

Chapter 9

Discrimination of HIV–Positive Persons When Establishing an Employment Relationship

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ABSTRACT

The right to work is one of the basic human rights guaranteed in most modern states by the constitution as the highest legal act. Every person who is legally capable has the right to work and that right cannot be denied. However, in practice this is not the case. There are particularly endangered categories of the population who, despite constitutional and legal guarantees, cannot exercise their right to work due to various personal characteristics and traits. The basis for discrimination can be gender, age, religion, and nationality, as well as a certain disease that does not make a person incapable of work. The paper will pay special attention to people who are positive for HIV, and who suffer from a special type of social discrimination, degradation, and disrespect for their basic human rights due to this specific disease.

INTRODUCTION

The proverb says that a healthy person needs a lot of things, while a sick person needs only one thing, and that is to heal. Unfortunately, a person does not know how to value health, as the most important value, with which he is born, but which he cannot preserve later in life. Many, with their careless attitude towards their own lives, but also the lives of others, often contribute to the rapid deterioration of their health. This is especially supported by an unhealthy life, consumption of alcohol, cigarettes and psychoactive substances, but also entering into risky sexual relations without the use of protection. As a consequence of such behavior, various diseases can occur, and one of them is HIV. HIV is an abbreviation of human immunodeficiency virus. The presence of this virus contributes to the decline of the immune system, and especially to the attack of cells, as especially important elements of every living organism. HIV has a devastating effect on the cells that give the body immunity, and there is a weakening of vital organs, such as the heart, kidneys and brain and their severe disease, cessation of kidney

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activity, encephalopathy and cardiopathy. HIV is transmitted exclusively through body fluids, through vaginal, oral and anal sexual intercourse, transfusion, in drug addicts, using the same needles, while it can be inherited from the mother during the period of intrauterine development.

Relatively little is known about HIV among the lay public, and there are especially misconceptions when it comes to its transmission. Therefore, there is an unfounded attitude towards people suffering from this virus, discrimination, distancing from them, social segregation and they have numerous difficulties in everyday life. HIV is a relatively young disease, diagnosed in humans in 1983. It originates from Central Africa, is a monkey's immunotropy and originated from a special variety called green African monkeys. Misconceptions about people living with HIV are primarily related to the transmission of this virus, and they avoid shaking hands with them, social contact, avoid staying in the same rooms with them, openly harassing and degrading them. HIV has a wrapper of proteins and fats, and due to its structure it cannot survive at the outside temperature and in the outside environment for more than a few seconds. Also, HIV is negatively affected by disinfectants, such as alcohol, formaldehyde, desderman and others. Thus, the only possibility of HIV transmission is in the ways already mentioned, while social contacts with people with HIV cannot contribute to the infection. That is why the inhumane treatment of people living with HIV has no logical, medical, or any other justification, but represents a classic form of discrimination and violation of basic human rights.

Negative attitudes towards HIV-positive people are also expressed when establishing an employment relationship. It is far more difficult for these persons to establish an employment relationship and to have the same treatment in the process of seeking jobs as persons without a health problem. Due to the already mentioned ignorance about the transmission of HIV and unfounded fear of people who have this infection, a social deviation towards them has been created, which significantly complicates their lives. The most drastic example is the difficulties in employing these people, which calls into question their existence and survival.

THE CONCEPT OF DISCRIMINATION

When defining the concept of discrimination, it is assumed that discrimination is a form of destinction. Discriminatory behavior is behavior that is different towards a certain group of people with certain common characteristics. Discrimination against that particular group implies its expulsion and exclusion from regular social flows, thus putting it in an inferior position. As can be seen from the term itself, discrimination is the antipode of human rights and is an obstacle to their realization and enjoyment. Discrimination can be based on gender (eg discrimination against women), racial (eg discrimination against certain races, such as blacks, African Americans, etc.), sexual (resulting from discrimination against LGBT people), national (discrimination against certain peoples and nations), on the basis of illness and disability, etc.

In the Republic of Serbia, all forms of discrimination are prohibited. The Constitution of the Republic of Serbia¹ states that discrimination is an inadmissible form of treatment towards any group, and insists on the existence of equality among all people. "Everyone is equal in front of the Constitution. Everyone has the right to equal legal protection, without discrimination. Any discrimination - direct or indirect, on any grounds, especially on the basis of race, sex, nationality, social origin, birth, religion, political and other beliefs, property, culture, language, age, mental or physical disability - is prohibited."² "Besides the stated declarative provisions, the Constitution of the Republic of Serbia also contains measures that

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