

**Summary of a decision of the French Court of Cassation, Criminal Division,
dismissing an appeal by C. Morat, accused. Date of decision: January 10, 2006**

Facts

C. Morat was aware that he was HIV-positive since 1998. In 1999 and 2000, he had unprotected sex with several women, claiming to be allergic to latex, and not informing them of his HIV-positive status. Two of the women were infected and filed a criminal complaint.

Procedural history

In a judgment dated June 28, 2004, the Correctional Court of Strasbourg found Morat guilty of the offence of administration of a noxious substance causing permanent mutilation of disability (article 222-15 of the Penal Code). The Court sentenced Morat to six years of imprisonment, and declared him to be civilly liable for all the harm suffered by the victims.

In Colmar, the Court of Appeal, an intermediate appellate court, affirmed the conviction and sentence.

The accused filed an appeal in the Court of Cassation, France's highest court.

Arguments

In the Court of Appeal, the accused asked to be acquitted on the following grounds:

- 1) Causation, a requisite element, was not established: it was not shown with certainty that the accused actually transmitted the virus to the criminal complainants/civil plaintiffs.
- 2) The requisite *mens rea* was not established: having unprotected sex without revealing one's HIV-positive status is merely taking a risk of administering the virus. Moreover, the accused said he remained silent about his HIV+ status out of fear of rejection.
- 3) The judges at first instance relied solely on the complainants' statements to infer that his sexual relations with them were a "plausible" source of the infection, and the judges did not carry out or even propose a viral strain comparison.

In the Court of Cassation, the accused put forth additional arguments:

- 1) The offence in question was not intended to apply to loving relationships which are alleged, by one partner, to have resulted in an infection.

- 2) Exposure to even a unilateral risk does not constitute an administration of a noxious substance, since the risk is of a random nature.
- 3) There must be a definitive causal relationship between the damage to one person and the administration of a noxious substance by the other. The trial and intermediate appellate judges reversed the onus of proof by relying solely on the complainants' statements and finding the causal relationship "plausible." This violates the presumption of innocence.
- 4) The element of intent in the offence of administering a noxious substance includes a deliberate desire to cause harm to another person, and this cannot be validly inferred from imprudent or negligent conduct.

The Court of Appeal judges held as follows:

- 1) With respect to *mens rea*, intent to harm is inferred from the accused's knowledge of the patent risks of infection with an incurable disease through such practices, from the certainty that he never notified any of the women of his HIV+ status, and from his attitude: large number of sexual relations, multiple partners within the same time frame, little consideration for the young women in question, and his claim that he was allergic to latex, in order to avoid having protected sex.
- 2) As to the causal relationship between the administration of the substance and the damage, the judges found that viral strain investigation is in no way determinative because HIV is characterized by constant mutations and there are no allegations the two victims had other unprotected sexual relations prior to or during their relationships with the accused.

The Court of Cassation dismissed the appeal from the conviction on the following grounds:

The Court of Appeal correctly found that the factual elements and requisite intent for the offence were present, based on

- the accused's knowledge of his HIV-positive status at the time the events took place;
- his large numbers of sexual relations with several young women;
- his intentional and constant concealment of his medical condition; and
- the sexual infection of two young women who now have a viral condition that constitutes a permanent disability (infirmity).