidence for that. Research suggests that the threat of punishment does hardly ever affect sexual behaviour.

The threat of punishment is in no case helpful. Contrary, it increases the fear of speaking about HIV and protection, and thus maybe revealing oneself as being HIV-positive. The greater the pressure on people with HIV the greater the fear of being rejected.

Safety and truthfulness are not actionable

In sexual matters it is not always easy to speak frankly. There are fears and inhibitions as well as desires and projections. It is even more difficult to broach the issue of one's own HIV infection, since it is often connected with the fear of being rejected and with feelings of guilt.

These are the reasons why there isn't any right to truthfulness in sexual encounters. "Actionable truthfulness" – this kind of thinking suggests, safety could be procured by penal law. But there is no 100% safety in the realm of sexuality, not even in long-term relationships. This is to be kept in mind in all considerations on prevention and must not be ignored because of unrealistic concepts.

Truly helpful is an environment that enables and empowers people to talk frankly about HIV and sexuality.

Deutsche AIDS-Hilfe therefore demands an end of all prosecutions even in cases, when HIV-positive people conceal their infection or untruly claim to be HIV-negative. Since in the vast majority of cases people living with HIV do not act with malicious intent but out of fear, the threat of punishment will do more harm than good by even furthering non-disclosure. Truly helpful is an environment that enables and empowers people to talk frankly about HIV and sexuality.

At the same time Deutsche AIDS-Hilfe argues for a clear distinction between moral and legal issues. Psychological and physical harm caused by HIV non-disclosure and transmission of the virus must not be trivialized; however, these have to be dealt with differently, and not by judicial sanctions.

Taking into account the impact of viral load

Still too few courts of justice recognize that HIV therapy can be effective protection against transmission, since it inhibits reproduction of HIV in the body. Effective HIV therapy makes transmission nearly impossible; its

protective efficacy is at least as high as the use of condoms.

**An effective HIV therapy
provides effective protection
against HIV transmission.**

Deutsche AIDS-Hilfe advocates for abolishing the criminalisation of people living with HIV. As long as HIV exposure is still punishable, the courts must at least take into account the impact of viral load. If the viral load of someone living with HIV is permanently undetectable, this person has, as a matter of fact, protected his or her partner.

Conclusion

Currently, criminal law is being misused to enforce moral concepts. Society perceives people with HIV to be especially responsible for protecting HIV-negative people. Apparently, this is based on the need to not accept responsibility and to delegate it to others. This creates the illusion that people with HIV are solely responsible for HIV prevention, so that HIV-negative people are free to continue having unprotected sex.

What we need is an open climate where sexuality, ecstasy and HIV are not taboo. Advocating against discrimination means also promoting HIV prevention. This is the task for the judiciary, policymakers, the media and society alike.