

RESOLUTION

Eastern Europe and Central Asia Judges' Forum on HIV,

Human Rights and the Law

December 1st, 2023.

We, the members of the Eastern Europe and Central Asia Judges' Forum on HIV, Human Rights and the Law,

Considering that criminal laws imposing liability for exposing others to the human immunodeficiency virus (HIV) have a negative impact on people living with HIV, their close contacts, and key populations most affected by the epidemic, as well as hinder the effective implementation of HIV prevention, treatment, care, and support programs.

Bearing in mind that the wording of such criminal laws dates back to the 1980s, when there was very limited data on HIV and no effective treatment existed for HIV-positive people.

Noting the economic burden on the state associated with the enforcement of such laws (including the working hours of law enforcement officers, prosecutors, and courts, as well as the cost of incarcerating individuals sentenced to imprisonment).

Having reviewed the current scientific data on the risk of HIV transmission through sexual contact, summarized in the World Health Organization's analytical brief, "The Role of HIV Viral Suppression in Improving Health Outcomes and Reducing Transmission Risk.

Recommended:

TO JUDGES AND OTHER CRIMINAL JUSTICE PARTICIPANTS:

Conduct a comprehensive review of each case related to the risk of HIV transmission, prioritizing critical elements such as intent and the degree of transmission risk. This includes considering factors such as viral load levels, adherence to antiretroviral therapy, disclosure of HIV status to a partner, use of preventive measures, and other relevant circumstances.

Do not criminalize people who are HIV-positive if they are taking antiretroviral therapy, have a suppressed or undetectable viral load or are using preventive measures, and have no intent to infect another person.

In cases where sentencing is unavoidable, consider applying penalties below the minimum threshold or non-custodial sentences.

TO THE SUPREME COURTS:

Conduct an analysis of judicial practice in criminal cases related to the transmission of HIV, including cases involving the risk of HIV exposure. This analysis should aim to identify key trends, such as the

number of cases filed; the ratio of convictions to acquittals; the specific provisions of the relevant article of the Criminal Code under which the majority of individuals are prosecuted; the severity of punishments imposed; and the extent to which courts consider international recommendations and guidelines.

Based on the findings of this analysis, explore the possibility of developing and publishing a document (such as a Resolution of the Plenum of the Supreme Court) to provide courts with guidance on key considerations when handling cases related to the transmission of HIV.

TO EDUCATIONAL INSTITUTIONS RESPONSIBLE FOR JUDICIAL TRAINING AND RETRAINING:

Develop training courses for judges aimed at improving their understanding of issues related to HIV infection.

Involve community activists in judicial training to enhance judges' qualifications on HIV-related matters and foster a tolerant, impartial, and non-discriminatory attitude toward people living with HIV.