

CZECHIA



COUNTRY STATISTICS

Czechia has a population of 10.3 million. As of the end of 2018, 3,368 people have been diagnosed with HIV; the estimated number of PLHIV might be up to 1,000 additional cases. The last official figures for the UNAIDS treatment (90-90-90) targets are from 2017 and they are 78-71-92 respectively.

From the beginning of the HIV-epidemic, there has been a steady increase in incidence (mostly gay men and other men who have sex with men), however, the speed of the increase slowed down in 2018, due to the application of the “test and treat” guidelines and the increased easier access to PrEP but in 2019 there has been again growth in the speed of the increase.



RELEVANT LEGISLATION USED IN CASES OF HIV-CRIMINALIZATION

Non-disclosure of HIV-status

There is an obligation under Public Health Protection Law to disclose one's HIV-status to health care providers in Czechia. In case of failing to do so, it is considered an administrative offense where a fine up to CZK 10,000 (approx. EUR 400) can be imposed, but no criminal liability should be applied.

However, the Czech AIDS Help Society is aware of one court case where an individual was found guilty with a crime of “dissemination of a contagious human illness” for conduct consisting

of non-disclosing their HIV-status to a doctor. Unfortunately, the individual did not have proper legal representation and did not appeal against the decision of the court of first instance.

In 2019 Czech AIDS Help Society initiated a Public Health Protection Law amendment which would reduce the mandatory HIV status disclosure in the healthcare settings to cases of professional exposure. (However, the amendment was rejected by the Parliament in February 2020).

Exposure to HIV

Exposure to HIV and other communicable diseases can be criminalized under Sections 152 and 153 of the Czech Act No. 40/2009 Sb. – Czech Criminal Code. These provisions cover the “dissemination of a contagious human illness” and “dissemination of a contagious human illness by negligence”.

Transmission of HIV

Besides the above provisions of the Czech Criminal Code, Section 145 the crime of “serious bodily harm” of the same Act can also be applied.

The above provisions of the Czech Criminal Code are not HIV-specific, and they can be, and have been applied to other communicable diseases.



CASES OF HIV-CRIMINALIZATION

There are no available statistics regarding the number of HIV-criminalization as it is together with all other crimes under the same provisions of the Czech Criminal Code.

The Czech AIDS Help Society is aware of about 20 HIV criminalization in the past 10 years. A vast majority of these cases were on sexual exposure/transmission and involved gay men and other men who have sex with men. They are aware of one case where vertical transmission was criminalized.

In Czechia, while the process of investigations are usually private and personal data of individuals are protected from disclosure, criminal proceedings in front of the court are public. During court hearings, the participation of individuals not involved in the case can be restricted; however, sentences are always delivered publicly.

There are several issues with the court cases. These include the lack of knowledge about HIV among justice professionals (judges, prosecutors), meaning that much depends on the quality of the defence and their ability to present all available medical arguments.

There is also an insufficient number of HIV experts in the pool of court appointed experts. It has happened that the court-appointed psychiatrists or other medical professions provided outdated or even prejudiced information as expert statements and these were accepted by the court. There is also the issue of lack of protection of the accused against medialisation of the case. Some of the HIV-criminalization cases have been followed by the media, who shared sensitive details about the health state and sexual life of the accused.

In a case where the person living with HIV was represented by the Czech AIDS Help Society, the Czech Supreme Court has acknowledged that viral load must be taken into account when determining criminal liability. Unfortunately, this decision is not yet widely known among legal practitioners, but since the decision was issued and it can be referred to, the organization has been successful in using this argument in the defence of all PLHIV with undetectable viral load.

In 2016 the public health department launched criminal investigations against 30 gay men living with HIV whom it alleges had unprotected sex in violation of the country's laws that make it a crime to expose someone else to HIV. Their argument was based on these men having had another sexually transmitted infection. Fortunately, the Czech AIDS Help Society could provide legal support in the cases and raised international awareness with civil society and international agencies intervening with the ministry of health and the charges were all dropped due to successful argumentations from the defendants and their legal representatives.



GUIDELINES AND TRAINING ON HIV-CRIMINALIZATION

There are no official guidelines or trainings on HIV-criminalization in the country. The Czech AIDS Help Society have had several ad-hoc attempts to provide training to selected journalists but the interest was very low so this has not developed into any sustainable project or programme.



THE ROLE OF MEDIA

Cases involving HIV transmission have always been interesting for the media, especially when they could report about sensational elements of the cases, such as details of the sex life of the person(s) in the case. The media reports usually focus on the statements of the prosecutor and the judge, paying less attention to the arguments of the defence. The fact that a PLHIV was charged with HIV transmission gets far more attention by the media than the fact that the case ended in acquittal.

The Czech AIDS Help Society have seen examples of stigmatizing and sensationalizing articles with the actual facts hidden and overshadowed by the sensational content and wording of the article.

Nevertheless, there have been some successful attempts to present the disadvantages of criminalisation of HIV transmission in the media and there are examples of professional media approach and reporting of the cases.



INFORMATION ON HIV-CRIMINALIZATION TO PEOPLE LIVING WITH HIV

Since 2012, the Czech AIDS Help Society has been providing free-of-charge legal services to any person living with HIV. This includes on-line and telephone counselling, providing legal support and representation in court cases (including cases of HIV-criminalization).

They also publish information on the issue, including newsletters, leaflets, and recommendations. They have often been approached in cases of HIV criminalisation.

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

There are no discriminating laws against PLHIV; however, there are significant issues in practice. PLHIV are often discriminated against due to their HIV-status, especially in their access to health care services. It appears that gay men are the most frequently criminalised group.