

Pénalisation

OPINION FOLLOWED BY RECOMMENDATIONS ON THE CRIMINALISATION OF SEXUAL HIV TRANSMISSION IN FRANCE

ADOPTED BY THE FRENCH NATIONAL AIDS COUNCIL ON 19 FEBRUARY 2015



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The French National AIDS Council delivers opinions and recommendations on all of the issues that society faces as a result of HIV/AIDS. Its work is aimed at political authorities and all of those affected by the epidemic.

It is the intention of the CNS to participate in this manner in the development of public policy, within a framework that promotes respect for fundamental ethical principles and human rights.

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PREAMBLE

In many countries, according to their respective judicial systems and on various legal bases, the criminal liability of people living with HIV (PLHIV) may be sought if the virus is transmitted to another person, if another person is exposed to a risk of transmission, and even, in certain cases, for a failure to disclose one's HIV status to a partner before sex.

Beyond significant differences in the levels of prosecution, the scope of punishable acts and the greater or lesser severity of the applicable and issued sentences, stronger criminalisation has been observed on an international scale since the beginning of the millennium. This has led to a substantial increase both in the overall number of proceedings against PLHIV for acts relating to HIV transmission risk, and in the number of countries in which prosecutions have been recorded.

In France, apart from an initial conviction which went relatively unnoticed in 1999, the issue primarily emerged in 2004 and 2005, when a man accused of having contaminated two former partners from whom he had concealed his HIV-positive status was convicted and sentenced to six years in prison. The case was hugely controversial, setting HIV organisations against the plaintiffs and victims organisations.

Within that context, the French National AIDS Council issued in April 2006 its first *Opinion on Criminalization of the Sexual Transmission of HIV* [*Avis sur la pénalisation de la transmission sexuelle du VIH*].¹ Taking legal action appeared then to be an entirely new and marginal phenomenon. It did however challenge the concepts and values constituting the culture shared by the majority of those involved in the fight against AIDS. In this *Opinion*, the Council primarily investigated the consequences of trials on the founding principles of HIV prevention and recommended an overall strengthening of prevention policies.

Since then, over 20 cases have been tried in France, and the way acts of HIV transmission and/or exposure are dealt with by the justice system is based on solid case law. Furthermore, advances in research have transformed prevention tools and strategies. Despite these developments, the attention given to the complex legal, ethical and health issues raised by legal action in the area of sexual HIV transmission remains limited, both from the public authorities and community stakeholders in the fight against AIDS.

This situation is in contrast with the strong support that such issues receive in other national contexts, particularly in Europe, and on a global level by the various international forums involved in the fight against HIV. Key work has been undertaken by various international organisations to investigate and prepare a body of recommendations and in particular by UN agencies.²

For all of the above reasons, and aware of the fact that the approach and recommendations issued in 2006 no longer address current challenges, the French National AIDS Council has deemed it necessary to look again at the issue of criminalisation of sexual HIV transmission. An *ad hoc* commission has been formed. Its role was to assess both the legal frame and societal and health consequences of the criminalisation of sexual HIV transmission and/or exposure without actual transmission. The choice has been made to only consider the criminal aspect of legal proceedings and to set aside the civil component (regarding compensation) which generally accompanies them, as this component is a separate and specific area of investigation. A report, to be released in due course, will present all of the Committee's observations and analyses.

In consideration of the legal bases and current case law, the aim of this *Opinion* is to contribute to thinking on criminalisation of HIV transmission and exposure to the risk of HIV transmission, beyond the polarized debate between opponents and supporters of legal action. Its recommendations are targeted at the public authorities, stakeholders in the fight against HIV and the sexually active population as a whole. It aims to reduce the prosecution risk to which PLHIV are exposed, improve the way offences are dealt with by the criminal justice system when court proceedings are instituted, and, finally, limit any negative effects on prevention policies.

I. SEXUAL HIV TRANSMISSION AND RISK OF TRANSMISSION: UNDER WHICH CONDITIONS CAN THE CRIMINAL LIABILITY OF PEOPLE LIVING WITH HIV BE INVOKED?

Measuring instances of legal action for HIV transmission or exposure to the risk of HIV transmission is challenging due to the scarcity and gaps in the available data. Two indicators can however be identified from the research carried out. One relates to the number of complaints filed, and the second relates to the number of proceedings which have led to trial.

A SMALL NUMBER OF TRIALS FOR A SIGNIFICANT NUMBER OF COMPLAINTS

The available administrative and judicial sources are not sufficient to calculate or estimate the total number of complaints filed for this type of offence. An order of magnitude of the number of complaints can however be established based on data from the ANRS-Vespa2 survey, which was conducted based on a representative sample of all people monitored for HIV in hospital in 2011.³

Firstly, the survey shows that just over one in ten people living with HIV said that they were tempted to file a complaint against the person that they thought had contaminated them. Therefore, the idea of using legal action to establish a partner's liability does not appear to be exceptional, even if only a small minority of PLHIV consider such action. However, it is far rarer for them to go through with it, as only 1.4% of PLHIV questioned stated that they had actually filed a complaint. Based on this declarative data, it is possible to estimate an order of magnitude of between 1500 and 2000 complaints filed since the start of the epidemic.

Given the significant number of complaints, the number of prosecutions leading to a criminal trial seems low. An empirical inventory of all of the cases tried, which can be considered virtually exhaustive, has identified a total of 23 proceedings which led to trials, from the first case of this type tried in 1998, and then by appeal in 1999, up to the end of 2014. All of these proceedings resulted in the defendant being convicted.⁴

During this 17-year period, the frequency of trials has gone from three in ten years (1998-2007) to 20 over the past seven years (2008-2014). This relative increase should be treated with caution, given the small number of cases and the fact that the time of proceedings from the initial complaint to the subsequent trial varies a great deal. It nevertheless suggests a significant rise in the number of cases brought before the courts since the end of the first decade of the millennium. The extent to which this increase is a result of a rise in the number of complaints filed, or of a greater tendency on the part of the police and court authorities to hear and progress complaints filed for events related to HIV transmission, has not been proven.

In any case, trials for HIV transmission and/or exposure to the risk of HIV transmission remain numerically rare when compared to the various orders of magnitude of the epidemic. Consequently, an average of nearly three trials per year has been recorded since 2008, in comparison with around 7000 to 8000 new HIV contaminations each year.⁵ Based on 2010 figures, of an estimated 120,000 PLHIV aware of their infection,⁶ all cases tried since 1998 covered a total of 34 known victims, and lead to the summons and conviction of 22 people.

SOLID CASE LAW BASED ON THE OFFENCE OF THE "ADMINISTRATION OF HARMFUL SUBSTANCES"

Unlike certain countries, in France criminal punishments for HIV transmission are not based on legislation specific to the disease or to all communicable diseases. Following brief consideration, the legislator explicitly dismissed the adoption of such legislation in 1991. Therefore, HIV transmission prosecutions have been made and convictions issued based on existing criminal legislation (*See Box 1*).

Following some initial hesitation on the legal definition to be applied, solid case law has been established based on the offence of the "administration of harmful substances causing physical or psychological harm to another person" ("administration de substances nuisibles ayant entraîné une atteinte à l'intégrité physique ou psychique d'autrui", or ASN), as set out by Article 222-15 of the French Criminal Code (*code pénal*). This criminal definition was used in 1999 in a judgment issued by the Rouen Court of Appeal, which constituted the first definitive conviction for HIV transmission offences. It has been then twice confirmed by the Court of Cassation in 2006 and 2010 and forms the legal basis for all proceedings instituted since this time.

It should be noted that no proceedings on the grounds of ASN have been recorded regarding the transmission of infectious diseases other than HIV. This is not as a result of the criminal legislation in itself, but rather of a lack of legal action brought by people contaminated by other infectious agents.

Box 1: Launching criminal prosecutions

Criminal prosecutions are launched by the French Public Prosecution Service (*Ministère Public*).

Prosecutions may be launched after a complaint has been filed with the police departments, gendarmerie or the Public Prosecutor (*Procureur de la République*). The French Public Prosecution Service is responsible for deciding on further action to be taken: i.e. the launch of the prosecution, the implementation of alternative proceedings or termination of the proceedings, subject to appeal. Proceedings which have already been brought are not suspended in the event of the complaint being withdrawn by the complainant.

Proceedings are also launched if other victims are discovered as part of preparatory inquiry investigations. The French Public Prosecution Service may prosecute incidental cases and join them to the proceedings, regardless of whether or not the victims in question intend to file a complaint.

ACTUS REUS

Two types of *actus reus* are required in order to define the ASN offence. Firstly, a harmful substance must have been administered. This is characterised by a person with HIV having unprotected sex with his or her partner, with the harmful substance in this case being the sexual secretions or bodily fluids infected by the virus, and their administration due to the lack of protection. Condomless vaginal or anal penetration is the most often involved way of administration while the harmful substance usually consists of the sperm or vaginal secretions. However, it is important to note that other practices, such as fellatio without a condom, and other substances such as preseminal fluid, may be and have occasionally been used to constitute the offence.

Secondly, under the *actus reus*, administration of the harmful substance must cause harm to another person's physical or psychological integrity. In the case of the transmission of a virus, the resulting HIV infection irrefutably constitutes harm to the victim's *physical* integrity. In this respect, advances in treatment considerably reduce the harmful consequences of the contamination on the victim's health and thus reduce the severity of harm to the physical integrity, but do not call it into question. The incurable nature of the infection, its irreversible impact on the body, the need for extensive treatment for life, and its impact on the conditions for procreation all remain components which constitute physical harm. Finally, two recent cases demonstrated that the offence could be defined if the perpetrator had exposed certain victims to the risk of transmission where they had not in fact been infected. In such cases, it is harm to the victim's *psychological* integrity which is cited. Such victims have indeed attested to the psychological shock and anxiety caused when they learned of the risk to which they had been exposed.

MENS REA

The issue of the 'moral' or 'intentional' component required to characterise the offence is more complex. The ASN offence falls within the scope of criminal provisions punishing acts of intentional violence, of which it constitutes a specific form. In legal language, the concept of an intentional offence does not mean that the perpetrator wants the result of the offence. The intentional nature of the offence simply relates to the fact that the perpetrator has deliberately decided to act in a way that the law (of which it ought to be aware) defines as punishable.

In this case, a person who knows that he/she is HIV-positive and knows how the virus is transmitted, and decides in spite of this to engage in unprotected sex, is acting with intention and therefore commits the offence of ASN. Thus, in the judgment issued by the Rouen Court of Appeal referred to above, the judge points out that the defendant, who was aware of his HIV-positive status as well as of the danger of transmission of the virus through sperm, had thus "deliberately administered a product in full knowledge of the harmful nature of the administered substance". This legal reasoning, which has been confirmed by subsequent cases, including before the Court of Cassation, suggests that sufficient proof of *mens rea* is provided by the fact that the perpetrator is *aware of committing a punishable act*, without it being necessary for the latter to have had *the intention to cause damage*. Following this case law, it is therefore sufficient to show that the perpetrator is aware of his/her HIV-positive status at the time of the events in order to constitute criminal intent.

Beyond the minimum criterion of being aware of the possible consequences of the act are possible different levels of intent, which are not required in order to constitute the offence, but may be taken into account when assessing the severity of the wrongdoing. Therefore, a distinction may be made in order to set a sentence within the range defined by the Code (*See Box 2*) between, for example, a case of a perpetrator who uses a strategy of producing false serology results to convince his/her partner to stop using a condom, and a case in which the perpetrator does not mention his/her HIV positivity in a context in which the issue of protection is not raised between the partners. The Code itself defines certain aggravating circumstances.

Box 2: The range of applicable sentences for ASN

The French Criminal Code sets out rules for sentencing based on the seriousness of the harm caused to the victim's physical or psychological integrity as a result of an ASN offence.

ASN causing contamination is generally defined under Article 222-9 regarding violence causing permanent serious injury or physical disability. It constitutes an offence which is punishable by 10 years in prison and an €150,000 fine, or, if one or several of the aggravating circumstances set out by Article 222-10 have been established, a crime punishable by 15 years in prison and an €150,000 fine.

ASN causing exposure to the risk on HIV transmission is defined under Article 222-13 regarding violence causing unfitness for work of eight days or less, or which has not caused any unfitness for work. It constitutes an offence which is punishable as a 5th class contravention, or, if one or several of the aggravating circumstances set out by Article 222-10 have been established, a crime punishable by three years in prison and a €45,000 fine.

The aggravating circumstances in question relate either to the role of the victim (i.e. being the defendant's spouse, cohabiting partner or PACS [civil partnership] partner), or to the defendant's behaviour (e.g. if his/her actions were premeditated).

ANY UNPROTECTED SEX BETWEEN PARTNERS WITH DIFFERENT HIV STATUSES CAN POTENTIALLY LEAD TO THE CRIMINAL LIABILITY OF THE HIV-POSITIVE PERSON.

The legal bases and case law components set out above clarify the conditions under which the criminal liability of PLHIV can be invoked in France. Only two conditions are required to legally establish the ASN offence: firstly, that the HIV-positive person has unprotected sex with an uninfected partner, exposing the latter to risk contracting the virus; and secondly, that the HIV-positive person acts in the knowledge of this risk. It is important to note a number of consequences as regards the scope of punishable acts and the prosecution risk for PLHIV:

- **Exposure to HIV transmission risk constitutes a crime even in the absence of actual transmission and can lead to prosecution and conviction.** Until now, convictions for exposure alone have only been issued incidentally for cases in which the principal matter was a conviction for actual transmission of the virus to at least one victim. Furthermore, these cases were characterised by their severity (reoffending status of the defendant, aggravating circumstances etc.).
- **Unprotected sexual relations between partners with different HIV statuses constitutes a crime committed by the HIV-positive partner, even if the HIV-negative partner is informed of the risk to which he/she is being exposed and consents to such risk.** As regards the facts, the perpetrator's concealment of his/her illness is central to most existing proceedings, whether based on simple omission, a clear lie or the use of strategies to fool his/her partner. In law, however, the criminal nature of the unprotected sex depends neither on the concealment committed by the defendant nor on the victim's consent. According to a fundamental principle of criminal law, the victim's consent cannot exempt the perpetrator from his/her liability.
- **The perpetrator's formal knowledge of his/her HIV-positive status prior to the events is not an absolute prerequisite to defining the act as an offence.** The defendant's liability may be invoked in the light of risk behaviour suggesting that they were probably aware of their HIV-positive status. In existing proceedings, the perpetrator's HIV-positive status prior to the events is usually evidenced by a previous positive serology or medical treatment for HIV. However, the *mens rea* required to constitute an ASN offence may be characterised by the fact that one has knowingly taken the risk of transmitting the virus to another person, regardless of the formal knowledge of HIV status.
- **Any sexual protection other than the systematic use of condoms represents a criminal risk.** The concept of protected sexual relations undoubtedly refers to the systematic use of condoms, including during fellatio. The admissibility of other prevention methods, particularly the protection afforded by taking antiretroviral (ARV) treatments, remains legally uncertain, as the courts have not ruled on such cases. Whereas a contamination following a condom accidentally splitting may be considered as a force majeure event and thereby provide an exemption for the perpetrator, a failure of the treatment to prevent contamination may not necessarily be interpreted in the same way, as certain legal experts will classify this as a non-exempting risk.

The modest number of court proceedings which have come to trial seems to indicate the public prosecutor's offices and examining magistrates have, until now, shown a careful and measured approach in their assessments of opportunities to prosecute events linked to the risk of HIV transmission and in their definitions. The number of cases tried has however been rising for several years, and the circumstances surrounding prosecuted acts have become more varied. In addition, the legal analysis (confirmed by the observation of certain recent borderline cases) shows that the scope of events likely to be sanctioned on the basis of ASN is potentially wider than the majority of cases would lead us to believe. [See *Recommendations: warning 1*, p. 17]

II. THE PROGRESSION OF LEGAL ACTION PARADOXICALLY COINCIDES WITH A 'NORMALISATION' OF THE DISEASE

The emergence and progression of criminal proceedings related to HIV transmission is not the result of changes in the applicable criminal legislation or case law. Criminal proceedings only began to progress (or in any case be successful) in the first decade of the millennium, and primarily in the second half of the decade, i.e. after the epidemic's most acute phase, when it had lost some of its exceptional original characteristics.

This trend questions the factors that may lead people to take legal action precisely at a time when the disease undergoes a normalization process, which transforms some of its social representations and calls into question some of society's fundamental responses to the epidemic. A qualitative study of the cases tried in France identifies some characteristics of the individuals involved in legal action and of the facts and circumstances leading to prosecutions.

EMERGENCE OF THE CRIMINAL JUSTICE RESPONSE AND MUTATIONS OF THE EPIDEMIC

Legal action has occurred against a backdrop of the relative therapeutic and epidemiological normalisation of the disease (*See Box 3*), which transforms some of its social representations and calls society's fundamental responses to the disease into question.

Box 3: An entirely different medical and epidemiological context

The introduction of effective ARV treatments, available in France from 1996 onwards, marks the end of medicine's powerlessness to tackle AIDS. The drop in death rates and improvement in the health of people living with HIV has reversed their life prospects. The distinction between HIV and AIDS is gradually replaced by a discourse which describes HIV infection as a chronic disease. Furthermore, the characteristics of the epidemic have evolved. From being originally associated with narrowly-defined social groups (male homosexuals, haemophiliacs and drug users), the epidemic has, to a certain extent, been 'normalised'. It is becoming more associated with women, and heterosexual transmission now accounts for the majority of cases.

Transmission of the virus beyond the groups who were originally identified has remained unaddressed for many years. For a long time, issues such as the sexuality of drug users or male bisexuality have not been considered. In addition, first actions aimed at women only addressed sex-work issues or the risk of transmission to the child during pregnancy. The consideration of the specifically heterosexual and feminine factors of the epidemic only emerged at the beginning of the millennium. In result, associations took action to voice the concerns of the 'forgotten ones' in the fight against AIDS, including 'migrants' and 'women', together with the development of public action programmes targeting women,

Paradoxically, the use of legal action increased when treatments became able to considerably reduce the damage to health caused by HIV infection and the disease thus ceased to be life-threatening. It may however be that it is precisely these advances which prompted the emergence of legal action due to changes in the symbolic perceptions and portrayals of the disease. For those who thought of contamination in terms of perpetrators and victims, the fatal outcome of the disease might have represented a form of inherent punishment (even an unfair one, as the victim must suffer the same fate as the perpetrator). The disease provided certainty about the perpetrator being sentenced to suffering and death. Conversely, seeking justice became relevant from the moment that the disease ceased to cause imminent and certain death.

Poor consideration for women (other than those who have a high exposure risk) in the response to the epidemic constitutes another essential component of the backdrop against which the first legal action was taken. Such action was indeed brought by a few women, who took action on the fringes of the traditional community in the fight against HIV, representing a new distinct move away from this culture.

IMPLICATIONS FOR THE HISTORIC MODEL OF THE FIGHT AGAINST AIDS

In 2003, a small group of HIV-positive women living in Marseille joined together as the association 'Femmes Positives'. They shared a history of having been contaminated within a stable relationship by a partner who was aware of his HIV-positive status and had concealed it. The legal process against their former partners essentially highlights two factors. The first is the feeling of having been betrayed in the context of a stable relationship, based on mutual trust, by a partner who knowingly left them in the dark on the transmission risk they were exposed to. The second is the feeling of being the "neither nors", in other words, having had a lack of awareness of the contamination risk due to not belonging to a "high-risk group".⁷

The assertion of the legal process has therefore marked a break on two levels:

- Firstly, it has called into question the two fundamental principles on which the response to the epidemic was initially based: i.e. solidarity between those affected and the refusal to distinguish between those regarded as "victims" after having been infected by a partner, and others considered to be accountable for

their own infection as a result of their lifestyle choices. Community mobilizations had until this point focused on the political dimension of the AIDS crisis and pointed out the responsibility and failures of the state and society to address the development of the epidemic. By contrast, the legal process refocused the issue on individual responsibility, and led to patients being brought into conflict with other patients. From a criminal viewpoint, liability is by its very nature indivisible, and the consequence of a trial is, with the formality afforded by law, to indicate that the transmission of the virus involves a guilty party.

- Secondly, by reducing transmission issues to the criminal liability aspect, the legal process shattered the useful construct on which the HIV/AIDS prevention paradigm was based. This paradigm advocated the equal commitment of each partner to protecting sexual relations, regardless of their respective HIV statuses. The women involved in legal action proved that, in the general population which is removed from HIV issues, this equality principle went unheeded and illusory as regards the democratic ideal that it assumed in relationships between partners.

However, the stance of the association 'Femmes Positives' and the legal process that it promotes only relates to a minority of HIV-positive women. In parallel, many HIV-positive women, within the main AIDS associations or in partnership with feminist associations, state their refusal to use the legal process.

WHO TAKES LEGAL ACTION?

The data collated from 23 defendants and 34 victims that were parties to legal proceedings allows to categorize them in the usual socio-epidemiological groups of HIV epidemiology. The profiles of the people involved in cases reveal four main characteristics for legal action:

- **Cases involving heterosexual transmission of the virus are clearly over-represented** in relation to the share of this transmission route in the epidemic. Those cases account for more than three quarters of proceedings. Conversely, homosexual transmission cases appear to be under-represented. Although nearly 45% of the people monitored for HIV in France in 2011 are men who have sex with men (MSM)⁸ they are only involved in half of this proportion of cases.
- **Gender distribution is heavily unbalanced between perpetrators and victims** in heterosexual transmission cases. With the exception of only two cases, the defendants are men and the plaintiffs are women.
- **Immigrants from Sub-Saharan Africa are strongly under-represented in proceedings**, given the significant share of this group among heterosexual PLHIV. A quarter of the heterosexual men summoned are immigrants from Sub-Saharan Africa, while they constitute 40% of the heterosexual men followed-up for HIV in France. Even more pronounced is the fact that immigrant women from Sub-Saharan Africa were virtually unrepresented among female plaintiffs (1 in 26), even though they represent 54% of the heterosexual women followed up for HIV in France.⁸
- Transmission occurred in almost all cases within **couple relationships**, or at least relationships conceived and perceived as such by the victim. In rare cases they involve married couples, but usually co-habiting couples or otherwise relationships characterised by a degree of stability and a long-term nature. Cases involving relationships between men are based on the same premise. The plaintiffs are usually men who have invested a great deal into the relationship, and who are not into a gay scene that favours a multi-partner sexual culture.

There is therefore a noticeable gap between the profiles of the people involved in cases and the structure of the population living with HIV. Paradoxically, most defendants and even more victims do not belong to the most affected population groups in the epidemic, but rather to the general population, within which the HIV prevalence is low. This specific feature advocates the need to reinforce preventative actions towards general population, in addition to actions aimed at PLHIV and the groups at higher risk of transmission. Given their traditional role and their central position in prevention work, HIV and AIDS associations should contribute to define a suitable response, which takes into account the profile of people who take legal action. [See *Recommendations: Reminders 1 and 3*, p. 16, *Recommendation 4*, p. 16]

III. THE EFFECTS OF LEGAL PRACTICE AS REGARDS CRIMINAL JUSTICE PRINCIPLES AND OBJECTIVES

ISSUES OF INSURING FAIR PROCEEDINGS

In cases involving HIV transmission or exposure to the risk of HIV transmission, the sexual and emotional nature of the links which previously bound the parties, and the disclosure of the extremely intimate details required for the investigation of the events, contributes to the particular poignancy of the emotional dimension during the proceedings, and particularly during a trial. The set of social representations attached to HIV contamination also contributes to burden these cases with specific symbolic and moral load, reinforced by the media in some cases.

Moreover, investigating such cases is technically extremely complex, given the difficulty of investigating and proving the actual virus transmission from one person to another. Therefore, in the interests of the fairness of the proceedings and upholding the rights of those summoned, it is essential that these cases benefit from a rigorous, impartial and high-quality investigation. On observing various cases, a number of difficulties can be identified.

PREREQUISITES FOR A HIGH-QUALITY INVESTIGATION

The investigation operations conducted by police officers for the preliminary enquiry constitute a particularly delicate stage of the proceedings. The investigation of alleged HIV transmission or exposure involves examination of the parties' respective medical histories, seeking information on their sexual behaviour, dating their sexual relations and, where relevant, sex with other partners. Chronological reports, details of the sexual practices and implementation of any transmission risk reduction measures may prove decisive to supporting or questioning the accountability of the transmission or exposure to risk.

It is therefore crucial that the investigators responsible for finding and questioning the defendant's (or where relevant the victim's) partners or ex-partners have access to a correct and up-to-date knowledgebase regarding HIV infection, modes of transmission and prevention methods. Investigations guided or influenced by certain prejudices or scientifically wrong assumptions on the part of investigators or examining magistrates may lead to a charge which relies on questionable grounds or, conversely, to overlook a need to conduct specific investigations or expert assessments.

The gathering of medical information and its use as part of an investigation constitutes a particularly sensitive point. For example, one case was reported which referred to the police departments' attempts to obtain a doctor's 'informal' disclosure of the medical information on their patient who had been summoned, such as the date of his/her HIV-positive diagnosis.⁹ Such a practice is unequivocally illegal, and any doctor who agrees to provide such information is infringing upon legislation which protects medical secrecy. Doctors may however find themselves unequipped to deal with such a request and the accompanying pressure. It should therefore be reiterated that access to medical data in the context of legal disclosure is governed by a strict framework, and may only be done through procedures to seize the medical file by requisition of an examining magistrate. Only an appointed medical expert is authorised to examine such files. Within the limits of the expert's assigned duties, the report submitted to the proceeding can only point out any factors that may be of use to the magistrate.¹⁰

It is also crucial, given the intrusive nature of these types of investigations, that investigators have access to a clear methodological and ethical framework concerning the use of private information and, even more so, information which is likely to be covered by medical secrecy. Thus, the disclosure by investigators of a defendant's HIV-positive status to various third parties cannot be done without considering ethical issues relating to both the defendant and the third parties. These third parties may, find out through the disclosure that they might have been exposed to a risk of contamination and need to be referred to the competent services, in order to provide them with appropriate medical care and/or psychosocial support. Observations show that this is not always done, and that the communication of incorrect information on the risk of transmission, seroconversion periods and the reliability of serology results have generated and maintained needless anxiety in HIV-negative people, which is likely to affect their decision on whether to become a civil party in the proceedings. [See *Recommendations: Recommendation 2*, p. 16]

RAISING AWARENESS OF HIV RELATED ISSUES AMONG MAGISTRATES

A high-quality proceeding should be based on the best scientific and medical data available, regarding modes of HIV transmission, ways of reducing the transmission risk (including ARV treatments), social and psychological problems met by PLHIV and the reduction of the infection's consequences on the patient's health. These issues relate to both the production of evidence of the defendant's guilt, but also, if proven guilty, assessment of the severity of the wrongdoing.

It is essential that magistrates (whether responsible for the investigation or the ruling) consider this knowledge and understand HIV issues, so that they can comprehend the facts and consider the evidence submitted to them by the parties, with all of the required methodological accuracy.

Therefore, magistrates ought to be more aware of the scientific, social and ethical issues raised by HIV [See *Recommendations: Recommendation 1*, p. 16]. The existing systems of initial and/or continuing education may constitute an appropriate framework for awareness raising. Making resources available to magistrates responsible for this type of case would enable them to access high-quality scientific information on the latest HIV knowledge. [See *Recommendations: Recommendations 1 and 5*, p. 16-17]

THE KEY ROLE OF DEFENCE LAWYERS

Legal proceedings are based on the principle of *Audi alteram partem*, meaning that all of the parties must be heard in the presence of all others. This principle is fundamental to guarantee fair treatment and implies that each party has access to, and the right to question or contest, the charges or evidences brought by the other parties. Thus, parties have the responsibility to ensure, throughout the proceedings and during the trial, that all of the components that may be of use to the judge are submitted to the proceedings. However, the emotional context surrounding most cases is generally very unfavourable for the defendant and not conducive to a rigorous and in-depth analysis of technical components. This gives the defence lawyers a particularly important role, since it is their very responsibility to ensure that up-to-date and objective scientific HIV-related knowledge is taken into account.

However, on observing some tried cases it seems that such vigilance is not always equally applied. Regarding the constitution of the *actus reus* for the offence, some cases are surprising: few discussions raised by uncertainties when establishing accountability for transmission, lack of applications for additional expert reports, no challenging of methodologically questionable conclusions drawn by the prosecution expert reports. More generally, assessing the severity of the wrongdoing and its consequences, the argumentative structures and rhetoric of the debates observed during some trials seem to be entirely based on obsolete and stereotypical knowledge of HIV infection and its consequences, reflecting the archaic portrayal of the disease and contamination risk. It is noticeable that many defence lawyers make no attempt to deconstruct or challenge the relevance of such assumptions.

Given the importance for those summoned of having a competent defence team, lawyers need to be able to access resources to ensure that they have sufficient knowledge of the required scientific and technical information, as well as of the HIV specific issues. [See *Recommendations: Recommendations 4 and 5*, p. 17]

PURPOSES OF CRIMINAL PUNISHMENTS

As defined by Article 130-1, the French Criminal Code specifies that the purpose of the sentence is to: "*ensure the protection of society, prevent the perpetration of further offences and restore social balance while respecting the interests of victims*". The same Article therefore vests sentencing with a dual purpose: firstly, to punish the perpetrators of the offence, and secondly, to promote their reformation, integration or reintegration.

The sentence, within the limits set out by law for the offence in question, must be proportionate to the wrongdoing committed and individualised. In order to determine the type, length and enforcement of sentences issued, the court must take into account the circumstances of the offence, the personality of the perpetrator and his/her financial, family and social situation (*French Criminal Code*, Art. 132-1).

Regarding acts of HIV transmission, the most frequent legal definition used is ASN having caused permanent physical disability. This offence is basically punishable by a maximum of 10 years in prison and a fine of €150,000. It is tried by a regular Criminal Court (*Tribunal correctionnel*). However, the criminal legal definition may include certain aggravating circumstances. The penalty then increases up to 15 years of imprisonment and the case falls within the jurisdiction of the Court of Assize (*Cour d'assises*), which involves a jury trial. Within these limits, several components are likely to be taken into account as regards the circumstances of the offence and/or the personality of the perpetrator, in order to decide on the sentence. Elements determining the severity of the wrongdoing must be assessed, such as the number of victims, the severity of the prejudice they have suffered, the behaviour of the defendant and his/her state of mind (level of intent, beyond simply being aware of the offence). While the sentence must aim to deliver a fair punishment, it should also meet its other objective of contributing effectively to the social reintegration of the convicted person and preventing reoffending. Observation of criminal practice reveals the existing tension between these two objectives, and calls into question the balance that has so far prevailed.

MOST HIV TRANSMISSION CASES LEAD TO PRISON SENTENCES

From the 23 tried proceedings identified in France, the majority of cases were brought before Criminal Courts and only 5 before a Court of Assize

The sentences issued show that imprisonment remains the rule, as courts systematically chose prison sentences, ranging from one to twelve years. Sentences of five years or less are largely dominant (in 18 of 23 cases), allowing courts to partially or fully suspend the sentence, or to chose among various alternatives to custodial sentences (only possible in certain cases and according to specific terms and conditions).

However, it seems that imprisonment for all or part of the sentence remains the general rule, as a full suspended sentence was only issued in 3 out of 18 convictions. Partial suspended sentences were issued in around ten cases, but the use of adaptation measures for the imprisonment component, such as a suspended sentence with probation,

specific psychosocial obligations or electronic tagging, remains the exception. Out of 23 people convicted, 19 served a prison sentence.⁴

IMPRISONMENT DOES NOT PROVIDE AN APPROPRIATE SOLUTION IN TERMS OF HEALTH MANAGEMENT, REINTEGRATION AND PREVENTION OF REOFFENDING

While a prison sentence forcefully characterises society's condemnation of the incriminated behaviour, the nearly systematic use of prison sentences raises the question of balance between the punishment role of the sentence and the role of promoting the convicted person's reintegration and the prevention of reoffending.

To support the use of prison sentences, some rulings cite the need for imprisonment to prevent the convicted person from causing harm. It should be noted that imprisonment in itself is not a means of limiting the spread of HIV. On the contrary, it has been proven that prison is a place of high transmission risk, either through the use of injectable drugs, or through sexual relations. Moreover, such practices are concealed and/or nonconsensual, which makes preventative measures particularly difficult to implement.¹¹

Similarly, the deterrent effect that would generally be expected from prison sentences seems doubtful. Deterrence assumes that perpetrators make a rational and controlled decision, balancing the expected benefit of their criminal behaviour and the risk of being convicted and imprisoned. And yet, the determining factors of sexual risk-taking are complex, and in most cases there appears to be little rational thinking involved in the perpetrator's behaviour.

Reducing HIV risk behaviour primarily requires providing individuals with prevention education and psychosocial support, which should enable them to better cope with their HIV-positive status, to understand the causes of their risk behaviour and to acquire tools to prevent such situations.

The prison setting, on the other hand, creates numerous obstacles. Despite current recommendations,¹² HIV medical care conditions for prisoners are often sub-optimal. Access to appropriate psychological and social support remains limited or non-existent, and confidentiality is far from guaranteed.¹³ HIV infection remains a taboo in prison, and HIV-positive status disclosure notoriously makes one extremely vulnerable to discrimination and violence from fellow detainees. The need to keep this secret requires HIV-positive detainees to hide from their fellow detainees when they take their treatment. This environment impacts upon adherence to treatment and encourages concealment. Moreover, the vulnerability of those convicted for HIV transmission seems to be exacerbated by the fact that they are regarded as 'predators' or sexual criminals within the social hierarchy of the prison setting.

ALTERNATIVES TO IMPRISONMENT SHOULD BE PROMOTED

In recent years, the legislator has underlined its wish to improve the effectiveness of preventing reoffending by promoting reintegration. Various provisions have been strengthened, which primarily and under certain conditions favour alternatives to custodial sentences.

These provisions apply to offences punishable by a maximum of 10 years in prison, which in fact covers most proceedings for HIV transmission or exposure. The Act of 15 August 2014 notably sets out the principle that a non-suspended prison sentence "may only be issued as a last resort, if the severity of the offence and the personality of its perpetrator makes such a sentence necessary, and if any other punishment is clearly inadequate". (*French Criminal Code*, Article 132-19)

Moreover, the law states that, should the use of a prison sentence be deemed necessary, measures should be taken to adapt the sentence as soon as the convicted person's circumstances allow, without prejudice to practical impossibility. According to the length of the prison sentence issued and to various conditions, these adaptation measures include several regimes for serving the sentence such as semi-imprisonment, work release, electronic tagging, and split sentences.¹⁴

More generally, the principle of individualised sentences is strengthened and guided by the need to determine the type and length of sentences according to their expected social effectiveness in terms of rehabilitating the convicted person and preventing reoffending.

Such changes constitute a framework that encourages courts to apply a less systematic use of prison sentences. This allows a more balanced and better-adjusted criminal justice response to the challenges raised by offences linked to HIV transmission risk. [See *Recommendations: Recommendation 3*, p. 16]

IV. PUBLIC HEALTH STRATEGIES VS. CRIMINAL JUSTICE

INDIVIDUAL HEALTH AND PUBLIC HEALTH: CURRENT CHALLENGES AND STRATEGIES FOR EFFECTIVE PREVENTION

Over more than 15 years, effective treatments for HIV infection have turned a quickly fatal disease into a chronic condition that a majority of patients can lead a near-normal life with. However the epidemic remains active, with around 7000-8000 new infections in France each year. This number has not fallen.

Preventing transmission is therefore the main public health objective in the fight against HIV, but strategies have been entirely updated, and new preventative biomedical tools have emerged. These have allowed alternative strategies to be developed in addition to condom use alone, which has proven to be limited since contaminations fail to fall. These strategies are mainly based on the preventative role that screening and antiretroviral treatment can play.¹⁵

Screening has a positive effect on behaviour. It has been shown that people who know they are infected reduce their risk practices.¹⁶ Moreover, screening is a key step in accessing medical care and treatment. Improving screening is a crucial issue considering the current epidemiological context. Approximately one PLHIV in five are unaware of their infection, i.e. nearly 30,000 people in France. It is estimated that these people are at the source of nearly two-thirds of new contaminations.⁶

In addition to therapeutic benefits, initiating antiretroviral treatment, which is now recommended at any stage of the infection, very considerably reduces the risk of transmission of the virus.¹⁷ Antiretroviral treatment has proven an efficient prevention method, with comparable impact and in addition to behavioural recommendations. The effectiveness of treatment as prevention (TasP) requires strict adherence by each individual. A residual transmission risk, although very low, cannot be excluded (no more than for the use of condoms). In public health terms, wider treatment coverage of infected people is considered an essential lever to reduce HIV incidence at the population level, and a means to eventually control the epidemic.¹⁸ In addition, antiretroviral treatment recently proved its preventative effectiveness when taken by uninfected people at high risk of exposure.¹⁹

LEGAL PROCESS AND PUBLIC HEALTH PROCESS: COMMON GROUND AND DISCREPANCIES

Both the criminal justice system and public health action contribute to the protection of society and its citizens, each according to its own aim and within its own field. They share the creation of standards aiming to regulate behaviour (within their own systems and in accordance with their respective intentions). Contradictions may however appear between legal and public health standards, which may produce adverse effects and send mixed messages.

THERE IS NO EVIDENCE OF A SIGNIFICANT IMPACT OF PROSECUTION RISK ON PREVENTION AND SCREENING BEHAVIOUR

Although not its aim, criminal law interferes in HIV prevention. By defining punishable behaviour, it sets a specific preventative standard for PLHIV. This can be summarised by the requirement imposed on all people aware of their infection to systematically have safe sex with uninfected partners, supposedly by using condoms, under penalty of their criminal liability being invoked.

The criminal risk might have a positive impact, in line with public health objectives and strategies, if awareness of the criminal risk proves to discourage risk behaviour among PLHIV. Conversely, a potential counter-productive effect must be considered, if criminal risk is encouraging people who take risks not to get tested, in order to evade criminal liability.

Some considerations and data suggest a lack of any significant impact of the threat of punishment on the risk behaviour of PLHIV.

On a descriptive level, it should firstly be noted that a significant proportion of PLHIV do not comply, for whatever reason, with the standard of systematic condom use (*See Box 4*). In fact, it is accepted that sexual behaviour is determined by several factors, and is not entirely rationally driven. The fear of punishment represents at best one of several factors. Moreover, the motivation to adopt preventative behaviours, whether rooted in fear of legal consequences or in any other reason, such as the basic wish not to harm one's partner, does not automatically induce people ability to implement such behaviours. This is true even in a long-term relationship where talking about condoms can be difficult.

Box 4: The use of condoms by people living with HIV

Among serodiscordant couples, 21% of MSM, 21% of heterosexual men and 36% of heterosexual women declare non-systematic condom use with their HIV-negative partner for penetrative sex.

Sex with a casual partner seems to be more frequently protected. However, among PLHIV, 9% of MSM and 12% of heterosexual men and women report not having used a condom with their last casual partner.²⁰

Furthermore, a deterrent effect on risk behavior might only be obtained if PLHIV are aware of the prosecution risk and, above all, understand it. Studies on the impact of the prosecution risk on behaviour are scarce, and rarely able to be extrapolated given the country-specific situations and legal frameworks they relate to. They do however show that PLHIV often lack knowledge about prosecution risk and fail to comprehend the components of this risk, which necessarily limits its impact.

In France, data from the ANRS-Vespa2 study shows that 7 out of 10 PLHIV followed-up at hospital in 2011 were aware that some people had been convicted for having transmitted HIV to their partner. More than half of them (56.4%) expressed concern about this information.³ These data suggest quite a wide awareness of the existence of a prosecution risk among PLHIV. This, however, does not necessarily mean that they have an accurate knowledge of that risk. As a matter of fact, the concern experienced does not reflect the reality of criminal law practice. Migrants from Sub-Saharan Africa express greater concern, even though this category is strongly under-represented in criminal cases. Being concerned about the criminal risk appears to be significantly associated with only two factors: firstly, experiencing poor living conditions and secondly, having unprotected sex (i.e. without a condom) with a main partner. The second factor suggests that failure to use a condom in a relationship is correctly perceived and interpreted by those concerned as a factor exposing them to a risk of prosecution. By contrast, it also shows that awareness of exposing oneself to a prosecution risk is not enough for these people to change their preventative behaviours.

Regarding the impact on screening, there is little evidence that the prosecution risk discourages people from getting tested. There is no data on this in France, and the studies conducted abroad are scarce, of limited scope and pertain to different legal frameworks. Although we cannot rule out that some individuals at high-risk of transmitting HIV may avoid screening in order to protect themselves from the prosecution risk, nothing indicates that such a practice is common or likely to have a measurable impact on the use of screening.

SOCIAL REPRESENTATIONS AND STEREOTYPES CONVEYED BY CRIMINAL CASES UNDERMINE PREVENTION EFFORTS

Prevention policies are not limited to promoting efficient preventative behaviours, they also require to tackle a host of structural impediments which maintain an unfavourable environment and limit people's ability to implement such behaviours.

As regards HIV prevention, the major obstacles remain the persistence of false or outdated portrayals of the disease and transmission risk, stigmatisation, rejection and discrimination towards people affected. Such obstacles make it particularly difficult for PLHIV to disclose their status to their partners. And yet failure to disclose each other's HIV statuses, particularly to a frequent partner or in the context of a long-term relationship, is not conducive to implementing, never mind sustaining, effective protection.

In this respect, publicity about criminal cases supports the circulation of approximate or incorrect information on HIV, and exacerbates HIV-related stigma. Media coverage of trials often focuses on the emotional aspect to the detriment of analysis, and leads to simplistic representations of complex situations. The specific case of the defendant and his/her behaviour tends to be generalised and to project a very negative image of all PLHIV.

More fundamentally, the criminal process results in identifying someone who is guilty of transmission. Although this is perfectly consistent with legal logic, it sends a wrong signal for prevention. Analysing HIV transmission only in terms of parties being either guilty or victim provides a simplistic understanding of risk exposure. By upholding the concept that HIV-positive people must bear full responsibility for prevention, criminal cases undermine public health efforts to encourage HIV-negative people to reduce risks on their own initiative. [See *Recommendations: Reminders 1 and 3*, p. 16, *Recommendation 4*, p. 16]

THE CONCEPT OF PROTECTED SEX IN THE ERA OF EFFECTIVE HIV THERAPY

The current uncertainty on the way the justice system might consider the use of antiretroviral treatments as a means of sexual protection is a point of concern. It is of little doubt that the courts will have to rule on such cases in the future.

From a public health standpoint, the fact that the epidemic is still active demonstrates the limitations of a prevention model solely based on promoting condom use. This is why prevention messages have evolved to combine behavioural and biomedical prevention tools, including screening and treatment.

In the event that the courts were to interpret the concept of protected sex as solely condom use and excluding treatment, this would compromise the development of new strategies whose effectiveness has now been proven. [See *Recommendations: Warning 2*, p. 17]

RECOMMENDATIONS

GENERAL CONSIDERATIONS

1. Exposure to HIV transmission risk and actual transmission of the virus during sex basically result from a failure of prevention. The prosecution risk faced by PLHIV is a consequence of such failures.

Therefore, the French National AIDS Council, in line with its recommendations issued in 2006, reiterates that the main lever for preventing the prosecution risk is to improve peoples' ability to implement effective HIV prevention.

2. Both the criminal justice system and public health action contribute respectively to the State's duty to protect all citizens. Both create standards aiming to regulate behaviour (within their own systems and in accordance with their respective intentions). It is crucial to limit any contradictions between legal and public health standards, in order to avoid sending mixed messages.

3. In order to uphold the victim's right to obtain a punishment for the offence and compensation for the harm suffered, and to uphold the summoned party's right to fair proceedings and, where relevant, to a fair punishment and appropriate sentence, the following is required:

- At all stages of the proceedings, ensuring that the best scientific and medical data is used, regarding HIV transmission modes; prevention and treatment, including in particular the preventative effects of treatment;
- Ensuring that the objective of social reintegration and prevention of reoffending is considered when choosing the type and length of the sentence, if the summoned party is found guilty.

CONSEQUENTLY, THE FRENCH NATIONAL AIDS COUNCIL:

- REITERATES:

1. The need to continue and strengthen the fight against stigmatisation and discrimination faced by people living with HIV in their private, social and professional lives;
2. The necessity of implementing all of the Council's recommendations previously issued, through its Opinions, regarding the improvement in effectiveness of prevention and screening strategies and services;
3. The challenge of redefining and strengthening prevention actions towards the general population, going beyond the usual target groups, and further promoting prevention towards PLHIV.

- RECOMMENDS:

1. In order to ensure better information of judges involved in HIV transmission or exposure proceedings, **the promotion of initial and continuing education of magistrates and future magistrates on HIV related issues**, in the context of training courses initiated and delivered by the French National School for the Judiciary (*École nationale de la magistrature*). In this respect, the French National Aids Council highlights the opportunity of integrating HIV related issues into training programs, considering the training objectives and terms set out by Opinion no. 4 of the Council of Europe's Consultative Council of the European Judges (CCJE) at national and European levels;
2. In order to bolster the quality of investigations conducted prior to the proceedings, **the promotion of training actions of police officers and future officers on HIV related issues**, in the context of initial and continuing training courses delivered by the National Police Academy (*École nationale supérieure de police*) and the National Police Officer Training Centre (*Centre national de formation de police judiciaire*) under the administrative supervision of the Minister of the Interior;
3. In order to prevent reoffending, enabling the integration and reintegration of people convicted for HIV transmission or exposure and improving their support, **the application of alternatives to custodial sentences**, in accordance with the objectives of Act no. 2014-896 of 15 August 2014 regarding individualised sentences and strengthening of criminal punishment effectiveness, and taking into account, for HIV issues, the principles set out by the Council of Europe in its recommendation no. R(99)22 regarding overcrowding in prisons and prison population inflation. Alternatives to custodial sentences, including social support (i.e. suspended sentence measure with probation, electronic tagging, semi-imprisonment, social and judicial supervision and 'criminal constraint') and community punishments (community service) should be preferred to detention, provided that the length of the sentence issued allows such enforcement.
4. In order to promote the prevention of the prosecution risk linked to HIV transmission or exposure:
 - That *HIV/AIDS associations* **contribute to a better understanding of legal issues by the people and communities concerned**;

- That *the public authorities* **support actions aiming to provide information on the legal rights and responsibilities of people living with HIV.** These actions must be based on communication and the circulation of suitable and awareness-raising legal information to PLHIV, HIV physicians, and all the health, non-health and community stakeholders involved. These actions must also strengthen support for the people concerned, through HIV prevention actions, as well as the social remote support service for legal matters, 'Sida Info Droits'.
- That *the public authorities and HIV/AIDS associations* **promote actions to fight PLHIV stigmatisation and discrimination and prevention actions towards the general population.**

5. In order to provide wide and appropriate access to up-to-date and high-quality legal and scientific information on the criminalisation of HIV transmission and exposure:

- That *the Ministry of Justice* **implements a reporting tool to follow-up the rulings issued in France and to document the characteristics of the related proceedings.**
- That *the competent public authorities* **initiate the creation of a working group in charge of designing and provisioning of information tools suitable for professionals and people involved:** legal and criminal investigation professionals (training schools, National Bar Council), judicial experts (National Council of Companies of Judicial Experts), health and community care professionals, HIV/AIDS associations, and people living with HIV. In addition, on an international level, the working group could help to inform the United Nations about the criminalisation of HIV/AIDS.

-WARNS:

the public authorities,

legal and justice professionals,

healthcare and community care professionals working in the fields of HIV and STIs, and more generally with a holistic approach to sexual health,

those involved in the fight against HIV/AIDS,

people living with HIV,

and more generally the whole sexually-active population,

1. About the recent rise in the number of cases tried and about the extension of the scope of punishable acts under ASN, which increases the prosecution risk for people living with HIV. Any HIV-positive person who has unprotected sex with an uninfected partner, and who acts with knowledge of this risk, may be prosecuted, regardless of whether or not the virus is transmitted;

2. On the worrying situation of PLHIV who, in their sexual relationships, implement other means of protection and do not always use a condom. It cannot be guaranteed that other means of protection will be deemed admissible in the context of proceedings for HIV transmission or exposure. This legal uncertainty is likely to compromise the prevention strategies of PLHIV and the recommendation to initiate ARV treatment in order to prevent HIV transmission. These prevention strategies were advised in the French National AIDS Council's *Opinion and recommendations regarding the potential for treatment as an innovative tool for fighting the HIV epidemic*, and are promoted by the 2013 *Report of the French Expert Group on the medical care of PLHIV* (Groupe d'experts sur la prise en charge médicale des PVVIH).

SUMMARY OF RECOMMENDATIONS

No.	Objectives	Recommendations	Competent authorities and/or recommendation targets
1	Contribute to better information of judges	Promote initial and continuing education of magistrates and future magistrates on HIV related issues	French National School for the Judiciary (École nationale de la magistrature)
2	Bolster the quality of police investigations	Promote training actions of police officers and future officers on HIV related issues	Ministry of the Interior
3	Prevent reoffending, enable the integration and reintegration of convicted people and improve their support	Apply alternatives to custodial sentences	Ministry of Justice
4	Promote the prevention of the prosecution risk	Contribute to a better understanding of legal issues by the people and communities concerned	HIV/AIDS associations
		Support actions aiming to provide information on the legal rights and responsibilities of people living with HIV.	Ministry of Health French National Institute for Health Prevention and Education (INPES)
		Promote actions to fight PLHIV stigmatisation and discrimination and prevention actions towards the general population	Ministry of Health, Regional Health Agencies (ARS), French National Institute for Health Prevention and Education (INPES) Other competent ministries HIV/AIDS associations
5	Provide access to up-to-date and high-quality legal and scientific information	Implement a reporting tool to follow-up the rulings issued in France and to document the characteristics of the related proceedings	Ministry of Justice
		Initiate the creation of a working group in charge of designing and provisioning of information tools suitable for professionals and people involved	Health/Justice Interministerial Committee

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- 21.11.2014 ■ **Eric Morain** – Lawyer at the Paris Bar

- 04.12.2014 ■ **Ministry of Justice – Directorate for Criminal Matters and Pardons (Direction des affaires criminelles et des grâces)** – Olivier Christen (Assistant Director for Specialised Criminal Justice), Raphaëlle Bove (Office for Public Health, social and environmental legislation)

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The methodological guide referred to by the Circular can be consulted at:
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