

Annex 1

Mandate for the Law Commission ('the Commission') appointed to conduct an inquiry and submit recommendations regarding issues surrounding criminalisation of transmission of a communicable disease that is hazardous to public health

The Commission shall:

- Compile and evaluate information on whether it is appropriate to apply criminal law in prosecuting persons for behaviour that poses a hazard to public health owing to the risk of communicable disease transmission and if so, what type of behaviour should make such persons liable for prosecution; see the Norwegian Communicable Disease Control Act on protection of the population against transmission of communicable diseases.
- In this work, the Commission shall:
 - Assess the body of knowledge that exists concerning the individual or generally deterrent effects of penal regulations in respect of HIV, including whether current regulation might be construed as discriminatory, or might have adverse impact on the individual's behaviour, prophylactic strategies and willingness to undergo testing. Extent and reasons are to be described.
 - Assess and discuss new findings concerning the risk of transmission of infection from a person who is HIV positive but taking effective treatment (low or no detectable cell count) through unprotected sex, in respect of what legal significance should be ascribed to this aspect. Any gaps in our knowledge in this area are to be pointed out.
 - Address the importance of penal regulation for non-infected/HIV negative sexual partners in respect of the individual's responsibility for taking precautions, and the extent to which criminalisation of those who are infected might indirectly be perceived as exempting them from responsibility for their own health.
 - Describe relevant case law on the transmission of communicable diseases that are hazardous to public health and assess whether such case law gives grounds for initiation of amendments to Norwegian legislation, including whether the distinction between wilful and negligent transmission is sufficiently well provided for in current legislation.
- Describe the legislation, case law and empirical findings in other countries concerning the transmission of communicable diseases that are hazardous to public health.
- Explain Norway's international obligations in respect of criminalisation and HIV; see Ungass.
- Assess and propose amendments to the existing Norwegian General Civil Penal Code and other legislation, and propose other instruments and interventions for reducing any negative consequences of prevailing statutes on communicable diseases that are hazardous to public health.
- Assess the interface between the General Civil Penal Code, Communicable Disease Act and appurtenant regulations; propose amendments, and assess the relationship of these legal instruments to other legislation with bearing on persons who are HIV positive.
- Address the economic, administrative and other significant consequences of the proposals.

The inquiry shall be based on Section 155 of the current Norwegian General Civil Penal Code and Sections 237 and 238 of the new Norwegian General Civil Penal Code insofar as the proposed amendments have bearing on the issues addressed by the inquiry.

Procedures and time limits

The Commission shall retain external expertise for the purposes of the inquiry, for example, in the form of sub-inquiries and seminars and/or assess the need for a reference group. The Commission shall familiarise itself with relevant statutes, case law and

interventions in other comparable countries. Norway is in dialogue with UNAIDS on support for an UNAIDS project to examine empirical findings on criminalisation of HIV infection in different countries in the West, together with collection of data on the communicability of HIV. The Commission will be able to engage in dialogue with this project concerning key issues and working methods and will be able to make use of the project's findings. The project is due to commence in late 2010. A project description has been made available by UNAIDS.

A secretariat will be placed at the disposal of the Commission.
The Commission shall submit its recommendations by 1 October 2012.

It is assumed that the Commission's expenses will be covered within the Norwegian Ministry of Health and Care Services' budget.