



Precedent from
Finland's Supreme
Court
September 15, 2021

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Situation before September, 2021

- It's been likely that taking preventive measures for transmission, such as being on ART (undetectable viral load) or using condoms, are considered not exposing anyone for HIV.
 - This has not been verified by Finland's Supreme Court and situation has been unclear.
- In 2015: the accused was on ART, had had unprotected (no condom) sex (anal intercourse) without disclosing his HIV-status to a sexual partner. The HIV transmission had not happened. The accused was convicted of imperilment.
- In 2015: An other case, one vaginal intercourse, and taking into account all circumstances the charge of aggravated assault (attempt) was dismissed.
- In 2017: Many unprotected intercourses with a spouse (no condom, no ART), HIV transmission occurred. Convicted of aggravated assault.

Precedent, September 2021

- A had been aware of his HIV infection and had once had unprotected sex with B. HIV infection had not been transmitted to B.
 - ART used by A and the low viral load in his blood, and taking into account the circumstances of the case
- > The charge of aggravated assault (attempt) was dismissed.
- > A had not caused a danger to the life or health of B, so the alternative charge of causing the danger (imperilment) was also dismissed.

Precedent, September 2021

- Precise information on the viral load of A at the time of sex is not available. The viral load has probably been between 487 and 55 copies per milliliter, probably 100 to 300 copies per milliliter.
 - In addition, the risk of infection has been reduced by the fact that A has ejaculated on the sheet and not inside B.
 - HIV is still regarded a dangerous infection.
- To clarify the precedent, we organised a webinar and had professor of criminal law from University of Helsinki to explain us what this precedent means.

Does the Supreme Court believe U=U, Do we still have to disclose?

- Since the 2015 preliminary rulings, medical research data on HIV infection and the impact of medication on infectivity have increased.
- According to expert opinions, there is no risk of contracting HIV infection even during unprotected intercourse when an HIV-positive person is on successful ART, ie his or her blood virus remains below 200 copies per milliliter.
- The Supreme Court considers that the risk of infection in such a situation is essentially theoretical and would not be a question of the specific danger required by the hazard characterization.
- The case can be found only in Finnish:
<https://korkeinoikeus.fi/fi/index/ennakkopaatokset/kko202164.html>