

Dutch Supreme Court

rejects punishment of

unprotected sex by PLWHA

Issues

The Dutch Public Prosecutor decided between 2000 and 2005 to institute criminal proceeding against PLWHA for unprotected sex and who had failed to inform their sexual partners that they were infected with HIV. These prosecutions had a major impact on public health and on the position of PLWHA in particular. Lawyers of defendants were not well informed on HIV-specific issues and needed extra training

Description

The Dutch executive committee on "AIDS Policy & Criminal Law" (2004) analyzed and debated the various aspects of the issue. Their Report "Detention or prevention?" did express the concern especially based on public health reasons and rationale to The Ministry of Justice and The Ministry of Public Health.

The Dutch Supreme Court (2005) has determined in a case where no HIV was transmitted that having unprotected sexual contact by PLWHA is dangerous. But it does not mean that the person had the conditional intention on the probability that the other person would be infected with HIV. According to general rules of experience, this probability is not significant in itself. This may be different under exceptional circumstances.



THE DUTCH APPROACH

The Supreme Court observes that the question whether PLWHA having unprotected sexual contacts is punishable without being any (conditional) intention, is at the discretion of the legislator. The Ministry of Justice and The Ministry of Public Health (June 2005) did choose in these cases not to punish PLWHA and the Dutch Government did express their opinion not to develop specific legislation.

The Dutch Supreme Court (February 2007) did follow in a case where HIV was transmitted her verdict as in 2005, also based on public health and prevention reasons.

The Ministry of Justice did reconfirm in June 2008 the policy the Ministry of Public based on public health reasons not to criminalize PLWHA for having unprotected sex.

Lessons learned

The Report "Detention or prevention?" did bring the related public health reasons back on the agenda of the Public Prosecutor and the Dutch legislator. Lawyers do need in these proceedings special training on HIV-specific issues and were effected with the support of the Dutch HIV Association.

Recommendations

Workshop on HIV-specific issues to be implemented in the training program of Lawyers. The Dutch approach on no criminalization of unprotected sex by PLWHA to be added to the international HIV/AIDS advocacy agenda.