

## Legislative changes around criminalisation in Switzerland



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- **Legal context of criminalisation in Switzerland**
  - Art. 122 ff: Assault with intent to cause serious bodily harm
  - Art. 231: Transmission of a dangerous communicable human disease
  - Exposure as well as infection is punishable by law with Art. 122 & 231
  - The majority of convictions are **for exposure**, not infection!
  - As Art. 122 is protecting a **private good**, the mutual consent to have unprotected sex with a HIV-positive partner is not punishable
  - As Art. 231 is protecting a **public good** (public health), the mutual consent to have unprotected sex with a HIV-positive partner would still be punishable
  - Both articles are non-exclusive, and often apply together: conviction
- **Switzerland belongs to the Top1 countries in (Western-) Europe with high criminalisation records – together with Sweden and Austria**

Table 1: Convictions according to period (n=51)

	First instance, cantonal	Second instance, cantonal	Fed. Supr. Court	Total
Before 1989	0	0	0	0
1990–1994	2	2	2	6
1995–1999	4	2	2	8
2000–2004	9	3	3	15
2005–2009	9	9	4	22
<b>Total</b>	<b>24</b>	<b>16</b>	<b>11</b>	<b>51</b>

Table 3: Nationality of accused (n=39)

	Number	Percent (rounded off)
Switzerland	9	23.077 (23)
African countries	11	28.205 (28)
European countries	4	10.257 (10.5)
USA	1	2.564 (2.5)
Asia and Middle East	2	5.128 (5)
Unknown	12	30.769 (31)
<b>Total</b>	<b>39</b>	<b>100 (100)</b>

Table 4: Offender-victim constellations (n=39)

	Frequency
Heterosexual contacts	31
Homosexual contacts	5
Other constellations	3
<b>Total</b>	<b>39</b>

## Changes of Art. 231 StGB

Old Penal Code: Art. 231	Federal Council	New Version: Parliament
<p>1. Any person who <b>wilfully transmits a dangerous communicable human disease</b> shall be liable to a custodial sentence not exceeding five years or to a monetary penalty of not less than 30 daily penalty units.</p> <p>If the offender acts in a <b>particularly depraved manner</b>, the penalty shall be a custodial sentence of from one to five years.</p> <p>2. If the offender acts <b>through negligence</b>, the penalty shall be a custodial sentence not exceeding three years or a monetary penalty.</p>	Dito	<p>1. Any person who intentionally <b>and maliciously</b> transmits a dangerous communicable human disease shall be ...</p> <p>2. Deleted</p>
<p>Any person who has transmitted such a disease to a single person is not punishable <b>if he informed</b> the person <b>prior to</b> the transmission about the concrete risk of infection.</p>		

- **The changed formulation of Art. 231 is put to final vote on 16.06. before parliament**
- **Will hopefully reduce convictions of PLWH in the future**
- **The “Swiss Statement” will hopefully further reduce convictions of PLWH with no detectable VL (once courts accept this fact)**