

Case Study 6: **Repealing bad criminal law on HIV in Denmark**

General Information about Case Studies 6/7/8. These studies discuss tackling criminalisation of transmission & exposure in the European region.

Many countries across Europe have seen prosecutions of people with HIV for transmission, exposure or even just perceived exposure of HIV. Laws and responses have varied and are documented in the GNP+ Global Scan. Coverage of prosecutions and changes to the law can be found indexed by country at the HIV Justice Network's database. This set of three interlinked case studies looks at the very different approaches taken by people in three European countries in response to what they saw as the inappropriate use of criminal law to prosecute people with HIV for transmission-related "crimes". While each has an interesting story to tell in its own right, together they illustrate that there may be a number of different paths to tackling an issue, each with its own pitfalls and benefits.

General Criminalisation links:

GNP Global Criminalisation Scan: <http://criminalisation.gnpplus.net/node/11>

HIV Justice Network website: <http://www.hivjustice.net>

Global HIV Law Commission: <http://www.hivlawcommission.org/index.php/working-papers?task=document.viewdoc&id=90>

UNAIDS Policy Brief:

http://data.unaids.org/pub/BaseDocument/2008/20080731_jc1513_policy_criminalization_en.pdf

Oslo Declaration on Criminalisation: <http://www.hivjustice.net/oslo/>

Aidsmap briefing on the issue: <http://www.aidsmap.com/law>

What was the issue?

Denmark began prosecuting people for HIV exposure and transmission in 1993, but in 1994 the Supreme Court ruled that the wording of the existing general law did not provide a clear legal base for conviction. From 1994, Parts 2 and 3 of a new Article 252 of the Danish Criminal Code prohibited exposing others to the risk of being infected with a life-threatening and incurable disease. In 2001 HIV was established as the only disease covered by this, with a maximum sentence of eight years.

From 2001 to 2008 there were at least 18 prosecutions, all for sexual exposure or transmission of HIV. Of these, one failed due to the accused committing suicide. At least ten of those prosecuted were migrants, including seven people of African origin. At least 11 cases resulted in convictions.

Why was change needed?

[AIDS-Fondet](#), the largest national HIV NGO, was closely involved in challenging the law and its use. They and others argued for repeal of Article 252 on the grounds that it was inequitably used, contributed to stigma and harmed HIV prevention and treatment access. Top clinicians

campaigning with them, taking the same line as the [UNAIDS Report recommendations](#) that only intentional transmission should be a prosecutable offence.

What/who were the barriers to change?

“This is not an issue that you win elections on” said Henriette Laursen, ex-CEO, AIDS Fondet (AF). Many politicians were reluctant to be associated with something so stigmatised and to be seen to push for legal change. Some of the cases were complex, involving other criminal charges, which did not gain public sympathy and many involved migrants, compounding the stigma. Media coverage was often inflammatory and stigmatising, again decreasing public sympathy. There was also a lack of understanding of the wider impact that prosecutions had on public health as well as the (much lower than perceived) reality of HIV transmission levels.

How long did change take and who was involved in making the change?

The active campaign to change or abolish Article 252 ran from the mid-1990s to 2012 and was led by AIDS-Fondet. Clinicians, researchers and other NGOs including [HIV Danmark](#), the national group of people with HIV, were all involved and the campaign attracted international support. It became more active as time went on and gained support from Parliamentarians as it became clear that the wording of the Article itself was obsolete due to treatment advances.

What was the outcome?

In 2011, the Danish Government, faced with changing the wording again (because it was outdated due to treatment advances), announced an interdepartmental working group to examine the issue. It ended with the ongoing suspension of the Article, but no final resolution (see below). In 2012 it was reported that previous convictions were being reviewed and, where appropriate, reversed.

How was change made?

Ensure your own organisation is on board when you start: AF's primary focus was prevention and social support; PLHIV issues would usually have been taken up by the national patient group. Due to their internal legal expertise and the issue's likely high profile, AF however decided early on to tackle criminalisation as an issue. There was initial concern expressed, as in England, that the issue might not be popular with some funders. They had to convince their own Board that it was a key issue for the organisation, in which they had the support of eminent doctors on the Board.

Legal expertise and support for cases: The CEO of AIDS-Fondet, Henriette Laursen, was a trained lawyer, which helped her understand and communicate the issues. She was able to use the right language when engaging with the Ministry of Justice and also understand their difficulties in trying to reform the wording of the Article. In addition, people involved in cases were supported by HIV-Danmark, the national self-help organisation for people with HIV, which helped campaigners to understand and communicate the personal as well as public health issues involved.

Political persuasion and briefing: Henriette Laursen explained, *“I spent a lot of time on the phone with politicians trying to persuade them how the law did more harm than good – it allowed the media to talk about people with HIV as dangerous, as criminals, which was the basis of stigma”*. Slowly, allies were identified and people in key positions educated. Relationships with civil servants were as important as politicians. By chance, they had an intern within AF from the Ministry of Justice, so they gave the intern criminalisation as a project. This ensured that once the internship had ended, the Ministry had an internal expert on the issue.

Use of changing clinical situation with improved treatments and outcomes: A major factor in unlocking legal change was the advances in HIV treatment and their impact on onward transmission. The Danish system was open to considering evidence that HIV was no longer an automatically fatal condition and that with good care and treatment, people could live a full life. Transmission of other, non-life-threatening STIs had been decriminalised in the 1980s and this created an analogy which could be used, sometimes even with the same politicians.

Making alliances: The campaign involved all relevant stakeholders such as people with HIV, researchers and in particular clinicians “*The fact that eminent clinicians with international reputations campaigned with us helped*” (Henriette Laursen). The campaign also linked in with international and regional efforts to raise the issue, which helped to show global support and interest.

Using international opinion and research: At a crucial juncture, when the intergovernmental working party was considering its options on Article 252, AF presented them with a letter signed by 122 global NGOs, asking for its abolition. At the same time, a national newspaper carried an article from Justice Edwin Cameron, the most senior judge in South Africa and himself a person living with HIV, praising its suspension & asking for abolition. This was acknowledged to be an influential intervention. The campaign also used the recommendations of the UNAIDS expert report on the criminal law to argue for change. Denmark’s criminalisation statute came under further scrutiny at a crucial juncture in 2011/12 as part of a wider Nordic legal research project.

Careful handling of the media: Henriette Laursen became the spokesperson for the campaign. As a lawyer she was seen as “expert” and, as an HIV-negative person, less susceptible to accusations of special pleading for herself or of stigmatising characterisation. The campaign pursued a deliberate policy of managing its media exposure to minimise any poorly informed public backlash: “*We were very conscious of the role of the media; we wanted to use the channels seen by politicians but not incite wider hostile opinion through the popular press*”.

Using Parliamentary structures and precedents: Henriette Laursen went on to say that “*we knew that suspending the law was our best chance. The provision was obsolete, they had already had to rewrite it once as treatments and life expectancy improved.*” The law had already been suspended once; the original reason for singling out HIV had gone, and it was a manageable condition like the other STIs which had already been decriminalised. The campaign could quote what politicians had said then – because HIV was no longer automatically deadly, they had a precedent.

The interdepartmental working group was a swift way of making change, enabling suspension and reform of legislative clauses without having to go through a full Parliamentary process to introduce new law.

Being able to weigh gains and risks: The intergovernmental working group initially wanted to replace the existing clause with unhelpful new wording that the campaigners opposed. However, thanks to their good relationships with civil servants they were able to argue against it despite not being formally within the process. There was a brief consultation period which was inconclusive. Since 2011, the part of Article 252 specifying HIV has been suspended and no cases brought under it.

“Because it's been suspended, the minister can now decide what diseases the statute covers and though it no longer mentions any specific disease, it could be reactivated. It's a risk, because if a really bad case came up... but we decided to leave it alone because pushing for more could have backfired, with the decision going either way. We had to think long and hard about that” (Henriette Laursen).

Are there any ongoing issues?

The suspension of Article 252 means that there needs to be constant vigilance, in case the situation changes.

What lessons have been learnt?

Know your strengths: *“AF had a good name. We were trusted by the public and generally things that we said didn't provoke argument so when we said something was a problem, people generally trusted us that it was” (Henriette Laursen).*

Collaborate widely: That so many different people and groups, both inside and outside Denmark, were part of the movement against criminalisation, was a strong influence.

Educate policymakers on clinical advances: Most politicians and civil servants have limited knowledge of HIV. They need to be briefed on new breakthroughs, and their implications for the law – and each update gives a chance to influence them.

Find legal and policy precedents: The principles behind the earlier repeal of STI legislation could be quoted in support of HIV, as could the policy recommendations of the UN and other international bodies. Politicians like being in good company more than they like being the first to stick their head above the parapet.

Make good relationships at all levels: Having close relations with civil servants helped, as did long term relationships with politicians. Interns and junior postholders often progress in Government and they remember people who were helpful earlier on.

Pay attention to timing: A key feature of the Danish campaign was excellent timing, such as planning the show of support with the international sign-on letter just as they were trying to influence the Government's decision.

Have trained spokespeople who can handle difficult questions: Henriette Laursen said about the experience, *“it was quite difficult, but we knew what we were doing. I had to read everything, keep helping anyone who seemed friendly to understand. It was very difficult for new people to deal with the issue and with hostile reactions – you have to be able to cope with stigma and handle a wide range of opinions.”*

Links (see also links for Case Studies 6-8)

<http://www.hivandthelaw.com/campaign/what-can-you-do/success-stories/denmark>

<http://criminalhivtransmission.blogspot.co.uk/2011/02/denmark-justice-minister-suspends-hiv.html>

<http://pag.aids2012.org/Abstracts.aspx?AID=1978>

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