

Did patterns of court rulings in Sweden regarding HIV as a criminal act change after the new recommendation from The Public Health Agency of Sweden?

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Background

In Sweden, HIV infected persons are obliged to inform and protect any sexual partner according to the Swedish communicable diseases act. Furthermore, according to the criminal offence act it is a crime to risk infecting someone with HIV with intent, by aggravated assault or from negligence.

In 2004, a ruling by the Supreme Court stated that

- unprotected sex conducted by an HIV-positive person should not be assessed as an act of intent, unless the offender had knowledge of a high probability of transmission and/or had reckless or violent behaviour
- not using a condom should always be regarded as an unaccepted risk
- there was an actual risk of transmission even if the patient had a well stabilized treatment without detectable virus levels.

In 2012, the Public Health Agency of Sweden published a new recommendation regarding the definition of “well-treated HIV” with low transmission risk*.

Objective

The present study assesses the effect of the new recommendation on court rulings after 2012 as well as the factors which influence verdicts overall.

Methods

We analysed court records from court rulings regarding HIV cases from 2004-2017 and categorized the content according to pre-defined characteristics (e.g verdicts, sex, sexual practice, country of origin and if the court evaluated infectiousness).

Data analysis

We summarised the number of court rulings by verdict, sex, sexual practice and country of origin. To assess the impact of the recommendation on well-treated HIV on the courts' ruling and evaluation, court records during 2004–2012 were compared with court records during 2013-2017. The two time periods were compared descriptively in terms of verdicts, deportation as part of the verdict, detention and if the courts' evaluated infectiousness.

To investigate time period (2004-2012 or 2013-2017) as an explaining factor for verdict not guilty, we calculated odds ratios (aOR), adjusted for sex, sexual practice and country of origin (Sweden/abroad) using logistic regression.

Results

Description of the defendants

During 2004-2017 we identified court records from 33 defendants: 25 during 2004-2012 (mean: 2.6/year) and 8 during 2013-2017 (mean: 1.6/year). Among the defendants 10 were female and 23 were male. Twenty-eight were born abroad (total: 76%, female: 80% and male: 73%). Twenty-four (14 male) rulings were regarding suspected heterosexual transmission and nine were regarding suspected homosexual transmission (table).

Patterns in the verdicts

In total, twenty-eight verdicts were found guilty; 24 (96%) in 2004-2012 and 4 (50%) in 2012-2017 (figure 1).

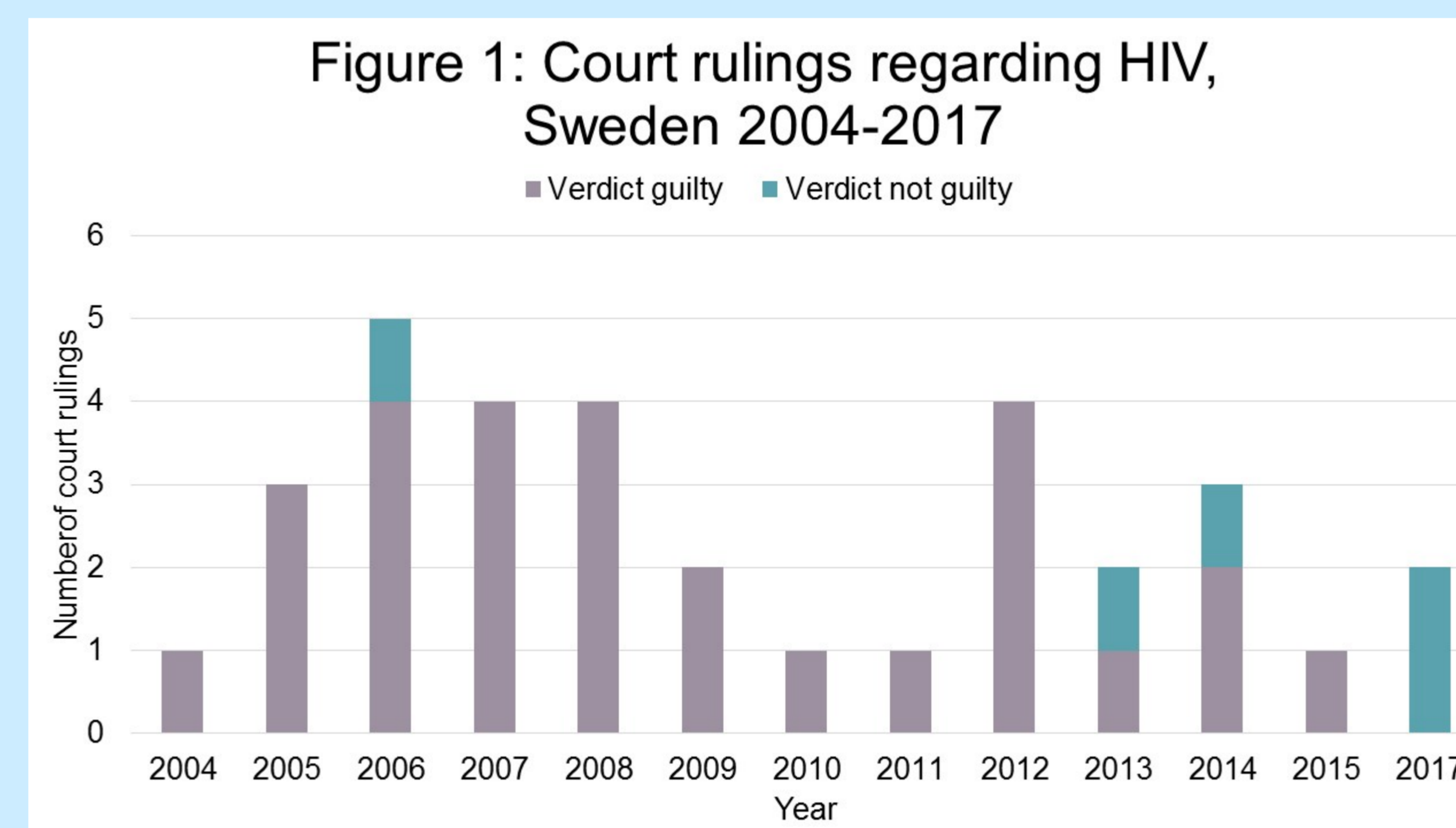
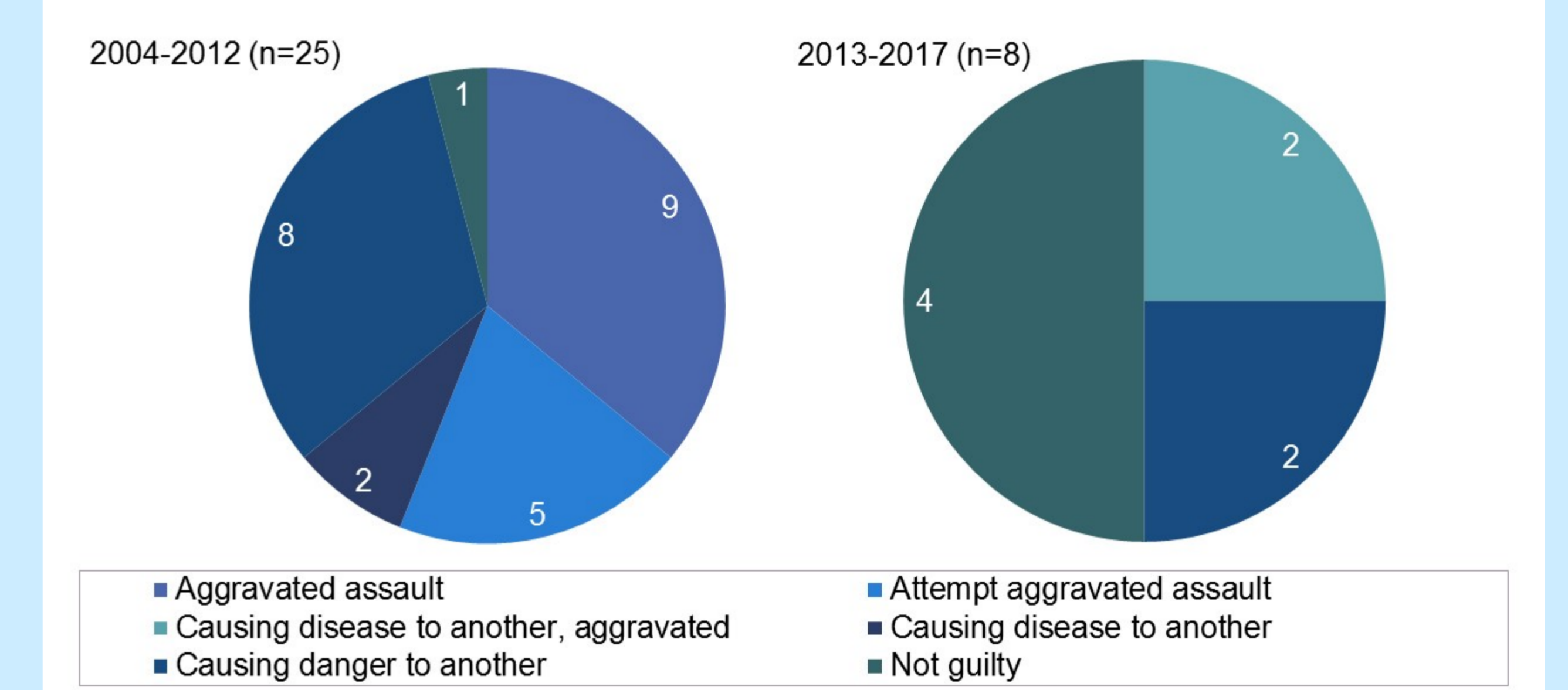


Table: Verdict in court rulings regarding HIV by sex and route of transmission, Sweden 2004-2017

Verdict	Women - heterosexual n (%)	Male - heterosexual n (%)	Male - Homosexual n (%)	Total n
Aggravated assault	3 (30)	5 (36)	1 (11)	9
Attempt aggravated assault	2 (20)	3 (21)	0 (0)	5
Causing disease to another, aggravated	1 (10)	0 (0)	1 (11)	2
Causing disease to another	0 (0)	0 (9)	2 (22)	2
Causing danger to another	3 (30)	3 (21)	4 (44)	10
Not guilty	1 (10)	3 (21)	1 (11)	5
Total	10 (100)	14 (100)	9 (100)	33

Figure 2: Verdicts in court rulings regarding HIV, Sweden 2004-2012 and 2013-2017



No verdicts in 2013-2017 was with intent, by aggravated assault (figure 2). The verdict was more likely to be not guilty in the time period 2013-2017 compared to 2004-2012 (aOR 48, CI:2-999, p=0.01).

Five verdicts (20%) in 2004-2012 and none during 2013-2017 included deportation. Fifteen (60%) defendants during 2004-2012 were detained, and three (38%) during 2013-2017. Infectiousness was discussed during both time periods (n=18 (72%) and n=7 (88%) respectively). In three cases (not guilty) during 2013-2017 the defendant was defined as well-treated according to the Public Health Agency of Sweden.

Conclusions

Court rulings after 2012 resulted in milder verdicts, and a smaller proportion of defendants were deported and/or detained. Verdicts after 2012 were more likely to be not guilty. Our analyses suggest that the recommendation from The Public Health Agency of Sweden regarding "well-treated HIV" has had an influence on court rulings after 2012**.

*Smittsamhet vid behandlad hivinfektion, Smittskyddsinstitutet, oktober 2013.

**As a result of the Public Health Agency's knowledge base on "well-treated HIV", the Supreme Court took a position on the matter in a judgment on 7 June 2018. In contrast to the Supreme Court in 2004, the court stated that the risk of transmission from a well-treated HIV patient was minimal (not considered). The objective prerequisites for the crime, causing danger to another person, were thus not met.