

AUSTRIA



COUNTRY STATISTICS

Austria has a population of 8,822,267. The modelling tool of ECDC reveals a number of 9440 PLHIV. The tool assumes that Austrian HIV Cohort Study is representative for the whole of Austria. However, one has to take into consideration that the cohort study does only include data from selected hospitals.

According to the data of the cohort study⁸ 92% of all PLHIV have been diagnosed (8,684), 94% of them are on treatment (8163) and 85% of them are below the limit of detection (6939).

Referring to the Austrian cohort study (2018) most common modes of transmission have been: 55.56% MSM, 6.57% IDU, 29.29% heterosexual transmission. Most heterosexual infections occur amongst migrant populations. Therefore, the most vulnerable groups in Austria are MSM and migrant populations.

The distribution has been quite stable for the last ten years. In 2018, 397 HIV-infections were newly diagnosed in Austria. Therefore, the number of new diagnoses is lower than in the past 15 years. The reason behind this decrease in the incidence is many folded and can be contributed to several factors, including the effects of treatment as prevention (TasP) and the informal use of pre-exposure prophylaxis (PrEP) by people at higher risk.



RELEVANT LEGISLATION USED IN CASES OF HIV-CRIMINALIZATION

Non-disclosure of HIV-status

There is no general obligation to disclose one's HIV-status in Austria. There are certain occupations (e.g. surgeon) where one's HIV-status is considered relevant. In such cases, employees are obliged to disclose their HIV-status to their employers and failing to do so can be a reason for a justified termination of employment.⁹

Exposure to HIV

Exposure to HIV and other communicable diseases can be criminalized under § 178 (intentional exposure) and 179 (negligent exposure) of the Austrian Criminal Code (Strafgesetzbuch). These legal provisions define (public) health as a public good that has to be protected. Therefore, the theoretical risk of spreading a disease that has to be reported is penalized, even if an actual transmission has not taken place.

Transmission of HIV

In addition to the paragraphs applied for exposure, §83 of the Austrian Criminal Code – causing personal injury and health damage – can be applied to cases of transmission. The above provisions of the Austrian Criminal Code are not HIV-specific, and can be and have been applied to other communicable diseases.



CASES OF HIV-CRIMINALIZATION

AIDS-Hilfen Österreich are aware of 74 convictions under the above criminal laws for the period of 1990 – 2009. In the period between 1990 and 2001 there were 36 convictions under § 178 and 6 under § 179. In the period between 2005 and 2009 there were 52 prosecutions and 38 convictions under § 178. 15 out of the 52 cases were of HIV while 37 were due to other communicable diseases. 8 people were prosecuted under § 179, 3 of whom due to HIV and 5 of whom due to other communicable diseases. In the period between 2010 and 2018 Aids Hilfe Wien has been informed about 27 prosecutions under § 178.

Court cases in Austria are open to the public, but closed hearings can be requested if the issues discussed are personal and can have an effect later on the lives of the parties involved. Recently courts have been using undetectable viral load as scientific evidence of zero exposure thus PLHIV on effective treatment get acquitted or their cases dropped before going into court.



GUIDELINES AND TRAINING ON HIV-CRIMINALIZATION

AIDS-Hilfen Österreich are not aware of any police or prosecutorial guidelines on HIV-criminalization in the country. However, they offer personalized, HIV-specific trainings to nurses, physicians, and staff of state institutions such as the police and staff of prisons.



THE ROLE OF MEDIA

AIDS-Hilfen Österreichs report a mixed role of media when reporting about HIV-criminalization cases. Most reports are focusing on the sensational elements of the cases, further increasing unjustified fears of transmission and increasing stigma around HIV in the public.

However, some media coverage focuses on factual informing and promoting the scientific progress in HIV-treatment such as U=U etc.



INFORMATION ON HIV-CRIMINALIZATION TO PEOPLE LIVING WITH HIV

AIDS-Hilfen Österreich offers legal counselling on several legal topics to PLHIV, including HIV-criminalization.

KEY POPULATIONS MOST AFFECTED BY HIV-CRIMINALIZATION AND OTHER DISCRIMINATING LEGISLATION AND POLICIES

In Austria there is the so-called AIDS-Law (“AIDS-Gesetz”) that is designed to forbid PLHIV to engage in sex work. This law does not take into consideration safer sex options such as condom use or treatment as prevention (TasP) but imposes a lifelong ban on sex work for those diagnosed with HIV. In Austria an official, registered sex worker has to get tested for HIV every six week. If diagnosed, they are not allowed to work in sex work any longer.

Additionally, Austria has a system of compulsory, state health insurance. However, there are people in Austria (e.g. EU citizens with no insurance in their country of origin, refugees who have not received asylum, migrants in irregular situations) who cannot access the health system and life-saving HIV-care and treatment services.

The presumption that the compulsory state health insurance system covers everyone in Austria, leave some people behind and further marginalizes them, limiting their right to health by not providing free HIV-treatment and care for them, at the same time disregarding the interest of public health i.e. people on effective treatment and undetectable viral load are not transmitting the virus.