



## **European network of legal experts in gender equality and non-discrimination**

### **FLASH REPORT**

<b>Country:</b>	Greece
<b>Title:</b>	Sanctions against a private company for the dismissal of a HIV positive employee
<b>Date:</b>	24 May 2019
<b>Expert:</b>	Theodoridis Athanasios
<b><u>Context</u></b>	
<b>Issue at stake:</b>	The right of a HIV positive patient not to be discriminated by being dismissed due to his disability
<b>Grounds of discrimination:</b>	Disability
<b>Field of application:</b>	Employment
<b>Source:</b>	National equality body
<b>Applicable law:</b>	Articles 1, 3 and 9 of Law 4443/2016

### **Content**

**Case development:** In early April 2019 the Hellenic Labour Inspectorate, after having received a relevant Opinion by the Greek Ombudsman, imposed a fine against a private company for the dismissal of a HIV positive employee. One month after being hired, while undergoing training to acquire the relevant certificate as cargo inspector, the employee was hospitalised. He was then diagnosed as HIV positive, of which he informed his employer as he would consequently need to be absent from work several months. Although he initially received, as he claims, an effective treatment which proved that his health would be improved, two months later he was informed by the company's representative that two people had been hired for training in the same area of expertise and there was no work for him to be assigned to.

Three days later, the company claimed, responding to the extrajudicial letter that he sent to the company asking for his return to work, that he had voluntarily quit. According to the company, the employee's working time in the business was only thirteen days, all of which as an apprentice, while he lacked in formal and qualifying skills and in performance over his colleagues, arguing that the company was unaware of his illness, at the time of his 'voluntary' retirement. The company also cited economic and technical reasons for his dismissal, claiming that the employee never carried out duties as cargo inspector, but was undergoing training throughout his employment. After the following labour dispute in the Hellenic Labour Inspectorate (HLI), the employer company made three attempts to resolve the dispute by proposing that the employee could return to work but on less favourable terms, terms that he did not accept.

The employee eventually addressed a complaint to the Ombudsman as Equality Body who, after taking into account the evidence from both parties, declared in November 2018 that the formal notification of termination of the claimant's employment contract was invalid because of his chronic illness. That is because the employer had not shown that they were unaware of the employee's health problem, nor did they sufficiently justify the reasons for his removal. In view of the above, the Ombudsman found a violation of the provisions on

direct non-discrimination (Articles 1, 3 and 9 of Law 4443/2016) and recommended to the HLI the imposition of the prescribed administrative sanctions in accordance with article 24 of Law 3996/2011 on the reformation of Hellenic Labour Inspectorate.<sup>1</sup>

Also, in the Ombudsman's report, an extensive reference is made to the International Labour Organisation (ILO) recommendations on HIV and AIDS in the field of work,<sup>2</sup> including:

*«3. [...] (c) there should be no discrimination or stigmatization of workers, in particular jobseekers and job applicants, on the grounds of real or perceived HIV status or the fact that they belong to regions of the world or segments of the population perceived to be at a greater risk of or being more vulnerable to HIV infection [....]*

*10. Real or perceived HIV status should not be a ground of discrimination preventing the recruitment or continued employment, or the pursuit of equal opportunities (...).*

*11. Real or perceived HIV status should not be a cause for termination of employment. Temporary absence from work because of illness or caregiving duties related to HIV or AIDS should be treated in the same way as absences for other health reasons (...).*

*12. When existing measures against discrimination in the workplace are inadequate for effective protection against discrimination in relation to HIV and AIDS, Members should adapt these measures or put new ones in place and provide for their effective and transparent implementation."*

Finally, in early April 2019, after having been informed by the Ombudsman, the Hellenic Labour Inspectorate's department imposed a fine on the employer company, an element which is also expected to be used in civil courts where the claimant's action is pending.

**Key points of analysis:** It is very important that the dismissal of a HIV positive employee is regarded as discriminatory even if the diagnosis takes place during his sick leave. The Ombudsman's Opinion ensures a high level of protection from discrimination as far as HIV positive employees are concerned.

**Internet link source:** <https://www.synigoros.gr/resources/20191104-porisma.pdf>.

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<sup>1</sup> Greece, Law 3996/2011 'on the reformation of Hellenic Labor Inspectorate, settlement of issues of social security and other provisions' (Νόμος 3396/2011 'για την αναμόρφωση του Σώματος Επιθεώρησης Εργασίας, τη ρύθμιση θεμάτων Κοινωνικής Ασφάλισης και άλλες διατάξεις') (OJ 170 A/05.08.2011).

<sup>2</sup> International Labour Organisation, Recommendation concerning HIV and AIDS and the world of work, 2010 (No. 200), 17 June 2010.