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Challenging dismissal and outdated employment practices - Greece

What was the issue?

D was employed in 2002 as a cabin crew member of an airline operating in Greece. After three months his contract became permanent and in 2008 he was promoted to cabin chief (SCCM). In 2013, after recurrent problems with his lungs, he went to the hospital where he was diagnosed with an acute respiratory infection due to an underlying cause of HIV infection. He took 3 months sick leave to start antiretroviral treatment, during which time he submitted all the necessary documents regarding his medical condition. His superiors required him to undergo aero-medical tests to obtain the required health certificate to return to his duties. The doctor responsible for the tests wrote “Unfit to perform the duties of a flight attendant – permanent unsuitability” and following this he was dismissed.

According to Greek equality laws covering “racial or ethnic origin, religion or belief, disability, age or sexual orientation” it is illegal to fire someone on the basis of one of the above mentioned identities. The EU medical regulations for cabin crew state that “Cabin crew members who are HIV positive may be assessed as fit if investigation provides no evidence of clinical disease and subject to satisfactory aero-medical evaluation.” However, the aero-medical evaluation requirements contradict this by stating “Cabin crew members shall be free from any... active, latent, acute or chronic disease or disability”.

Why was change needed?

As antiretroviral therapy (ART) has transformed HIV infection from a progressive, typically fatal infection, to a chronic lifelong disease, these requirements are open to interpretation by the individual healthcare professionals responsible for aero-medical assessments. The medical advances have outstripped law reform and there was an urgent need to advocate reforms on both an EU and national level.

The current legal situation allowed airlines to discriminate against their PLHIV employees, while the two articles could be also considered contradictory. This legal “grey zone” leaves the outcome to subjective interpretation, with unforeseen results of an upcoming trial in 2018, eradicating any hopes of extrajudicial compromise between the airline and the plaintiff. The judicial precedent of a similar case of dismissal of a PLHIV employee saw Greece condemned by the European Court of Human Rights.

How could matters be improved?

Since the national legislation regarding HIV positive flight attendants has to be in compliance with community and international regulations, the investigation that needed to be done should focus on all of them and evaluate the possible capacity to change. This issue should be brought up on an EU level and national level as there have been multiple cases of discrimination by airlines towards HIV positive employees.

What are the barriers to change?

The legislation of some countries (e.g. UAE) restrict entry by PLHIV, including airline employees. Possession of ART is considered proof of a positive HIV status. This challenge has already been faced and managed by other international airlines with fairly extended networks, and their HIV positive cabin crew members travel routes are limited appropriately. Moreover, the ignorance of some legislating MPs and MEPs regarding HIV and its transmission may be a barrier that HIV CSOs should focus on reducing.

What has been done so far?

Positive Voice has provided legal assistance and representation to the plaintiff. At the same time a press release has been published, denouncing the incident without naming the company or the business sector itself after following their legal counsel's advice. The first instance of judgement is expected in 2018. Until then, psychological support is being provided to the plaintiff and further investigation of the legislative framework is in process in order to inform future actions, including an appeal if necessary.

What lessons have been learnt?

Medical advances in HIV treatment have not been matched by laws covering employment and other forms of social discrimination. Some clinicians who are not HIV specialist may also continue to be misinformed about the risks (or not) of working with HIV. Even judicial precedent may not be enough to convince an employer or Government to act responsibly where stigma drives decisions. It can be useful to consider how other countries and industries have handled similar situations in order to show that it can be managed practically.