

HIV MANIFESTO

HIV-CRIMINALISATION IS COUNTER-EFFECTIVE AND HARMS THE SOCIETY

Every organization, group, and person affirming their support to this manifesto, concurs with our view that the Norwegian Penal Code §155 must be abolished.

This legal paragraph was introduced in 1902 in order to protect the society from the public threat of infectious diseases. However, it has only been applied in cases involving hiv, and is often referred to as the «hiv-paragraph»

It has never been documented that §155 prevents hiv transmission. On the contrary, there are reasons to believe that it imposes several negative consequences for both individuals and society.

The paragraph induces a false security for hiv-negative people, a psychological burden for people living with hiv, and a hurdle that undermines effective public health initiatives.

Society must realise that criminalisation represents an erroneous strategy in the fight against hiv.

We ask the Norwegian authorities to comply with the requests of the joint United Nations programme on hiv/aids, UNAIDS, to avoid criminalisation of people living with hiv, in accordance with fundamental human rights.

We further recommend the Norwegian authorities to fulfill their humanitarian and ethical responsibilities, and abolish § 155 now!

November 2008

The norwegian penal code section § 155

Any person who, having sufficient cause to believe that he is a bearer of a generally contagious disease, willfully or negligently infects or exposes another person to the risk of infection shall be liable to imprisonment for a term not exceeding six years if the offense is committed willfully and to imprisonment for a term not exceeding three years if the offense is committed negligently. Any person who aids and abets such an offense shall be liable to the same penalty. If the aggrieved person is one of the offender's next-of-kin, a public prosecution shall be instituted only at the request of the aggrieved person unless it is required in the public interest.

BACKGROUND FOR THE MANIFESTO

Current revision of the Norwegian penal code

The Norwegian authorities (i.e., the Justice advisory group of the Norwegian Parliament), are in the process of revising the Norwegian penalty code, including the legal paragraph § 155, also referred to as the “Hiv-paragraph”. Regarding this process, several organizations, groups and people who oppose this paragraph, have got together to sign this manifest. In our opinion, criminalisation of hiv transmission is a wrong strategy to fight hiv. We hereby address our opinion and explain why § 155 works against it's own purpose.

Our goal - an urge for support

Our main goal is to convince Norwegian authorities to abolish § 155. In doing so, Norway will comply with recommendations, ethical standards and international human rights set forth by UN. Decisionmakers, domestically and internationally, are hereby urged to support the principles documented in this manifest.

Crime and Punishment

The law is an instrument to underpin civil obedience, and maintain order and justice in a civilized society. The purpose is to protect individuals and society. This leads to a problematic juridical dualism, and the winner of the Holberg-award in 2007, the revered professor in jurisprudence, Ronald Dworkin, has warned about the consequences of prioritizing the interests of the society, thereby neglecting the rights of individuals. He has also documented that the law is not always applied justly or sensibly, and at the end of the day this can yield negative consequences for the society.

The penal code §155 is criminalizing hiv-positives who transmit hiv, or exposes others to the danger of becoming hiv-infected. This legal paragraph was introduced in 1902 in order to protect the society against publicly threatening infectious diseases. In theory, this paragraph comprises several diseases, but has only been applied to cases involving hiv-transmission, or in cases where exposure to hiv-infection has occurred. It is therefore often referred to as the “hiv-paragraph”.

Living with hiv in 2008

Hiv is a diagnosis people can live with. Due to effective medicines, hiv-positives can expect to live close to normal lives, but it is still a traumatic experience to be diagnosed. Nearly all hiv-positive people should expect to go through phases of chock and shame, loss of selfesteem and -respect, stigmatization, and social distress. This is mainly due to the prejudice and social stigma that is associated with this medical diagnosis.

To live with § 155

The paragraph is considered to be a psychological burden by most hiv-positive people. Many live with good physical health, are employed, and live normal lives. However, many tell that the most distressing part of being hiv-positive today is the criminalisation and the stigma. The fact that society is considering hiv-positive people as infectious “walkabouts” is a very destructive experience for many. Most hiv-positive people are taking good care of themselves and their possible sexual partners. E.g. the use of condom is much higher among homosexuals, than among others in the society. The principle that the law should protect the individual is not maintained through §155. The paragraph is demonizing hiv-positive people who have sex, independently of how much responsibility is undertaken. What is supposed to be an ultimately fulfilling experience in life, is categorized as something comparable to an attempt of murder.

The right way forward

Removing stigma and discrimination is a win-win solution, for both hiv-positive people and for the rest of society. Through improved quality of life, hiv-positive people will regain self-respect. Increasing focus on psychosocial issues from the health institutions, combined with network support, will provide hiv-positive people with a more solid fundament to handle life. This also applies to the ability to engage in safer sex. This will prevent further hiv-transmission, and will have a positive impact on society as a whole. Regarding the challenges that hiv-positive people face in Norway today, society has chosen to deal with these issues through a criminal law, implying that all hiv-positive people must take full responsibility in stopping further hiv-transmission. Hence, the paragraph is not only an extra burden on a stigmatised minority, but also a complete lack of responsibility from society in addressing the real challenges in the fight against hiv.

KEY ARGUMENTS AGAINST HIV-CRIMINALISATION AND § 155

It does not protect against HIV

There is no documentation that the paragraph works (i.e., prevents infection transmission/protects the society). There are strong indications, however, that this penal code works against its own purpose. The number of infections has increased drastically since 2003, the year when the penalty of breaking this law was further strengthened, and it has in recent years been referred to as the "Hiv-paragraph".

The paragraph produces a false safety for hiv-negatives, who assume that hiv-positives have and will show the full responsibility to avoid hiv-transmission; hence it contributes to deteriorating use of safer sex. The law makes some people think it is better not to test for hiv, to avoid the risk of being punished by this law. The law takes the attention away from the real challenges, in particularly the psychosocial ones. The risk of being punished also makes some people reluctant to inform about their sexual partners, and hence the paragraph can inhibit the determination of the transmission source. The paragraph undermines more efficient actions to prevent hiv-transmission.

Elevating stigma

The legal text of § 155 is fundamentally and practically a stigmatizing law that inhibits openness and maintain prejudice on hiv. The combat against hiv must never become the fight against people living with hiv. The way § 155 works today is a lot of the latter; it targets the person in lieu of the ball. With its discriminating character and origin out of fear, the law has many similarities to the law against homosexuality that was abolished in 1972.

Confusing and broadband juridical text

The text of the paragraph is confusing and very broad, lumping all possible ways of hiv-transmission or exposure to virus into one unified category. The law text includes the terms "reason to believe", meaning that one does not need to know about ones hiv-status; "reckless", meaning that one does not need to transmit infection with intention; and "expose to risk", meaning that transmission does not have to occur. Hence, a person who is unaware of his/her hiv-status can be sentenced without infecting anybody. If the condom breaks, a person can in theory be punished as well. Consequently, the paragraph is in reality a sex-ban for hiv-positive people. The law has caused a lot of confusion among both hiv-positive and hiv-negative people. The paragraph does not explain what is defined as "expose to risk". 100% safe sex does not exist, and it is not clear according to this paragraph, what is the lower bound for exposing someone to the risk of hiv-infection. Legal precedent in former cases involving hiv indicates that hiv-positive people must inform about their status prior to sexual encounters, and this precedent is experienced as an extra burden for hiv-positive people who struggle with openness.

Out of date

There is no sensible relation between risk/injury and punishment in cases where § 155 has been applied. The sentences in recent cases have demonstrated a limited knowledge level about hiv reflecting out of date facts and myths from the 80s. Today's situation is drastically different, and recent research strongly indicates that hiv-positive people who are on effective hiv medicine are probably not infectious. This combined with the fact that hiv-positive people can live close to normal lives today, should have implications for the evaluation of risk and injury. Furthermore, the paragraph does not distinguish between low and high risk of infection, or between different risk groups, but instead it emphasizes the "worst case scenario". It neglects the fact that newly infected people who are unaware of their own status are most infectious.

UN warns against hiv criminalization

It is a political decision, a prioritized principle, and focus of practical work, that Norway should become a humanitarian superpower in the world. In this regard, § 155 is an ugly scratch on a polished surface. The UN consortium against hiv, UNAIDS, strongly warns against using the law to prevent hiv transmission, and recommends all countries to focus on public health actions. Norway, being one of the countries who have the most strict laws against hiv-transmission, or risk of transmission, are clearly opposing the recommendations of UN.

Secretary of Foreign Affairs, Jonas Gahr Støre, expressed the following in a speech to students at the University of Oslo (3/9-2008): "The debate on the future of UN and the multilateral collaboration system is a debate on how to optimally maintain Norwegian interests. We need UN, and the world needs UN. UN is our most important tool to create a better world. Such an organization we should take great care of!" As a modern democracy, with high ethical standards, Norway should not have a paragraph like § 155. The paragraph also makes it more difficult to confront discriminating laws of other countries with lower ethical standards.

Removal, not revision

We do not want a revision of § 155, but the removal of this paragraph. If not, the paragraph can easily be revised to target hiv transmission again in the future. Since this paragraph has only been used in cases involving hiv, why should we keep it if hiv is removed from the list of infections this law should target? The law has the potential to punish sexuality. If we really want to get rid-off the hiv stigma, this paragraph must be removed.

OUR NEIGHBOURING COUNTRIES ARE MOVING AWAY FROM CRIMINALISATION

While criminalisation of hiv is increasing worldwide, especially in undeveloped countries, including several african ones, we now see that Norway's neighbouring countries, with experience in this field, now moves away from criminalisation, after having tried this approach.

England:

In 2006 various british organisations, the police, and the representatives from the medical field got together, and asked CPS - the british public crown Justice - to produce an updated evaluation of legal status of hiv and criminalisation. This evaluation was recently finished, and published. CPS concludes that stricter requirements must be met, for legal action to take place in these matters. Among the main points are the following: Scientific evidence that the accused has actually transmitted hiv, is a necessity before further criminal actions can take place. The accused must have been aware of his or hers hiv-infection before any legal actions can take place. Persistent use of condom is a defense against legal prosecution. Terrence Higgins Trust and NAT (National Aids Trust) have made a common statement: The new guidelines from CPS goes far in removing confusion and unclarities regarding people with hiv and other sos in relations to the law. The level of evidence now required to prosecute someone, indicates that there will be less focus on criminalization in the future.

Sweden:

In Sweden hiv-positive people have for several years been prosecuted, as a means of prevention. However, recently the Swedish Institute for Infectious Disease Control (SMI) publicly announced that they consider prosecuting hiv-positive people, as seen in recent years, as counter-productive for society, and should be abolished.

Denmark:

Recently two danish authorities in the field of hiv and Aids publicly recommended that the paragraph aimed specifically at Hiv should be abolished. Professor Jens Lundgren has researched on the hiv-virus for more than 15 years. Today he is chairman of the internationally renowned research-unit CHIP (Copenhagen HIV Programme). According to Jens Lundgren more people will test for hiv, if the penal code § 252 is abolished. Thus hiv-positive people who need it will come under medical treatment. "If a hiv-positive person is under antiretroviral treatment, the risk that he or she will pass on the virus is extremely low. Statistically we are talking about a risk of transmission in 1 out of 25.000 intercourses. His recommendation to have the paragraph abolished is supported by professor Jens Skinhøj from Rigshospitalet (Danish national hospital), who is also chairman of the national Hiv-fund.

Netherlands:

After two supreme-court rulings in 2003, no hiv-positive person has been prosecuted by law. People can no longer be persecuted for homicide due to hiv, which was earlier the case. The changed practice happened after various health authorities, organisations and the Justice department came together and had a thorough dialogue. Their conclusion was that criminalisation of hiv did not have the desired effect, but rather unwanted and unforeseen negative consequences.

ENDORSEMENTS

This manifesto has been endorsed by leading hiv-, and other organisations, doctors, healthcare centers, politicians, artists, and various private supporters.

Among our supporters are:

Craig McClure - Executive Director, International AIDS Society.

RFSL – Swedens leading organisation for gay and lesbian people.

Anette Trettebergstuen – member of the norwegian Parliament.

BrynsengLegene – One of Norways largest hiv-test clinics.

HomoPositiv – A leading group for hiv-positive gay men.

In order to view a full list of our supporters, and/or endorse our manifesto, please visit our web-page:

<http://hivmanifest.blogg.no/>

or send us an e-mail:

hiv.manifest@gmail.com

Thank you for your attention on this important matter.

Best regards,

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