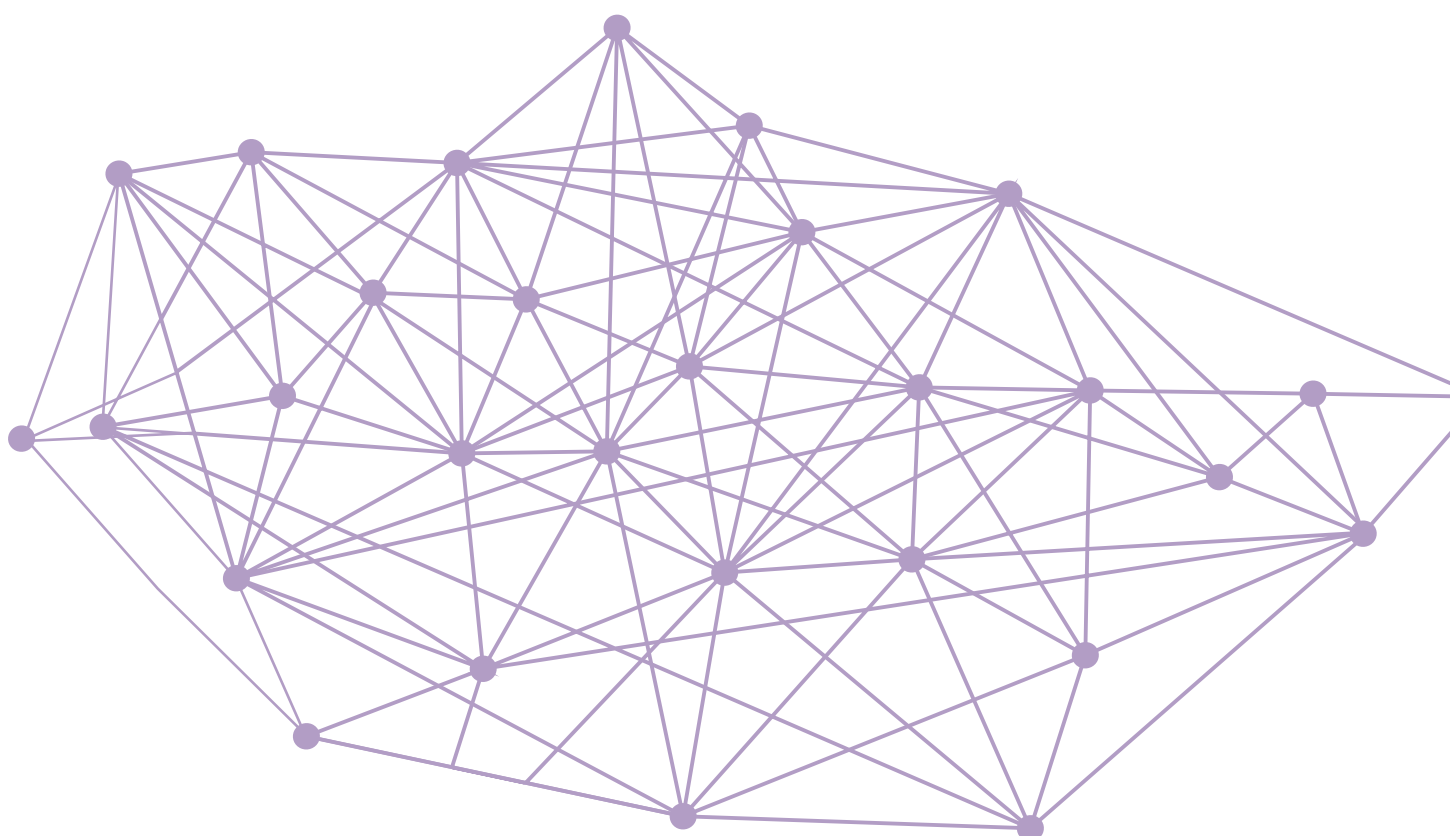


# HIV CRIMINALIZATION IN THE EU/EEA

A COMPARATIVE 10-COUNTRY REPORT



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# LIST OF ABBREVIATIONS

<b>AAE</b>	AIDS Action Europe	<b>NGO</b>	Non-governmental organizations
<b>AIDS</b>	Acquired Immune Deficiency Syndrome	<b>PLHIV</b>	People living with HIV
<b>ART</b>	Antiretroviral therapy	<b>PREP</b>	Pre-exposure prophylaxis
<b>ECDC</b>	European Centre for Disease Prevention and Control	<b>STI</b>	Sexually transmitted infection
<b>EEA</b>	European Economy Area	<b>TASP</b>	Treatment as prevention
<b>EHLF</b>	European HIV Legal Forum	<b>TB</b>	Tuberculosis
<b>EU</b>	European Union	<b>UNAIDS</b>	the Joint United Nations Programme on HIV/AIDS
<b>HIV</b>	Human immunodeficiency virus	<b>U=U</b>	Undetectable = Untransmittable
<b>PWID</b>	People who inject drugs	<b>WHO</b>	World Health Organization
<b>MSM</b>	Men who have sex with men		

# INTRODUCTION

The mission of AIDS Action Europe's European HIV Legal Forum (EHLF) is to develop effective means of improving access to HIV prevention, counselling and testing, treatment, care and support for all those who have limited access to HIV services due to legal obstacles, through the united efforts of legal and policy experts with the aim of bringing into effect a rights-based approach to health as adopted by the European Commission.

In 2012, following growing interest within the AAE Steering Committee and the broader AAE network for mutual support and joint action on legal issues related to HIV, AAE developed the first steps towards the EHLF, which began with a pilot project initiated by five AAE member organisations (the 'EHLF partners') in Hungary, Italy, the Netherlands, Switzerland and the United Kingdom.

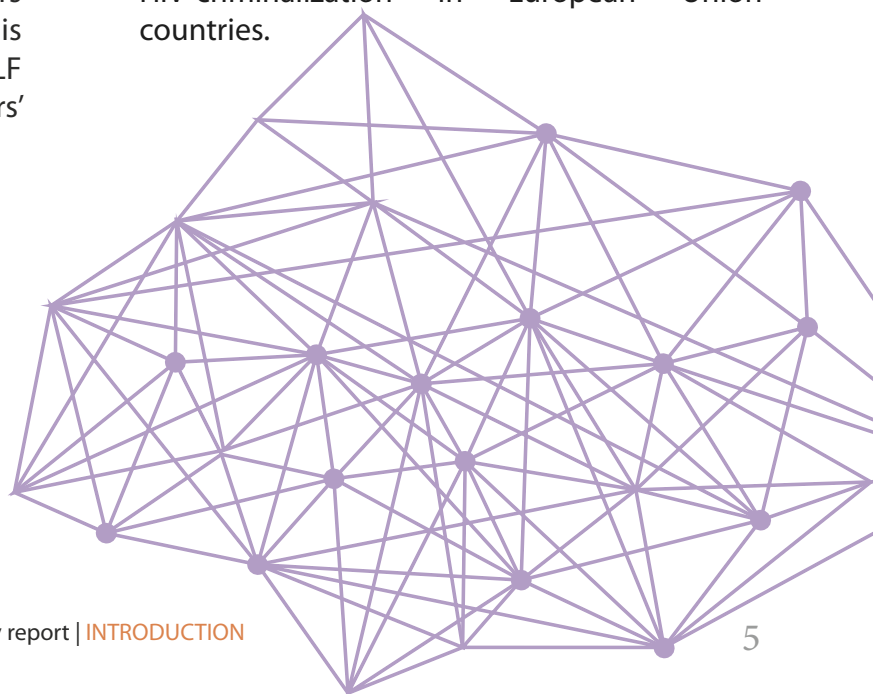
The pilot focused on the legal situation affecting access to healthcare of migrants in an irregular situation (also known as 'undocumented migrants') who are living with HIV since it was felt by all five EHLF partners that there was an urgent need to act on this issue. A survey was devised by the EHLF partners and rolled out in the partners' countries.

The results provided valuable insights into differences in health systems in the five countries and its effects on access to treatment and services for irregular migrants.

By documenting the legal situation, providing a comparative analysis of each country's laws and how they were applied, the survey report identified good practice and innovative solutions consistent with international human rights, acting as a catalyst for change where practice remains poor.

Following the pilot phase, the EHLF was enlarged and the latest report covered 16 European countries legal situation and level of access to HIV- and co-infection services for migrants in an irregular situation<sup>1</sup>.

In the project phase 2018-2019, EHLF partners with coordination from the AIDS Action Europe office produced a 10-country report on access to HIV-, viral hepatitis-, and TB-services for people in prison and other closed settings and the present 10-country report on HIV-criminalization in European Union countries.



# BACKGROUND

The Steering Committee of AIDS Action Europe identified the criminalization of HIV-non-disclosure, -exposure and -transmission (HIV-criminalization) as a core thematic area that the network should address and work on in the 2018-2021 strategic period.

Despite the progress of scientific evidence and recent positive developments in practice of investigations and prosecutions in some European countries, HIV-criminalization remains a key issue both for PLHIV and preventative measures across Europe. According to data from HIV Justice Network, 18 countries in the WHO European region have HIV specific criminalisation laws, and 31 countries have prosecuted PLHIV<sup>2</sup>.

HIV criminalization undermines the human rights of PLHIV and key affected populations, they are discriminatory and no data support that it helps prevent new HIV-infections; on the contrary it harms HIV prevention efforts as it increases stigma and deters people, particularly those in key populations, from getting tested and knowing their status.

HIV-criminalization cases also have negative effects on both parties involved as both the defendant and the complainant are forced to share private information on their lives, including sex lives, and the lengthy and often inhuman investigations and the sensational media coverages impose additional emotional burden on everyone involved.

AAE was invited to join the Steering Committee of HIV Justice Worldwide in 2017 and since then has been increasingly involved in anti-criminalisation advocacy activities and decided to work with 10 AAE member organizations based in EU countries and create a comparative 10-country report as the basis for future advocacy activities in the issue.

“HIV criminalization” refers to the use of criminal law to penalize alleged, perceived or potential HIV exposure; alleged nondisclosure of a known HIV-positive status prior to sexual contact (including acts that do not risk HIV transmission); or non-intentional HIV transmission.<sup>3</sup>

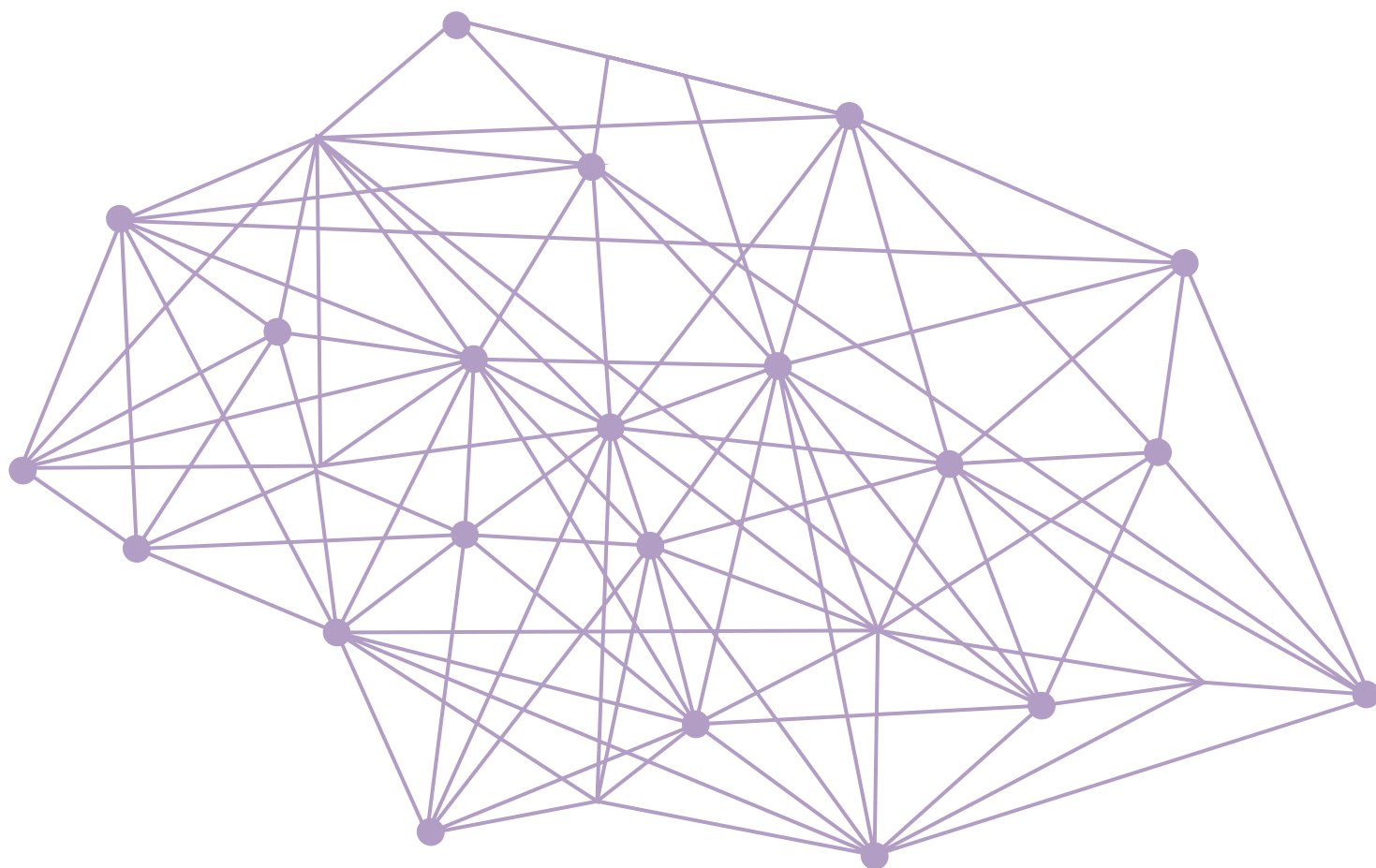
# METHODOLOGY

This study will cover the following 10 European Union Member States: Austria, Czechia, Finland, Germany, Greece, Ireland, Italy, Portugal, Romania, and the United Kingdom.<sup>4</sup>

These countries were chosen because they are considered representative of the epidemiological, political, geographical, and economic diversity of European Union and represent a variety of history with HIV-criminalization.

The partners from each country were chosen based on their previous and current work on HIV-criminalization from the AAE membership.

The information in the country profile section was provided by the AAE member organizations and are based on a standardized questionnaire. The organizations included all available information and cases known to them, reflecting the state of affairs during the data collection period of June – October 2019.



# EHLF PARTNERS

AAE would like to acknowledge its members who were partners in the project and provided information on their national legislation relevant to HIV-criminalization, researched and summarized known HIV-criminalization cases and gave insight to the national context and roles of different stakeholders, such as media, play in HIV-criminalization.

Our partners that provided invaluable information and input to this report are:

Aids-Hilfe Wien **Austria**

Czech AIDS Help Society **Czechia**

Positiiviset ry **Finland**

Deutsche Aidshilfe **Germany**

Centre for Life **Greece**

HIV Ireland **Ireland**

Fondazione LILA Milano **Italy**

GAT Grupo de Ativistas em Tratamentos **Portugal**

Asociatia Romana Anti-Sida (ARAS) **Romania**

National AIDS Trust (NAT) **the United Kingdom**



# MAIN FINDINGS

The ten countries covered in this report, despite all being EU Member States, are different from each other regarding their legislation relevant to HIV-criminalization and their number of cases of HIV-criminalization. However, they all show common characteristics, which will be summarized in this section of the report.

For more detailed, country-specific information, please check the following section where the situation regarding HIV-criminalization in each country represented in the EHLF are described.



## THE ACTUAL NUMBER OF HIV-CRIMINALIZATION CASES

The number of HIV-criminalization cases reported by the EHLF member organizations are the number of those cases that are known to each organization. The source of information in most cases is either direct client contact with the organizations or media reporting.

All organizations in the project provide legal information for PLHIV, thus people who are charged with HIV-status non-disclosure, HIV-exposure or HIV-transmission reach out to them for information or support. The media, besides reporting on the cases, sometimes reach out to these organizations too as they are interested in the opinion of NGOs working for and representing the interest of PLHIV.

However, not all cases are reported by the media and people who are charged with HIV-criminalization do not necessarily reach out to the member organizations.

Thus, some of the cases remain unknown and research aiming at getting a more precise picture of the number of cases is challenging.

With the exception of Romania, all countries in the report use general provisions of their criminal code, resulting in HIV-criminalization cases being published together with other cases and decisions under the same laws, which makes research difficult if not impossible. Portugal, for instance, only publishes decisions of second instance, thus cases that ended in the first instance, either with a sentence or with acquittal, are not recorded in any publically accessible resource.

This implies that the actual number of HIV-criminalization cases is higher in each of the countries covered by this report, which is also true for other countries in the region and globally.



## LACK OF TRAINING AND GUIDANCE ON HIV-CRIMINALIZATION FOR POLICE, PROSECUTORS, AND JUDGES

Although the application of the criminal code in cases of HIV-criminalization raises complex issues and so does the investigation process, most countries do not have HIV-specific training or guidelines/ guidance developed for the police, prosecutors or judges.

Of the 10 countries covered in this report, only one, the United Kingdom, has guidance for prosecutors and the police for cases of HIV-criminalization.

Unfortunately, this reflects the global situation; very few countries and jurisdictions in the world have developed guidance for prosecutors or the police.

In its 2013 Guidance note<sup>5</sup>, UNAIDS reinforced its call on governments to “issue guidelines to limit police and prosecutorial discretion in application of criminal law” and emphasized the importance of these guidelines being supported by implementation mechanisms and made accessible for PLHIV and the general public, as well as service providers (paragraph 68 – 70).

Although relevant scientific and medical evidence - such as the fact that having an undetectable viral load means that there is no risk of transmission - is becoming more frequently used in HIV-criminalization cases in most of the countries covered by the report, there is still a substantial gap in the scientific knowledge and understanding of judges, prosecutors and the police regarding HIV transmission, prevention, and treatment options, as well as how scientific methods should be used and their limitations when they are used to establish proof.

In 2018, twenty scientists from regions all over the world developed and published an Expert Consensus Statement to address the use of HIV science by the criminal justice system.<sup>6</sup> The aim of the Statement was to give an expert opinion based on the latest scientific and medical research data on:

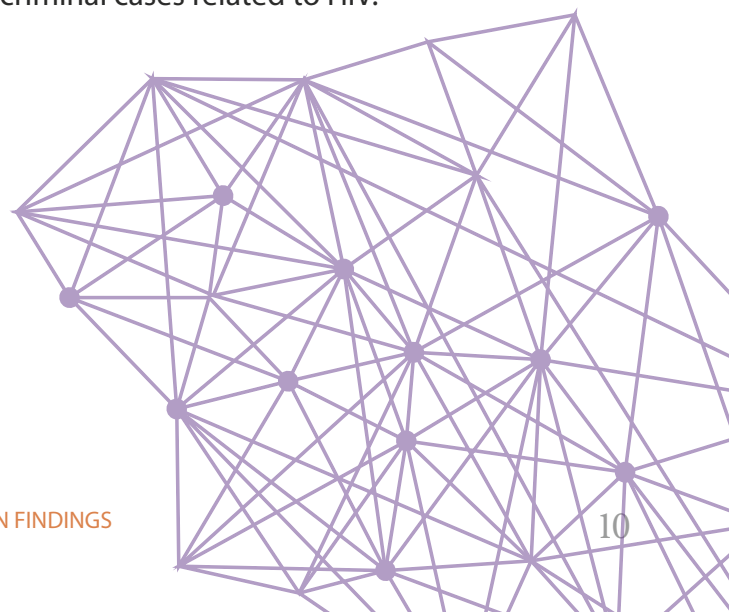
- HIV transmission – i.e. the possibility of HIV transmission during certain acts;
- treatment effectiveness – i.e. how modern antiretroviral therapy has substantially improved the life expectancy and what the actual harm of an HIV-infection is;
- and the issues with phylogenetic analysis – i.e. whether it can be used as proof of ‘who infected who’.

The authors stated, “The possibility of HIV transmission during a single, specific act was positioned along a continuum of risk, noting that this possibility varies according to a range of intersecting factors, including viral load, condom use, and other safer sex practices. Current evidence suggests the possibility of HIV transmission during a single episode of sex, biting or spitting ranges from no possibility to low possibility”.

They added in connection with HIV-therapy “Modern antiretroviral therapies have improved the life expectancy of most people living with HIV who have regular access to them, to the point that their life expectancy is similar to that of HIV-negative people, thereby transforming HIV infection into a chronic manageable health condition”.

They also expressed concerns of the use of scientific evidence in court cases based on phylogenetic analysis, as it “cannot conclusively prove the claim that a defendant has infected a complainant with HIV. However, they emphasized the importance that “phylogenetic results can exonerate a defendant when the results rule out the defendant as the source of a complainant’s HIV infection”.

The statement suggests that if up-to-date scientific evidence is applied in criminal cases, it will limit unjust prosecutions and convictions. It also recommends being cautious when considering prosecution, and encourages governments and policy makers and the police, prosecutors and judges to follow and apply the most up-to-date findings of HIV science in criminal cases related to HIV.





## THE ROLE OF MEDIA

As mentioned earlier, the media can be a useful source of information when it comes to learning about cases of HIV-criminalization. Some of the organizations providing information for this report have had positive experience with journalists who have been sensitive to the issue and thus provided professional coverage of the cases, focusing on facts and evidence in their reports.

Unfortunately, however, most media coverage focuses on the sensational elements of HIV-criminalization cases, thus further stigmatizing PLHIV and other key affected populations while spreading misinformation and reinforcing myths related to HIV/AIDS.

In 2012 media coverage in Greece created a panic in the general population and spread misinformation with sensational headlines and overemphasizing the risk of HIV transmission and ignoring the facts on HIV-prevention and treatment options. (See Greece country profile for details of the case.)

The experience of working with the media on HIV-criminalization cases is very mixed in the countries covered by the report, and numerous organizations expressed their need for training on how to engage with media on this issue.

## DISCRIMINATING APPLICATION AND USE OF THE LEGISLATION

HIV-criminalization has always disproportionately affected those most marginalized in society. Depending on the national context, women, people of colour, migrants, sex workers, gay men and other MSM, trans people or the poor and homeless have always been overrepresented in HIV-criminalization cases.<sup>7</sup>

The case is not any different in the countries covered by this report. The infamous Greek case of 2012 where migrant women who use drugs were forced to be tested for HIV due to presumed sex work or the Czech case of 30 gay men accused of HIV exposure by the public health institute or the overrepresentation of black African men among the defendants in the UK show that racism, xenophobia, homophobia and stigma and prejudice against sex workers and people who use drugs interact with HIV-criminalization.

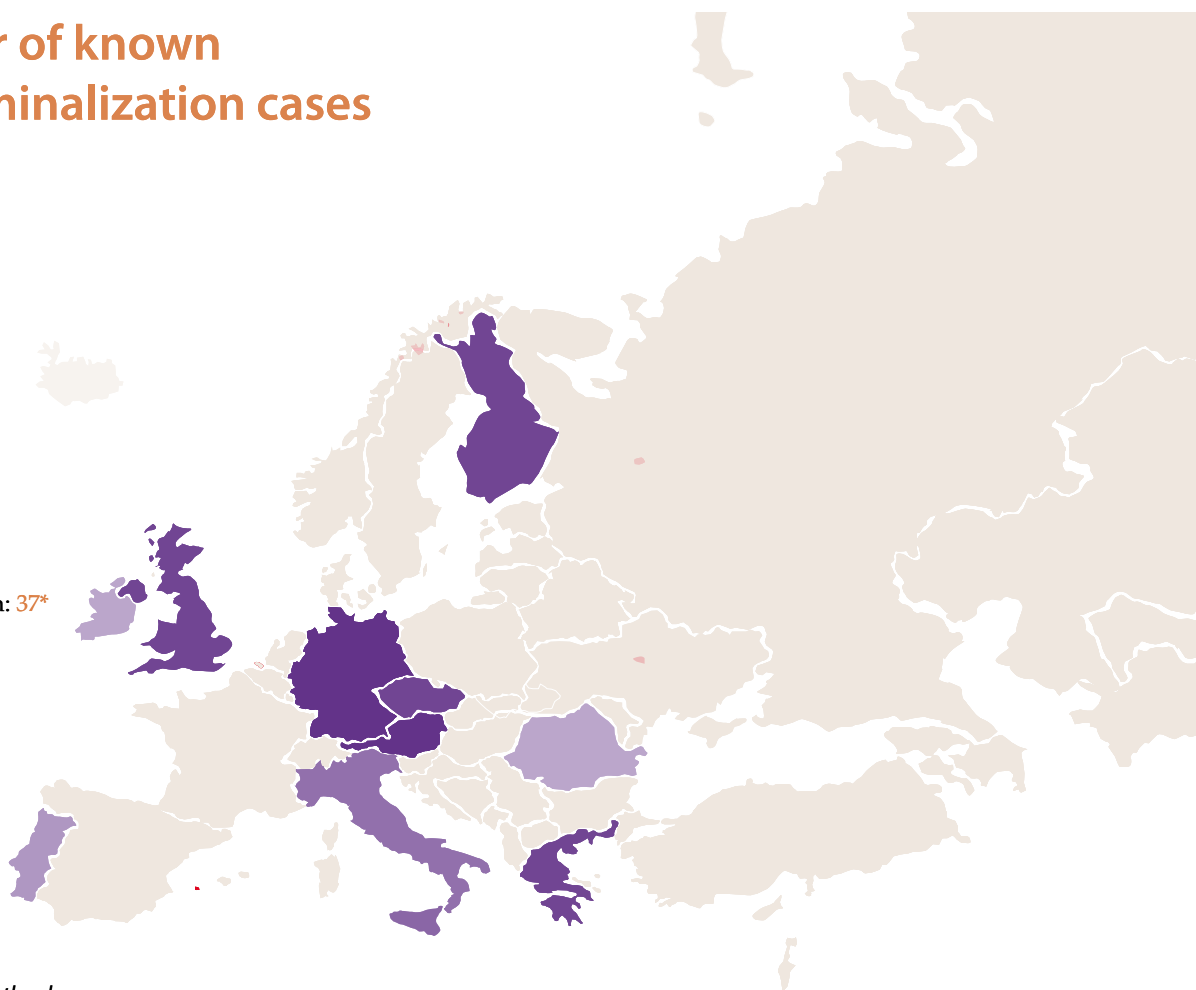
# COUNTRY PROFILES

The information in the following country profiles were provided by the organizations that collaborated in the project.

In case of questions or need for further information, please contact the AIDS Action Europe office at [info@aidsactioneurope.org](mailto:info@aidsactioneurope.org) or directly the organizations listed under EHLF partners on page 8 of this report.

## Number of known HIV-criminalization cases

- Ireland: 1
- Portugal: 2
- Romania: 7
- Italy: 14
- Czechia: 20
- Finland: 25
- Greece: 33
- United Kingdom: 37\*
- Austria: 52
- Germany: 54

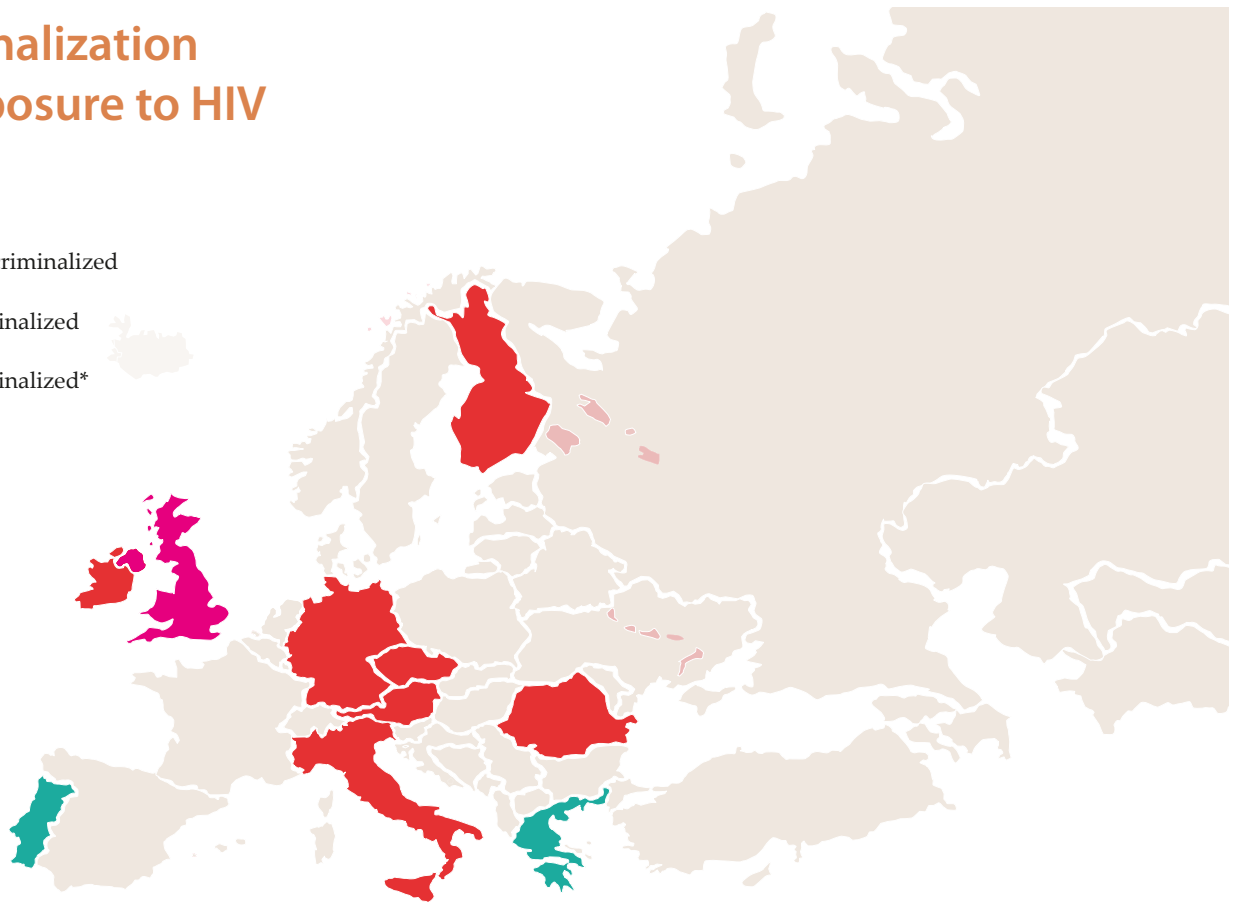


\*32 England, 5 Scotland



## Criminalization of exposure to HIV

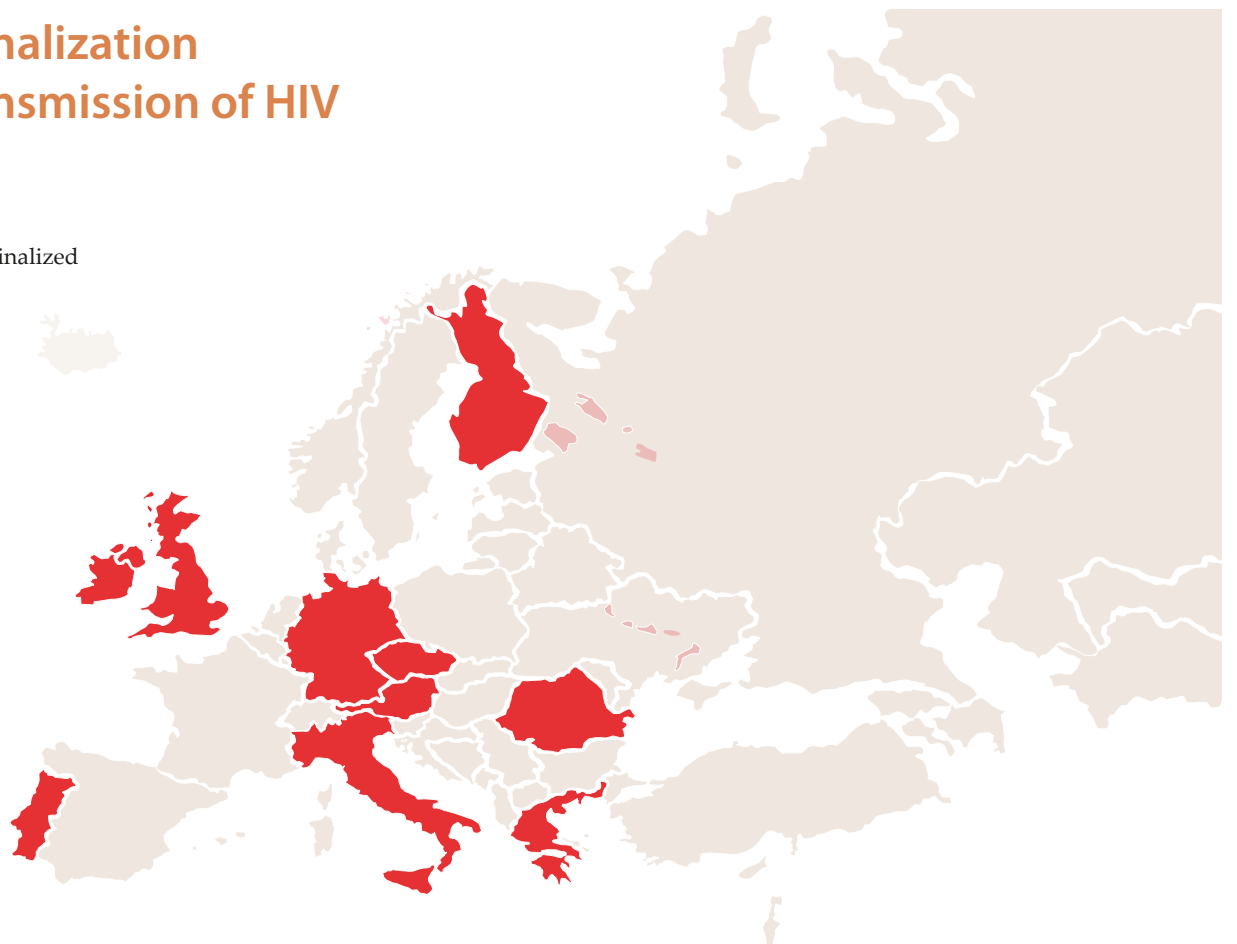
- Not criminalized
- Criminalized
- Criminalized\*



\*UK (in England, Wales and Northern Ireland only cases of exposure are prosecuted if there is evidence that the person intentionally (as opposed to recklessly) set out to transmit HIV, in Scotland both intentional and reckless exposure are criminalized)

## Criminalization of transmission of HIV

- Criminalized



# AUSTRIA



## COUNTRY STATISTICS

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

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

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

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



## RELEVANT LEGISLATION USED IN CASES OF HIV-CRIMINALIZATION

### *Non-disclosure of HIV-status*

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

### *Exposure to HIV*

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

### *Transmission of HIV*

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



## CASES OF HIV-CRIMINALIZATION

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

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



## GUIDELINES AND TRAINING ON HIV-CRIMINALIZATION

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



## THE ROLE OF MEDIA

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

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



## INFORMATION ON HIV-CRIMINALIZATION TO PEOPLE LIVING WITH HIV

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

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

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

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

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

# CZECHIA



## COUNTRY STATISTICS

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

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



## RELEVANT LEGISLATION USED IN CASES OF HIV-CRIMINALIZATION

### *Non-disclosure of HIV-status*

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

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

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

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

### *Exposure to HIV*

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

### *Transmission of HIV*

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

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





## CASES OF HIV-CRIMINALIZATION

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

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

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

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

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

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

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



## GUIDELINES AND TRAINING ON HIV-CRIMINALIZATION

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



## THE ROLE OF MEDIA

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

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

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



## INFORMATION ON HIV-CRIMINALIZATION TO PEOPLE LIVING WITH HIV

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

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

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

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

# FINLAND



## COUNTRY STATISTICS

The population of Finland is 5,519,586 (31st May 2019) and by the end of 2018 4,173 people have been diagnosed with HIV. Currently there are about 3,000 people on treatment and there is an estimated 600 people who are not aware of their HIV-status in the country. Finland reports that 95% of those receiving treatment have an undetectable viral load.

The number of new cases in Finland has been stable in the past few years. In 2018 there were 153 new HIV diagnoses reported, almost the same as in the previous year (158). The new cases are concentrated in the Helsinki and Uusimaa Hospital District (56%). The highest incidence is reported from the South Karelia hospital district (5.4 / 100,000).

The number of new infections among Finnish citizens have been steadily low since the 2000s due to effective prevention programmes and good coverage of HIV medication. Mother-to-child transmission due to comprehensive HIV screening and HIV treatment in pregnant women have not been reported with women who are aware of their HIV-status.

The situation among foreigners, however, has been different. 59% of all cases were found in foreigners who either acquired the virus in Finland or abroad. Foreigners have also been the majority in all transmission routes.

There are clearly challenges to have prevention programmes to reach migrants and other foreigners living or arriving in Finland.



## RELEVANT LEGISLATION USED IN CASES OF HIV-CRIMINALIZATION

### *Non-disclosure of HIV-status*

Non-disclosure of HIV-status is not criminalized nor is there an obligation to disclose one's status in any situation in Finland, however, courts have interpreted the failure to disclose in combination with unprotected sex as exposure other to HIV, which can be criminalized under the Finnish Criminal Code.

### *Exposure to HIV and transmission of HIV*

Both for exposure and transmission chapter 21 (homicide and bodily injury) of the Finnish criminal code applies to those who expose others to the risk of HIV infection. The Supreme Court has recently applied section 5 (assault), section 6 (aggravated assault) and section 13 (imperilment) in cases of exposure. The law differentiates between intentional or negligent exposure/transmission.



The above provisions of the Finish Criminal Code are not HIV-specific and can be and have been applied to other communicable diseases. Positiiviset, HivFinland is aware of one case of criminalization of hepatitis transmission.

The court cases are closed from the public. Undetectable viral load is used more and more in prosecutions and in court proceedings, most cases where the person can prove with medical certificate that they have undetectable viral load are dropped during investigation.



### CASES OF HIV-CRIMINALIZATION

As cases of HIV-criminalization are not public in Finland, there are no official statistics on the issue. Positiiviset, HivFinland are aware of the cases where they were contacted. There is an estimated number of a total of 20-25 cases that has taken place in Finland. The Supreme Court of Finland has had rulings in five cases since 1993.



### GUIDELINES AND TRAINING ON HIV-CRIMINALIZATION

HIV-clinicians are informed by community organizations about HIV-criminalization on different occasions, mostly connected to relevant new scientific information, or when a case is happening, but there is no organized training or official guidelines for any professions in Finland.

The national HIV expert group has been discussing HIV criminalization on some occasions during the past approximately 12 years. A professor of criminal law has also been invited to present the current situation.



### THE ROLE OF MEDIA

Media reports covering HIV-criminalization cases are generally seeking for the sensational elements of the cases. The media has also been known for helping the police find further “victims” in HIV-criminalization cases, posting news with questions as “Have you had sex with person XYZ?” often also publishing photos of the person in the case.

However, the most recent cases have been reported either factually or not at all.



### INFORMATION ON HIV-CRIMINALIZATION TO PEOPLE LIVING WITH HIV

HIV clinicians inform their patients that it would be wise to disclose their HIV-status to their sex partners even though having an undetectable viral load means one cannot transmit HIV. The situation of criminal liability in case of non-disclosure however, remains unclear.

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

Generally HIV-criminalization is harmful for all people living with HIV in Finland.

Illicit drug use and the possession of drugs are criminalised in Finland. In addition, pimping, buying sex from a victim of human trafficking or under minor is criminalized.

Migrants without a place of domicile are not entitled to HIV treatment.

# GERMANY



## COUNTRY STATISTICS

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

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



## RELEVANT LEGISLATION USED IN CASES OF HIV-CRIMINALIZATION

### *Non-disclosure of HIV-status*

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

### *Exposure to HIV*

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

### *Transmission of HIV*

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

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



## CASES OF HIV-CRIMINALIZATION

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

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

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



## GUIDELINES AND TRAINING ON HIV-CRIMINALIZATION

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



## THE ROLE OF MEDIA

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

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



## INFORMATION ON HIV-CRIMINALIZATION TO PEOPLE LIVING WITH HIV

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

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

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

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

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

# GREECE



## COUNTRY STATISTICS

The population of Greece is 10,757,300 (census of 2017). In 2018 687 HIV-diagnosis were made in Greece, the estimated number of PLHIV is 17,389. 52% of all diagnosed PLHIV are on treatment.

Unprotected sex between men is the main route of transmission of HIV in Greece. Since the 2013 outbreak of HIV among people who inject drugs, the situation got better in the PUD community but there has been an increase of HIV diagnosis among people of different nationalities, mostly among refugees from Africa and South and Central Europe.

## *Transmission of HIV*

According to the Greek Criminal Code (articles 309, 310, 311), someone deliberately transmitting HIV can be held responsible, depending on the circumstances for dangerous or serious or deathly bodily harm.

Also relevant is article 425 of the Greek Criminal Code, which is a general article on infectious diseases, but it has never been applied to HIV-criminalization as the wording of the article applies to infectious disease that can be transmitted by everyday personal contact.

The above provisions of the Greek Criminal Code are not HIV-specific and can be applied to other communicable diseases.



## RELEVANT LEGISLATION USED IN CASES OF HIV-CRIMINALIZATION

### *Non-disclosure of HIV-status*

Non-disclosure of HIV-status is not criminalized nor is there an obligation to disclose one's status in any situation in Greece.

### *Exposure to HIV*

Article 306 of the Greek Criminal Code can be applied to exposure, which is defined as exposing a person or persons to risk of life or physical integrity by shifting a person from a safe position to a risky position.

However, this provision has not been used for HIV exposure cases due to the specific conditions under which it can be applied.



## CASES OF HIV-CRIMINALIZATION

The only case of HIV criminalization in Greece for a long time was the case of a blood donor who was not aware of his HIV-infection but did not disclose to have had sex with a sex worker when donating blood.

In 2012, however, there were prosecutions of 32 women who inject drugs, assumed by the authorities that they were sex workers.

The prosecutions were based on Public Health Decree 39A (2012), a since then repealed measure that allowed police to detain people suspected of being HIV positive and force them to be tested. The prosecutions were for the crime of causing serious bodily harm on purpose. The majority of them were acquitted by criminal court rulings; however, some of the women were deported from Greece being a migrant in irregular situation (undocumented). During this process, the women faced many infringements of their rights, including their personal data and photos were published on the website of the police, and the media reported of them as criminals.

As far as the criminal system concerned, the secrecy of the criminal procedure applies in the Greek Court, assuring the protection of the sensitive personal data of the parties, by not revealing them to the media or press and respecting the presumption of innocence. However, in this 2012 case the police by the order of the prosecutor violated the rights of these women, sharing their sensitive private data (living with HIV).

Whereas the Greek trials are public, article n. 330 of the Greek Code of Criminal Procedure predicts the possibility of the privacy of a trial when there are special reasons for the protection of the private or family life of the person, especially when a trial of crimes against sexual freedom and economic exploitation of sexual life results in particular mental discomfort or victimization of the person.

In 2018, a historical decision was issued unanimously by the Second Joint Court of Athens, expressing for the first time the message of the scientific community that a person with HIV who has an undetectable viral load cannot transmit the virus. The Court acquitted a defendant who was accused with attempt to transmit HIV by a partner with whom he had an occasional sexual relationship. The case was taken over by the Centre for Life, offering free legal assistance to the beneficiary throughout his judicial adventure.



## GUIDELINES AND TRAINING ON HIV-CRIMINALIZATION

There are no guidelines or training provided to professionals involved in HIV-criminalization in Greece.





## THE ROLE OF MEDIA

As referred above, in the 2012 case of the prosecution of the 32 women, the media presented these cases as criminals with sensational articles such as "Terror for 700 men in the world", "Sex workers spread deaths", "Panic in Athens from AIDS", or "Sanitary bombs infected by AIDS prostitutes". These articles were further fuelling fear and stigma against PLHIV and other key populations. When it came to reporting about the majority of women being acquitted, there was little published in the mass media.



## INFORMATION ON HIV-CRIMINALIZATION TO PEOPLE LIVING WITH HIV

The Legal Service of the Centre for Life has been in operation since June 2012, providing specialized information on the rights of people living with HIV in key areas of social life, as well as selective legal representation in cases regarding the violation of their human rights.

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

Unfortunately, there are laws that cultivate the discriminations against PLHIV in some professional fields such as the army, sex work and health professionals. Especially, in the army the candidates are obliged to be tested for HIV in order to be ensured their physical situation.

Moreover, according to the 2734/1999 legislation for sex workers, sex work is forbidden to people living with any kind of communicable diseases, including HIV. Based on article 5 par. 2 of the legislation, if a sex worker knowingly lives with sexually transmittable or other infectious disease and continues to work in this field, can be punished by imprisonment for up to one (1) year unless the act is more severely punished by another provision.

People with hepatitis B, C, or HIV are not allowed to work in chronic haemodialysis units. The presidential decree 225/2000 (article 13 par.4) forbids doctors, nurses or other staff to work in this field if they test positive to these 3 diseases, contradicting the legislation 4443/2016 against any kind of discrimination.

# IRELAND



## COUNTRY STATISTICS

Ireland has a population of 4,851,608 (Census 2016). There have been 9,344 HIV diagnoses and the estimated number of PLHIV in 2018 is 7,200. 5,700 people are estimated to be receiving treatment and 5,400 are estimated to have undetectable viral load.

There were 528 new HIV diagnosis in 2018 – rate of 11.1 per 100,000 population. 8% increase in notifications in 2018 compared to 2017. 79% of new cases in 2018 were among males. 32% of people diagnosed with HIV in Ireland in 2018 had been previously diagnosed with HIV in another country.



## CASES OF HIV-CRIMINALIZATION

HIV Ireland is only aware of one case, which has reached the courts. In 2018, a 28-year-old man was convicted under Section 4 Non-Fatal Offences against the Person Act 1997 of causing serious harm to the two women with whom he had unprotected sexual intercourse.

Both women were reported to have subsequently acquired HIV and been unaware of the man's HIV status. Upon conviction, the man was sentenced to 10 years in prison. The case is the only known conviction to date concerning deliberate transmission of HIV in Ireland.



## RELEVANT LEGISLATION USED IN CASES OF HIV-CRIMINALIZATION

### *Non-disclosure of HIV-status*

Non-disclosure of HIV-status is not criminalized in Ireland.

### *Exposure to HIV*

Exposure to HIV can be criminalized under Section 13 of Non-Fatal Offences against the Person Act 1997 - Endangerment.

### *Transmission of HIV*

Exposure to HIV can be criminalized under Section 4 Causing Serious Harm and Section 13 Endangerment of Non-Fatal Offences against the Person Act 1997.



## GUIDELINES AND TRAINING ON HIV-CRIMINALIZATION

There are no guidelines or training provided to professionals involved in HIV-criminalization in Ireland.



## THE ROLE OF MEDIA

The above case involving a man, originally from Africa but living in Ireland was deemed to have been presented relatively objectively in the Irish media. The story hit the headlines for a day or two at the time of the verdict and then again at the time of the sentencing. This was the extent of media reporting of the case.



## INFORMATION ON HIV-CRIMINALIZATION TO PEOPLE LIVING WITH HIV

HIV Ireland has worked with Positive Now (the All-Ireland Network of People Living with HIV) to educate their 350+ affiliates on this issue and have included information on this topic in their 'Living with HIV in Ireland: A Self-Help Guide' which is distributed to HIV clinics around Ireland.

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

### *Sex Workers*

The Criminal Law (Sexual Offences) Act 2017 criminalises the purchase of sex and is intended to decriminalise those engaged in sex work. The Act does not decriminalise instances of sex workers working together (so-called brothel keeping provisions). This law is due to be reviewed in 2020.

### *Drug use*

The primary legislation under which criminal charges for drugs offences is brought is the Misuse of Drugs Act 1977 and the Misuse of Drugs Act 1984. This legislation has been further amended by the Criminal Justice Act 1999, the Criminal Justice Act 2006 and the Criminal Justice Act 2007.

The Misuse of Drugs Regulations 1988 lists the various substances to which the legislation applies. The Criminal Justice (Psychoactive Substances) Act 2010 covers substances which are not specifically proscribed under the Misuse of Drugs Acts, but which have psychoactive effects.

The main drug offences under which criminal charges are brought are offences of drug possession and possession for the purpose of supply. For example, passing drugs among friends constitutes a supplying offence. Allowing your house or premises to be used for drug misuse is also illegal.

A conviction under the Misuse of Drugs Act can affect future employment prospects and many countries refuse visas to people with drug convictions. Misuse will often invalidate insurance policies, including holiday, vehicle, and health coverage.

# ITALY



## COUNTRY STATISTICS

Italy has a population of 60,391,000 (ISTAT report January 1, 2019).

According to data reported to the ECDC in 2019, the estimated number of PLHIV in Italy is 130,000 (120,000 – 150,000). There have been 114,400 diagnoses by 2019 and 100,000 PLHIV were reported to be on treatment; 87,000 have an undetectable viral load.

No Cascade of Care data on different key populations is available in Italy. The 3 key populations identified by Italy as the most important with respect to focusing the HIV response were gay men and other MSM, PWID and migrants.

Declines in new diagnoses (2016 vs 2014) have been observed among MSM (-14%) and PWID (-33%); there is no data available on migrants.



## RELEVANT LEGISLATION USED IN CASES OF HIV-CRIMINALIZATION

### *Non-disclosure of HIV-status*

Non-disclosure of HIV-status is not criminalized in Italy.

### *Exposure to HIV*

Exposure to HIV is criminalized under Articles 56, 582, 583, and 575 of the Italian Penal Code (bodily harm, aggravated bodily harm and culpable homicide, in the case that exposure to HIV causes the infection and death of the infected partner).

There are certain conditions that need to be present for criminalization for exposure to HIV. The accused must know their HIV status and have a detectable viral load and not use methods of protection (e.g. condoms) or incur in other risky behaviour (e.g. sharing needles). In one case a person living with HIV (VT) was prosecuted also for culpable HIV epidemic (art. 438 CP), but he was not judged guilty of such a crime.

### *Transmission of HIV*

Similar to exposure to HIV, transmission of HIV is criminalized under Articles 582, 583, and 575 of the Italian Penal Code (bodily harm, aggravated bodily harm and culpable homicide, in the case that transmission causes the death of the infected partner).

Same conditions as per exposure to HIV need to be present for criminalization for HIV transmission. The accused must know their HIV status and have a detectable viral load and not use methods of protection (e.g. condoms) or incur in other risky behaviour (e.g. sharing needles).

None of these legislations is HIV-specific and can be applied to other infectious diseases.





## CASES OF HIV-CRIMINALIZATION

No detailed information is available concerning data on prosecutions for transmitting HIV, since data specifically related to HIV are not kept separate from those of other crimes that are prosecuted under the same laws.

In Italy, in general court cases are public. Both the defendant and the accuser, through their lawyers, can ask for a closed court case.

There is no specific data protection policy for the investigation processes concerning the prosecution of HIV exposure/transmission.

### THERE IS CERTAINTY ABOUT 14 CONVICTIONS, SINCE THE SENTENCES WERE RECORDED.



**IT IS KNOWN THAT MANY CASES DO NOT REACH COURTS IN ITALY.**



## GUIDELINES AND TRAINING ON HIV-CRIMINALIZATION

In Italy, no guidelines or training are provided to professionals involved in HIV-criminalization. Although judges and lawyers have to undergo regular training updates, there is no information available whether these training updates include issues around HIV-criminalization.



## THE ROLE OF MEDIA

Media play a very negative role as they continue maintaining a sensationalistic /scandalous approach to these cases, despite the fact that over the course of time they have been invited to use a politically correct language and to give scientific, evidence based information about HIV transmission and people living with HIV.



## INFORMATION ON HIV-CRIMINALIZATION TO PEOPLE LIVING WITH HIV

NGOs working on HIV issues provide information and counselling to PLHIV on legal issues and their implication of exposing others to the HIV infection.

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

No key populations are disproportionately affected by HIV-criminalization, the majority of the convictions concerned heterosexual contacts and men.

# PORTUGAL



## COUNTRY STATISTICS

Portugal has a population of 11 million. According to the 2018 data reported by the Portuguese Ministry of Health, the estimated number of PLHIV is 38,901, 91.7% of whom is diagnosed (35,709). 31,000 people are on treatment (86.8%) and 28,007 (90.3%) have an undetectable viral load.

Epidemiological trends in HIV and AIDS epidemic in Portugal reveals that in the last decade there has been a 40% decrease in the number of new diagnoses of HIV infection and 60% in new diagnoses of AIDS. (1,068 cases have been reported, corresponding to a rate of 10.4 new cases per 100,000 inhabitants).

Although Portugal continues to present the highest rates of new diagnoses of HIV infection and the incidence of AIDS registered in the European Union (EU), these rates show a decreasing trend, which, in a comparative analysis of the number of cases diagnosed in 2007 and 2016, was 40% in cases of HIV infection and 60% in new cases of AIDS. In cases of HIV infection, however, this decrease is more marked in female (50%) than in male (35%), with the opposite situation in cases of AIDS (61% in the male and 51% female).

The data obtained for the same years showed that the number of cases of heterosexual transmission and PWID fell by respectively 45% and 90%.

Conversely, there was a 29% increase in the number of cases in gay men and other men MSM, which have been higher in number since 2015 than in heterosexual men, the authors of the report stress.<sup>10</sup> In the last five years, it was found that in the new diagnoses, in men aged between 15 and 29 years, 79.8% were MSM.

Recent trends also show an increase in the proportion of male cases, as well as the median age at diagnosis, except for MSM cases, which occur more frequently in young people. There is also a high percentage of late diagnoses, particularly in heterosexuals. The percentage of late diagnoses remains higher than in the EU, with particular relevance in heterosexual cases. Thus, the increase in the number of cases of MSM of young ages, as well as the high percentage of late diagnoses, in particular in heterosexuals, were, in the most recent years, the most urgent situations of intervention.



## RELEVANT LEGISLATION USED IN CASES OF HIV-CRIMINALIZATION

Non-disclosure of HIV-status or the exposure to HIV is not criminalized in Portugal.

### *Transmission of HIV*

HIV transmission could lead to prosecution if it falls within the scope of article 283 of the Portuguese criminal code, which mentions the penalties for spreading contagious/infectious diseases.

However, in order to be prosecuted for that, it must be proved that

- (i) the defendant knew he/she was HIV+;
- (ii) the defendant has the malicious intention of infecting the victim;
- (iii) that the virus was actually transmitted to the victim by the defendant.

Less likely to happen but still possible in the Portuguese criminal legal framework is to prosecute someone for transmitting HIV on the basis of article 143 of the Portuguese criminal code, regarding the crime of offences against someone's physical integrity. Since the scope of this article is, by its nature, much wider than the aforementioned, it is easier for HIV transmission to fall within the scope of this article. Nonetheless, it must be proven that it was the defendant that infected the victim.

These provisions of the law are not HIV-specific and can be applied to other infectious diseases.



## CASES OF HIV-CRIMINALIZATION

Court decisions and trials are public in Portugal, so everyone could attend a criminal trial and understand who is being prosecuted and what for. Furthermore, judicial decisions are published in a public website from the Attorney General's Office and everyone could search and read those decisions.

However, only decisions by higher courts are published on that website (Courts of Appeal, Supreme Court of Justice and Constitutional Court). That leaves aside most judicial decisions, judged by all the courts of first instance who receive all the judicial proceedings in first place. Only in case of appeal or in very specific and rare legal cases can a judicial proceeding be judged by superior courts. This means that there is only access to HIV-criminalization decisions if those decisions come from superior courts.

There have been two HIV-criminalization cases judged in Portugal; one is quite old while the second one is still pending for the Court of Appeal decision, since the case is very recent (August 2019).

The first one happened in 1998, the first time an HIV-criminalization case was judged by a superior court in Portugal. In that case, it was considered proven that the defendant (i) was aware of his HIV status, (ii) intentionally wanted to transmit the virus to others and that (iii) he succeeded in transmitting HIV to some of his partners. In this case, the Court of Appeal confirmed the first instance court decision that all the requirements of article 283 of the Portuguese criminal code, which mentions the penalties for spreading contagious/infectious diseases, were fulfilled and the defendant was considered guilty and sentenced to three and half years in jail. (process no. 989/00 from 03/10/2000).



The second case started its proceedings in 2019, in a first instance court in the south of Portugal (usually known for being quite conservative when it comes to decide on controversial matters).

The Public Prosecutor accused the defendant for spreading contagious/infectious diseases, namely, HIV.

The only data mentioned in the decision regarding both parties is that defendant is a heterosexual man and the assistant/victim is a heterosexual woman. No more information is given regarding their ethnicity or migration status but, considering their full names, they are both native Portuguese.

The court decision considered proven the following facts:

a) defendant was diagnosed with HIV in 2005 and he immediately started ART, becoming undetectable a few months later;

b) in 2007, defendant and his previous partner, who was also living with HIV, had two children who were born HIV negative;

c) from 2015 until present times, the defendant did not attend some of the routine medical appointments with his infectologist doctor and, therefore, he could not have access to ART for those periods;

d) from 2016 to 2017 he dated the assistant, who was HIV- before she met him;

e) the defendant and assistant were monogamous in their relationship;

f) some months after they broke up, she felt very sick and went to the hospital, where she was diagnosed with HIV.

During trial, the assistant claimed there were some times when condom was not used, although defendant claims that condom was used every time they had sex.

After the judging was over, the court decided to convict the defendant but not for the crime of spreading contagious/infectious diseases. The court considered that there was wilful misconduct by the defendant, since he knew he was HIV positive and did not attend the medical appointments nor took the ART on a daily basis, which are necessary to keep an undetectable viral load. That said, the first instance court convicted the defendant of the crime of serious offence to physical integrity.

The defendant has appealed the decision and the decision of the Court of Appeal is still pending. The first instance court decision is not public so there is no further information about the details of the process.

Investigation process in Portugal is under judicial secrecy thus all sensitive personal data of involved parties are secret and only judicial authorities and the police may have access to them.

Criminal procedure in Portugal is only under judicial secrecy during the investigation phase. That is to say that reached the trial stage, criminal procedure happens on open doors in a public trial. This is one of the most important Portuguese criminal procedure principles where only in very specific situations the judge might decide to subject the trial stage under judicial secrecy.

Therefore, there is no general rule regarding HIV criminalization, it might or might not be subjected to judicial secrecy depending on the case.



## GUIDELINES AND TRAINING ON HIV-CRIMINALIZATION

There are no guidelines or training provided to professionals involved in HIV-criminalization in Portugal.



## THE ROLE OF MEDIA

Media is usually respectful and data conscious while reporting HIV criminalization cases as well as reporting HIV scientific and medical findings. Although HIV criminalization cases rarely end on media reports, whenever it happens, identification data is usually omitted.

Nevertheless, some tabloids are not so respectful and data conscious and frequently violate special personal data of targeted people.



## INFORMATION ON HIV-CRIMINALIZATION TO PEOPLE LIVING WITH HIV

Information is available if PLHIV seeks for it from organizations that work with HIV and with PLHIV. There is no online or public information regarding their rights and legal responsibilities in relation to HIV-criminalization.

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

Key populations are not criminalized nor disproportionately affected by HIV-criminalization.

However, drug possession and consumption is only legal in Portugal if the drug user has the quantity considered by law as a daily dose. If a drug user has more quantity than permitted by law, the possession and consumption are criminalized.

# ROMANIA



## COUNTRY STATISTICS

Romania has a population of 19.53 million. According to data from UNAIDS (2018) the estimate number of PLHIV is 18,000. The cumulative figure of HIV diagnosis in the country since 1985 is 24,936 with 16,486 people diagnosed still alive (data source: CNLAS – National Commission to Fight against AIDS – 31 December, 2019). The number of PLHIV receiving treatment was 12,088 and 8,336 had an undetectable viral load at the time of reporting (30 June, 2019).

The majority of new cases are among gay men and other MSM (73%) while injecting drug use has been reported in 41% of the new cases in the first six months of 2019.



## RELEVANT LEGISLATION USED IN CASES OF HIV-CRIMINALIZATION

### *Non-disclosure of HIV-status*

Non-disclosure of HIV-status is not criminalized in Romania.

### *Exposure to HIV and transmission of HIV*

Article 354 of the Romanian Criminal Code is HIV/AIDS specific and can be used for both exposure and transmission cases. The earlier version of the law was restricted to sexual transmission of the virus, while under the updated law (2014) all means of exposure or transmission can be criminalized.

Exposure (attempt) is criminalized under Section 5 of Article 354. Transmission of HIV is criminalized under Section 1 (the person knows their HIV-status) or under Section 2 (the person did not know their HIV-status).



## CASES OF HIV-CRIMINALIZATION

ARAS is aware of 7 cases from media sources. All 7 persons were found guilty and are imprisoned. There is no further official information about the cases or the sentences.

Information is not available on the investigation process. Court cases in Romania are public, but, upon request, they can be closed from public.



## GUIDELINES AND TRAINING ON HIV-CRIMINALIZATION

There are no guidelines or training provided to professionals involved in HIV-criminalization in Romania.



## THE ROLE OF MEDIA

Media is very active in cases of HIV-criminalization and negatively influence the general opinion on HIV/AIDS, by presenting the person living with HIV as a criminal. ARAS is usually asked to present its opinion in such cases and they somewhat manage to balance the information regarding HIV/AIDS and the actual case.

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

Drug possession is criminalized in Romania. Hepatitis C treatment is available only for people having medical insurance and unfortunately most PWID do not have one.

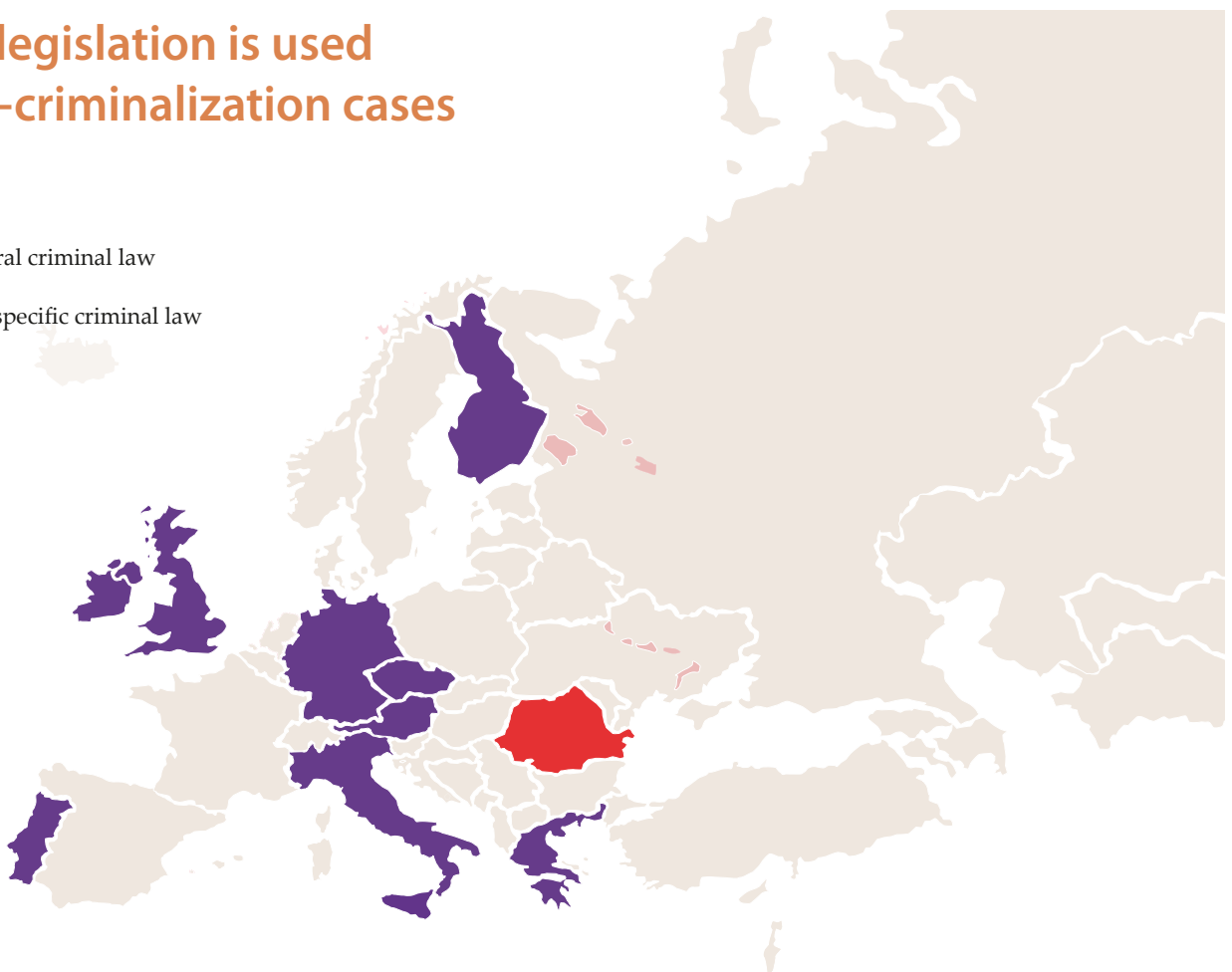


## INFORMATION ON HIV-CRIMINALIZATION TO PEOPLE LIVING WITH HIV

The information is available on different websites, including the website of the National Union of Organizations of People Living with HIV/AIDS. Regardless of these efforts, unfortunately, still many PLHIV are not rights and legal responsibilities.

## What legislation is used in HIV-criminalization cases

- General criminal law
- HIV-specific criminal law



# UNITED KINGDOM



## COUNTRY STATISTICS

The population of the United Kingdom (UK) is estimated at 66,435,600 (Office for National Statistics – mid 2018).

In 2018, an estimated 103,800 people were living with HIV infection in the UK. Of these, 93% had been diagnosed, 97% of people diagnosed were receiving treatment, and 97% of people receiving treatment were virally suppressed. This means that of all the people living with HIV in the UK, 87% are virally suppressed and therefore unable to pass the virus on.

A total of 96,142 people, including 319 children aged under 15, received HIV care in the UK in 2018. Of all people accessing care, around two thirds were male; over half were white; just over a quarter were black African; two in five were aged 50 or over; and over a third accessed care in London. The vast majority of people accessing care acquired HIV through sexual transmission, and the proportion who acquired it through heterosexual sex is very similar to the proportion of people who acquired it through sex between men.

New HIV diagnoses have sharply declined since peaking in 2014, and the 2018 figure (4,453 new diagnoses) represents a 29% decrease since 2015. This recent reduction has been mostly driven by fewer HIV diagnoses among gay and bisexual men, which have decreased by 35% since 2015. New diagnoses amongst heterosexuals have also significantly decreased, with the steepest declines seen in London residents, people aged 25 to 34 years, persons of black African ethnicity and those born abroad. Injecting drug use accounted for just 2% of HIV transmissions in 2018, while mother-to-child transmission accounted for less than 2%.





## RELEVANT LEGISLATION USED IN CASES OF HIV-CRIMINALIZATION

### *Non-disclosure of HIV-status*

Non-disclosure of HIV-status is not criminalized in the United Kingdom.

### *Exposure to HIV*

In Scotland, under the law of 'Culpable and Reckless Conduct' (see 'Transmission of HIV' for full prosecution criteria) a person can be prosecuted for recklessly putting someone at risk of infection, even if the infection is not passed on.

While recognising the potential criminality of such an act, the COPFS (Crown Office and Procurator Fiscal Service) states that 'where there has been no resultant transmission of the infection, prosecution for the crime of culpable and reckless conduct would only be contemplated in exceptional circumstance.' In practice, exposure has only been prosecuted in cases that also involved transmission.

In England, Wales and Northern Ireland exposure can only be prosecuted if there is evidence that the person intentionally (as opposed to recklessly) set out to transmit HIV. In this instance, it is possible to be charged with attempting to intentionally transmit a serious sexual infection under the Criminal Attempts Act 1981. There has only ever been one such prosecution.

### *Transmission of HIV*

In England, Wales and Northern Ireland there are two laws, which can be used to prosecute HIV transmission:

1) Section 20 of the Offences Against the Person Act 1861 – this is described as reckless transmission. In this context recklessness means that a defendant foresaw that the complainant might contract an infection via sexual activity but still went on to take that risk.

You can be prosecuted for reckless transmission if all of the following points applied in relation to the alleged offence:

- you knew you had HIV;
- you understood how HIV is transmitted;
- you had sex which risked HIV transmission (i.e. you did not use appropriate safeguards);
- you transmitted HIV to the sexual partner;
- that sexual partner did not know you had HIV when the HIV was transmitted.

If the sexual partner did know that you had HIV and consented to the risk, this would be a valid defence. The maximum penalty is 5 years imprisonment for a Section 20 Offence, though multiple complainants can result in multiple sentences being delivered to run consecutively.

2) Section 18 of the Offences Against the Person Act 1861 – this is described as intentional transmission.

The criteria for prosecution are the same as for reckless transmission, except that the prosecution must prove that the accused acted with intent to transmit HIV. In such circumstances, the consent of the complainant to sexual activity in the knowledge that the defendant is infectious does not amount to a defence for the defendant. Section 18 carries a maximum sentence of life imprisonment.

In Scotland there are two laws which can be used to prosecute HIV transmission:

1) Culpable and Reckless Conduct – this common law offence is used when there is evidence that a person displayed 'criminal negligence and indifference' as to whether they could pass HIV on.

In other words, they understood the risks but behaved 'recklessly.' You can be prosecuted for reckless HIV transmission if all of the following apply:

- you knew you had HIV;
- you understood how HIV is transmitted;
- you had sex which risked HIV transmission (i.e. you did take appropriate safeguards in accordance with advice given by a medical professional);
- you transmitted HIV to the sexual partner.

Consent is not a defence to culpable and reckless conduct under Scots law, however, there is a strong presumption against prosecution in circumstances where the victim gave their informed consent to sexual activity in the knowledge of the risk of transmission of infection.

2) Assault Laws - if there is evidence that a person intentionally set out to transmit HIV to another person, assault laws could be used to prosecute them. This has so far never occurred.

None of the above legislation is HIV-specific and can be applied to the transmission of any sexual infection that could have 'serious' consequences for the infected person's health. In England there has been one case of reckless herpes transmission and one case of reckless Hepatitis B transmission. In Scotland, one person has been convicted of transmitting both HIV and Hepatitis C. All other cases have involved HIV.



## CASES OF HIV-CRIMINALIZATION

In England, since 2003 (when the first HIV-criminalisation case took place) there have been 32 prosecutions: 29 for reckless HIV transmission (24 convictions, 4 acquittals, 1 death during proceedings), 1 for intentional HIV transmission (conviction), 1 for reckless herpes transmission (conviction), and 1 for reckless Hepatitis B transmission (conviction).

In Scotland, there have been 5 prosecutions: 2 for reckless HIV transmission (1 conviction, 1 not guilty due to insanity), 2 for reckless HIV transmission AND reckless HIV exposure (conviction), and 1 for reckless HIV and Hepatitis C transmission (conviction).

Compared to the overall population of people living with HIV, white women are overrepresented as complainants in prosecutions, and black African men are overrepresented as defendants. NAT (National AIDS Trust) maintains a record of all known prosecutions detailing names, ages, dates, genders, and sentences.

With regards to the investigation process, NAT has previously worked with the Police to produce guidance aimed at ensuring that investigations are conducted in a way which is:

- consistent with CPS prosecution policy;
- appropriately informed about HIV from both a clinical and a social perspective;
- respectful of human rights and confidentiality;
- and which does not prolong an investigation longer than necessary.

Since this guidance was produced there has not been analysis of how well investigations have been handled in practice, but an earlier review of police investigations identified the following areas of good practice:<sup>11</sup>

- police tend to handle information sensitively and be respectful of confidentiality;
- inappropriate disclosure is avoided;
- police often seek specialist advice to support their investigations;
- police showed particular discretion when a case involved juveniles.

The same review identified the following areas of concern:

- poor institutional understanding of HIV can lead to stigmatising and inappropriately handed investigations;
- investigations are sometimes drawn out far longer than necessary and cause undue anxiety;
- phylogenetic analysis is complex and nuanced, and police may misinterpret results or not know how to properly handle requests for medical records.

In the course of their work, NAT have found that some police forces are good at reaching out to organisations such as NAT for advice, while others are not. Sometimes investigations that should have been immediately ended have instead gone on for long periods of time because of poor understanding of the law and/or a pursuit of the wrong evidence in the wrong order. However, NAT also know of investigations that have been handled very well, and hope that this is improving in general as their Investigation Guidance becomes more widely known.

NAT is currently developing a survey for people living with HIV (in the UK) who have experienced criminalisation, which will include questions about how investigations were handled. Court hearings are closed in the UK.



## GUIDELINES AND TRAINING ON HIV-CRIMINALIZATION

The UK is one of the few countries globally and the only one in Europe that has guidelines on HIV-criminalization for prosecutors.

The Crown Prosecution Service of England and Wales has produced legal guidance for prosecutors.<sup>12</sup> NAT advocated for and were consulted in the initial development of this guidance, and are presently involved in an ongoing update/review.

In Scotland, the Crown Office and Procurator Fiscal Service has produced legal guidance for prosecutors.<sup>13</sup>

NAT has worked with the Association of Chief Police Officers (ACPO) to produce 'Investigation Guidance relating to the Criminal Transmission of HIV: for police forces in England, Wales and Northern Ireland' The Guidance is available to all police officers in England, Wales and Northern Ireland via the College of Policing website, and can also be found on NAT's website.<sup>14</sup> The guidance provides best practice advice to guide police officers through these investigations. It includes:

- investigation and evidential flowcharts; key information about HIV;
- specific guidance for when the accused is Under 18;
- advice on disclosure, confidentiality and how to ensure that investigations are not stigmatising;
- and guidance on communications and media reporting.

The British HIV Association (BHIVA) and British Association of Sexual Health and HIV (BASHH) have produced guidance on 'HIV Transmission, the Law and the Work of the Clinical Team.'<sup>15</sup> This guidance is aimed at those working in the field of HIV medicine, especially clinicians.

### *Trainings on HIV-criminalization*

NAT has provided training on HIV-criminalisation to police forces, HIV support services, and peer support groups of people living with HIV on an ad-hoc, occasional basis for a number of years. They are now delivering a one-year 'police training' pilot project in partnership with the Terrence Higgins Trust (the UK's largest HIV and sexual health charity), which involves training police forces in 3 UK cities. If this project is successful, NAT will explore the possibility of delivering police training on a wider basis.





## THE ROLE OF MEDIA

The media approach to these cases tends to be stigmatising and insensitive. This is sadly consistent with the UK media's reporting on HIV in general, in which people with HIV are often othered and blamed.

Unsurprisingly, the notion that people living with HIV are either victims or villains is particularly applied to HIV-criminalisation stories. Reporting is frequently inaccurate, with the terms 'recklessly', 'knowingly', 'intentionally', and 'deliberately' used interchangeably and without regard to the specifics of the case.

Non-disclosure and material deception are often confused, with defendants described as 'concealing' or 'lying' about their status, with no acknowledgement that that vast majority of people living with HIV in the UK are undetectable and that in any case you are not obliged to disclose your status to anyone.

NAT's Communication Officer frequently intervenes to request that language is changed and information is corrected. Such interventions are often successful but depend on the goodwill of the relevant journalist.



## INFORMATION ON HIV-CRIMINALIZATION TO PEOPLE LIVING WITH HIV

NAT have produced the following resources:

'PROSECUTIONS FOR HIV TRANSMISSION: A guide for people living with HIV in England and Wales' was produced in partnership with Terrence Higgins Trust and can be found on each of their respective websites. <sup>16</sup>

'PROSECUTIONS FOR HIV & STI TRANSMISSION OR EXPOSURE: A guide for people living with HIV in Scotland' was produced in partnership with Terrence Higgins Trust and HIV Scotland, and can be found on each of their respective websites. <sup>17</sup>

'POLICE INVESTIGATION OF HIV TRANSMISSION: A guide for people living with HIV in England, Wales and Northern Ireland' can be found on NAT's website. <sup>18</sup>

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

The populations most affected by HIV in the UK are gay, bisexual and other men who have sex with men (MSM), and the black African population. There is also elevated prevalence amongst Black Caribbean communities, people who inject drugs, prisoners, and people born in high prevalence countries.

#### Drugs

Under the Misuse of Drugs Act 1971, possession of illegal drugs is criminalised. Penalties are most severe for Class A drugs like crack cocaine and heroin, for which possession carries a maximum sentence of 7 years imprisonment.

In recent years Government policy has focused almost exclusively on abstinence, and harm reduction initiatives have been de-prioritised. There are some harm reduction interventions still in place (Needle and Syringe programmes, opioid substitution therapy) but they are underfunded and insufficient to meet need. NAT is campaigning for a renewed focus on harm reduction, including the opening of Drug Consumption Rooms in areas of highest need and funding for heroin assisted therapy. The current government however is very resistant to drug policy reform, and continues to take a regressive approach.

### *Migrants*

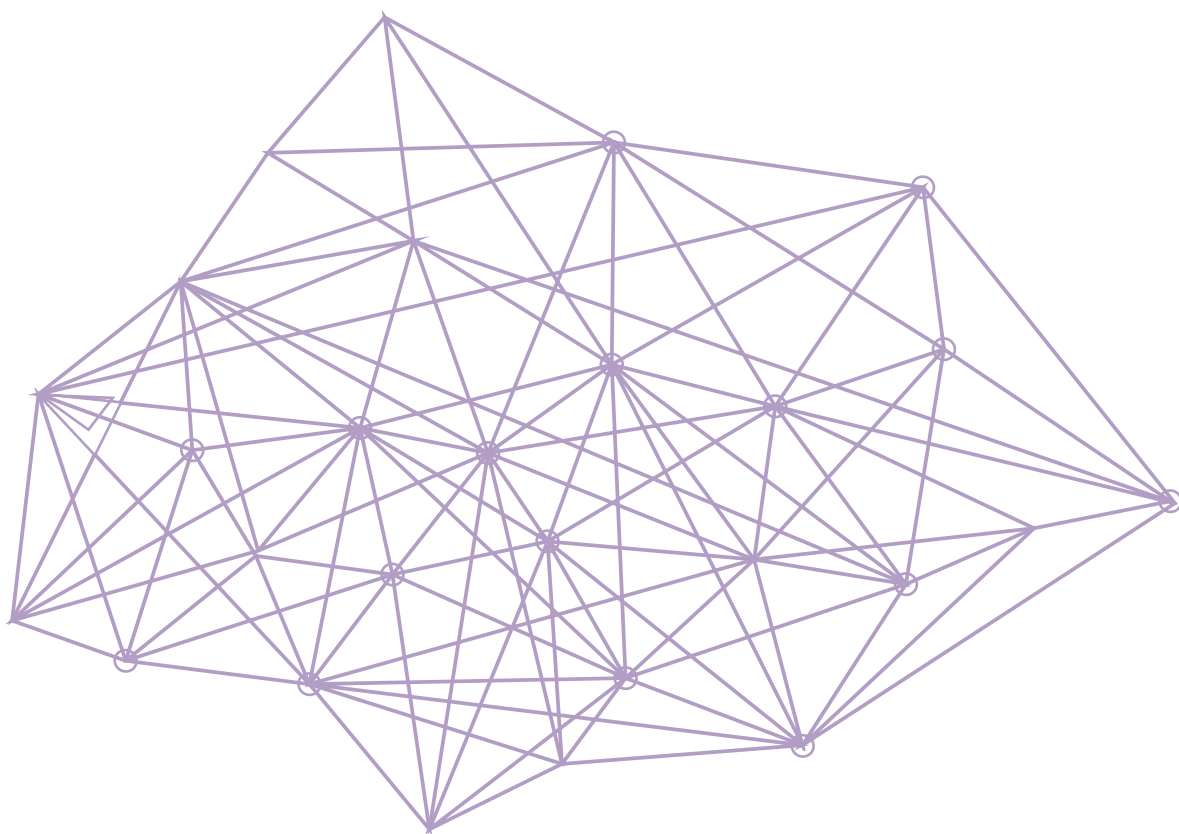
Undocumented migrants are criminalised as they are left without legal status in the UK, making their presence in the UK unlawful, and prohibiting them from accessing employment and a wide range of welfare services.

'Hostile environment' policies are administrative and legislative measures designed to make staying in the UK without legal status difficult and works to ensure it is harder for undocumented migrants to access employment, education, healthcare, and housing.

Due to regressive legislation, in most settings access to healthcare is only afforded to undocumented migrants if they can pay for it, meaning many migrants forgo it. HIV treatment is currently exempt from charges regardless of immigration status. Despite this exemption, many migrants are deterred from accessing healthcare altogether, impacting outcomes such as prompt HIV diagnosis.

### *Sex work*

In the UK, sex work itself (the exchange of sexual services for money) is legal, but a number of related activities, including soliciting in a public place, kerb crawling, owning or managing a brothel, pimping and pandering, are crimes. This forces sex workers to work alone and exposes them to violence. A major study led by the London School of Hygiene & Tropical Medicine last year found that sex workers who had been exposed to repressive policing were twice as likely to have HIV and/or other sexually transmitted infections (STIs) compared with sex workers in countries without repressive policing practices.



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