

LGBTTIAQ PERSONS AND HIV/AIDS RELATED STIGMA AND DISCRIMINATION

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Abstract: *Persons who belong to marginalized social groups – the Roma, people who practice prostitution, homosexuals, persons with special needs and disabled, persons with different social or physical disabilities are often stigmatized by society. A country in which those who are different than the majority of the people by their origin, sexual orientation, language, health condition and yet are granted the same rights as that of the majority may be called a modern democratic country where the rule of law is practiced.*

Keywords: *human rights, discrimination, HIV/AIDS, homosexual*

1. PROTECTION AGAINST HUMAN RIGHTS VIOLATIONS FOR HOMOSEXUALS LIVING WITH HIV/AIDS

Discrimination means illicit differentiation, that is, prohibited unequal treatment of an individual or a group based on their personal characteristics exercised by a person or legal entity. In a social system, discrimination is most often related to labour and employment, healthcare, education and vocational development, procedures before government bodies, provision of public services, use of facilities and public areas and housing.

Anti-discrimination law, that is, human rights as a legal discipline pertains to the protection of groups of individuals who suffer the consequences of discrimination. The concept of human rights was first developed in the relationship between a state, that is, a sovereign or a monarchy and an individual (Magna Carta).[1] Human rights can be violated not just by states but by individuals as well, which is sometimes more important and more detrimental than actions of a state. Human rights are universal and inalienable. The task of any state is to protect its citizens from discrimination of any kind and or to strive to adopt and implement anti-discrimination laws and other protection measures.

The respect of human rights is considered a moral imperative of any organized society today. There is a myriad of legal references to human rights and protection against discrimination. The rule of prohibition against discrimination is recognized by all international documents on human rights as well as the constitutions of almost all countries in the world. [2] Human rights violations during the Second World War were the trigger for the adoption

of the Universal Declaration of Human Rights by the UN General Assembly in 1948. Article 1 of the Universal Declaration includes the following: "All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood". This provision unambiguously emphasizes the equality and freedom of human beings.[3] In that regard, Article 14 of the European Convention for the Protection of Human Rights and Fundamental Freedoms of 1950 states: "The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status".[4] The case law of the ECHR [5] indicates the following in terms of other statuses recognized (protected other grounds which haven't been explicitly listed in Article 14 of the ECHR [6]): sexual orientation, disability, age, paternity, marital status, membership in an organization, military rank, parent of a child born out of wedlock and domicile. The court emphasizes that this is an exhaustive list that pertains only to the personal characteristics of an applicant which makes him different than other people.

The national laws of many countries include regulations which serve to protect from discrimination. Serbia has established a legal and institutional framework to regulate combating discrimination. However, its application is insufficient and better mechanisms of prevention and oversight and protection need to be put in place. The Republic of Serbia guarantees to every citizen human rights and freedoms. Everyone is equal before the Constitution and law. Everyone has the right to equal protection under law, without discrimination.[7] The Law on the Prohibition of Discrimination adopted in 2009 introduced the protection of persons on the grounds of their health condition and it specified that: "Discrimination against an individual or a group or their family members on the grounds of his or their health condition shall be prohibited"[8,9]. Article 21 of the same law reads as follows: "Sexual orientation[10] shall be a private matter and no one may be called to publicly declare his/her sexual orientation." The Criminal Code of the Republic of Serbia protects the equality of citizens in a similar manner: "Whoever on the grounds of race, colour, religion, nationality, ethnic origin or other personal characteristic violates fundamental human rights and freedoms guaranteed by universally accepted rules of international law and international treaties ratified by Serbia".[10] Every citizen has the right to health protection provided in line with the highest possible standard of human rights and values, that is, has the right to physical or mental integrity and to the safety of his personality and respect for his moral, cultural, religious and philosophical convictions. Any kind of discrimination on any grounds, either direct, indirect is prohibited. More generally, discrimination against homosexuals and persons living with HIV/AIDs is prohibited. HIV positive status is still a barrier for the respect for human rights guaranteed by international regulations. In Serbia, the adopted legislation relating to health issues and health protection are mostly indirectly applicable, while some areas remain unregulated and put in the hands of practice and professional code of conducts and codes of ethics. Despite the fact that Serbia has the legal and institutional framework that regulates protection against discrimination, it is still far away from being a tolerant society in which citizens exercise their rights without obstructions and with the full respect for differences. In practice, some social groups still exercise their rights with some difficulty.

2. WHO “DOES NOT DESERVE” TO ENJOY RIGHTS AND FUNDAMENTAL FREEDOMS

In Serbia little is being said about AIDS, and even when people speak about it, it is usually done in a scholarly manner, strictly for educational purposes and as planned. A conspiracy of silence has caused people in Serbia to still see AIDS as an illness from a different world. The laws create norms, but in practice there is still a series of obstacles standing in the way of efficient implementation of laws which pertain to equal treatment of all citizens and the enjoyment of fundamental rights and freedoms guaranteed by international and national legislation. Discrimination is even more complex when a person living with HIV is a member of the LGBTTiAQ population. The LGBTTiAQ population belongs to the groups at risk of HIV and in this case there is a possibility of double discrimination on the grounds of health condition and sexual orientation. Stigmatization, discrimination and homophobia in many countries encourage the thinking that AIDS is an inevitable consequence of homosexual behaviour. Bias, stereotypes and ethical principles of some communities only “add fuel to the fire” thus deepening the social antagonism of already stigmatized persons. This is a global problem spread across different social tiers, professions and cultures. Homosexual behaviour is considered “deviant and sinful” in many parts of the world. Homosexuals are confronted with hate speech and violence, insults, and exposed to public ridicule,[12] their communities often accused them of spreading immorality, drop of birthrate. They consider them the source of sexually transmitted diseases, and think that they do not deserve to enjoy rights and freedoms that belong to them as any other citizen. An old myth that AIDS affects drug addicts and homosexuals still exists. During the Second World War, medical experiments were made on persons from the group labelled with the pink triangle (LGBT population) in concentration camps all over Europe to find the cure against homosexuality. They very often were treated much worse than other inmates, they had to work harder, longer, they were often denied water and food, they were maltreated, humiliated, ridiculed because of the anti-gay policy and the “destruction by work” policy would lead them to a certain death. They were confronted by not only the guards in the camps but with other inmates as well, and they were often beaten to death. Though present in society, homophobia was even more frequent in camps, which contributed to even higher death rates of homosexuals in concentration camps compared to other “anti-social” groups. There were several cases when gays would remove yellow triangles from Jewish camp uniforms to replace their pink triangles hoping that they would be treated better as Jews. [13]

In his book “Law and Society”, American professor Steven Vago points out that, in small, traditional and homogenous societies there is a consensus of social norms, they are consistent with each other which results in so-called “aligned behaviours”. According to him, consistency of social norms is conditioned with socialization which is very similar for all citizens. Professor Vago argues that in those societies “deviations” are most frequently exposed to informal mechanisms of social control such as hear-say, mocking, humiliation and expulsion. On the other hand, the understanding that a specific life style is binding on all citizens is widespread, as is as the attitude that some groups are more superior to others (heterosexuals to LGBTTiAQ). Society often creates the perception that only specific persons or groups can be infected by HIV and contract AIDS. Globally, this disease has been anathematized, communities label the ill; they see their illness as a deserved punishment for their immoral behaviour. In the history of civilization probably no illness has ever been

treated as shamefully as this one, or caused less empathy and uncontrolled panic and fear of infection. [14]

3. HOMOSEXUALS = HIV/AIDS/SIDA

Ever since the beginning of the HIV outbreak (in the 1980's) almost 78 million people have been infected with it worldwide, and around 39 million people have died from the consequences of that same virus. At the end of 2013, some 35 million (actually an estimated 33–37 million) people lived with HIV. Globally, on average 0.8% of persons of the age between 15 and 49 has been infected with HIV. [15] In Serbia, currently, 1931 persons live with HIV, and it has been estimated that around an additional 1100 people don't know that they have been infected with HIV (35% or every third person infected with HIV).

The global incidence of AIDS emphasizes the change of the attitude towards sexuality, creates anxiousness, fear and new legislation passed to protect persons with this infection. The acquired immunodeficiency syndrome- AIDS ("syndrome immuno-déficitaire acquis" - SIDA) is the most serious manifestation of the infection caused by the human immunodeficiency virus (HIV virus with subgroups - HIV1 and HIV2) which has a fatal outcome. [16] Globally, men who have sex with other men are 19 times more at risk to be infected with HIV compare to the general population. The frequency of HIV infection amongst persons who handle sex on a commercial basis is 12 times higher than in the general population. Transgender women are 49 times more at risk to be infected with HIV than all adult persons in the reproductive stage of life (15-49 years of age). [17] Homosexuals living with HIV are victims of discrimination; those persons face social death much before their biological clock strikes the last hours of their lives. The gravest danger to society is represented by ignorance which may have enforceable consequences. Namely it is possible to contract HIV in several ways: by having unprotected sexual intercourse with an HIV positive person (anal, vaginal and oral), by having a sexual intercourse without a condom, through contact with infected blood, from an HIV positive mother to her foetus. It is possible to become infected through blood transfusion, through donated blood and organs, if the usual measures and procedures are not followed through (testing). The World Health Organization has issued a clear statement: AIDS is not transmitted through usual social communication; by handshaking; using the same tableware; it is not airborne (it is not transmitted by talking, sneezing or coughing); it is not waterborne (it is not transmitted by swimming in a swimming pool, the ocean, a river); through clothes, shoes, underwear, door knobs, public transport brackets, seats; through insect stings, pet bites and domestic animals; by associating and spending time in the same household with an infected person; in preschool facilities; in a work place.

Discrimination on the grounds of health condition is not such a rare occurrence and it exists when an individual or group of persons are denied health services because of their personal characteristics, when they need to comply with special conditions in order to be provided with health services for grounds other than medical reasons; when they are refused a diagnosis and denied information about their current health condition, provided or intended medical treatments or rehabilitation measures; as well as harassment, humiliation, and belittling during their stay in a healthcare institution. From a legal standpoint, no one is to be blamed for getting ill. It is unprofessional, legally and medically unacceptable that doctors and medical staff refuse to provide medical aid to persons infected with HIV,

and this often happens. Just healthcare is provided by prohibition of discrimination during healthcare practice on the grounds of race, gender, age, nationality, social background, religion, political or other convictions, financial status, culture, language, type of illness, psychiatric or physical disability. [18] There are numerous cases where dentists have refused their services. LGBTI+ persons infected with HIV are exposed to discrimination in many aspects of life beginning with medical institutions, the work environment, friends, family to other persons infected with the same virus. It is not rare that those persons lose jobs and have difficulty to find new employment which is a great existential problem for them and their families. [19] Discrimination by the employer exists when a legal entity or an entrepreneur calls on an individual or a group to declare their sexual orientation, or if they prevent them from expressing their sexual orientation. [20]

Homophobia and stigmatization are considered a major obstacle standing in the way of efforts to combat discrimination against homosexuals infected with HIV. They disable effective treatment of the illness and thus contribute to its spread. [21] People are unfamiliar with how the HIV virus is transmitted; they guide themselves by partial information which only deepens their fear and creates more bias and aversion towards the ill. In Serbia, in addition to frequent ignorance as regards the ways how HIV infection is transmitted, men typically refuse to wear a condom during sexual intercourse, underrate the risk, fail to take precautionary measures in terms of testing, etc. In the Republic of Serbia, a total of 3098 persons infected with HIV were registered since the beginning of the outbreak in 1985 till November 20, 2014. Out of that number 1727 persons contracted the illness while 1067 died of AIDS and 100 more persons infected with HIV died of illness or conditions unrelated to HIV. As before, sexual intercourse is currently the most frequent manner of transmission, in particular unprotected anal sexual intercourse, both between newly registered persons infected with HIV and among those who have contracted the illness and died of AIDS (around 80%). [22] Though Serbia belongs to the group of countries with low prevalence of HIV/AIDS, the epidemiological situation may be described as unfavourable with a tendency to worsen further, considering difficult socio-economic circumstances and risky behaviour.

Social isolation of those persons has a quite negative influence on the physical and mental health of persons infected with HIV. People usually go through a state of shock, anger, fear, and frustration after having been diagnosed with HIV. The negative attitude of the community towards a homosexual infected with HIV, often leads him into depression, addiction illness, suicide; he himself caused a risky sexual behaviour, feels guilty, he is ashamed, experiences moral judgment and annihilation. Fear of being ridiculed by the community and social isolation, being rejected, loss of individual and family identity, stigmatization; all of that leads to self-isolation and HIV patients are rarely bold enough to seek reprimand or sanctions for discriminatory behaviour to which they are exposed. Those persons can gain more self-confidence and a more positive attitude towards themselves and can acquire better mental health only with social support. The social support for those persons usually comes from their family members, friends and the wider community; they are the ones to take steps to reduce the effect of discrimination and stigma with the aim of protecting their physical and mental health. Around the world, different counselling centres operate and provide much-needed advice to persons infected with HIV. Discussing illness through counselling is a good means for a person to more easily accept the diagnosis, treatment or a new life style but also to inform other persons about the health condition of the ill person with the aim to prevent the infection spreading and make others exercise caution because of the infected person.

On the other hand, social stigma is often caused by the fact that some groups of homosexuals purposefully refuse to use condoms, they are not afraid that they will spread infection because they believe that they can control the virus with one pill a day. Those persons call themselves “barebikers”. That term is otherwise used to denote horseback riding without a saddle and homosexuals who do not use a condom on purpose find it a neat metaphor. Besides that, some of them think that taking HIV infection from the partner is considered an expression of loyalty to the partner. UNAIDS calls on national governments to limit the punishment only to cases of purposeful transmission, when the person who knows that he is HIV infected, acts with premeditation and spreads the HIV virus. [23,24]A report of the global network of people living with HIV/AIDS in Europe and the Terrence Higgins Trust organization pointed that over 36 out of the total of 45 surveyed countries consider HIV transmission or the risk of HIV transmission a criminal offense. The largest number of persons convicted on that account is found in Austria, Sweden and Switzerland, while in countries like Bulgaria, Luxembourg and Slovenia transmission or threatening the health of other persons with infection does not represent a criminal offense. The UNAIDS report: “Criminalization of HIV Infection Transmission,” pointed to the fact that the criminal law of some countries punishes HIV infection transmission and threatening the health of other persons with HIV. [25]The criminal law of the Republic of Serbia sanctions any person who knowingly threatens the health of another person with HIV infection, any person who purposefully failed to comply with regulations and measures that pertain to the prohibition of spreading the HIV infection and thus transmitted the HIV infection to another person out of negligence. [26]Still, there are no clear data which confirm that a widespread application of the criminal law in regards to spreading HIV infection provides either justice to be served in criminal proceedings or prevention of spreading of the infection.

In Europe, every year more than 100.000 persons are diagnosed with the HIV infection, and in many countries in the region this number does not show any tendency of dropping. The successful increase in the number of people who get tested for HIV will reduce contracting the illness, patients dying and the number of new HIV infected persons. With continuous education about the importance and dangers of the HIV virus and respect for human rights, Serbia can contribute to a better position for homosexuals and HIV infected persons.

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