



The Constitutional Court once again recognized the ban on blood donation for MSM as unconstitutional

On December 17, 2019, the Constitutional Court once again recognized the established unreasonable ban for MSM (man, who has sex with other man) to be a blood donor as unconstitutional. The lawyers from GYLA and Equality Movement were plaintiffs in the mentioned case. The appealed norm banned MSM to be a blood donor for 10 years after the last sexual intercourse. Earlier, on February 4, 2014, the Constitutional Court recognized the order of the Minister of Health as unconstitutional, which permanently banned homosexual man to be a blood donor. Unfortunately, decision of the Constitutional Court, made on February 4, 2014, was executed by the Minister of Health as the Minister changed an indefinite ban with a 10-year ban on blood donation.

This time the Constitutional Court recognized the 10-year ban for MSM to be a donor as unconstitutional. In general, ban on blood donation for some time after the risky sexual intercourse, serves to prevent the spread of infectious diseases. The point is that for some time after the sexual intercourse, clinical studies cannot show whether a person is infected with HIV (**Human Immunodeficiency** Virus) or not. This period is

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so called “The Window Period”, which does not last more than one year from the last sexual intercourse. Modern medical methods can detect HIV a year earlier. It is unlikely for the medical examination not to be able to detect a person being infected with HIV for 10 years. That is why the Constitutional Court considered the imposition of this ban for MSM for 10 years as a violation of the right to freedom of personal development.

Herewith, the Constitutional Court has also found the discrimination. The danger of spreading HIV might be equally created by homosexual man, who had unprotected sexual intercourse and also by a heterosexual man, who had sexual intercourse with an person infected with HIV. However, according to the order of the Minister of Health, a heterosexual man, who had unprotected sexual intercourse with a person infected with a HIV, is not allowed to donate a blood for 1 year, as for the homosexual man for 10 years. And this circumstance indicated unequal treatment to homosexual man’s detriment, which had no justification.

It is noteworthy that the Constitutional Court is a negative legislator, the Constitutional Court can only abolish the existing unconstitutional regulation. The Constitutional Court itself cannot impose any term of restriction. This is competence of the positive legislator-legislative and executive government. Therefore, the Constitutional Court has set a deadline to the Minister of Health until March 31, 2020, to adopt a new normative act, which will impose new terms for “the window period”. GYLA believes that this term shall not be discriminatory-less than a heterosexual person has in case of unprotected sexual intercourse. Term for this temporary ban in case of heterosexual person is one year.

GYLA calls upon the Ministry of Health, at least this time, to properly enforce the Constitutional Court’s ruling and not to impose unreasonably long-term restriction terms for homosexual man to be a donor.

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