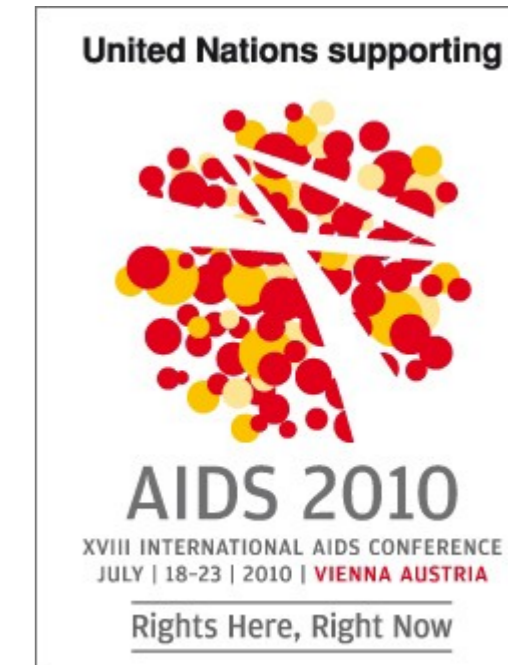


Access to public services professions of HIV people – lesson for Eastern Europe

Case study of judgment of Constitutional Court of Poland of
23 November 2009, no. P 61/08

 HELSINKI FOUNDATION
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1. Regulation

- regulation of the Minister of Internal Affairs of **1991** concerning the features and methods of proceedings of the medical boards subordinate to the Minister of Internal Affairs
- a **positive HIV diagnosis** meant that a **patient was immediately recognized as unfit for service** (health category D - "unfit for service")
- the medical boards **did not have the possibility of classifying such people** as, for example, fit for limited service on some specific posts (health category C - "limited ability to service")
- being infected with HIV made **it impossible to serve in the Police or other public services**

3. Judgment of Constitutional Court

- this regulation results in automatic dismissal from service when a policeman is found infected with HIV, **regardless of the actual state of health**
- the regulation of 1991 is a **disproportionate limitation** of the constitutional right of access to public service**
- **"the mechanism of automatic dismissal from the Police (...) is not the least oppressive measure of preventing accidental epidemics"**
- the Constitutional Court criticized the **lack of flexibility** in the attitude to officers infected with HIV
- **medical examination should not be conducted ex ante** by the legislator
- the regulation should be **adjusted to the current state of medical knowledge**

2. The facts of the case

- X.Y. was a policeman living in Gdańsk, Poland
- in 2006, during routine medical examination, X.Y. was diagnosed with the presence of HIV
- the Voivodeship Medical Board and the District Medical Board found him **unfit for service in the Police**
- the Municipal Police Chief **released** him from service in police*
- the Voivodeship Police Chief upheld this decision
- X.Y. appealed to the **Voivodeship Administrative Court in Gdańsk**
- the Court decided to refer a question of law to the **Constitutional Court**

4. Conclusions

- the Minister of Internal Affairs prepared the draft of the amendment to the regulation of 1991
- unfortunately, it still contains provisions which recognize that a candidate infected with HIV shall be found unfit for service
- the same problem regards AIDS and HbsAg (antigen of the Hepatitis-B-Virus – HBV)
- on 10 march 2010 the Voivodeship Administrative Court in Gdańsk **revoked the decision** of the Municipal Police Chief that released X.Y. from service in police

* Strategic Litigation Program of Helsinki Foundation for Human Rights provided **pro bono lawyers** (prof. Małgorzata Bednarek and Łukasz Gorek) for X.Y.

** Article 60 of the Constitution of Poland: *Polish citizens enjoying full public rights shall have a right of access to the public service based on the principle of equality.*

Barbara Grabowska
Strategic Litigation Program
Helsinki Foundation for Human Rights
barbaragrabowska@hfhr.org.pl; (+48) 508 286 697, www.hfhrpol.waw.pl/precedens
Zgoda 11, 00-018 Warsaw, Poland

