

GERMANY



COUNTRY STATISTICS

Germany has a population of 82.8 million. Germany has been very close to reaching the first 90 of the UNAIDS treatment targets: the estimated number of all people living with HIV is around 86,000, by the end of 2017, 74,800 people have been diagnosed; and have already reached the second and third 90 targets: 68,800 were on treatment and 65,500 had an undetectable viral load.

The number of new diagnosis in 2017 was 3,300, which has been stable and showed a slight decrease in the last few years due to effective prevention programmes and the upscale of treatment. In the future, further decrease is expected due to the national rollout of PrEP in Germany.



RELEVANT LEGISLATION USED IN CASES OF HIV-CRIMINALIZATION

Non-disclosure of HIV-status

Non-disclosure of HIV-status is not criminalized nor is there an obligation to disclose one's status in any situation in Germany, however, when it comes to criminalization of exposure to HIV and transmission of HIV, the relevant provisions of the German Criminal Code apply only in case of non-disclosure.

Exposure to HIV

Exposure to HIV is criminalized under §223 (bodily injury) and §224 (assault) of the German Criminal Code as an attempt and if the person living with HIV has not disclosed their status to their partner. Other relevant provisions are found under §22 and §23 of the German Criminal Code which define attempt and criminal liability.

Transmission of HIV

Transmission of HIV is criminalized under the same provisions as exposure to HIV when the actual transmission of the virus took place and if the person living with HIV has not disclosed their status to their partner.

The above provisions of the German Criminal Code are not HIV-specific and can be applied to other communicable diseases. The proof of disclosure relies on the accused.



CASES OF HIV-CRIMINALIZATION

Deutsche Aidshilfe are aware of 54 court cases between 1987 and 2016. 34 cases of the criminal cases ended in conviction, 7 in acquittal in 8 cases the proceedings were closed before reaching the court.

Prison sentences have been imposed between 1 year and ten years, some of them with suspension. Most of the criminalization cases were against gay men and other MSM (21), while there were further 19 cases against heterosexual men and 5 against women. Migrants have been accused in 4 cases and sex workers in 2 during this period.

Court hearings are open to the public. Courts are taking into consideration the use of condom and increasingly the adherence to treatment and undetectable viral load. Charges are often dropped during investigation when the accused have undetectable viral load.



GUIDELINES AND TRAINING ON HIV-CRIMINALIZATION

There are no guidelines or training provided to professionals involved in HIV-criminalization in Germany. There are few defence lawyers who have expertise in the topic and NGOs such as Deutsche Aidshilfe and its member organizations provide information and support in cases when they are contacted.



THE ROLE OF MEDIA

The media are often on the side of the supposed victims of HIV-exposure and transmission; reports also like to highlight the sensational elements of the cases, especially when a known person is under investigation or in court.

In recent years, however, there have also been increasing reports about science and the consideration of the viral load.



INFORMATION ON HIV-CRIMINALIZATION TO PEOPLE LIVING WITH HIV

The Deutsche Aidshilfe provides legal information and information on HIV-criminalization in its brochures and on their websites.

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

The possession of drugs is illegal, with different regulations by federal states.

Migrants with irregular status have no access to health services, including HIV-treatment and care services. In some of the federal states of Germany, migrants applying for stay or asylum are mandatorily tested for HIV.

The police keeps records of the HIV and hepatitis status of people when they acquire such information. The files of the person from then on is marked with 'ANST' short for contagious in German.