

No criminalisation of people living with HIV!

Position paper and next steps

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Background

- HIV transmission and HIV exposure punishable by a general law on bodily harm (§§223 and 224 of the criminal law)
- cases not registered
- ~ 40 cases known since 1988
- New field: civil law (HIV transmission)
- Undetectable viral load: 2008 first verdict of not guilty
- In general: knowledge on HIV/AIDS not up to date

Discussion in Germany

- 2009/2010: Prosecution of Nadja Benaissa
- DAH claimed not guilty
- many did not agree: community of PLWH, general public, member organisations of DAH...
- procedure of discussion in the whole organisation
- publication of the position paper in March 2012
 - addressed to the general public
 - focusing on consensual (self-determined) sex
 - initiate broader discussions on change of legal practice

No criminalisation in cases of self-determined sexual activities

- Criminalisation promotes the spread of HIV
 - assumption that the laws prevent HIV transmission wrong
 - threat of punishment to motivate PLWH to protect their partners
 - Contrary: disclosing becomes more difficult
 - pressure on PLWH leads to fear / confusion, not to positive action

No one-sided allocation of responsibility

- All partners are fully responsible for the protection against HIV transmission.
 - criminalisation endangers the understanding of self-responsibility in HIV prevention
 - HIV positive people accused as source of HIV transmission
- Criminalisation harms prevention
 - criminalisation leads to false sense of security
 - back to the 80s: the state should protect its citizens against HIV transmission.

No right to safety and truthfulness

- No right to truthfulness in sexual encounters
 - unrealistic concept of relationships and marriage
 - moral and legal issues are mixed up: moral concepts go into legal issues instead of being addressed as what they are
- Helpful is an environment that enables and empowers people to talk frankly about HIV and sexuality

Taking into account the impact of VL

- Effective HIV therapy provides effective protection against HIV transmission.
- Prosecution of HIV exposure should end if HIV is undetectable
 - More and more courts are respecting this
 - Still the prosecutions are not stopped
 - Even experts are not always giving the right and up to date information on HIV/AIDS
 - „Old“ recommendations on websites are used

Next Steps

- EATG-Workshop in Berlin in September
- National AIDS Council working group starting in June
- Trainings for service providers: change in attitudes towards “victims”
- HIVEurope working group on criminalisation to be implemented
- Positive Begegnungen 2012: Conference of PLWH with focus on criminalisation



Thank you!