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PRESS RELEASE

PREVENTION

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PRESS RELEASE : CRIMINALIZATION FOR THE SEXUAL TRANSMISSION OF HIV

For many months now, a number of legal proceedings, completed or underway, have dealt with the topic of sexual transmission of HIV. In little time, the variety of charges brought forth – for deliberate deception, concealment of information, or intentional transmission – fell away from public debate, as the stage was taken over by a controversy between PLWA (associations, plaintiffs and victims associations). While the individual right to compensation is a basic freedom, which may give rise to legitimate punishment as the outcome of a legal suit, it proves less effective in the context of sexual transmission of HIV due to a number of greater constraints, and might even have a negative impact in terms of public health. This is because it could give the impression that criminal repression is an effective means of protection against HIV-contamination. Moreover, the stigma placed on HIV sufferers could be heightened, making it even more difficult for them to reveal their status with regard to HIV-contamination.

The CNS would like to issue a reminder that prevention policy is based both on individual responsibility and the importance of building solidarity with those living with HIV, the said solidarity requiring a fight against all forms of discrimination. It needs to be reiterated that everyone, to the extent of their powers, must watch over their own health and that of others, compelled to do so by respect for others. While a person living with HIV has the responsibility to not transmit the virus, an uncontaminated person is responsible, when embarking on a new relationship, to ensure he or she is protected from HIV and other sexually-transmitted diseases. The commonly-accepted idea that couplehood is an objective and effective form of prevention, as both parties are assumed to be faithful, has shown it is far from foolproof. As experience has recently revealed, being in a couple does not automatically protect from HIV-infection. For this reason, when an individual engages in extra-marital intercourse, his or her responsibility is to use protection, in order to protect the regular partner. Should that tacit agreement fail to be upheld by one of the partners, the other loses all means of protecting him or herself, unless told of possible contamination by the partner.

It should also be emphasised that knowing that one is infected with HIV by no means implies that one understands or accepts its consequences. Consequently, certain patients fail to take all of the precautionary measures necessary to protect their partners or, taking the opposite approach, prohibit themselves from any form of sexual activity, for fear of contaminating others. Beyond sexuality, many surveys clearly show that fear of being excluded (from the workplace, family, the community, etc.) remains a significant issue. Faced with stigma and rejection, the person has little opportunity to tell of his status.

In certain types of transmission, the criminal liability of the person transmitting HIV appears clearly in play, as the French Supreme Court has ruled. Yet it would be disastrous were those individual cases to lead to the feeling that the mere fact of living with HIV makes a person a potential criminal and heightens existing stigma. Beyond the criminal realm, the CNS wishes to assert the principle of dual responsibility: the responsibility of the contaminated persons not to transmit HIV and the responsibility of all persons to protect themselves so as to not be contaminated.