

No Criminalization of People with HIV!

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Summary

In Germany people with HIV are still convicted after sexual transmissions 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 criminalization of HIV transmission or HIV exposure in cases of self-determined sexual activities. Such a penalization not only imposes the responsibility on people with HIV alone but also endangers HIV prevention.

Thus HIV transmission is not being prevented but promoted.

HIV transmission and HIV exposure is considered as a form of personal injury and thus a criminal offense. According to prevailing jurisdiction the HIV-positive partners have to insist on the use of condoms or to inform their partners of their being infected. (for detailed information see: www.aidshilfe.de)

That interpretation by prevailing law is by no means imperative, often it is just based on the assumption that HIV infections could thus be prevented. Deutsche AIDS-Hilfe urges judiciary to reconsider the application of said laws and henceforth abstain from the resulting criminalization of people with HIV.

As long as HIV transmission and HIV exposure are still criminalized, the courts should at least take into account that an effective HIV therapy protects against HIV transmission as effectively as condoms do.

**The criminalization
of HIV transmission
and HIV exposure
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 mutually performed by two people, both 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 sexual encounters. It re-determines a mutual situation into an ex parte activity of HIV-positive people only, thus disregarding the responsibility of their partners.

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

Criminalization Endangers Prevention

By allocating the responsibility to HIV positive people only the basic approach of the successful prevention in Germany is being undermined. Everybody can protect themselves, provided that they have the necessary information and means, and there are no inhibiting external circumstances.

Allocating all responsibility to HIV-positive people may provoke the illusion, the government could control HIV. People may rely on HIV-positive people being solely responsible for protection. This can be fatal just because many transmissions occur with people not even knowing about their infection.

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

Since only a person can be convicted who knows about his/her HIV status, criminalization may keep people from taking an HIV-test. This is counterproductive: HIV transmission can effectively be prevented, if as much people as possible know about being infected, and are treated in time. A good, effective treatment also protects their partners against HIV transmission (see below: "Considering the Impact of Viral Load").

Sometimes the argument is brought forward that the threat of punishment would 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 never of any avail. On the contrary. It increases the fear of speaking about HIV and protection, and thus maybe revealing oneself as being HIV-positive. The harder the pressure on people with HIV the higher 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 of 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.

**A helpful environment
is one that enables people
to frankly talk
about HIV and sexuality.**

Deutsche AIDS-Hilfe therefore demands an end of all legal penalization even in cases, when HIV-positive people conceal their infection or untruly claim to be HIV-negative. Since generally they do not act with ill intent but because they are afraid, the threat of punishment is harmful also in those cases. A helpful environment is one that enables people to frankly talk about HIV and sexuality.

At the same time Deutsche AIDS-Hilfe argues for a clear distinction between moral and legal questions. Psychological harm and physical damage caused by concealment of an HIV infection and eventual transmission of the virus must not be trivialized, but should, however, be treated otherwise than by penalization.

Considering the Impact of Viral Load

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

protective effect is at least as good as that of condoms.

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

Deutsche AIDS-Hilfe argues for an end of criminalization of people with HIV. As long as HIV exposure is still criminalized, the courts should at least take into account the question of viral load. If it is permanently impossible to detect any HI-virus in the blood of an HIV-positive person, this person has virtually cared for the protection of his/her partner.

Conclusion

Presently the penal law is being misused in order to enforce moral concepts. In our society the notion is prevailing, that HIV-positive people are especially responsible for the protection of HIV-negative people. This notion is apparently caused by a need to disclaim responsibility and transfer it onto other people. The illusion being: If HIV-positive people have to care for protection, HIV-negative people are free to continue having unprotected sex.

An open climate, where sexuality, ecstasy and HIV are not taboos, is what we need. Fighting against discrimination means promoting HIV prevention. It's a challenge for either justice, politics, the media and our society as a whole.