

Criminalisation of HIV transmission in Europe

A rapid scan of the laws and rates of prosecution for HIV transmission within signatory States of the European Convention of Human Rights

Research conducted by: Global Network of People Living with HIV/AIDS Europe (GNP+ Europe) and Terrence Higgins Trust (THT).

Funded by: GNP+ (Europe), THT, and the Joint UN Programme on HIV/AIDS (UNAIDS)

Disclaimer

This paper comprises a synthesis of input from several different sources, and remains as of April 2005 a draft document open to comments. The statements and information provided in this document are based on replies to a questionnaire and have not been independently confirmed. The views expressed in this document do not necessarily reflect the official position of UNAIDS which partly funded the production of this document.

Document prepared by: Moono Nyambe
Global Network of People Living with HIV (Europe)

Researchers: Hailey Gaines, Moono Nyambe

Supervised and edited by: Thomas Yocum, Terrence Higgins Trust

Managed by: Julian V. Hows, Global Network of People Living with HIV (Europe) and Lisa Power, Terrence Higgins Trust

Responsible UNAIDS staff people: Miriam Maluwa and Susan Timberlake

Acknowledgements: Additional material and comments on drafts of this report provided by Andrew Doupe GNP+ Europe and Julian V. Hows, GNP+ Europe

Resources:

- *Criminal Law, Public Health and HIV Transmission: A Policy Options Paper*, UNAIDS, 2002
- NAM database (Nambase) for Europe-wide contact details

Contents

1 Introduction

2 Aims of the research

3 Methodology

3.1 Overview

3.2 Language

3.3 Translation

3.4 Ease of access to information

4 Results

4.1 Overview

Table I: Prosecution table

4.2 Transmission of HIV: Criminal or Not Criminal

Table II: Overview of the European situation

4.3 Criminal conduct

4.4 Transmission vs Exposure

Table III: Transmission vs exposure

4.5 Labelling of the criminal act

4.6 The fault element

Table IV: Categorisation of countries approach

4.7 Coercive vs Consensual

4.8 Sentencing/Punishment

5 People profile

5.1 Overview

5.2 Gender

5.3 Modes of transmission

5.4 Nationality/occupation of those convicted

Table V: Nationality and occupation of those convicted

6 Other Issues

6.1 Media issues

6.2 Human rights issues

6.3 The role of organisations supporting people living with HIV and AIDS

7 Country data

Annex 1 – Survey questionnaire

1 Introduction

In recent years, there has been substantial anecdotal evidence that prosecutions for HIV transmission have been on the increase across Europe – most noticeably in a series of cases in Finland, the Netherlands, Sweden, and the United Kingdom. During this same period, HIV incidence and prevalence has increased, particularly in the countries of Eastern Europe and the Western and Central Asian Republics. In light of this and high profile media coverage of HIV transmission cases, there is concern that States might increasingly choose to legislate the criminalisation of the transmission of HIV and prosecute people who transmit HIV, leading to the infringement of the human rights of people living with HIV or AIDS (PLWHA). Furthermore, such laws may be increasingly seen within the new legal framework of an enlarged European Union as a viable tool to curb conduct that carries the risk of HIV transmission, without other options being adequately considered.

These concerns have been raised against the background of a long history of debate since the beginning of the HIV epidemic on the value and appropriateness of the use of criminal law and other punitive measures in the response to the epidemic. In order to assist in the development of sound public policy and law on the question of criminal law and HIV and AIDS, UNAIDS produced in 2002 *Criminal Law, Public Health and HIV Transmission: A Policy Options Paper*¹. The paper identified a number of public policy, public health, human rights and legal considerations that States should take into account when making decisions about the use of the criminal law in the context of HIV and AIDS. It recommended that criminal law should only be used in certain kinds of cases as a last resort after public health laws and policies have failed to achieve the desired goals. Furthermore, it recommended that if the criminal law is used, it should not be HIV specific, should not be applied to acts that pose no substantial risk of transmission of HIV, should not be applied to cases where the partner was aware of the defendant's positive status and there was no deceit or coercion, should not be used for negligent transmission, and should require that the HIV positive person knew s/he was infected and knew that his/her conduct posed a significant risk of transmission of HIV.

Underpinning any response, in summary the paper recommended that:

- any legal or policy responses to HIV and AIDS, particularly the coercive use of State power, should be effective in the overall pursuit of public health and should conform to international human rights norms, particularly the principles of non-discrimination and of due process
- State action that infringes on human rights must be adequately justified, such that policy-makers should always undertake an assessment of the impact of law or policy on human rights, and should prefer the 'least intrusive' measures possible to achieve the demonstrably justified objective of preventing disease transmission.

In this context, the current study sought to identify, briefly describe, and analyse the law in relation to the criminalisation of HIV transmission in use at the time of the study (2004) by signatory States to the European Convention for the Protection of Human Rights (ECHR) and Fundamental Freedoms. This was done so as to (a) provide an analysis of current trends in the criminalisation of HIV transmission in Europe; (b) assist governments, non-governmental organisations and people living with HIV and AIDS in examining the compatibility and conformity of these laws with

¹ Elliot, R, *Criminal Law, Public Health and HIV Transmission: A Policy Options Paper*, UNAIDS, 2002.

human rights principles and obligations; and (c) realise an informed and measured approach that is based on human rights and public health to the use of law for regulating conduct that may result in HIV transmission.

The study showed that there were at the time many different types of law used to criminalise the transmission of HIV. These laws range from HIV-specific laws to the use of general criminal law provisions in such cases. Some laws required intent, some did not, some criminalised only actual transmission, while other criminalised the risk of transmission. Furthermore, some laws criminalised “reckless” as well as “negligent” behaviour in addition to “intentional” behaviour. Though data were hard to come by with regard to the sex, ethnic background and legal status of those prosecuted, it appeared that a substantial number were male, often immigrants and from marginalised groups.

The study was not definitive with regard to many issues raised by the criminalisation of HIV transmission. However, enough material was gathered to raise concerns about the following:

- Whether the laws actually deter behaviour that results in, or threatens, the transmission of HIV, i.e. whether the laws achieve valid prevention goals?
- Whether public health measures might achieve prevention goals more effectively than the criminal law?
- Whether HIV-specific legislation in this area is ever warranted?
- Whether application of the law is foreseeable by those who may be prosecuted?
- Whether an assessment is made regarding the actual level of risk of transmission being posed?
- Whether appropriate burdens of proof are met?
- Whether the issue of ‘consent to the risk’ is adequately taken into account?
- Whether there is selective or discriminatory prosecution based on ethnicity, legal status or sexual orientation?
- Whether sentences are appropriate?
- Whether the media plays a harmful or helpful role?
- Whether the use of the criminal law causes further stigmatisation and isolation of people living with HIV?
- Whether various human rights of those prosecuted are violated, e.g. right to privacy, health, freedom of movement?

It is hoped that this study is one useful step in the urgent need to find answers to these questions and to examine further the appropriateness and value of the use of the criminal law in the response to the HIV epidemic.

2 Aims of the Project

The aims of the project were to conduct a survey of the 45 signatory countries to the European Convention on Human Rights in order to map:

- The types of criminal or state laws used in prosecuting persons for the transmission of HIV
- The rate of prosecutions/convictions
- The numbers and identity of those against whom the laws were used in the context of the relevant national epidemiology of HIV
- Local organisations working on these issues
- How best information on these issues could be obtained

3 Methodology

3.1 Overview

Data was collected by respondents who completed a questionnaire. More than 600 questionnaires were sent to HIV and AIDS organisations, government departments (Ministries of Justice or Public Health or the equivalent), UN country representatives, government officials, and those working on the issues in the 45 countries that have signed the European Convention of Human Rights. More than 90 per cent of the questionnaires were sent electronically with respondents being invited to respond in kind. Eighty-seven completed questionnaires were returned. Telephone calls were made to identify and elicit the support of respondents in completing questionnaires and to clarify incomplete and unclear responses.

The research comprised a survey and analysis of the extent and nature of national laws involving the criminalisation of the transmission of HIV based on quantitative and qualitative data in States that are signatories to the European Convention for the Protection of Human Rights and Fundamental Freedoms. The research involved the following activities: (a) creating a list of potential contacts from various sources, (b) sending out a questionnaire to all of those on the contact list and tabulating results; (c) following these up with phone calls, emails, etc. (d) tabulating results; and (e) conducting analysis based on results of the survey.

The information provided through these questionnaires comprised the primary sources for the descriptive accounts and analysis that follow. Thus, the results of the research comprised self-reported data collected from responses to the questionnaires used in the survey. These data were not independently confirmed.

Because there was no European Union-wide organisation or forum dealing with HIV criminalisation issues, recruitment of respondents was based on the following parameters. Priority was given to obtaining responses from UNAIDS country officials, national HIV organisations, universities, and from Departments of Justice or the equivalent. In this regard, NAM's Nambase was a useful resource for collecting contact details of the organisations working in each country, as were UNAIDS staff in Geneva and GNP+ Europe and personal contacts of those managing the project. Internet searches also helped find contact details of organisations and legal departments of universities across the study area. Embassies and High Commission offices based in the UK were contacted for information about in-country government offices. They were also invited to facilitate completion of the questionnaire for their home country. British Council offices were also contacted to help identify competent persons to complete the questionnaire. The Council of Europe was approached and may still submit data.

The questionnaire was divided into four sections:

- Criminalisation – factual information about rates of convictions and prosecutions, where applicable;
- The law – information of the laws used, where applicable;
- The people being prosecuted – information about the people being prosecuted: gender, mode of transmission, nationality and occupation at the time of prosecution;
- Organisations – details of respondents and organisations working in this area.

Most of the questions were closed or required factual information. At the end of each section a question was posed that asked respondents to give an opinion on their assessment of the situation in their country. A 'comments' box was placed as

the last section of the questionnaire allowing respondents to provide any other information they thought relevant to the research.

Because the questionnaire could only be sent in one language (English), efforts were made to keep it simple, easy to understand and without jargon. GNP+ Europe and Terrence Higgins Trust were involved in editing and revising the text for the questionnaire.

Distribution began on 16 June 2004, and responses were accepted for inclusion until 23 September 2004. The questionnaire distribution period fell in the middle of the holiday season for a number of the countries involved in the study. Because this period also coincided with the International AIDS Conference in Bangkok, most questionnaires were returned after mid-August. A copy of the questionnaire is attached in Annex 1.

3.2 Language

While the questionnaire was in English, some questionnaires were answered in the official language of the responding country. In these cases, another source from the country was asked to translate the material. Where data was translated by the project team, the reporting indicates this. All translation of the legal text was done by the respondents. In some cases, official translation was provided; in others, the respondents used legal representatives to translate the legislation. In all instances, legal text is reproduced as given.

3.3 Translation of the laws²

All the laws analysed for this study were translated from their original official language into English. In some cases, the transcripts provided were not an 'official' translation. However, in all cases but one (Belgium), the translation was provided by the responding country. There were as many different formulations of the law as there were respondents.

3.4 Ease of Access to Information

Of the 45 countries involved in the study, no information or insufficient information was provided for Andorra, Greece, San Marino and Spain. Of the more than 600 questionnaires sent out, some 50 people/organisations responded that they were unable to complete the questionnaire because of lack of access to information.

Information was corroborated by a government source in 13 of the 41 countries that responded. This was generally from the Ministry of Justice or its equivalent, or Public Health or Prosecution Services. Corroboration by a government official did not, in all cases, amount to all the data requested being provided.

Respondents generally were able to identify the law or laws that were being used for the criminalisation of HIV transmission. Where more than one law was in place, not all respondents could identify all the legal references or statutes pertaining to the

² The study was concerned more with reporting on the laws applied than commenting on their suitability or adequacy. Neither have we commented upon whether particular laws or their application might be subject to challenge under the provisions of the European Convention of Human Rights, to which all the countries are signatories. Where comparisons were made with other countries, this was more for illustration of the commonalities or divergences than a measure of one's superiority over another.

criminalisation of HIV transmission. While the laws could be identified, not all respondents could provide the precise date of enactment. Again, where the existing law had been amended to specifically mention HIV, the precise dates of amendment were not provided in all cases.

4 Results

4.1 Overview

Respondents from 41 out of 45 countries provided information for the study. Of the respondents from the 41 countries that were able to provide information, it was reported that in at least 36 countries the *actual* or *potential* transmission of HIV can constitute a criminal offence. This supported anecdotal evidence that increasingly the law is seen as a tool for regulating conduct that can lead to HIV transmission. (See Table I). In 21 of these countries, it was reported that at least one person has been prosecuted.

Table I: Prosecution Table

| Number of attempted prosecutions | Country (* refers to number of convictions) |
|---|--|
| 30 or Over | Austria, Sweden* ³ , Switzerland |
| 20 - 30 | |
| 10 - 19 | Denmark, Finland, Netherlands ⁴ |
| 5 - 9 | Norway |
| 1 - 4 | Azerbaijan, Cyprus, Czech Republic, Estonia*, France*, Georgia, Germany*, Hungary ⁵ , Italy*, Latvia, Portugal ⁶ , Romania* ⁷ , Slovakia*, United Kingdom |
| 0 | Armenia, Belgium, Bosnia & Herzegovina, Croatia, Iceland, Ireland, Liechtenstein, Lithuania, Malta, Moldova, Serbia and Montenegro, Turkey, Ukraine* |
| HIV transmission not criminalised | Albania, Bulgaria, Luxembourg, Slovenia, Republic of Macedonia |
| No data or not enough data received from the country | Andorra, Greece, Poland, Russia, San Marino, Spain |

Respondents from the 36 countries reported that 14 countries had legislation enacted or amended to deal specifically with transmission of HIV and/or other sexually transmitted infections⁸. (See Table II) Amongst these, only the respondent in Georgia cited the UNAIDS paper, *Criminal Law, Public Health and HIV Transmission: A Policy Options Paper*, as the impetus behind the creation of a new piece of legislation designed to address the issue.

³ Shows that the number refers to the number of convictions, at least those known to the respondent.

⁴ Exact information not available, however it was reported that 11 people have been convicted and it was suggested that most prosecutions led to convictions. It is estimated that 13 prosecutions have occurred in the past.

⁵ Three cases reported by the Hungarian Civil Liberties Union.

⁶ Information not available, however two cases reported by Positivo – the responding organisation.

⁷ Exact information not available but respondents indicated that there have been less than five.

⁸ Any country with a specific mention of HIV in the wording of the law.

Of the countries using existing legislation, it appeared that the United Kingdom had the oldest piece of legislation (1861). The age of this legislation suggested that it might not be suitable for application to the highly complex issues relating to an epidemic that is little more than 20 years old. In Cyprus, the respondent was able to report little about the 1957 law that was used to secure a conviction, apart from that it was enacted to deal specifically with the prevention of typhoid, cholera and venereal diseases.

There appeared to be no correlation between the number of people prosecuted/convicted in those countries in which prosecutions have occurred and the total number of people living with HIV and AIDS in each of those countries. The respondents in Russia, which had the highest number of people living with HIV in the study group, did not provide statistical information of the numbers prosecuted. However, a sample of the countries showed that respondents reported the following: Austria, 1 prosecution for every 3500 people reported to be living with HIV/AIDS; Azerbaijan, 1 for every 467; Czech Republic, 1 for every 1125; Estonia, 1 for every 3900; Finland, 1 for every 150; France, 1 for every 30,000; Georgia, 1 for every 3000; the Netherlands, 1 for every 1730; Portugal, 1 for every 11,000; Romania, 1 for every 1300; Slovakia, 1 for every 100, and Sweden 1 for every 120.

Specific data concerning the number of prosecutions and convictions, as well as the gender/mode of transmission, were the data least readily available. From the respondents in the 41 countries that provided information, the most precise data concerned countries that had recently had their first conviction or those who had not prosecuted anyone: Armenia (0), Belgium (0), Bulgaria (0), Croatia (0), Cyprus(1), Georgia(2004), Iceland(0), Ireland(0), Latvia(0), Malta(0), the Netherlands (1989 but 9 cases since 2001), Slovakia(1999), Turkey(0), and the United Kingdom (2001)).

On the other hand, the least precise data emanated from countries that had been prosecuting people for HIV transmission for more than 10 years: Austria (14 years), Finland (15 years), France, Italy, Romania (10 years), Sweden (12 years) and Switzerland (16 years.) Respondents from these countries could not provide exact figures of the numbers of people convicted. Of these, it appeared that Austria, Finland, Sweden and Switzerland had, between them, convicted more than 60 per cent of the total number of people convicted for transmitting HIV in Europe. In the case of Switzerland there appeared to be no centralised system of data collection for prosecutions and convictions, with each Canton maintaining its own data base. Therefore, those trying to collect data nationally were faced with collecting data from 26 Cantons.

Centralisation of the statistical data did not always result in that data being readily available. In Portugal, because criminalisation of HIV transmission was effected under existing assault laws, all were reported as 'Common Danger Crimes' making it impossible to separate HIV transmission-related convictions. This was also the case in Finland, Sweden and the United Kingdom. In terms of finding cases, those in the United Kingdom were at somewhat of an advantage as prosecutions for HIV transmission were a relatively new event.

No pattern emerged to indicate which organisations or authorities would have the best access to the required information. Small NGOs were just as likely not to have access to the required data as official sources such as the Ministry of Justice or its equivalent, or Public Health or Prosecution Services.

4.2 Transmission of HIV: Criminal or Not Criminal

A starting point for the questionnaire was to separate countries which criminalised HIV transmission from those that did not. However, from the responses received, it was evident that a third category existed: respondents that could not say categorically whether or not HIV transmission could be prosecuted in their country. Respondents from Bosnia and Herzegovina reported that they were in this position; however, responses from others, such as the United Kingdom, showed that the situation was apparently not clear until the first conviction was obtained.

4.3 Criminal conduct

In the case of HIV transmission, the conduct by which transmission can occur is generally not in itself deemed to be criminal, with the exception of injecting drug use, and in some jurisdictions, sex between men and/or anal sex. There is the theoretical 'man threatening people with a needle filled with HIV infected blood', but this conduct would be illegal even if the blood contained was not infected with HIV. Of the countries analysed, no reports were made of such incidents. Equally, there were no reports of a conviction for HIV transmission from mother to child. The bulk of the convictions apparently were applied to alleged transmission during consensual sex.

While a single act of intercourse could lead to infection, the risk of transmission can vary greatly. The risks are estimated to range between 1 in 10 and 1 in 1600 for unprotected anal sex among men, and between 1 in 667 and 1 in 1000 for any one act of vaginal sex⁹. This raises legal and evidentiary issues regarding whether the risk of actual transmission is a significant one and/or whether transmission has indeed occurred during the sexual acts under consideration. The question must be asked: Is the prosecution of individual cases of HIV transmission also a game of chance?

⁹ "Detention or Prevention", AIDS FONDS, 2004

Table II: Overview of the European situation

| Country | Transmission prosecuted? YES, NO or POSSIBLE (P) | Number or people prosecuted to date | No of people convicted to date | Year of 1 st attempted prosecution | HIV Specific legislation (S) or non-specific law (NS) | Year when legislation enacted | Prosecutions in last year | Convictions in last year | Maximum sentence applicable in years | No. of men convicted | No. of women convicted | Conviction from homosexual transmission | Conviction from heterosexual transmission | Exposure as well as actual transmission punishable (E) Only actual | Number of nationals and foreigners prosecuted for transmission of HIV |
|--------------------------|---|-------------------------------------|--------------------------------|---|---|-------------------------------|---------------------------|--------------------------|--------------------------------------|----------------------|------------------------|---|---|---|---|
| Albania | No | N/A | N/A | N/A | N/A | N/A | N/A | N/A | N/A | N/A | N/A | N/A | N/A | N/A | N/A |
| Andorra | | | | | | | | | | | | | | | |
| Armenia | Yes | 0 | 0 | Not yet | S | ua | 0 | 0 | 8 | 0 | 0 | 0 | 0 | E | No prosecutions as y |
| Austria | Yes | 30-40 | 30 app | 1990 | NS | 1974 | ua | ua | 3 | 25* 10 | 5* | 20* | 10* | Not clear | Mostly Austrian* |
| Azerbaijan | Yes | 3-4 | 3 -4 | 2001 | S | 1999 | 1 | 1 | 5 (8) ¹¹ | ua | ua | ua | ua | E | ua |
| Belgium | Yes | 0 | 0 | Not yet | NS | | 0 | 0 | ua | 0 | 0 | 0 | 0 | T | ua |
| Bosnia & Her. | P | 0 | 0 | Not yet | NS | 2003 | 0 | 0 | 10 | 0 | 0 | 0 | 0 | T | No prosecutions as y |
| Bulgaria | No | 0 | 0 | N/A | N/A | N/A | N/A | N/A | N/A | N/A | N/A | N/A | N/A | N/A | N/A |
| Croatia | Yes | 0 | 0 | Not yet | NS | | 0 | 0 | 0 | 0 | 0 | 0 | 0 | T | No prosecutions as y |
| Cyprus | Yes | 1 | 1 | 1997 | NS | 1957 | 0 | 0 | 2 | 1 | 0 | 0 | 1 | ua | Cypriot |
| Czech Rep. | Yes | 3 | 2 | 1989 | NS | | 2 | 1 | 3 | 2 | 0 | 2 | 0 | T | Both Czech |
| Denmark | Yes | 12 | 2 | 1993 ¹² | S | 2001 | 2 | 1 | 4 | 2 | 0 | 0 | 2 | E | 5 Danish, 7 Foreigner |
| Estonia | Yes | ua | 2 | 2000 | NS | | ua | ua | 12 | 2 | 0 | | | T | 1 Estonian, 1 Egyptian |
| Finland | Yes | 6-12 | 5 -10 | 1989 | NS | 1995 | 2 | 2 | 10 | 7ap p | 1 | 1 | 8app | T | Mostly foreign |

¹⁰ Figures according to one of the respondents – a different breakdown given by another respondent.

¹¹ Number in brackets represents maximum sentence for infecting more than one person.

¹² The first prosecutions were brought before the amendment of the legislation; hence date of legislation being later than date of first prosecution.

| | | | | | | | | | | | | | | | |
|-----------------------|-----|------|--------|---------|-----|------|----------|----------|----------------------|----------|------|-----|------|-----|---------------------------|
| France | Yes | ua | 2 or 4 | 1996 | NS | | 1 | 1 | life | 2or 4 | 0 | 0 | 2/4 | E | Ua |
| Georgia | Yes | 1 | 1 | 2004 | S | 2001 | 1 | 1 | ua | 1 | 0 | | | E | Georgian |
| Germany | Yes | ua | 3 ko | 1988 | NS | | - | - | 10 | 3 | 0 | 0 | 3 | E | 1 German, 2 foreigners |
| Greece | | | | | | | | | | | | | | | |
| Hungary | Yes | 3 ko | 0? | - | NS | - | 0 | 0 | 5 | 3 | 0 | 3 | 0 | T | All Hungarian |
| Iceland | Yes | 0 | 0 | Not yet | NS | 1940 | 0 | 0 | 4 | 0 | 0 | 0 | 0 | E | No prosecutions as yet |
| Ireland | Yes | 0 | 0 | Not yet | NS | 1997 | 0 | 0 | Life | 0 | 0 | 0 | 0 | T | No prosecutions as yet |
| Italy | Yes | ua | 3 ko | 1999 | NS | | 1 | 1 | ua | | | 0 | 3 | ua | |
| Latvia | Yes | ua | 0 | 2003 | S | 1998 | 0 | 0 | 8 | 0 | 0 | 0 | 0 | T | Latvian |
| Liechtenstein | Yes | 0 | 0 | Not yet | NS | | 0 | 0 | 3 | 0 | 0 | 0 | 0 | E | No prosecutions as yet |
| Lithuania | Yes | 0 | 0 | Not yet | NS | 1994 | 0 | 0 | 10 | 0 | 0 | 0 | 0 | T | No prosecutions as yet |
| Luxembourg | No | N/A | N/A | N/A | N/A | N/A | N/A | N/A | N/A | N/A | N/A | N/A | N/A | N/A | N/A |
| Malta | Yes | 0 | 0 | Not yet | S | 2002 | 0 | 0 | 9/life ¹³ | 0 | 0 | 0 | 0 | T | No prosecutions as yet |
| Moldova | Yes | 0 | 0 | 0 | S | 1993 | 0 | 0 | 8 | 0 | 0 | 0 | 0 | E | No prosecutions as yet |
| Netherlands | Yes | ua | 11 | 1989 | NS | | 2 | 2 | 12 | 11 | 0 | 5 | 4 | E | 10 Dutch, 1 Turkish |
| Norway | Yes | 5 | 5 | 1987 | NS | 1902 | 1 | 1 | | 4 | 1 | 0 | 5 | E | 3 Norwegian, 2 Foreigners |
| Poland | Yes | ua | ua | ua | S | 1997 | ua | ua | 3 | ua | ua | ua | ua | E | ua |
| Portugal | Yes | ua | 2 ko | None | NS | 1982 | ua | ua | 8 | ua | ua | ua | ua | T | ua |
| Romania | Yes | ua | < 5 | 1994 | S | | ua | ua | 15 | ua | most | ua | most | T | ua |
| Russia | Yes | ua | ua | ua | S | 1996 | ua | ua | 5 (8) | ua | ua | ua | ua | E | ua |
| San Marino | | | | | | | | | | | | | | | |
| Serbia & M | Yes | 0 | 0 | Not yet | S | | 0 | 0 | 10 | 0 | 0 | 0 | 0 | T | No prosecutions as yet |
| Slovakia | Yes | ua | 2 | 1999 | S | | 1 | 1 | 8 | ua | ua | ua | ua | E | ua |
| Slovenia | No | N/A | N/A | N/A | N/A | N/A | N/A | N/A | N/A | N/A | N/A | N/A | N/A | N/A | N/A |
| Spain | | | | | | | | | | | | | | | |
| Sweden | Yes | ua | 30 | 1992 | NS | 1965 | 4 | 4 | 10 | 17 | 1 | 6 | 12 | E | Mostly African |
| Switzerland | Yes | >30 | >20 | 1988 | NS | | 5ap p | 4ap p | 5 | mos t | | | most | T | Mostly Swiss |

¹³ Life imprisonment applies if the person infected dies.

| | | | | | | | | | | | | | | | |
|----------------------|-----|------|-----|---------|-----|------|-----|-----|------|-----|-----|-----|-----|-----|------------------------|
| Y/R Macedonia | No | N/A | N/A | N/A | N/A | N/A | N/A | N/A | N/A | N/A | N/A | N/A | N/A | N/A | N/A |
| Turkey | Yes | 0 | 0 | Not yet | E | | 0 | 0 | 0 | 0 | 0 | 0 | 0 | Ua | No prosecutions as y |
| Ukraine | Yes | 4 ko | ua | 1990s | S | 1998 | ua | ua | 10 | ua | ua | ua | ua | E | ua |
| UK | Yes | 4 | 4 | 2001 | E | 1861 | 3 | 3 | Life | 4 | 0 | 0 | 4 | T | 1 UK national, 3 Afric |

| | |
|--|--|
| <p>Key: N/A: Not applicable -Used for countries which do not criminalise HIV transmission Blank: No information received for that country</p> | <p>ua: Information unavailable or not known to the people who responded ko: Known of, at least to one of the people who responded to the questionnaire app: Approximately</p> |
|--|--|

4.4 Transmission vs. Exposure

When considering the harm associated with HIV transmission, most obviously this would relate to the *actual* infection of a person with HIV. However, respondents reported that in at least 15 countries (see table below) the law also provides for the criminalisation of *exposing* another person to the risk of HIV infection.

Table III

| Only actual transmission punishable |
|--|
|--|

| |
|--|
| Belgium, Bosnia & Herzegovina, Croatia, Czech Republic, Estonia, Finland, Hungary, Ireland, Latvia, Lithuania, Malta, Portugal, Romania, Serbia and Montenegro, Switzerland and the United Kingdom |
|--|

| Exposing another person to the risk of transmission also punishable |
|--|
|--|

| |
|---|
| Armenia, Azerbaijan, Denmark, France, Georgia, Germany, Iceland, Liechtenstein, Moldova, the Netherlands, Norway, Poland, Russia, Slovakia, Sweden and Ukraine. |
|---|

In Armenia, it appears from information received that the lesser harm of exposing another to 'evident risk' was reflected in the lesser sentence imposed (correctional labour). In Norway, there appeared to be no distinction made between actual transmission and exposure, both being punishable with the same sentence. In Russia, placing another person 'under the risk of HIV transmission' appears to be punishable by limitation of freedom for up to three years, while infection by a person who is aware of their HIV positive status is punishable by imprisonment for up to five years. Most of the countries that punished exposing another person to the risk of HIV infection reported having specific legislation criminalising HIV transmission. Exceptionally, Georgia had HIV specific legislation, yet HIV exposure was not criminalised.

4.5 Labelling of the criminal act

In countries without HIV specific legislation, it was reported that prosecutions for the transmission of HIV were brought under a variety of different laws. The labels used could be broadly categorised in three groups, although similar labelling does not imply uniformity of sanction. In some countries, prosecution for the transmission of HIV could be brought under more than one law, transcending this categorisation (see Finland). The three categories and their variations were:

1. Transmission of contagious diseases/ sexually transmitted infection/ causing injury to health
 - Austria – endangerment by transferable disease
 - Belgium – causing sickness
 - Bosnia and Herzegovina – transmission of communicable disease
 - Croatia – infecting with a venereal disease
 - Czech Republic – transmission of disease
 - Estonia – causing health damage
 - Iceland – spreading contagious disease
 - Ireland – serious harm
 - Liechtenstein – endangerment through disease
 - Lithuania – made ill or injured
 - Netherlands - cause detrimental effect on someone's health

- Portugal – offend the health
 - Sweden – causing disease
 - Switzerland – spreading human diseases
2. Bodily harm/ Assault/ Grievous bodily harm/ Aggravated assault
- Croatia – inflict serious bodily injury
 - Finland – assault, aggravated assault
 - France – bodily harm
 - Germany – bodily injury, dangerous bodily injury, serious bodily injury
 - Hungary – bodily harm.
 - Liechtenstein - bodily harm, grievous bodily harm.
 - Netherlands - grievous bodily harm.
 - Sweden – assault, bodily injury
 - Switzerland – grievous bodily harm.
 - United Kingdom – inflicting grievous bodily harm.
3. Manslaughter/ Killing/ Poisoning/ Homicide
- Finland – manslaughter, killing, homicide
 - France – poisoning
 - Sweden – mortal danger

While it is not surprising that there are many different formulations of the laws concerning the criminalisation of HIV transmission, these differences go well beyond those relating to language and labelling. The label attached to a crime is important because it goes to the foreseeability of criminal sanctions for certain behaviour. For the same ‘harm’ (HIV transmission), the application of different labels have resulted in a wide divergence with regard to the foreseeability of the crime, the degree of sanction imposed, and/or the moral condemnation involved.

4.6 The Fault Element

Apart from Belgium, Croatia and Slovakia, where no fault element was required, i.e. infliction of harm *per se* was sufficient for a criminal act to be established, respondents from all the other countries specified some element of fault. This distinction has important implications for people living with HIV and those organisations representing them. Fault was categorised broadly as follows:

Table IV: Categorisation of country’s approach

| 1. Intentionally - This was the most common fault requirement. It is also one that was supported by those who expressed a view on the matter. | 2. Recklessly | 3. Negligently – In most cases attracted a lesser sentence |
|---|---------------------------------|---|
| Armenia, Austria*, Azerbaijan, Czech Republic, Denmark, Finland, France, Georgia, Germany*, Hungary*, Latvia, Liechtenstein*, Lithuania*, Malta*, Moldova, the Netherlands, Norway*, Russia, Serbia, Sweden, Switzerland, United Kingdom* | United Kingdom, the Netherlands | Austria, Germany, Hungary, Liechtenstein, Lithuania, Malta, Norway, Sweden, the Netherlands |

* country distinguishing between two or more fault elements

Not all laws from countries distinguished culpability in the ways illustrated above. For example, in Ireland, there did not appear to be any distinction between *intentional* and *reckless* conduct. In Norway, the same punishment resulted whether the crime was committed *wilfully* or *negligently*. In the case of Poland and Romania, fault appeared to be established whenever a person was infected by someone who knew of s/he was HIV positive. In Ukraine, a distinction was made between a person who knew their HIV positive status and a person who deliberately transmitted HIV, there being a more severe penalty for deliberate transmission. In Iceland *gain* and *high spirits* were also considered as possible motives for HIV transmission. In Germany, whoever committed bodily injury with the consent of the injured person only acted unlawfully if the act was, despite the consent, *contrary to good morals*. It was unclear whether or not HIV transmission would be classed as *contrary to good morals*.

4.7 Coercive vs. Consensual

In more than 90 per cent of cases where people were convicted for HIV transmission, the route of transmission was consensual sexual intercourse. This raised the issues whether it was appropriate or effective from a prevention point of view to place all the responsibility on the HIV positive person to protect sexual partners from HIV transmission.

In Iceland, it was reported that everyone was under an obligation to 'take all precautions against communicable disease, and to do one's best to avoid infecting oneself or others'. Derogation from this duty apparently led to criminal sanctions against the HIV-positive person, and yet no sanction was imposed on the person who became infected through mutually agreed acts. A similar obligation to take measures to avoid HIV transmission was imposed in Georgia. In a workshop at the 9th International Conference for People Living with HIV/AIDS, Warsaw, 13 -18 August, 1999¹⁴, the discussion turned on why sanctions are not imposed on those who do not heed prevention messages, particularly as many countries laud the effectiveness of their HIV prevention campaigns over the past 20 years.

4.8 Sentencing/Punishment

Respondents reported that imprisonment was the most common punishment for a person convicted of infecting another with HIV. The maximum (and most severe) sentence possible for transmitting HIV that was found within the study group was a life sentence which could be imposed in France, Ireland, Malta and the United Kingdom. In the case of the United Kingdom, the label given to the offence was that of *grievous bodily harm*, whereas Ireland the offence was that of *serious harm*. So far, it did not appear that either France or the United Kingdom had imposed a life sentence on any of the people convicted. It also appeared that most of the other countries had not imposed the maximum applicable sentence. In Germany, one person was sentenced to the maximum 10 years, but this reflected the fact that he apparently infected more than one person.

Respondents from Bosnia and Herzegovina, Germany, Lithuania, the Netherlands, Romania, Serbia and Montenegro and Ukraine reported that in these countries sentences of 10 years' imprisonment or longer can be imposed.

Respondents in Armenia, Hungary, Latvia, Malta, Moldova, Norway, Portugal, Slovakia, Sweden and Switzerland reported that in these countries sentences between five and ten years' imprisonment can be imposed.

¹⁴ Doupe, A. Workshop on criminalization of HIV transmission and legal discrimination, 9th International Conference for People Living with HIV/AIDS, Warsaw, 13 - 18 August, 1999

Some countries appeared to provide penalties other than prison. For example, it was reported that in Armenia a person can be punished by enforced correctional labour for exposing someone to the risk of HIV infection. In Germany, Iceland, Ireland, Portugal and Switzerland, fines can also be levied as an alternative or as an addition to imprisonment. In Moldova, one could be made to pay the cost of treatment of the infected person.

It was reported that Moldova, Russia and Ukraine imposed heavier sentences on those people who infect two or more persons, or infect a juvenile. In countries such as the Netherlands, Sweden and the United Kingdom¹⁵, it appeared that if the convicted person was found guilty of another crime in addition to that of infecting someone with HIV, the courts amalgamated the offences and imposed heavier sentences.

It was reported that in Austria, Finland, Sweden, Switzerland and the United Kingdom deportation was also used as an element of punishment. In some of these cases, deportation was to countries that did not provide antiretroviral therapies. In one Finnish case, deportation resulted in the separation of a man from his wife and children.

It was reported that detention and forced isolation have also been used as punitive measures for HIV transmission or as preventative measures. In Sweden, the Communicable Disease Act allows the authorities to detain persons in order to contain the transmission of infections. It was reported that of the 65 people isolated up until 1998, 62 of these were HIV positive. The average period of isolation was between six and nine months, with 12 people being isolated for more than two years. The longest case of isolation was for seven years and six months.

No specific details were provided for Italy even though information received indicated that detention was imposed. In Russia, there was provision for 'limitation of freedom for up to two years' but no further information was provided.

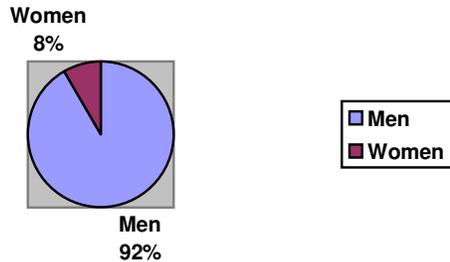
5 People profile

5.1 Overview

It was reported that at least 130 people have been convicted for transmitting or exposing another person to HIV infection in the countries researched. As this was a low figure in relation to the total number of people living with HIV in the study area, it appeared that the use of the criminal law in the case of transmission of HIV was relatively rare. From the replies received, respondents could not always specify either the gender of the offender or the mode of transmission of HIV in all countries.

5.2 Gender

¹⁵ R –v- Konzani



From the countries for which data was received concerning the gender of the offender, details were provided for 84 people convicted, 77 of who were male, and seven female. Of the sample group of offenders, this equates to 92 per cent male and 8 per cent female offenders. The respondents from Switzerland (with more than 20 convictions) reported that the majority were men, but did not give a specific breakdown. Respondents gave several reasons for the gender disparity. The most common was that, more often than not, women were seen as victims and not the cause of harm. It was also suggested that the nature of the media reporting of the cases had transformed what were sexual acts involving shared and equal responsibility between two consenting adults into an act done 'by a man to a woman'. The man was reported to have 'repeatedly had sex with the woman' when, in fact, it could be said that they repeatedly had sex together.

5.3 Modes of HIV transmission

Sexual transmission



In the majority of the cases reported, HIV transmission was alleged to have occurred through heterosexual sex. In all countries except Austria and the Netherlands, it appeared that more people were convicted for HIV transmission through heterosexual sex than for any other mode of transmission. In Croatia, Italy, Norway and the United Kingdom, it appeared that all convictions were for transmission through heterosexual sex. Respondents from Sweden and Switzerland did not provide information concerning modes of transmission. However, in Switzerland, there was a reported rise in the number of men who have sex with men (MSM)-related HIV transmission prosecutions. It was suggested that this was in part due to prejudice by legislators as reflected in the language used by judges regarding 'promiscuous lifestyles'.

In countries such as Norway and the United Kingdom, epidemiological studies indicated that homosexual transmission was most common, yet it was reported that all the people convicted had transmitted the virus through heterosexual sex. One reason for this could have been reluctance by those in the gay community to involve their community in the courts and undergo the scrutiny of the press. It could also be suggested that public health campaign messages were prominently targeted to these communities, and those infected did not feel that they should blame anyone but themselves. Further, it could be suggested, rightly or wrongly, that gay relationships were perceived to be based on more equal power

relations and that therefore, partners were less likely to be seen as vulnerable or susceptible to deception.

Mother-to-Child transmission

There were no convictions reported for HIV transmission from mother to child. This was perhaps linked to the sentiment expressed above - women were not seen as causing harm, or the woman in question was seen as having already suffered enough by having given birth to a baby infected with HIV. It may be useful to note that in some legal systems there would be no statute of limitations on a child asserting that a case ought to be brought at a later date, or a court or other competent authority acting on behalf of the child.

5.4 Nationality and occupation of the people convicted

Data on nationality and occupation of the people convicted were the least readily available. From the respondents in the nine countries that were able to provide this information, it appeared that in three countries more foreigners were convicted than were nationals of that country.

Information about the occupation status of those convicted was requested to give an indication of the social and economic status of those convicted. This information was not available to the respondents from Austria, Denmark, Germany, Sweden and Switzerland. Because Sweden and Switzerland between them represent nearly 45 per cent of the total number of people convicted, firm conclusions cannot be drawn. However, based on their financial, nationality and occupational and migrant status, the majority of those convicted in seven countries out of the sample of nine could be regarded as being in vulnerable social and economic positions (see table below).

Table V: Nationality and occupation of those convicted

| Country | Number convicted | Nationality of those convicted | Occupation at the time of conviction |
|----------------|-------------------------|--|---|
| Sweden | Approx 30 | Portuguese, Canadian, Middle Eastern, Swedish, Brazilian, Somalian, Nigerian, Danish, Tanzanian, Nigerian, Ugandan and Congolese | Information not available |
| Switzerland | More than 20 | Predominantly Swiss, but several of those convicted were African. | |
| Netherlands | 11 | 10 Dutch, 1 Turkish | Most on disability benefits, 1 owner of a business, 1 high profile football association executive, and 1 blackmailer. |
| Finland | Approx. 7 | Mostly of African and Asian origin | Students, spouses and some unemployed. |
| Norway | 5 | 3 Norwegians, 1 South African and 1 Sudanese | 2 Students, 1 on disability benefits and 1 unknown (1 illegally working in furniture shop) |
| United Kingdom | 4 | Scottish, Somalia/Kenyan, Malawian and Cote D' Ivorian | Ex-convict, former solicitors clerk, 2 asylum seekers (who are not permitted work) |

| | | | |
|---------|---|---------------|---|
| Italy | 3 | All Italian | 1 prostitute, 1 petty criminal and 1 DJ |
| Hungary | 3 | All Hungarian | 1 actor in pornography industry |
| Georgia | 1 | Georgian | Unemployed |
| Latvia | 1 | Latvian | Prisoner |

6 Other Issues

6.1 Media issues

Respondents identified the media as being a prominent accompaniment of most prosecutions, particularly during trials, and especially during the first successful prosecution of an HIV transmission case within a country. In most cases, the popular press appeared to 'sensationalise' the cases, often depicting those convicted as being a threat to the population. Media, and media-shaped negative public viewpoints, were cited by a number of respondents as a key factor in criminal prosecutions and their public impact.

In the United Kingdom, the first trial and subsequent conviction resulted in newspaper and television headlines. The second conviction recorded was the first for England and Wales and also attracted much media coverage. In this case, the reporting centred as much on the immigration status of the person convicted as on the potential and actual harm caused. Similar developments have been seen in Finland and Sweden where the majority of those convicted have been foreign nationals.

Some community organisations have condemned such reporting, on the basis that it leads to further marginalisation and stigmatisation of immigrant communities, and arguments have been made that such reporting could increase stigmatisation and discrimination against all PLWHA. In Switzerland, where the reporting of one case centred on 'gay lifestyles' and 'sex in a dark room', it could be argued that this reinforced homophobia and gay stereotyping.

Not everything said about the media was negative. For some respondents, the media served as a tool for providing information about cases and also helped generate debate on the issues.

It was not possible, within the confines of this survey, to fully examine the role of the media within criminal prosecutions for transmission of HIV. Further scrutiny of this could be useful in considering the relationship between criminal prosecutions and stigma about HIV.

6.2 Human rights issues

The survey confirmed that there is need for further research into the potential human rights violations present in some aspect of criminal enforcement and judicial systems in relation to HIV. For example, lack of provision or discontinuation of effective care and treatment through imprisonment or deportation could amount to violation of the rights to life, to health and freedom from cruel, inhuman or degrading treatment. In some cases mentioned above, deportation has in the main been to African countries where the provision of antiretroviral treatment is not yet guaranteed to every person living with HIV and AIDS. The European Court of Human Rights¹⁶, found that sending an HIV positive man to a country where no effective treatment or care could be guaranteed amounted to a violation of Article

¹⁶ D –v- United Kingdom, (1997) 24 EHRR 423

3 of the ECHR which provides that 'no one shall be subjected to torture or to inhuman or degrading treatment or punishment'.

The Finnish case mentioned above in which a man was deported and separated from his Finnish wife and children raises the possibility of a violation of Article 8: 'Right to respect for private and family life'.

Detention and forced isolation could be a violation of Article 5 of the ECHR which guarantees the 'right to liberty and security'. In light of everything that is known about the way that HIV is transmitted, one would be hard pressed to justify containment for over six years, as was the case in one incident in Sweden.

6.3 The role of organisations supporting people living with HIV and AIDS

Some of the support organisations which responded were dealing with these issues already in one way or another. The extent of this involvement ranged from keeping a watch on events to active support for those being prosecuted or for their lawyers. Some organisations were also campaigning to change or shape their national laws on criminalisation of HIV transmission.

There was, however, often a sense that organisations had been overtaken by events. It may be possible that, in the face of media or public hostility, and hampered by the difficulties in obtaining factual information or in agreeing to a view on the issue, some organisations thought it prudent to remain silent. Whatever the cause, it was noticeable that in a number of countries there was no easily located source of community or NGO expertise on HIV and the law. It is to be hoped that the current exercise has helped to produce renewed focus on the issue, and will contribute to building internal national understanding, interest and capacity with regard to HIV and the law.

7. Steps Forward

The research and analysis presented in this study comprise a snapshot of the situation regarding the criminalisation of HIV transmission in Europe based on the information and responses gathered at the time of the study (June-September 2004). However, it is important that this study represent only a beginning in terms of gaining a better understanding of the issues and trends involved.

Furthermore the study raised a number of important issues, in addition to the questions issues elaborated in the Introduction, which need to be pursued further. These can be summarised as follows:

- A need to maintain and further develop the database of contacts of those with active interests and specific roles in HIV and legal systems across Europe and Western and Central Asia.
- A need to encourage better data surveillance and collection on prosecutions and use of this area of the law
- Research into the impact that criminal prosecutions for the transmission of HIV have on stigma and discrimination, including the role of the media
- Research into other ways in which legal systems are used to regulate personal sexual behaviour and the human rights implications of such laws and their enforcement
- Consideration of the implications of prosecutions for HIV transmission for the growing number of other blood-borne and sexually transmissible serious health conditions.

In order to continue to pursue these issues and to maintain resources and momentum towards action and activism in this area, the Global Network of People with HIV and the Terrence Higgins Trust have undertaken to maintain this database as an information resource open to all, and have published it on the Internet with a call for comments, updates and revisions from interested parties in each country.

As we gain in understanding of how the use of the criminal law impacts upon people with HIV and upon public health, it will be important to formulate ways of empowering national and local groups which seek to debate this issue and work on it. Greater access to information, to others working on the issue within their country or region, and to core documents will all be part of supporting this greater capacity. It is vital that people with HIV, those most at risk of transmission, those who provide treatment and care, and those involved in sexual health promotion are all enabled to help shape future jurisprudence which respects human rights and furthers public health. We look forward to hearing your views and will keep you informed of developments.

Contacts:
GNP+ Europe
Terrence Higgins Trust

8. Country Data

The following section comprises a summary of the information received from respondents to the survey about each country in the study. In order to allow for easy comparison, it focussed on data that was common to all countries. The information provided here has in most cases not been independently verified.¹⁷ Furthermore, developments in the law which might have occurred after the study was conducted are of course not reflected.

Estimates for the numbers of people living with HIV have been taken from the UNAIDS 2004 *Report on the Global AIDS Epidemic* unless other, more recent, data was available.

The maximum sentence applicable refers to the maximum sentence that can be imposed for infecting one individual, taken from the whole range of laws that can be applied. In some countries, for example Armenia, the sentence would be increased if two or more people were infected or if a juvenile was infected. Where applicable this figure is shown in brackets.

Albania

Estimated number of people living with HIV: Information not available

Number of people prosecuted for HIV transmission: 0

Number of people convicted for HIV transmission: 0

Applicable law: None

Key wording in the law: Not applicable

Discussion:

From the responses received, it appears that Albania has no laws that could be used to initiate prosecution proceedings for the transmission of HIV. In 2000, the government enacted legislation on the 'prevention and control of HIV/AIDS'. However, this did not go as far as imposing sanctions for transmission. A special committee was set up in 2004 to review existing law and to consider whether criminal liability should be imposed for transmission of the virus. No other information was received about the '2004 Committee'.

Transmission of other sexually transmitted infections is not subject to prosecution.

Completed questionnaires were received from AKSIONPlus and WHO Albania.

Andorra

No information received on Andorra.

Armenia

Estimated number of people living with HIV: 2600

Number of people prosecuted for HIV transmission: 0

Number of people convicted for HIV transmission: 0

¹⁷ GNP+ Europe, Terence Higgins Trust and UNAIDS who co-funded this study do not claim that the information reported on each country by various respondents has been verified or is accurate. Those with further information are welcome to submit it to GNP+ Europe and THT.

Applicable law:

Article 123 of the Criminal Code of Armenia.

Key wording in the law:

The Article 123 of Criminal Code:

1. Exposure [of] another individual to evident risk of HIV transmission is punished with correctional labour: maximum for a 2 year period or arrest: maximum for a 2 month period or imprisonment: maximum for one year period.
2. Infecting another individual with HIV by an HIV positive individual knowing about his/her HIV status on purpose or by self-assurance is punished with imprisonment: maximum for a 5 year period.
3. The action described by the Point 2 of this Article conducted in relation to:
 - two or more individuals
 - juveniles
 - evidently pregnant womanis punished with imprisonment of a 3-8 year period.

Discussion: From the responses received, it appears no one has yet been prosecuted for the transmission of HIV in Armenia. The law distinguished between exposure to 'evident risk' and transmission 'on purpose'. It is not clear what 'evident risk' means in this respect. 'On purpose', on the other hand, seems to include transmission by anyone who knows that they are HIV positive. It appears that a person could be prosecuted even if transmission of the virus does not take place. A longer custodial sentence is applied to those who transmit the virus 'on purpose' to two or more persons, to juveniles or to evidently pregnant women.

Exposing another person to the risk of HIV infection could also be punished. The maximum sentence applicable was five years.

Transmission of other sexually transmitted infections is subject to prosecution under the same law.

Completed questionnaire was received from the National Centre for AIDS Prevention.

Austria

| | |
|--|-------------------|
| Estimated number of people living with HIV: | 10,000 |
| Number of people prosecuted for HIV transmission: | Between 30 and 40 |
| Number of people convicted for HIV transmission: | Approximately 30 |

Applicable law:

Sections 178 and 179 of the Austrian Penal Code.

Key wording in the law:**§ 178 deliberate endangerment of humans by transferable diseases**

Who commits an action, which is suitable to cause the danger of the spreading of a transferable illness among humans is to be punished with imprisonment up to three years or with fine up to 360 daily rates, if the illness belongs according to its kind to even if only limited indicate or to compulsorily notifiable diseases.

§ 179 negligent endangerment of humans by transferable diseases

Who commits in § 178 with punishment threatened action negligently, is to be punished with imprisonment up to one year or with fine up to 360 daily rates.

Discussion:

From the responses received, it appears that between 30 and 40 people have been prosecuted and approximately 30 people have been convicted for transmitting HIV in Austria. The two sections of the applicable law – Section 178 and Section 179 – come under Section 7 of the Austrian Penal Code, which deals with punishable actions of endangerment to humans and the environment. The law speaks in broader language of ‘transferable diseases’. This includes infectious diseases and diseases subject to registration. It is unclear from the information received into which category HIV infection falls.

From the information supplied, it appears the first prosecution for transmission was brought in 1990. While the numbers are not yet big enough to say conclusively, it appears there is a small but steady increase in the number of prosecutions being brought.

AIDS-Hilfe gave the gender split of those convicted at eight men and 12 women while Professor Hinterhoffer, of Universitat Salzburg, put it at 25 men and 15 women. Of these, AIDS-Hilfe indicated that two were transmissions through homosexual sex and 14 by heterosexual sex. However, Professor Hinterhoffer put the division at 20 for homosexual sex and 10 for heterosexual sex.

No information was provided about the nationalities or occupations of the people convicted. Professor Hinterhoffer suggested that most were Austrian nationals.

Placing another person in danger of being infected with HIV can also be subject to prosecution. The maximum sentence applicable is three years.

Transmission of other sexually transmitted infections is subject to prosecution under the same laws.

Completed questionnaires were received from AIDS-Hilfe Salzburg and Professor Hinterhoffer, Universitat Salzburg.

Azerbaijan

| | |
|--|--------|
| Estimated number of people living with HIV: | 1,400 |
| Number of people prosecuted for HIV transmission: | 3 or 4 |
| Number of people convicted for HIV transmission: | 3 or 4 |

Applicable law:

Criminal Code of Azerbaijan, Article 140 (From 1999)

Key wording in the law:

Intentionally exposing of another person to the risk of human immunodeficiency virus (HIV) infection is punished with two-year term of reformatory work or the limitation of liberty up to two years or the deprivation of liberty up to one year.

A person who knows about being infected himself with HIV and infects another person is punished with the deprivation of liberty from two till five years.

In the result of acts mentioned in the previous paragraph, infecting two or more persons or a person under age with HIV is punished with the deprivation of liberty from five to eight years.

Infecting a person with HIV as a result of negligent fulfilment of duties is punished with deprivation of liberty up to three years simultaneously with deprivation of work status or deprivation of right to practice activity for three years.

Discussion:

From the responses received, it appears either three or four people have been prosecuted for transmitting HIV in Azerbaijan. All the prosecutions led to convictions. According to the Ministry of Justice, the first attempt at prosecution was brought under an old law from 1987. No further information is given about that prosecution. However, since the enactment of the new law in 1999, three people have been prosecuted and convicted. The first of these was brought in 2001. One person has been prosecuted and convicted in 2004.

No information was available on the gender, mode of transmission or occupation at the time of prosecution of those prosecuted.

Exposing another person to the risk of HIV infection is also subject to prosecution. The maximum sentence applicable is five years (eight years for infecting two or more people or juveniles).

Transmission of other sexually transmitted infections is subject to prosecution under a different article.

Completed questionnaires were received from the UNAIDS Country Coordinator for Azerbaijan and Georgia with information provided by the Ministry of Justice.

Belgium

| | |
|--|--------|
| Estimated number of people living with HIV: | 10,000 |
| Number of people prosecuted for HIV transmission: | 0 |
| Number of people convicted for HIV transmission: | 0 |

Applicable law:

Article 421, Belgian Penal Code

Key wording in the law:

Article 421 du Code pénal :

«celui qui aura volontairement ou non causé à autrui une maladie ou incapacité de travail personnel, en lui administrant des substances qui sont de nature à donner la mort ou à altérer gravement la santé. »

(our unofficial translation : anyone who whether voluntarily or not causes sickness that makes another incapable of work by giving him or her substances that can cause death or greatly alter their health...)

Laurette Onkelinx, Ministre de la Justice, Question parlementaire N° 2673, Mai 2004 :

« L'interprétation large des termes « administrer » et « substances » permet d'inclure la transmission du virus HIV dans le champ d'application de cet article. »

Discussion:

From the responses received, it appears there have been no prosecutions to date for the transmission of HIV in Belgium. Sensoa reported knowing of unsuccessful attempts to initiate prosecution. As a result, Sensoa believe that HIV transmission might not be prosecutable under Belgian law. However, they and the Scientific Institute of Public Health

have indicated that the wording of Article 421 of the Penal Code could be sufficient for a successful prosecution. In answer to a question raised in the House of Representatives on the matter, the Minister of Justice confirmed that there was enough scope within existing legislation to punish such a crime. He said, however, that he doubted the murder, manslaughter or poisoning laws would be appropriate. (Parliamentary Question No. 2673 May 2004)

Only actual transmission of HIV to another person is subject to prosecution. Information on the applicable sentences was not available.

Transmission of other sexually transmitted infections is not subject to prosecution.

Completed questionnaires were received from Sensoa and the Scientific Institute of Public Health.

Bosnia and Herzegovina

| | |
|--|-----|
| Estimated number of people living with HIV: | 900 |
| Number of people prosecuted for HIV transmission: | 0 |
| Number of people convicted for HIV transmission: | 0 |

Applicable law:

Possibly Chapter 21 of the Entity Laws (Criminal Acts against the Health of People)
Article 211: Transmission of Communicable Diseases (2003)

Key wording in the law:

Article 211 reads:

The person who does not act according to regulations or orders by which the responsible body defines examinations, disinfection and care of sick people or acts against other measures for prevention and combat of communicable diseases among people, and by such act causes transmission of communicable disease, shall be obliged to pay a fine or go to prison up to two years.

If by act from article 1 transmit on of un curable communicable disease occurs, the offender shall be punished by prison in duration from one to ten years.

If acts described in the article 1 and 2 are done unintentionally the offender shall be punished to pay a fine or go to prison up to six months.

Discussion:

From the responses received, it appears there have there have been no prosecutions for HIV transmission in Bosnia and Herzegovina to date. The Ministry of Justice and WHO Bosnia both said transmission of HIV is not criminalised. However, UNICEF indicated the laws regulating the transmission of communicable disease could also be applied to HIV transmission. UNICEF in Bosnia and Herzegovina has taken the first steps in initiating a review of the legislation.

Only actual transmission of HIV to another person is subject to prosecution. Maximum sentence applicable is up to 10 years' imprisonment.

Transmission of other sexually transmitted infections is subject to prosecution under this same law.

Completed questionnaires were received from the Ministry of Justice, WHO Bosnia, and UNICEF.

Bulgaria

Estimated number of people living with HIV: Less than 500

Number of people prosecuted for HIV transmission: 0

Number of people convicted for HIV transmission: 0

Applicable law: None

Key wording in the law: Not applicable

Discussion:

From the responses received, it appears there is no provision in Bulgarian law for the criminalisation of HIV transmission.

UNAIDS reported that there have been two lawsuits brought against the state by haemophiliacs who has been infected through blood transfusions, however civil suits from transmission through infected blood products were viewed as beyond the scope of the current survey.

Transmission of other sexually transmitted infections is not subject to prosecution.

Completed questionnaires were received from Dose of Love and the UNAIDS Focal Point for Bulgaria.

Croatia

Estimated number of people living with HIV: Less than 200

Number of people prosecuted for HIV transmission: 0

Number of people convicted for HIV transmission: 0

Applicable law:

Article 99 of the Criminal Law; 'Aggravated Bodily Injury'

Article 239 of the Criminal Law 'Transmission of Venereal Diseases'

Key wording in the law:

The Article 99: Aggravated Bodily Injury

- (1) 'Whoever inflicts a serious bodily injury on another or severely impairs a person's health shall be punished by imprisonment for three months to three years'.
- (2) If bodily injury is inflicted on a person, or if a person's health is impaired so severely that the life of the injured person is endangered, or if an important part of the person's body or an important organ of the person is permanently weakened to a significant degree or destroyed, or if permanent work disability is caused to the injured person, or if permanent and severe damage to his health or permanent disfigurement is caused, the perpetrator shall be punished by imprisonment for six months to eight years.
- (3) If the injured person dies due to the serious bodily injury, the perpetrator shall be punished by imprisonment for one to ten years.

The Article 239: Transmission of Venereal Diseases

- (1) 'Whoever, knowing that he is infected with a venereal disease, communicates the same to another through sexual intercourse or an equivalent sexual act, if at the same time the

criminal offence of aggravated bodily injury is not committed, shall be punished by a fine or imprisonment not exceeding one year.'

Discussion:

From the responses received, it appears there have been no prosecutions for the transmission of HIV in Croatia. However, the Ministry of Justice indicated that either of the laws above could be used to bring a prosecution. The striking difference between the two pieces of legislation is the disparity in the penalties imposed. Under Article 99, punishment can be up to ten years' imprisonment, whereas the maximum term of imprisonment under Article 239 is one year.

Only actual transmission of HIV to another person is subject to prosecution.

Transmission of other sexually transmitted infections is subject to prosecution under the same laws.

Completed questionnaires were received from the Ministry of Justice and UNAIDS Sub-regional Focal Point.

Cyprus

| | |
|--|-------|
| Estimated number of people living with HIV: | <1000 |
| Number of people prosecuted for HIV transmission: | 1 |
| Number of people convicted for HIV transmission: | 1 |

Applicable law:

Cypriot law of 1957

Key wording in the law:

Not available.

Discussion:

From the responses received, it appears that one person has been prosecuted and convicted for the transmission of HIV in Cyprus. Despite this, KYFA indicated that transmission of HIV is not subject to prosecution. Some reports of this case have suggested that this conviction was secured largely because the English woman who was infected campaigned for a conviction. The man involved was convicted under Cypriot law of 1957, intended to prevent the spread of typhoid, cholera and venereal disease. There do not appear to have been any attempted prosecutions since then. It is unclear whether one can say categorically that transmission of HIV could be criminal. KYFA, a volunteer organisation supporting people with HIV, reported having written to the government six years ago to have the situation clarified but have not yet received a response.

The one person convicted was male; HIV was transmitted through heterosexual sex and his occupation was given as fisherman.

Transmission of other sexually transmitted infections is not subject to prosecution.

A completed questionnaire was received from KYFA.

Czech Republic

| | |
|--|-------|
| Estimated number of people living with HIV: | 2,500 |
| Number of people prosecuted for HIV transmission: | 3 |
| Number of people convicted for HIV transmission: | 2 |

Applicable law:

Paragraphs 189, 190 of the Penal Code.

Key wording in the law:

The Penal Code:

The intentional transmission of diseases that are included in the list (about 20 diseases) can be prosecuted up to 3 years in prison. Who did it because of omission of his/her duty can be sentenced up to one year or financial charge.

Discussion:

From the responses received, it appears three people have been prosecuted for transmitting HIV in the Czech Republic. Of these, two have been convicted. The one prosecution that did not lead to a conviction was brought in 1989 using a different law (intentional physical harm). It is unclear whether that particular prosecution failed because the law invoked was inappropriate, or whether it failed for other reasons. The first use of paragraphs 189 and 190 was in 2003.

The two people convicted were male and transmission occurred through homosexual sex. Both were Czech nationals; at the time of prosecution, one was unemployed and the other was a health care worker.

Only actual transmission of HIV to another person is subject to prosecution. Maximum sentence applicable is three years' imprisonment.

Transmission of other infectious infections is subject to prosecution under the same laws. Syphilis and gonorrhoea can also be prosecuted under a different law.

Completed questionnaires were received from the Czech AIDS Help Society and the Ministry of Health.

Denmark

| | |
|--|-------|
| Estimated number of people living with HIV: | 5,000 |
| Number of people prosecuted for HIV transmission: | 12 |
| Number of people convicted for HIV transmission: | 2 |

Applicable law:

Danish Penal Code, Section 252.2 amended by government order no. 547 of 2001

Key wording in the law:

The Danish Criminal Code section 252:

- (1) Any person who, for the purpose of gain, or who purely wantonly or in any similar reckless manner, exposes the life of physical ability of others to impending danger shall be liable to imprisonment for any term not exceeding four years.
- (2) The same penalty shall apply to any person who wantonly brings about danger that someone be infected with a fatal and incurable disease.
- (3) Following negotiations with the Minister of Public Health, the Minister of Justice shall lay down which diseases meet the criteria of Subsection.

The government order nr. 547 of 15 June 2001:

§ 1: The following disease is covered by the Danish Criminal Code section 252, subsection 2: HIV/aids (human immune-defect virus/gained immune-defect syndrome).

Discussion:

From the responses received, it appears twelve people have been prosecuted for transmitting HIV in Denmark. Of these, two people have been convicted. The first of the prosecutions was brought in 1993. However, the Danish Supreme Court found the defendant not guilty because it felt Section 252 did not provide a clear legal base for conviction. Other subsequent prosecutions failed for the same reason. Section 252 was thus amended in 2001 to include transmission of HIV. Since then, some prosecutions have failed for other reasons. In one case, the prosecuted person committed suicide before he could be convicted. There have been two prosecutions and one conviction in the last year.

The two people convicted were male and transmission occurred during heterosexual sex. One was Danish and the other a foreigner. All twelve who were prosecuted were male. Five of these were Danish; one of other European descent; one of Middle Eastern descent; four were African and one was Latin American. Information about their occupations at the time of prosecution was not available.

It is not clear whether exposure to the risk of transmission is also subject to prosecution.

Transmission of other sexually transmitted infections is not subject to prosecution.

Completed questionnaires were received from HIV-Denmark, Ministry of Justice and Office of the Director of Public Prosecutions.

Estonia

| | |
|--|---------------------------|
| Estimated number of people living with HIV: | 7,800 |
| Number of people prosecuted for HIV transmission: | Information not available |
| Number of people convicted for HIV transmission: | At least 2 |

Applicable law:

Penal Code of Estonia: §118, 119 and 121 – causing health damage to someone; §141 – raping.

Key wording in the law:

§118. Causing of Severe Health Damage.

Causing of health damage to someone else is penalised with 4-12 years in jail, if it is causing a threat to someone's life, severe physical disease, severe psychological disorder, discontinuance of pregnancy, a severe injury deforming significantly someone's face or loss of an organ or its functioning.

§119. Causing of Severe Health Damage out of Negligence

Causing of severe health damage to someone else out of negligence is penalised with a fine or up to one year in jail.

§121. Physical abuse

Damaging the health of someone else, hitting, kicking or other form of physical abuse causing pain is penalised with fine or up to three years in jail.

§141. Raping

Having sexual intercourse with someone against her/his will or abusing her/his condition where he/she was not capable of understanding what is happening or expressing resistance is penalised with one to five years in jail. The same act is penalised with 6-15 years in jail, if the victim is under 18 years old, if the act is carried out by two or more people, if the act has caused the victim a severe health damage or the death of the victim, if the act has driven the victim to suicide or suicide attempt or if the act has been carried out by a person, who has previously already committed a rape.

Discussion:

From the responses received, it appears that precise information is not available for the number of people prosecuted for transmitting HIV in Estonia. However, the Ministry of Justice reported having knowledge of two people being convicted in the last five years. Information is kept for prosecutions and convictions of all people tried under the above law, but no separate HIV specific statistics are kept.

The two people for whom information was available were male; one Egyptian and one Estonian. No information was provided about occupations of the people convicted.

Only actual transmission of HIV to another person is subject to prosecution.

Transmission of other sexually transmitted infections is subject to prosecution under the same laws.

Completed questionnaires were received from the Ministry of Justice and the Ministry of Social Affairs.

Finland

| | |
|--|---------------------|
| Estimated number of people living with HIV: | 1,500 |
| Number of people prosecuted for HIV transmission: | Approximately 6 –12 |
| Number of people convicted for HIV transmission: | Approximately 7 |

Applicable law:

The Finnish Penal Code Chapter 21 (Homicide and Bodily injury)

Key wording in the law:

Section 1 - Manslaughter (578/1995)

- (1) A person who kills another shall be sentenced for manslaughter to imprisonment for a fixed period of at least eight years.
- (2) An attempt is punishable.

Section 3 - Killing (578/1995)

- (1) If the manslaughter, in view of the exceptional circumstances of the offence, the motives of the offender or other related circumstances, when assessed as a whole, is to be deemed committed under mitigating circumstances, the offender shall be sentenced for killing to imprisonment for at least four and at most ten years.
- (2) An attempt is punishable.

Section 5 - Assault (578/1995)

- (1) A person who employs physical violence on another or, without such violence, damages the health of another, causes pain to another or renders another

unconscious or to a comparable condition, shall be sentenced for assault to a fine or to imprisonment for at most two years.

(2) An attempt is punishable.

Section 6 - Aggravated assault (654/2001)

(1) If in the assault

- (1) grievous bodily injury or serious illness is caused to another or another is placed in mortal danger,
- (2) the offence is committed in a particularly brutal or cruel manner, or
- (3) a firearm, edged weapon or other comparable lethal instrument is used and the offence is aggravated also when assessed as a whole, the offender shall be sentenced for aggravated assault to imprisonment for at least one year and at most ten years.

An attempt is punishable.

Section 8 - Negligent homicide (578/1995)

A person who through negligence causes the death of another shall be sentenced for negligent homicide to a fine or to imprisonment for at most two years.

Section 9 - Grossly negligent homicide (578/1995)

If in the negligent homicide the death of another is caused through gross negligence, and the offence is aggravated also when assessed as a whole, the offender shall be sentenced for grossly negligent homicide to imprisonment for at least four months and at most six years.

Section 10 - Negligent bodily injury (578/1995)

A person who through negligence inflicts not insignificant bodily injury or illness on another shall be sentenced for negligent bodily injury to a fine or to imprisonment for at most six months.

Section 11 - Grossly negligent bodily injury (578/1995)

If in the negligent bodily injury the bodily injury or illness is inflicted through gross negligence, and the offence is aggravated also when assessed as a whole, the offender shall be sentenced for grossly negligent bodily injury to a fine or to imprisonment for at most two years.

Section 5 - Imputability

- (1) Intent or negligence are conditions for criminal liability.
- (2) Unless otherwise provided, an act referred to in this Code is punishable only as an intentional act.
- (3) What is provided in subsection 2 applies also to an act referred to elsewhere in law for which the statutory maximum sentence is imprisonment for more than six months or on which the penal provision has been issued after this law entered into force.

Discussion:

From responses received, it appears that between six to twelve people have been prosecuted for HIV transmission in Finland. Of these, the Ministry of Justice estimates that between five and ten of these cases have led to convictions. AIDS and Mobility puts the number of people convicted at about seven, while the Finland AIDS Council puts it at about five. One department of the Ministry of Justice provided the full list of laws listed above as being applicable to HIV transmission. However, another department only listed Sections 1,

6, 9 and 11 as being applicable. Finland AIDS Council listed Sections 5 and 6 and added to the list Section 13 on Imperilment. Section 13 reads:

A person who intentionally or through gross negligence places another in serious danger of losing his/her life or health, shall be sentenced, unless the same or a more severe penalty for the act is provided elsewhere in the law, for imperilment to fine or to imprisonment for at most two years.

The reason given by all the respondents for not being definitive in the numbers of people prosecuted and convicted is that these statistics are not kept separate from the umbrella offence under which they are prosecuted.

This, in turn, has led to conflicting interpretations of those being prosecuted. One department of the Ministry of Justice estimated that of those prosecuted, between five to nine were male and one was female. They also report that in only one of these cases was transmission through homosexual sex; the other cases were the result of transmission through heterosexual sex. AIDS and Mobility agree that most of the people convicted have been heterosexual males. The Finland AIDS Council says at least one of the cases involved transmission through injecting drug use. According to one of the departments of the Ministry of Justice, many of the people prosecuted were foreign nationals, particularly of African and Asian origin. According to another, the majority may have been Finnish. AIDS and Mobility indicates that immigrants have been prosecuted at a higher rate than Finns and that most have been in vulnerable social and economic positions. The group includes individuals from Rwanda, United States, Thailand and Ghana. There have been two prosecutions in the last year, both of which led to the people involved being convicted.

AIDS and Mobility lists the occupations of the people prosecuted as students, spouses and unemployed. The list from the Finland AIDS Council includes musicians, a housewife and some people being unemployed.

Only actual transmission of HIV to another person is subject to prosecution. The maximum sentence applicable is ten years' imprisonment.

Transmission of other sexually transmitted infections is subject to prosecution.

Completed questionnaires were received from AIDS and Mobility, Finland AIDS Council and from two separate departments of the Ministry of Justice. Finnish Body Positive also contributed to the study.

France

| | |
|--|---------------------------|
| Estimated number of people living with HIV: | 120,000 |
| Number of people prosecuted for HIV transmission: | Information not available |
| Number of people convicted for HIV transmission: | 2 or 4 |

Applicable law:

French Penal Code: Articles 221-5, 222-15, 223-1 and 223-6.

Atteinte volontaire a l'integrite physique d'une personne, empoisonnement.

Key wording in the law:

Poisoning:

221-5

To make an attempt on somebody's life by using or giving any product which can lead to death is a poisoning. Poisoning is sentenced to ten years of imprisonment.

It is sentenced to life imprisonment when committed under the circumstances established in articles 221-2, 221-3 and 221-4.

The first two paragraphs of article 132-23 related to minimum sentence apply to the offence established in this article.

Administration of dangerous substances

222-15

Giving prejudicial substances which impair to somebody's physical or psychological integrity is sentenced to penalties as mentioned in articles 222-7 to 222-14 according to the differences provided for in these articles.

The first two paragraphs of article 132-23 related to minimum sentence apply to the offence in the same way as of those established in those articles.

Bodily harm

223-1

Exposing directly somebody to immediate death risk or injuries which would lead to disability or severe handicap resulting from a deliberate breach of a specific safety or caution rule dictated by law is sentenced to a year of imprisonment and a € 15 000 fine.

Refusal to assist a person exposed to danger

223-6

Whoever, through an immediate and risk less action, can prevent a crime or an infraction against somebody's physical integrity refrains from doing so, is sentenced to five years of imprisonment and a 75000€ fine.

The same sentence will apply to whoever refrains from helping someone in peril, when there is no risk neither for him/herself nor for a third person, and when he/she could have helped by acting directly or seeking for help.

Discussion:

From the responses received, it appears that precise information is not available for the number of people prosecuted for transmitting HIV in France. According to Act Up-Paris, four people have been convicted. AIDES put the figure at two. It is estimated that the first prosecution was brought in 1996 and one of the convictions was secured within the last 12 months. Of the laws listed, conviction under the poisoning laws has the possibility of the severest sentence: life imprisonment.

All of those convicted have been male and transmission has been through heterosexual sex.

Separately from this inquiry, AIDES reported that a former Secretary of State for Health was convicted for delaying the implementation of an HIV testing kit that would have prevented hundreds of persons being infected through blood transfusions.

It appears that exposing another person to the risk of HIV transmission can be subject to prosecution and treated in the same manner as actual exposure. The maximum sentence applicable is life imprisonment.

Transmission of other sexually transmitted infections is not subject to prosecution.

Completed questionnaires were received from Act-Up Paris and AIDES.

Georgia

| | |
|--|-------|
| Estimated number of people living with HIV: | 3,000 |
| Number of people prosecuted for HIV transmission: | 1 |
| Number of people convicted for HIV transmission: | 1 |

Applicable law:

Georgian Law on HIV/AIDS Prevention and Control, 2001. Article 9

Key wording in the law:

Article 9. Duties and responsibilities of PLWHA for spreading HIV/AIDS

1. HIV-infected person is obliged to take measures of avoiding spreading HIV/infection.
2. All HIV-infected persons, who is applying for medical assistance, is obliged to inform (warn) healthcare facilities or each medical worker about his/her HIV-status.
3. All HIV-infected persons using services in public service establishments, where exists real danger of skin and mucous membrane exposure and threaten of HIV-infection to other person, is obliged to warn serving personal about his/her HIV status.
4. To make intention real danger to affect other person with HIV-infection or other person through the individual, who knows about his/her disease, is prosecuted by the Criminal law according active legislation.

Discussion:

From the responses received, it appears one person has been prosecuted for transmitting HIV in Georgia. This prosecution led into a conviction. Section 1 of Article 9 creates an obligation for the person living with HIV to avoid spreading the virus. Section 4 confirms that transmission of HIV will be prosecuted, but it also suggests that other laws will be used to bring that prosecution (i.e. transmission of HIV will be punished according to appropriate active legislation).

The one person convicted was male, of Georgian nationality and unemployed. Mode of transmission of the virus was sharing injecting equipment for drug use.

It appears that exposing another person to the danger of HIV infection is also subject to prosecution.

Transmission of other sexually transmitted infections is not subject to prosecution; laws have been drafted but have still to be reviewed by the Georgian parliament.

A completed questionnaire was received from the Georgia AIDS Center.

Germany

| | |
|--|---------------------------|
| Estimated number of people living with HIV: | 43,000 |
| Number of people prosecuted for HIV transmission: | Information not available |
| Number of people convicted for HIV transmission: | At least 3 |

Applicable law:

German Criminal Code: Sections 223, 224, 226, 229

Key wording in the law:

Section 223 Bodily Injury

- (1) Whoever physically maltreats or harms the health of another person, shall be punished with imprisonment for not more than five years or a fine.
- (2) An attempt shall be punishable.

Section 224 Dangerous Bodily Injury

- (1) Whoever commits bodily harm:
 1. through the administration of poison or other substances dangerous to health;
 2. by means of a weapon or other dangerous tool;
 3. by means of a sneak attack;
 4. jointly with another participant; or
 5. by means of a treatment dangerous to life,shall be punished with imprisonment from six months to ten years, in less serious cases with imprisonment from three months to five years.
- (2) An attempt shall be punishable.

Section 226 Serious Bodily Injury

- (1) If the bodily injury has, as a result, that the injured person:
 1. loses his sight in one eye or in both eyes, his hearing, his speech or his procreative capacity;
 2. loses or permanently can no longer use an important bodily member;
 3. is permanently disfigured in a substantial way or becomes infirm, paralyzed, mentally ill or disabled,then the punishment shall be imprisonment from one year to ten years.
- (2) If the perpetrator intentionally or knowingly causes one of the results indicated in subsection (1), then the punishment shall be imprisonment for not less than three years.
- (3) In less serious cases under subsection (2), imprisonment from six months to five years shall be imposed, in less serious cases under subsection (2), imprisonment from one year to ten years.

Section 227 Bodily Injury Resulting in Death

- (1) If the perpetrator causes the death of the injured person through the infliction of bodily injury (Sections 223 to 226), then the punishment shall be imprisonment for not less than three years.
- (2) In less serious cases imprisonment from one year to *ten* years shall be imposed.

Section 228 Consent

Whoever commits bodily injury with the consent of the injured person only acts unlawfully if the act is, despite the consent, contrary to good morals.

Section 229 Negligent Bodily Injury

Whoever negligently causes bodily injury to another person shall be punished with imprisonment for not more than three years or a fine.

Discussion:

From the responses received, it appears no precise information is available for the numbers of people prosecuted for transmitting HIV in Germany. However, Deutsche AIDS-Hilfe reported being aware of at least three convictions. Statistical data of HIV specific prosecutions is not kept separate from that of the other crimes punishable using the same laws. The definitive HIV transmission case in Germany was in 1988, when the Federal Supreme Court decided that unprotected sexual intercourse with another person amounted to attempted dangerous bodily injury and could therefore be criminal. It did not matter that

infection did not occur; as long as a person was aware of being HIV positive, they would be committing a crime if they had unprotected sex.

The three people known to Deutsche AIDS-Hilfe were all male. One was German, another African and the other American. In all cases, the virus was transmitted through heterosexual sex. Information about their employment status at the time of prosecution was not available. Deutsche AIDS-Hilfe suggested that the sentences imposed on the non-Germans were harsher than those imposed on the German man convicted. The sentences were:

- Six years' imprisonment to the African for unprotected sex,
- 10 years' imprisonment to the American for infecting four women and
- Eighteen months, reduced to one-year probation, for the German because he tried to avoid ejaculation during sex with a woman at a 'swinger's club'. The woman in question was not infected.

Deutsche AIDS-Hilfe reported not being aware of any women being convicted for transmitting HIV. They were aware of several cases of prosecutions for transmissions through homosexual sex, but information on these was not made available.

Exposing another person to the risk of HIV infection is also subject to prosecution. The maximum sentence applicable is ten years' imprisonment.

Transmission of other sexually transmitted infections is subject to prosecution under Sections 224 and 225 of the German Criminal Code.

Completed questionnaires were received from AKAM, Deutsche AIDS-Hilfe e.V and the Ministry of Justice.

Greece

Not enough information received from Greece.

Hungary

| | |
|--|-----------------|
| Estimated number of people living with HIV: | 2,800 |
| Number of people prosecuted for HIV transmission: | At least 3 |
| Number of people convicted for HIV transmission: | 0 – Not certain |

Applicable law:

Criminal Code. Article 170 – Causing Bodily Harm

Key wording in the law:

Testi sértés

170.

(4) Büntettet követ el, és egy évtől öt évig terjedő szabadságvesztéssel büntetendő az elkövető, ha a testi sértés maradandó fogyatékoságot vagy súlyos egészségromlást okoz, illetőleg, ha a súlyos testi sértést különös kegyetlenséggel követi el.

(5) A büntetés két évtől nyolc évig terjedő szabadságvesztés, ha a testi sértés életveszélyt vagy halált okoz.

(6) Aki a súlyos testi sértést gondatlanságból követi el, vétség miatt egy évig terjedő szabadságvesztéssel, közérdekű munkával vagy pénzbüntetéssel, a (4) bekezdésben

meghatározott esetben három évig, életveszélyes sérülés okozása esetén öt évig terjedő szabadságvesztéssel büntetendő.

170.

§ (4) is the paragraph that would be used for transmission with intent: if the causing of bodily harm results in a permanent disability or a severe damage to health, the perpetrator can be sentenced to 1 to 5 years of prison.

§ (6) would be used for negligence: if the causing of severe bodily harm is perpetrated by negligence but causes the results described in (4), the perpetrator can be sentenced to up to 3 years of prison.

Discussion:

From the responses received, it appears there is no precise information available for the numbers of people prosecuted for transmitting HIV in Hungary. However, the Hungarian Civil Liberties Union (HCLU) reported being aware of at least three cases.

The three people known to HCLU were male and they were exposed to transmission through homosexual sex. HCLU do not know whether there was actual transmission. All three were Hungarian citizens. One was an actor and model in the pornography industry; details of the occupations of the other two were not available.

This suggests that only actual transmission of HIV to another person is punished. However the response from the HCLU indicates that exposing another person to the risk of transmission can also be punished. The maximum sentence applicable is five years' imprisonment.

Transmission of other sexually transmitted infections is subject to prosecution under the same article.

A completed questionnaire was received from the Hungarian Civil Liberties Union.

Iceland

Estimated number of people living with HIV: Less than 500

Number of people prosecuted for HIV transmission: 0

Number of people convicted for HIV transmission: 0

Applicable law:

General Penal Code, no. 19/1940, Section 175 and possibly Section 220(4)

Key wording in the law:

Section 175:

Anyone who brings about the danger that a contagious disease originates or spreads among the public by violating legal instructions respecting protection against contagious diseases or precautionary rulings by the authorities relating thereto shall be subject to imprisonment for up to 3 years. The penalty may, however, become imprisonment for up to 6 years in case of a disease, which the authorities have made special arrangements to obstruct or prevent from reaching this Country.

In case an offence in accordance with the present Article be committed through inadvertence, this will be subject to fines or imprisonment for up to 6 months.

Section 220(4):

Imprisonment of up to 4 years shall be imposed on any person who, for motives of gain, or in high spirits or in another irresponsible manner, places the lives or health of others in evident danger.

Also worth mentioning is:

Act no. 19/1997 on Communicable Diseases

Section III. General measures against communicable disease

1. Obligations of the individual

Art. 7. It is incumbent upon everyone to take all precautions against communicable disease, and to do one's best avoid to infecting oneself or others, as far as possible.

Discussion:

From the responses received, it appears no one has been prosecuted for the transmission of HIV in Iceland. The Ministry of Justice cited the first two laws as the ones applicable, but the Icelandic Centre for Infectious Diseases added the 1997 Act to the list. The 1997 Act also gives powers to the authorities to isolate anyone who does not follow the rules on contact with others.

Transmission of other sexually transmitted infections is subject to prosecution under the same laws.

Completed questionnaires were received from AIDS Organisation of Iceland, the Icelandic Human Rights Centre, and The Centre for Infectious Diseases and the Ministry of Justice.

Ireland

Estimated number of people living with HIV: 2,800

Number of people prosecuted for HIV transmission: 0

Number of people convicted for HIV transmission: 0

Applicable law:

Non Fatal Offences Against the Person Act of 1997, Section 4 and Section 13

Key wording in the law:

Non Fatal Offences Against the Person Act of 1997,

4.

- 1) A person who intentionally or recklessly causes serious harm to another shall be guilty of an offence.
- 2) A person guilty of an offence under this section shall be liable on conviction on indictment to a fine or to imprisonment for life or to both.

13.

- (1) A person shall be guilty of an offence who intentionally or recklessly engages in conduct which creates a substantial risk of death or serious harm to another.
- (2) A person guilty of an offence under this section shall be liable—
 - (a) on summary conviction to a fine not exceeding £1,500 or to imprisonment for a term not exceeding 12 months or to both, or
 - (b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding 7 years or to both.

Discussion:

From the responses received, it appears no one has been prosecuted for the transmission of HIV in Ireland. The Dublin AIDS Alliance, who also contributed to the Irish response, felt

that it was only a matter of time before a prosecution was brought in Ireland, particularly since prosecutions have occurred in the neighbouring United Kingdom. They have thus initiated dialogue with their government's advisory group on AIDS. If convicted under Section 4, a person is faced with a penalty of up to life imprisonment.

Transmission of other sexually transmitted infections is subject to prosecution.

Completed questionnaires were received from the Department of Justice, Equality and Law Reform. The Dublin AIDS Alliance also contributed information.

Italy

| | |
|--|------------|
| Estimated number of people living with HIV: | 140,000 |
| Number of people prosecuted for HIV transmission: | At least 3 |
| Number of people convicted for HIV transmission: | At least 3 |

Applicable law:

Three Statutes: Aggravated bodily harm, Homicide and Attempted Homicide.

Key wording in the law:

Translation of long document not available.

Discussion:

From the responses received, it appears that no precise information is available for the numbers of people prosecuted for transmitting HIV in Italy. However, Lega Italiano per la Lotta contro l'AIDS (LILA) reported being aware of at least three. LILA did not provide the full details of the three cases, but indicated that all prosecutions have been as a result of transmitting the virus through heterosexual sex.

Although LILA did not know the exact number of those facing prosecution, those charged included prostitutes and in one case, a housewife. Their occupations have been listed as prostitutes, white-collar jobs, doctors and a DJ. Although numbers of prosecution or convictions are not included, LILA suggests that there has been an increase in the numbers in the last five years.

It is not clear whether transmission of other sexually transmitted infections is subject to prosecution, but LILA indicates that hepatitis is considered a very serious infection.

A completed questionnaire was received from LILA.

Latvia

| | |
|--|-------|
| Estimated number of people living with HIV: | 7,600 |
| Number of people prosecuted for HIV transmission: | 1 |
| Number of people convicted for HIV transmission: | 0 |

Applicable law:

1998 Criminal Law Code, paragraph no. 133 and paragraph no. 138(2)

Key wording in the law:

Paragraph 133 Infection with HIV

For a person who knowingly commits infection of a person with human immunodeficiency virus (HIV), the applicable sentence is deprivation of liberty for a term not exceeding eight years.

Paragraph 138 (2)

1. If the non-appropriate or neglectful professional duties of medical staff has caused infection with HIV or has resulted in death, perpetrator is punished with imprisonment up to five years with taking away rights to cure up to five years.

Discussion:

From the responses received, it appears there has been one person prosecuted for transmitting HIV in Latvia. This, however, did not lead to the conviction of the person involved. The person prosecuted was male and was in prison at the time of the offence. UNDP-Latvia gave the mode of transmissions as 'blood analysis in the prison clinic'.

Transmission of other sexually transmitted infections is subject to prosecution under the same laws.

Completed questionnaires were received from the AIDS Prevention Centre, the Ministry of Health and from UNDP Latvia.

Liechtenstein

Estimated number of people living with HIV: Information not available

Number of people prosecuted for HIV transmission: 0

Number of people convicted for HIV transmission: 0

Applicable law:

S178 and 179 of the Criminal Code (St GB) and sections 83 and 84

Key wording in the law:

§ 178 StGB Deliberate Endangerment of Human Beings through Transferable Diseases

Whoever (deliberately) commits an act, which can cause the danger of spreading transferable, notifiable diseases among human beings shall be punished by imprisonment to a term not exceeding three years or fined up to 360 daily rates.

§ 179 StGB Negligent Endangerment of Human Beings through Transferable Diseases

Whoever commits an act described in § 178 in negligence shall be punished by imprisonment to a term not exceeding one year or fined up to 360 daily rates.

§ 83 StGB Bodily Harm

Whoever physically injures another person or damages the health of another person shall be punished by imprisonment to a term not exceeding six months or fined up to 360 daily rates.

§ 84 para. 1 StGB Grievous Bodily Harm

If the consequence of the deed (§ 83 StGB) is a damage of health or an occupational disability lasting more than 24 days or is the nature of the physical injury or damage of health severe by itself, the offender shall be punished by imprisonment to a term not exceeding three years.

Discussion:

From the responses received, it appears no one has yet been prosecuted for the transmission of HIV in Liechtenstein. The law concerning criminalisation of HIV transmission is very similar to that of neighbouring Austria.

Transmission of other sexually transmitted infections is subject to prosecution under the same laws.

A completed questionnaire was received from the Ministry of Justice.

Lithuania

| | |
|--|-------|
| Estimated number of people living with HIV: | 1,300 |
| Number of people prosecuted for HIV transmission: | 0 |
| Number of people convicted for HIV transmission: | 0 |

Applicable law:

Article 277, 135, 137 in the Penal Code of Lithuanian Republic

Key wording in the law:

Article 135.

1. A person, who injured or made ill, and a victim lost a sight, speech, fertility, pregnancy or was otherwise seriously disabled, acquired incurable disease or a long-lasting disease, which is life-threatening or hardly disordering human mind, or lost big share of professional or general efficiency, or victim's body was deformed beyond retrieve, is punished by deprivation of freedom for up to ten years.
2. A person, who severely injured or made ill an underage, a helpless person, own mother, father or child, pregnant woman, two and more people, with torture or otherwise cruelly, by a life-threatening way, because of rowdy incentive, because of selfish incentive, because of victim's service or citizen duties, trying to hide other crime, trying to get an organ or tissue of a victim's for transplantation purpose, is punished by deprivation of freedom from two up to twelve years.

Article 137. Severe health injure because of carelessness.

1. A person, who has severely injured or made ill another person because of carelessness, is punished by detention or deprivation of freedom for up to three years.
2. A person, who has severely injure or made ill two or more people because of carelessness is punished by deprivation of freedom for up to five years.
3. A person, who has performed the actions foreseen in part 1 or 2 or a present article through violating special rules of safe behaviour vested in legislation acts, is punished by deprivation of freedom for up to seven years.
4. A legal entity is also responsible for actions foreseen in the part 3 of a present article.

Article 277. Violation of the rules of fighting epidemics or communicable diseases.

1. A person, who has violated health care requirements or the rules of prevention and control of communicable diseases, stated in the legislation acts, and a disease has spread or epidemic occurred because of that, is punished by fine, detention or deprivation of freedom for up to three years.
2. A person, who, being informed by medical institution about his disease or cautioned about protection means he must take while communicating with other people, put into danger another person to infect with threatening infectious diseases, committed a crime and is punished by public work or fine, or deprivation of freedom, or detention.
3. A person pays the penalty according to this article in the cases when actions foreseen in this article are performed because of carelessness.

4. A legal entity is also responsible for actions foreseen in the part 1 of a present article.

Discussion:

From the responses received, it appears there is no precise information about the number of people prosecuted in Lithuania. However, it appears no one has been convicted. The Lithuanian AIDS Center knows of an attempt by some inmates in a correctional facility (prisoners) to have the prison's health care service and state prosecuted for those infected with HIV while in prison; however this prosecution apparently did not succeed.

Transmission of other sexually transmitted infections is subject to prosecution under the same laws. HIV is listed alongside syphilis, HVG and gonorrhoea under the Law of Prevention and Control of Human Communicable Diseases as being 'dangerous' and 'especially dangerous' communicable diseases.

Completed questionnaires were received from the Lithuanian AIDS Center and UNDP Lithuania.

Luxembourg

Estimated number of people living with HIV: Less than 500
Number of people prosecuted for HIV transmission: 0
Number of people convicted for HIV transmission: 0

Applicable law: None

Key wording in the law: Not applicable

Discussion:

From the responses received, it appears Luxembourg currently has no laws that could be used to initiate prosecution proceedings for the transmission of HIV. The questionnaire received from the Ministry of Health did not provide any additional information.

Completed questionnaires were received from the Direction De La Sante and the Ministry of Health.

Malta

Estimated number of people living with HIV: Less than 500
Number of people prosecuted for HIV transmission: 0
Number of people convicted for HIV transmission: 0

Applicable law:

Act III of 2002 Criminal Code: Section 244A Chapter 9

Key wording in the law:
244A.

- (1) Any person who, knowing that he suffers from, or is afflicted by, any disease or condition as may be specified in accordance with sub article (3), in any manner knowingly transmits, communicates or passes on such disease or condition to

any other person not otherwise suffering from it or afflicted by it, shall, on conviction, be liable to imprisonment for a term from four year to nine years:

Provided that where the other person dies as a result of such disease or condition, the offender shall be liable to the punishment established in article 211(1). [i.e. life imprisonment]

- (2) Where any such disease or condition as is referred to in sub article (1) is transmitted, communicated or passed on through imprudence, carelessness or through non-observance of any regulation by the person who knew or should have known that he suffers there from or is afflicted thereby that person shall on conviction be liable to imprisonment for a term not exceeding six months or to a fine (*multa*) not exceeding one thousand liri [€ 2300 circa]:
Provided that where the other person dies as a result of such disease or condition, the offender shall be liable to the punishments established in article 225. [i.e. imprisonment not exceeding four years or a fine not exceeding five thousand maltese liri: € 11,500 circa]
- (3) The Minister responsible for justice shall, by notice in the Gazette, specify diseases or conditions to which this article applies.

Discussion:

From the responses received, it appears no one has been prosecuted for the transmission of HIV in Malta. The 2002 Act is not specific to HIV, but covers all communicable diseases. The Minister of Justice, in a notice in a newspaper (as required by law), specifies diseases or conditions to which this Act applies. In their response, the prosecution service indicated that the motivation for the 2002 legislation was a realisation that the prohibited conduct was a threat to individual, as well as public, health.

Transmission of other sexually transmitted infections is subject to prosecution under the same law.

Completed questionnaires were received from the Chamber of Advocates, the Ministry of Health, the Prosecution Service and UNAIDS Focal Point.

Moldova

Estimated number of people living with HIV: 5,500

Number of people prosecuted for HIV transmission: 0

Number of people convicted for HIV transmission: 0

Applicable law:

Law on Prevention of AIDS 1993
Code of Criminal Procedures 2002

Key wording in the law:

Law on Prevention of AIDS, Article 6.

“A person being in good knowledge of having AIDS and deliberately exposing to risk of infection or contamination with AIDS another person can be charged with responsibility under the criminal law, at the same time reimbursing the costs of treatment to the infected person.

Code of Criminal Procedures, Chapter VIII, Offences against Public Health and Social Cohabitation

Article 211. Transmission of venereal diseases;

(1) A person. Who, being in knowledge of suffering from a venereal disease transmits it to another person will be sentenced to prison up to 3 years.

(2) The same offence exercised:

- a. repeatedly
- b. against two or more persons
- c. deliberately with a juvenile (minor)

shall be sentenced to prison from 3 up to 5 years.

Article 212. Contamination with AIDS disease

(1). Exposing deliberately of another person to contamination with AIDS shall be charged with imprisonment up to 3 years.

(2) Contamination with the AIDS disease by a person in good knowledge of suffering from the disease shall be charged with imprisonment from 3 up to 5 years.

(3) The same offence exercised:

- b. against two or more persons
- c. deliberately with a juvenile (minor)

shall be sentenced to prison from 5 up to 8 years.

(4) Contamination with the AIDS disease as a result of non-exercising or unsatisfactory exercising of functional duties by a medical professional shall be charged with imprisonment up to 5 years with (without) deprivation of the right to occupy some posts or exercise some duties for a period of up to 3 years.

Discussion:

From the responses received, it appears no one has been prosecuted for HIV transmission in Moldova. UNAIDS-Moldova indicated that the legal mechanisms for prosecution exist and that the first of these pieces of legislation was introduced in the face of the rising HIV epidemic, because no other piece of legislation could be used to effect criminalisation.

Exposing another person to the risk of HIV transmission is also subject to prosecution. The maximum sentence applicable is five years, rising to eight years for someone who infects more than one person or infects a juvenile.

Transmission of other sexually transmitted infections is subject to prosecution under the same law.

A completed questionnaire was received from UNAIDS -Moldova.

Netherlands

| | |
|--|---------------------------|
| Estimated number of people living with HIV: | 19,000 |
| Number of people prosecuted for HIV transmission: | Information not available |
| Number of people convicted for HIV transmission: | 11 |

Applicable law:

Articles 300 –303 of the Criminal Code. Article 82 brings HIV transmission within the meaning of the aforementioned articles. Article 45 penalises the ‘criminal attempt’. This means that actual transmission does not need to occur for HIV-risk behaviour to fall under the scope of the Criminal Code. In fact, in only one case was transmission believed to have taken place by the court in question.

Key wording in the law:

1. 300 (1) Singular physical abuse will be punished with detention of at the most two years or a fine of the fourth category.
300 (2) If this fact causes grievous bodily harm, the perpetrator will be punished with at the most four years of detention or a fine of the fourth category.
300 (3) If this fact causes death, the perpetrator will be punished with at the most six years of detention or a fine of the fourth category.
300 (4) Causing intentional detrimental effect on somebody's health is equalised to abuse.
300 (5) An attempt of abuse under this article is not punishable.

301 (1) Planned physical abuse will be punished with at the most three years of detention.

301 (2) If this behaviour causes grievous bodily harm, the perpetrator will be punished with at the most six years of detention or a financial fine of the fourth category.

301 (3) If this abuse will cause death, the perpetrator will be punished with at the most nine years of detention or a fine of the fifth category.

302 (1) He who causes intentional grievous bodily harm will be punished with at the most eight years of detention or a fine of the fifth category.

302 (2) If this fact will cause death, the perpetrator will be punished with at the most ten years of detention or a fine of the fifth category.

303 (1) Grievous bodily harm, committed with premeditated intention will be punished with at the most twelve years of detention or a fine of the fifth category.

303 (2) If this fact will cause death, the perpetrator will be punished with at the most fifteen years of detention or a fine of the fifth category.

Art. 82 (1) Under grievous bodily harm is comprised: illness that does not offer any chance on complete healing and will cause continuous disability for working or continuous disability to hold official functions, as well as spontaneous abortion or death of a foetus.

Art. 45 (1) An attempt to crime will become punishable if the intention of the perpetrator will have manifested itself by a start of execution of the crime.

45 (2) the maximum of the punishments for attempts will be reduction of the punishment by one third.

Discussion:

From the responses received, it appears no precise information about the number of people prosecuted for HIV transmission in the Netherlands is available. However, to date, it appears 11 people have been convicted. The first two prosecutions were brought in 1989. There were no more prosecutions until 2001 when the current spate of prosecutions

started. There have been two prosecutions between Sept. 2003 and Sept. 2004; both led to convictions.

All of the people convicted were male. All but one of these were born in the Netherlands, the one exception being of Turkish origin. In four or five of the cases, transmission occurred through homosexual sex. In another four cases transmission occurred through heterosexual sex. The mode of transmission in the other two cases was unavailable or not known. Most of those convicted were living on disability benefits, some held administrative positions and one was a convicted blackmailer.

Exposing another person to the risk of HIV transmission is also subject to prosecution. The severest sentence applicable is found in Section 303 (12 years' imprisonment, rising to 15 years if the infected person dies).

Transmission of other sexually transmitted infections is subject to prosecution.

A completed questionnaire was received from Hiv Vereniging Nederland.

Norway

| | |
|--|-------|
| Estimated number of people living with HIV: | 2,100 |
| Number of people prosecuted for HIV transmission: | 5 |
| Number of people convicted for HIV transmission: | 5 |

Applicable law:

The General Civil Penal Code of 1902, Section 155

Key wording in the law:

'Any person having sufficient cause to believe that he is a bearer of a generally contagious disease, wilfully or negligently infects or exposes another person to the risk of infection shall be liable....

Discussion:

From the responses received, it appears five people have been prosecuted for HIV transmission in Norway. All of these prosecutions have led to convictions. Section 155 was amended in 2003 to increase the maximum penalty applicable from three to six years. The first prosecution for HIV transmission was brought in 1991; there has been one prosecution and one conviction between September 2003 and September 2004.

All the people convicted in Norway appear to have passed on the virus through heterosexual sex even though the majority of people living with HIV in Norway have are reported to have been infected through homosexual sex. Four out of five have been male. Three out of the five people convicted have been Norwegian nationals. Of the remaining two, one was from South Africa whilst the other was Sudanese. None of the people convicted were in full time employment at the time of the prosecution; two were students, one lived on disability pension income, one is listed as an asylum seeker while the occupation of the last person is not known.

The group response by Gay Men's Health Committee, Pluss and the National Association Against AIDS noted that whilst 70 per cent of people living with HIV live in Oslo, none of the people convicted was in Oslo.

Exposing another person to the risk of infection is also subject to prosecution. The maximum penalty applicable is six years' imprisonment.

Transmission of other sexually transmitted infections is subject to prosecution under the same provision.

Completed questionnaires were received from the Norwegian Directorate of Health and Social Affairs in co-operation with the Ministry of Justice and a joint response from Gay Men's Health Committee, Pluss and the National Association Against AIDS.

Poland

| | |
|--|---------------------------|
| Estimated number of people living with HIV: | 14,000 |
| Number of people prosecuted for HIV transmission: | Information not available |
| Number of people convicted for HIV transmission: | Information not available |

Applicable law:

Criminal Code of 1997. Article 161, which came into force on 1 September 1998.

Key wording in the law:

Article 161

Whoever, knowing that he or she is infected by the HIV virus directly exposes another person to infection from that disease shall be subject to penalty of deprivation of liberty for up to 3 years.

Discussion:

From the responses received, it appears no precise information about the number of people prosecuted or convicted for the transmission of HIV in Poland is available. Poland is one of the few countries in the study group with legislation specific to the criminalisation of HIV transmission.

Directly exposing another person to the risk of HIV transmission is also subject to prosecution. The maximum penalty possible is three years' 'deprivation of liberty'.

Transmission of other sexually transmitted infections is subject to prosecution under a different law.

Completed questionnaires were received from a member of the Supreme Court Research and Analyses Office and from UNDP-Poland.

Portugal

| | |
|--|---------------------------|
| Estimated number of people living with HIV: | 22,000 |
| Number of people prosecuted for HIV transmission: | Information not available |
| Number of people convicted for HIV transmission: | Information not available |

Applicable law:

Portuguese Penal Code: Articles 144, 177 and 283.

Key wording in the law:

Article 144:

Who does offend the body or the health of another person:

- c) provoking particularly painful or permanent illness, or serious or incurable psychic anomaly; or
- d) provoking danger to life.

Article 177:

(3) The penalties foreseen in articles 163^o 168^o and 172^o 175^o [sexual crimes] are aggravated in half, in its minimum and maximum limits, if of the described behaviors results pregnancy, offence to serious the physical integrity, transmission of virus of HIV or forms of hepatitis that creates danger for life, suicide or death of the victim.[sic]

Article 183

1. The one

- a) Disseminates a contagious disease
- b) As doctor or its employee, nurse or laboratory employee, or a person legally authorized to elaborate an examination or a surgical registry, transmits wrong data or results.
- c) As chemist or chemist's employee gives medical substances not according to the medical prescription and,
Therefore, creates a danger for person's life or a serious danger for its physical integrity, shall be punished with imprisonment from 1 to 8 years.

2. If the danger referred in 1 has been created by a neglect behaviour, the agent is punished with imprisonment up to 5 years.

3. If the behaviour referred in 1 has been created by a neglect conduct, the agent is punished with imprisonment up to 3 years or with a fine.

Discussion:

From the responses received, it appears that there is no precise information about the numbers of people prosecuted and convicted for HIV transmission in Portugal. According to one lawyer, who consulted the Ministry of Justice, no statistical data was available. Positivo gave the same response, but said that this could be interpreted to mean either very few people or no one at all. According to the response from Abraco, no one has been prosecuted. The response from Castelo Branco Associados cited Articles 144 and 177 as being the applicable law in this area. Abraco and Positivo both cited Article 283 as the statute under which prosecution for HIV transmission can be brought. According to Positivo, a search of the databases of the Supreme and High Courts revealed that they were only two decided cases, both of which related to HIV transmission through injecting drug use. Positivo did not indicate the outcome of these cases.

Only the actual transmission of HIV to another person is subject to prosecution. The maximum sentence applicable, according to Article 283, is eight years' imprisonment.

Transmission of other sexually transmitted infections is also subject to prosecution.

Completed questionnaires were received from Abraco, Positivo and a lawyer with the firm Castelo Branco & Associados.

Romania

| | |
|--|---------------------------|
| Estimated number of people living with HIV: | 6,500 |
| Number of people prosecuted for HIV transmission: | Less than 5 |
| Number of people convicted for HIV transmission: | Information not available |

Applicable law:

Romanian Penal Code – No article specified

Key wording in the law:

(Provided by UNAIDS-Romania)

2. Transmission of HIV virus by a person that knows that is infected with the HIV virus is punished with imprisonment from 5 to 15 years.

Discussion:

From the responses received, it appears less than five people have been prosecuted for HIV transmission in Romania. It is not known how many of these prosecutions led to convictions. According to UNAIDS-Romania, the first prosecution for HIV transmission was brought in 1994. No data was available to UNAIDS-Romania about the particulars of any of the people prosecuted. According to World Vision Romania, most of those who were prosecuted were women and transmission occurred during heterosexual sex

Only actual transmission of HIV to another person is subject to prosecution. The maximum sentence applicable is 15 years' imprisonment.

Transmission of other sexually transmitted infections is subject to prosecution.

Completed questionnaires were received from World Vision-Romania and UNAIDS-Romania

Russia

| | |
|--|---------------------------|
| Estimated number of people living with HIV: | 860,000 |
| Number of people prosecuted for HIV transmission: | Information not available |
| Number of people convicted for HIV transmission: | Information not available |

Applicable law:

Criminal Code of the Russian Federation (Federal Law No.63-FZ dated 13 June 1996)

Key wording in the law:

Article 122: Infection by HIV

1. Placing deliberately other person under the risk of HIV infection - will be punished by the freedom limitation for up to three years, or by the arrest for the period from three to six months, or by the imprisonment for up to one year.
2. HIV infection of a person by the person, who was aware that he is HIV-infected, will be punished by the imprisonment for up to five years.
3. The acts specified in the part two of this article and committed towards two or more persons, or towards the under-age person deliberately, will be punished by the imprisonment for up to eight years.
4. HIV infection of a person as a result of improper professional performance - will be punished by the imprisonment for up to five years accompanied by the restriction for certain professional positions or activities for up to three years.

Note. A person, who has committed the acts specified in the parts one and two of this article, will not be prosecuted in case other person placed under the risk of HIV infection or infected by HIV had been timely warned on this disease of the first person, and had voluntarily agreed to act in a way creating the risk of infection.

Discussion:

From the responses received, it appears there is no precise information available about the number of people prosecuted and convicted for transmission of HIV in Russia.

Exposing another person to the risk of HIV infection is also punishable. The maximum sentence applicable is five years' imprisonment, rising to eight years where two or more persons or a juvenile is infected.

Transmission of other sexually transmitted infections is also subject to prosecution.

A completed questionnaire was received from WHO-Russia.

San Marino

No information received from San Marino.

Serbia and Montenegro

| | |
|--|--------|
| Estimated number of people living with HIV: | 10,000 |
| Number of people prosecuted for HIV transmission: | 0 |
| Number of people convicted for HIV transmission: | 0 |

Applicable law:

Criminal Code of Serbia

Key wording in the law:

(This wording provided by Zdravlje)

'...If someone disseminated HIV (or any other infective disease) by intention (not informing partner about his/her HIV status)... will be punished with the prison, from 5 to 10 years.'

Article 122a: Transmission of especially danger illness

One who knowingly that he/she is infected by especially danger illness, transmit the illness to another who didn't know about his/her illness, would be punished from six month to five years imprisonment.

Discussion:

From the responses received, it appears no one has been prosecuted for transmitting HIV in Serbia and Montenegro. The two organisations that responded each cited a different Act as being the applicable law. In either case, only actual transmission of HIV to another person is punishable. The maximum sentence applicable is either five or ten years' imprisonment.

Transmission of other sexually transmitted infections is also subject to prosecution.

Completed questionnaires were received from the UNAIDS Secretariat in Belgrade and from Zdravlje.

Slovakia

| | |
|--|---------------|
| Estimated number of people living with HIV: | Less than 200 |
|--|---------------|

Number of people prosecuted for HIV transmission: Information not available
Number of people convicted for HIV transmission: 1

Applicable law:

Section 226 or the Penal Code

Key wording in the law:

Article 226: Threatening by a venereal disease or by a virus of human immunodeficiency.

- 1) Any person who draws another person, notwithstanding that in negligence, in a danger of venereal disease or a human immunodeficiency virus, shall be liable to a term of imprisonment not exceeding three years or to a pecuniary penalty.
- 2) The offender shall be liable to a term of imprisonment of one to eight years, if he through the commission of the offence referred to in paragraph 1 draw another person in a danger of death

Discussion:

From the responses received, it appears that no precise information was available on the number of people prosecuted for transmitting HIV in Slovakia. However, one person has been convicted, in 1999. The Ministry of Justice did not provide any further details of the person convicted.

It appears that putting another person at the risk of HIV infection is also subject to prosecution. The maximum sentence applicable is eight years.

Transmission of other sexually transmitted infections is subject to prosecution under the same law.

Completed questionnaires were received from the Ministry of Health and the Ministry of Justice.

Slovenia

Estimated number of people living with HIV: Less than 500
Number of people prosecuted for HIV transmission: 0
Number of people convicted for HIV transmission: 0

Applicable law: None

Discussion:

From the responses received, it appears neither transmission of HIV nor transmission of other sexually transmitted infections is subject to prosecution in Slovenia.

A completed questionnaire was received the Institute of Public Health.

Spain

Not enough information received on Spain

Sweden

| | |
|--|---------------------------|
| Estimated number of people living with HIV: | 3,600 |
| Number of people prosecuted for HIV transmission: | Information not available |
| Number of people convicted for HIV transmission: | 30 |

Applicable law:

Chapter 3 of the Swedish Penal Code.

Key wording in the law:

Chapter 3, Section 5

A person who inflicts bodily injury, illness or pain upon another or renders him or her powerless or in a similar helpless state, shall be sentenced for assault to imprisonment for at most two years or, if the crime is petty, to a fine or imprisonment for at most six months. (Law 1998:393)

Section 6

If the crime referred to in Section 5 is considered gross, the sentence for gross assault shall be imprisonment for at least one and at most ten years. In assessing if the crime is gross special consideration shall be given to whether the act constituted a mortal danger or whether the offender inflicted grievous bodily harm or severe illness or otherwise displayed particular ruthlessness or brutality. (Law 1988:2)

Section 8

A person who through carelessness causes another to suffer bodily injury or illness not of a petty nature, shall be sentenced for causing bodily injury or illness to a fine or imprisonment for at most six months 16 s1999:36

If the crime is gross, imprisonment for at most four years shall be imposed. If the act was committed by driving a motor vehicle, special consideration shall be given, in assessing whether the crime is gross, to whether the sentenced person was under the influence of alcohol or other substance. (Law 1993:1462)

Section 9

A person who through gross carelessness exposes another to mortal danger or danger of severe bodily injury or serious illness, shall be sentenced for creating danger to another to a fine or imprisonment for at most two years.

Chapter 23, Section 1

A person who has begun to commit a crime without bringing it to completion, shall, in cases where specific provisions exist for the purpose, be sentenced for attempt to commit crime if there was a danger that the act would lead to the completion of the crime or such danger had been precluded only because of fortuitous circumstances.

Punishment for attempt shall be at most what is applicable to a completed crime not less than imprisonment if the least punishment for the completed crime is imprisonment for two years or more.

Discussion:

From the responses received, it appears that precise information about the number of people who have been prosecuted for transmitting HIV in Sweden is not known. However, around 30 people have been convicted, with the first prosecution for transmission of HIV in

1992. The Swedish Association for HIV Positive People (RFHP) says the lack of detailed information available is due to the fact that HIV positive people are prosecuted under assault laws and other laws. No distinction is made between HIV cases and all the other cases prosecuted under the same umbrella heading. According to RFHP, the media has been instrumental in informing them of cases appearing in court. In the last year, four people are known to have been prosecuted and all four were convicted.

Of the cases known to RFHP, 17 of those convicted were male. One woman was also convicted. In six of the cases transmission occurred through homosexual sex, while heterosexual sex was the mode of transmission for 12 of those convicted. According to RFHP, most of those convicted were from Africa. It lists the following as some of the countries from which those who were convicted originated: Portugal, Canada, 'Middle East', Sweden, Brazil, Somalia, Nigeria, Denmark, Tanzania, Niger, Uganda and Congo. Details of their occupations at the time of prosecution were not known.

Information about the sentences applicable is not available. However, RFHP indicated that the average number of years imprisonment was between five to seven years. Along with the prison sentences, those convicted are also liable to pay damages. These have been in the region of USD\$100,000. According to RFHP, there is anecdotal evidence to suggest that people living with HIV and AIDS are being blackmailed into paying large sums of money in exchange for not being prosecuted. Deportation and bans from ever returning to Sweden are also applied.

Exposing another person to the risk of HIV transmission and actual transmission of the virus are both punishable.

Transmission of other sexually transmitted infections is also subject to prosecution. RFHP said they know of one case where a man was convicted for the transmission of hepatitis B.

A completed questionnaire was received the Swedish Association for HIV-Positive People.

Switzerland

| | |
|--|--------------|
| Estimated number of people living with HIV: | 13,000 |
| Number of people prosecuted for HIV transmission: | More than 30 |
| Number of people convicted for HIV transmission: | More than 20 |

Applicable law:

Swiss Penal Code: Articles 122 and 231

Key wording in the law:

Grievous bodily harm (Art. 122 of the Swiss Penal Code)

Anyone who intentionally injures a person in a life-threatening way, anyone who mutilates a body, an important organ or a limb or who makes an important organ or limb of a human being useless, anyone who makes a person incapable of working, fragile, or insane, anyone who deforms a human being's face in a severe and permanent way. Anyone who causes intentionally another grievous injury to a human being's body or his/her physical or mental health shall be punished with penitentiary or prison from six months up to five years.

Spreading of human diseases (Art. 231 of the Swiss Penal Code)

1. Anyone who intentionally spreads a dangerous transmittable human disease shall be punished with prison from one month up to five years. If the offender has acted out of a mean attitude, the punishment will be penitentiary up to five years.
2. If the offender has acted out of negligence, the punishment shall be prison or he/she shall be liable to a fine.

Discussion:

From the responses received, it appears more than 30 people have been prosecuted for HIV transmission in Switzerland. Of these, more than 20 have been convicted. The first prosecution for HIV transmission was brought in 1988. It is estimated that five people were prosecuted between September 2003 and September 2004 and that about four of those were convicted. According to Aids-Hilfe Schweiz, this marks an increase in the rate of prosecutions.

Precise numbers are not given for the gender split, but more men than women have been prosecuted. Most of those prosecuted transmitted the virus through heterosexual sex. There have been a few prosecutions for infection through homosexual sex. No information was provided about the nationalities or occupations of the people convicted. However, Aids Hilfe Schweiz suggested that the majority were Swiss nationals. According to Groupe Sida, several African men have also been convicted. These have often been deported from Switzerland after imprisonment.

Transmission of other sexually transmitted infections and hepatitis C is also subject to prosecution.

Completed questionnaires were received from Aids-Hilfe Schweiz and the Kanton Schaffhausen, with a contribution from Groupesida.

The former Yugoslav Republic of Macedonia

| | |
|--|---------------|
| Estimated number of people living with HIV: | Less than 200 |
| Number of people prosecuted for HIV transmission: | 0 |
| Number of people convicted for HIV transmission: | 0 |

Applicable law: None

Key wording in the law: Not Applicable

Discussion:

From the responses received, it appears Macedonia has no laws that could be used to initiate prosecution proceedings for the transmission of HIV. In 2000, a legal opinion prepared on behalf of UNICEF showed that there are no laws that specifically mention HIV and AIDS.

Transmission of other sexually transmitted infections is subject to prosecution.

A completed questionnaire from UNAIDS Focal Point (Office of the UN Resident Coordinator – Macedonia)

Turkey

| | |
|--|------|
| Estimated number of people living with HIV: | 3700 |
| Number of people prosecuted for HIV transmission: | 0 |

Number of people convicted for HIV transmission: 0

Applicable law:

Turkish Criminal Law: No. 456 – On purpose battery

Turkish Criminal Law: No, 449, 450, 452, 455, 459

Key wording in the law:

A translation of the law was not available.

Discussion:

From the responses received, it appears no one has been prosecuted for transmission of HIV in Turkey. No other information was provided.

Transmission of other sexually transmitted infections is subject to prosecution.

A completed questionnaire was received from UNAIDS-Turkey.

Ukraine

Estimated number of people living with HIV: 360,000

Number of people prosecuted for HIV transmission: Information not available, however 4 cases in the Donetsk region known to the All-Ukrainian Network of PLWH.

Number of people convicted for HIV transmission: Information not available, however 2 cases in the Donetsk region known to the All-Ukrainian Network of PLWH.

Applicable law:

The law of Ukraine " About the prevention of disease AIDS and social protection of the population " from 1992, with changes brought in 1998, clause 14

The Criminal code of Ukraine (clause 130, a part 3 and 4)

Key wording in the law:

CHAPTER 2: CONDITIONS AND ORDER OF MEDICAL SURVEY FOR THE PURPOSE OF HIV-INFECTION DETECTION, REGISTRATION OF HIV INFECTED / AIDS PATIENTS, GRANTING MEDICAL CARE AND MEDICAL SUPERVISION TO THEM.

Article 9:

The person determined as HIV positive in accordance with the data of medical survey is notified about it by a health-care worker of health protection body, where the survey had been carried out, in view of the requirements of this Act about confidentiality of the specified information. Simultaneously HIV infected persons are notified on the necessity to adhere to preventive measures directed on the prevention of HIV-infection spreading, guarantees of observance of the rights and freedom of HIV-infected persons, and also about the criminal responsibility for the conscious exposing to danger of infection of other persons by HIV.

CHAPTER 3: CONSEQUENCES OF HIV INFECTION DETECTION AND HIV INFECTED PERSONS' DUTIES

Article 14.

In case of reception from health authority the information about infection by HIV, the warning of necessity of observance of preventive measures for the purpose of the prevention of HIV-infection spreading and the criminal responsibility for conscious exposing to danger of infection or infection of other person (persons), HIV positive persons are obliged to fix in writing the fact of reception of the specified information and warning.

Article 15.

HIV-infected persons and the AIDS-patients are obliged:

To arrange for the prevention of HIV-infection spreading, offered by health authorities, the first part of Article 9 of this Act;

To inform the persons who were in sexual contact with them before detection of the presence HIV-infection and the possibility of their infection,

To refuse from donorship of blood, its components, other biological liquids, crates, bodies and fabrics for use in medical practice.

Article 16

HIV infected and living with AIDS foreigners, and also persons without citizenship, which do not carry out the offered by health protection bodies preventive measures, create by their behavior threat to health of other persons, and expelled from Ukraine, as established by the Act of Ukraine, "About the legal status of the foreigners", (3929-12) order.

- HIV-infected bears the criminal responsibility for the deliberate decision in threat of transmission HIV and infection HIV of other persons.
- Infection other 2 or more persons or a minor HIV or another incurable infectious disease, the person knowing, that it is the carrier of this virus which is punished by imprisonment from 3 up to 8 years.
- Deliberate infection of other person of a HIV or infectious disease which is dangerous to human life which is punished by imprisonment from 5 up to 10 years.

Discussion:

From the responses received, it appears there is no precise information available about the numbers of people prosecuted and convicted for HIV transmission in Ukraine. However the All-Ukrainian Network for PLWH has indicated that they know of at least four prosecutions attempts in the Donetsk region of Ukraine. Two of these led to convictions. UNAIDS indicated that the first prosecution was brought in the 1990s, but they do not have access to official statistical data. No information has been given as to the gender, mode of HIV transmission or occupation at the time of prosecution of the cases mentioned above.

Exposing someone to the risk of transmission as well as actual transmission is also punishable. The maximum sentence applicable is ten years' imprisonment.

Completed questionnaires were received from the All-Ukrainian Network of PLWH and UNAIDS Ukraine.

United Kingdom

| | |
|--|--------|
| Estimated number of people living with HIV: | 53,000 |
| Number of people prosecuted for HIV transmission: | 4 |
| Number of people convicted for HIV transmission: | 4 |

Applicable law:

Offences Against the Person Act 1861, Sections 18 and 20

Key wording in the law:

Section 18: Wounding with intent to do grievous bodily harm

Whosoever shall unlawfully and maliciously by any means whatsoever wound or cause any grievous bodily harm to any person ...with intent, ... to do some ... grievous bodily harm to any person, [or with intent to resist or prevent the lawful apprehension or detainer of any person,] shall be guilty of an offence, and being convicted thereof shall be liable ... to imprisonment for life.

Section 20: Inflicting bodily injury, with or without weapon

Whosoever shall unlawfully and maliciously wound or inflict any grievous bodily harm upon any other person, either with or without any weapon or instrument, shall be guilty of a misdemeanour, and being convicted thereof shall be liable ... to imprisonment ... for not more than five years.

Discussion:

From the responses received, it appears there have been three successful prosecutions of HIV transmission in England and one in Scotland (which has a different and distinct legal system). Each of these known prosecutions has led to a conviction. One of these convictions has been appealed. In their response to this consultation, the Home Office mentions one other case in which a prosecution was attempted, but this was abandoned before coming to court. Terrence Higgins Trust knew of several other investigations where charges were considered but not eventually brought.

In 1993, the Crown Prosecution Service (CPS) was said to be 'powerless to act' when an attempt was made to prosecute a male haemophiliac who was accused of infecting four women. That case prompted the Law Commission to look into the matter. In 1998, the Home Office issued a Consultation Paper proposing a new offence of 'intentional transmission of a disease with intent to cause serious harm'. The Home Office indicated in the Consultation Paper that it believed its proposals were close in effect to those already in existence.

All convicted have been men and all charges were based on transmission during heterosexual sex. The person convicted in Scotland was a UK national. The three convicted in England had all sought, or been granted, asylum in the UK. The UK national was an ex-prisoner and unemployed; two of the three convicted in England were not legally allowed to work. Both are said to have worked illegally – one in a furniture shop and another as a musician. The third was described as a former solicitor's clerk.

Only actual transmission of HIV to another person is punished. The maximum sentence applicable is life imprisonment.

During the ruling in one of the cases, the Court of Appeal indicated that the law would apply equally to transmission of other 'serious sexually transmitted diseases'. It is not clear what these are. Terrence Higgins Trust stated that other sexually transmitted infections were subject to prosecution following an actual prosecution for transmission of herpes which failed on other grounds.

Completed questionnaires were received from Terrence Higgins Trust, George House Trust, and the Home Office, UK Coalition of People Living with HIV and AIDS and Dr. Mathew Weait.

In your opinion does the state consider HIV transmission to be a greater threat than the transmission of other sexually transmitted infections?

If specific laws have been drafted to criminalise HIV transmission, what in your opinion has been the driving force behind the drafting of these laws?

SECTION 3: WHO HAS BEEN PROSECUTED?

| | | |
|---|-------------------------------|--------|
| 1. Gender (please give numbers for each) | Men: | Women: |
| 2. How was HIV transmitted from the person being prosecuted to the complainant? (Please indicate numbers for each mode of transmission) | Homosexual sex: | |
| | Heterosexual sex: | |
| | Mother to child transmission: | |
| | Injecting drug use: | |
| | Blood transfusion: | |
| 3. Country(ies) of origin | | |
| 4. Occupation at time of prosecution: | | |

In your opinion, Is the law being used against specific groups? If so, which ones?

SECTION 4: THE ORGANISATION COMPLETING THIS QUESTIONNAIRE

| | |
|--|----------------------------------|
| 1. Does your organisation have a practical interest in issues about criminalisation of HIV transmission? | |
| 2. What activities do you undertake in this area? | Practical support to defendants: |
| | Research: |
| | Policy matters: |
| | Campaigning: |
| 3. Are there other organisations in your country that have an interest in this issue? | |

| Name of organisation | Contact person | Telephone | Email address | Postal address |
|--|----------------|-----------|---------------|----------------|
| 4. Comments: | | | | |
| 5. Would you like to receive a copy of the research report? Yes No | | | | |

Thank you for completing this questionnaire. If you have any comments or queries about this research, please contact policy@ttht.org.uk