



Report

on evaluation of criteria for blood donor selection

Mr A (hereinafter also the “complainant”) turned to me because he was refused as a blood donor at facility M, and later also at University Hospital N. The grounds for turning him down was, allegedly, his sexual orientation, or rather distrust in his sexual abstinence. Mr A considers the conduct of facility M and University Hospital N discrimination on the grounds of sexual orientation.

The Public Defender of Rights Act¹ has entrusted to me competence *inter alia* in the area of the right to equal treatment and protection against discrimination.² Therefore, I assessed the objections raised by the complainant from the viewpoint of a potential violation of the Anti-Discrimination Act.³

After they turned the complainant down as a blood donor, I examined the procedure of facility M and University Hospital N.

A. Summary of conclusions

I examined various criteria for selection of donors that were, in case of Mr A, significant in his opinion and according to the statements of the facilities above, and I came to the following conclusions.

Transfusion facilities cannot refuse anyone as a blood donor solely on the grounds of sexual orientation. Such criterion constitutes direct discrimination and is unjustified (part C.2).

I do not find the rule that allows transfusion facilities to refuse a male blood donor who has had sexual intercourse with another man in the past twelve months discriminatory, as its objective is to ensure safety of the blood taken, and is justified with regards to epidemiological data and the possibilities of medicine (part C.3).

Transfusion facilities may turn donors down if they have reasonable doubts that the potential donor does not provide complete and truthful information that is necessary in order to assess the suitability of the donor. This reason must not be used as a pretext for arbitrary refusal of donors (part C.4).

1 Act No. 349/1999 Coll., on the Public Defender of Rights, as amended.

2 Section 1 (5) in conjunction with Section 21b of the Public Defender of Rights Act.

3 Act No. 198/2009 Coll., on equal treatment and legal remedies for protection against discrimination and on amendment to certain laws (the Anti-Discrimination Act), as amended



B. Findings

B.1 Rejection of blood plasma donation at facility M

The complainant visited facility M with the intention to donate blood plasma. He stated that the examining physician had turned him down as a donor on the grounds that the complainant was gay. The complainant tried to convince the doctor that sexual orientation is not an obstacle to blood donation, because legal regulations do not stipulate such condition. The complainant visited facility M again to discuss the matter with the doctor once more. While there, a different doctor showed him the facility's internal regulations which stated that homosexuality and bisexuality constituted grounds for permanent deferral of male donors.

The complainant further communicated with the facility via e-mail. The head physician, MUDr. B, apologised to the complainant for the inaccurate and misleading statement of the examining physician. However, she insisted that in compliance with the internal regulations, facility M does not take blood plasma from men who engage in homosexual intercourse.

To my request for a statement, facility M answered that its primary objective is to ensure the safety of the transfusion products. Considering that the complainant stated that he was gay, he was evaluated by the doctor as a person who had potentially been exposed to an increased risk of transmission of infectious diseases, and therefore not accepted for the blood draw. There is no way for facility M to verify the donor's statement that he has not had sex with a man for more than 12 months; moreover, the examining physician stated that the complainant did not look trustworthy.

B.2 Rejection of blood donation at University Hospital N

The complainant also went to University Hospital N in order to donate blood. When he told the head of the transfusion department about his experience with facility M, she turned him down as a donor as well. The complainant states that she turned him down solely because of his sexual orientation. When he assured her that he had not had sex for more than 12 months, she answered that she could not completely trust his statement of his 12-month sexual abstinence, which is why she could not accept him as a donor.

To my request for a statement, University Hospital N answered that according to the then head of the transfusion department, the complainant's provocative behaviour did not seem trustworthy, which is why she turned him down for the sake of safety of the transfusion products.

C. Legal analysis

I based my evaluation of this case on legal regulations and related sources, professional literature and recommendations, and I also asked the chairwoman of the Transfusion Medicine Society MUDr. C for her opinion.



I consider blood donation an altruistic act that is necessary for the society, as the current science has not yet found a way to manufacture and replace blood and its components. It is also an expression of solidarity of people who are healthy and decide to donate blood with people who cannot do so for health reasons, and people for whom, on the other hand, the blood is vital. Anyone can contribute to saving someone else's life.

A conflict of two main interests occurs when choosing blood donors – on one hand, there is the protection of life and health of the patients who are administered blood or blood components transfusion; on the other hand, there are rights of the donors, the protection of their dignity, i.e. the right not to be deferred for no reason or on the basis of prejudice. It is necessary to find a certain balance between the two issues; to find a solution that will both ensure high security of the transfusion products and not interfere with people's dignity unreasonably and in an unjustified way at the same time.

C.1 Application of the Anti-Discrimination Act to blood donation

Blood donation is an area regulated by a number of legal regulations⁴ providing for the selection of suitable donors, the blood collection, and further handling of the taken transfusion products. The Anti-Discrimination Act also applies to them.

The Anti-Discrimination Act prohibits less favourable treatment in specified areas of life on the grounds of, inter alia, sexual orientation⁵. The areas include access to health care and its provision, and access to goods and services.

The term 'healthcare' is not defined in the Anti-Discrimination Act; the definition is contained in the Healthcare Services Act. Therefore, healthcare means a set of activities or preventive, diagnostic, treatment, medical rehabilitation, nursing and other health care performances aimed to prevent, detect and eliminate diseases and to maintain, restore or improve medical condition, and also to preserve and prolong life and mitigate suffering (palliative care), to help with reproduction and delivery, and to assess health⁶. In a linguistic interpretation, we must conclude that the term donation of blood cannot be placed under the term health care in the sense of the Health Care Services Act because while donating blood, the donor does not receive health care or preventative care, and blood donation is undoubtedly not part of palliative care or care associated with reproduction and delivery. If the donor's medical condition is assessed during the

4 Act No.378/2007 Coll., on pharmaceuticals and amending certain related laws (Act on Pharmaceuticals), as amended; Act No. 285/2002 Coll., on donation, collection and transplantation of tissues and organs and amending certain laws (Transplantation Act), as amended; Act No. 372/2011 Coll., on health care services and the conditions of their provision (the Health Care Services Act), as amended; Act No. 373/2011 Coll., on specific medical services; Decree No. 143/2008 Coll., on setting more specific requirements on ensuring the quality and safety of human blood and its components (the Human Blood Decree), as amended.

5 Section 2 (3) of the Anti-Discrimination Act includes the following reasons: race, ethnicity, nationality, sex, sexual orientation, age, disability, religion, belief, or worldview.

6 Section 2 (4) of the Healthcare Services Act.



evaluation of his/her suitability to donate blood, it is solely for the purpose of ascertaining the suitability of the person as a donor, and not for their later treatment.⁷

The term healthcare services stands above the term healthcare.⁸ Apart from healthcare, healthcare services also include the activities of transfusion facilities⁹, i.e. activities of healthcare services providers exercised in blood donations.

From the legal point of view, the question is whether, in the sense of the Anti-Discrimination Act, activities of the healthcare services provider relating to blood donation (as well as other medical services that are not healthcare) fall under access to healthcare or to goods and services in general. In my opinion, activities of transfusion facilities are to be regarded as an area of access to health care, since it is carried out in healthcare facilities, by healthcare professionals and, in the broader sense, serves to provide healthcare. It is therefore necessary to assess the meaning and purpose of the legal regulation, and to take its development into account as well. The Anti-Discrimination Act was adopted at the time of effect of the Act on Public Healthcare, which preceded the Healthcare Services Act, and which did not directly contain the definition of healthcare and medical services; blood donation and other healthcare services that are not healthcare could therefore be considered healthcare in the sense of the Anti-Discrimination Act.¹⁰

In any case, even if these types of healthcare services could not be regarded as healthcare within the Anti-Discrimination Act, it would be possible to place them under the provision of goods and services under the Anti-Discrimination Act. Therefore, the main conclusion that the Anti-Discrimination Act applies to the activities of transfusion facilities remains unchanged.

Blood donation is a praiseworthy and altruistic act; however, I also consider it important to note that individuals' right to donate blood does not follow from any legal regulations. Therefore, no one can claim the right to donate blood. However, there is the right not to be discriminated.¹¹

7 For more on specific features of blood donation in relation to health care, see also: KŘEPELKA, Filip. Přípustnost vyloučení sexuálně aktivních gayů z darování krve v Evropské unii a v České republice jako jejím členském státu (*Admissibility of Deferral of Sexually Active Gay People from Blood Donation in the European Union and the Czech Republic as its Member State*). In: *Časopis zdravotnického práva a bioetiky*. [online]. 2015(3), [retrieved on. 2017-01-20], pp. 18-19. ISSN 1804-8137. Available at: <http://www.ilaw.cas.cz/medlawjournal/index.php/medlawjournal/article/view/99>

8 Section 2 of the Healthcare Services Act.

9 Section 2 (2)(h) of the Healthcare Services Act.

10 See Public Defender of Rights' Report on Inquiry of 1 August 2011, File No. 161/2011/DIS, available at: <http://eso.ochrance.cz/Nalezene/Edit/2206>.

11 In the same way that there is no right, for example, to be selected for a certain position in a selection procedure, but there is the right of the applicants not to be discriminated against.

More on non-discrimination at blood donation: DUNNE, Peter. A right to donate blood? Permanent deferrals for "Men who have Sex with Men" (MSM): Léger. In: *Common Market Law Review*. 2015, 2015(6), p. 1669. ISSN: 0165-0750.



C.2 Rejection of a donor on the grounds of sexual orientation

Sexual orientation cannot be the only reason for rejection of a blood donor.¹²

Sexual orientation, regardless of whether it is heterosexuality, female or male homosexuality, bisexuality, or asexuality, is a protected characteristic under the Anti-Discrimination Act.¹³ Discrimination on these grounds is prohibited, unless it is justified by the effort to achieve a legitimate objective, and the means chosen to achieve this objective are proportionate and necessary¹⁴.

The reason given for deferring homosexual and bisexual men is ensuring the safety of the blood taken. There is no doubt about the legitimacy of this objective, as it is also explicitly regulated in the Pharmaceuticals Act¹⁵. It is also true that sexual intercourse between men is the most common way of transfer of certain infectious diseases, in particular HIV, and there is also much higher number of HIV positive people among homosexual men than among people of other sexual orientations¹⁶. Considering the possibility of infectious disease transfer, anal sex, the type of sexual intercourse typically practiced by homosexual men, is riskier than other types of sexual intercourse.¹⁷

Nevertheless, the deferral of homosexual and bisexual men is not justified in itself, since sexual orientation does not indicate the actual sex life of an individual that is essential for evaluating the risk entailed by the donor. The criterion of sexual orientation does not take into account the fact that some homosexual men may be sexually inactive (for whatever reason) in the long term (or have never been sexually active), and the risk of their becoming infected by sexually transmitted diseases is therefore zero. At the same time, this criterion does not take into account cases where a man of other sexual orientation has (for whatever reason) had sexual intercourse with a man, and the risk of him becoming infected is therefore higher than zero. The general deferral of homosexual men deepens the stigmatization of sexual minorities, which also leads to deferral of those who would otherwise be suitable as donors.

12 The Public Defender of Rights reached this conclusion in the Report on Inquiry of 24 October 2011, File No. 75/2011/DIS; available at <http://eso.ochrance.cz/Nalezene/Edit/2262>.

13 BOUČKOVÁ, Pavla et al. *Antidiskriminační zákon: Komentář (Anti-Discrimination Act: Commentary)*. 2nd edition. Praha: C. H. Beck, 2016, pp. 77-78. ISBN 978-80-7400-618-0.

14 Section 7 (1) of the Anti-Discrimination Act.

15 Section 67 (4)(b) of the Healthcare Services Act.

16 It follows from the regular reports on HIV/AIDS in the Czech Republic that the most common manner of the HIV infection transfer is sex, where 78.4 % of all the infected in 2015 were men who were infected by HIV via sexual intercourse with another man. National Institute of Public Health. *Průběžná zpráva o výskytu HIV/AIDS v ČR u příležitosti Světového dne AIDS 2015*. [online] Státní zdravotní ústav (*Regular Report on HIV/AIDS in the Czech Republic on the Occasion of the World AIDS Day 2015*) [retrieved on 2016-2-20]. Available at: http://www.szu.cz/uploads/documents/CeM/HIV_AIDS/rocní_zpravy/2015/Prubezna_zprava_o_vyskytu_HIV_AIDS_v_CR_u_prilezitosti_Svetoveho_dne_AIDS_2015.pdf.

17 Micro traumas which facilitate the transmission of infection are more frequent during homosexual intercourse. This was confirmed by the chairwoman of the Transfusion Medicine Society in the statement she provided.

Taking into account other types of sexual intercourse between homosexual men (e.g. oral sex), the risk of transmission of infectious diseases is higher than for people of other sexual orientations purely because homosexual men have a higher prevalence of these diseases.



For this reason, deferral of donors from blood donation on the grounds of sexual orientation is not only discriminatory but also ineffective. Therefore, the risk factors of the donor's sex life, such as homosexual intercourse, would seem as a more effective criterion for choosing a donor.

Facility M is guilty of discrimination on the grounds of sexual orientation by considering male homosexuality and bisexuality in itself a reason to reject a donor.

C.3 Rejection of a male donor on the grounds of sexual intercourse with another man

I do not find the rule that allows transfusion facilities to refuse a male blood donor who has had sexual intercourse with another man in the past twelve months discriminatory. Its objective is to ensure safety of the blood taken, and the rule is justified with regards to epidemiological data and the possibilities of medicine.

The criterion of male homosexual intercourse is not automatically associated with sexual orientation¹⁸, but it is clear that this type of sexual intercourse is performed primarily by homosexual and bisexual men. Therefore, this criterion can constitute indirect discrimination – indirect discrimination means discrimination on the basis of a seemingly neutral criterion which typically negatively affects a particular group defined by a discrimination grounds. Differentiation justified by a legitimate objective that is proportionate and necessary does not constitute indirect discrimination.¹⁹

Pursuant to the Pharmaceuticals Act, the transfusion facility operators must ensure that the risk of transmission of any agents of human blood-borne diseases is reduced to a minimum²⁰. More detailed rules for ensuring the safety of the blood taken are provided for by the Human Blood Decree. The Decree requires that persons whose sexual behaviour means exposure to an increased risk of getting serious infectious diseases that can be transmitted by blood be deferred²¹. The requirements implement, *inter alia*, the European Union legislation.²² The term 'high-risk sexual behaviour' is defined neither in the Human Blood Decree nor in any other legal regulation.

Therefore, in practice, Recommendation of the Transfusion Medicine Society for the Assessment of Donors' Eligibility to Donate Blood or Blood Components is used to assess the donor's suitability, including from the point of view of his/her sexual life (hereinafter

18 Even men of other sexual orientations can engage in homosexual intercourse, for example as a sexual experiment, or during gainful activities (prostitution, making erotic films).

19 Section 3 (1) of the Anti-Discrimination Act.

20 Section 67 (4)(b) of the Healthcare Services Act.

21 Annex 3 (B)(1) of the Human Blood Decree.

22 Directive 2002/98/EC of the European Parliament and of the Council of 27 January 2003, setting standards of quality and safety for the collection, testing, processing, storage and distribution of human blood and blood components, and amending Directive 2001/83/EC; and Commission Directive 2004/33/EC of 22 March 2004 implementing Directive 2002/98/EC of the European Parliament and of the Council as regards certain technical requirements for blood and blood components.



the “TMS Recommendation”)²³. According to the TMS Recommendation, high-risk sexual behaviour refers to sexual intercourse with a prostitute (including sexual partners of such individuals who have had high-risk sexual intercourse), an HIV positive person, a person infected by or carrying hepatitis B or C, men who have had sexual intercourse with men and their female sexual partners, practice of sex with random sexual partners, or group sex.²⁴

Therefore, when assessing the donor’s suitability, the TMS Recommendation does not take into account his sexual orientation. It considers whether a potential male donor has had sexual intercourse with another man (or whether a female donor has had sexual intercourse with such a man). For such people, the TMS Recommendation sets a 12-month deferral period.

To ensure the safety of the blood taken, it is prescribed to carry out tests for the presence of HIV 1 and 2, hepatitis B and C, and syphilis²⁵. The period of temporary deferral has been primarily determined with regard to the fact that transmissible infectious diseases cannot be detected by blood tests immediately after infection, but only after a certain period of time (window period). The window period varies in length; using the modern tests, is it less than three weeks for HIV, and 2 months for hepatitis C. If there are concurrent diseases, the window period is longer.²⁶

For many homosexual men, the twelve-month period of deferral actually means permanent exclusion. It might be argued that homosexual men who live in permanent monogamous relationships and have not been diagnosed with any infectious disease should not be deferred. However, this argument must be rejected. All donors only communicate data regarding themselves to the transfusion service facilities. Naturally, they cannot communicate data regarding their partners, as they do not have it. Therefore,

23 Transfusion Medicine Society of the Czech Medical Association of J.E. Purkyně. *Recommendation of the Transfusion Medicine Society of the Czech Medical Association of J.E. Purkyně No. STL2007_03 of 12 April 2007, version 7 (2014_06) [online] [Retrieved on 2017-12-11] Available at http://www.transfuznispolecnost.cz/index.php?page=dokumenty&identifikator_kategorie=DOPORUCENE_POST_UPY*

24 Page 8 of the TMS Recommendation.

25 Section 4 (3) of the Human Blood Decree.

26 The chairwoman of the Transfusion Medicine Society stated that for the tests currently used in the Czech Republic, the window period for HIV is 15 days of the infection, 35 days for hepatitis B, and 65 days for hepatitis C.

See also CIUFO, Meredith. Drawing Blood: Towards an EU Remedy for Blood Donation Rights. In: Boston University International Law Journal [online]. 2013, year 31, p. 354. [retrieved on 2016-1-26] Available at http://heinonline.org/HOL/Page?handle=hein.journals/builj31&div=14&start_page=341&collection=journals&set_as_cursor=0&men_tab=srchresults; or Detecting HIV earlier: Advances in HIV testing. [online] In: CATIE: Canada’s source for HIV and hepatitis C information. [Retrieved on 2016-3-20]. Available at <http://www.catie.ca/en/pif/fall-2010/detecting-hiv-earlier-advances-hiv-testing>.

Report of the American FDA on NAT blood testing for HIV and HCV states that for HIV 1, the window period is 11-15 or 5-9 days, depending on the chosen method, and 50-60 days for hepatitis C (p. 3). Guidance for Industry: Nucleic Acid Testing (NAT) for Human Immunodeficiency Virus Type 1 (HIV-1) and Hepatitis C Virus (HCV): Testing, Product Disposition, and Donor Deferral and Reentry. [online] In: Food and Drug Administration. [retrieved on 2016-3-20]. Available at <http://www.fda.gov/downloads/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/Guidances/Blood/UCM210270.pdf>.



if a former or current partner has engaged in high-risk sexual behaviour, the risk that the donor will also be infected with one of the serious infectious diseases transmissible through blood and sexually is higher as well. Because the prevalence of these diseases is significantly higher for homosexual men, the risk of transmission of infectious diseases is the highest, and thus justifies their temporary deferral, even if they are not promiscuous at all. It might also be considered whether the potential donor had protected or unprotected sex. Protected sex significantly reduces the risk of transmission of infectious diseases, it does not, however, guarantee absolute safety, especially when it comes to anal sex.

The question therefore remains whether the period of temporary deferral for high-risk sexual behaviour is appropriate with regard to the diagnostic methods used, and also with regard to the deferral periods set for other groups, such as people who practice sex with multiple and random sexual partners or group sex, who are deferred for the period of six months.

In the *Léger* case²⁷, the Court of Justice of the European Union dealt with the issue of whether the French legislation according to which men who have had sexual intercourse with other men had been permanently deferred from blood donation was in compliance with the prohibition of discrimination on grounds of sexual orientation enshrined in the Charter of Fundamental Rights of the European Union.²⁸ The Court concluded that the higher presence of blood transmitted infections (especially HIV) among homosexual men could justify their deferral only if the safety of the blood taken cannot be ensured in an effective but less restrictive way than the deferral of such men. It therefore recognised certain special rules regarding this group of men, but suggested at the same time that the application of such special rules should be proportionate to their purpose in the light of current medical, scientific and epidemiological findings.

Looking abroad, we can see²⁹ that in European countries, men who engage in sexual intercourse with other men are unconditionally accepted as blood donors only rarely. In most countries, sexual intercourse of two men means a 12-month deferral; in many countries, the deferral is permanent. However, this issue has been discussed continuously in European countries – in the UK, the deferral period was shortened to 3 months earlier this year³⁰. In Germany, the permanent deferral of men who have had homosexual intercourse was dropped this year on the grounds that changing the deferral period to one

27 Judgement of the Court of Justice of the European Union of 29 April 2015, *Geoffrey Léger v. Ministre des Affaires sociales et de la Santé a Etablissement français du sang*, C-528/13.

28 Article 21 (1) of the Charter of Fundamental Rights of the European Union

29 Source: Wikipedia. *Men who have sex with men blood donor controversy*. [online]. © Wikipedia, last modified on 5 December 2017. [retrieved on 2017-12-11]. Available at: https://en.wikipedia.org/wiki/Men_who_have_sex_with_men_blood_donor_controversy.

30 Advisory Committee on the Safety of Blood, Tissues and Organs. *Donor Selection Criteria Report (2017)*. [online]. Department of Health, United Kingdom of Great Britain and Northern Ireland. © 2017. [retrieved on 2017-12-11]. Available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/635174/SaBTO_donor_selection_criteria_report.pdf.



year does not increase the risk for the blood recipients.³¹ The situation is similar in the Netherlands, where the deferral period has also recently been changed from permanent deferral to one year. Furthermore, it is being debated whether to drop the one-year deferral period and replace it with a shorter one, which should be sufficient with regard to the length of the window period for infectious diseases for which the blood is tested³². It is clear from the above that neither Czech legislation nor TMS Recommendation deviate from European practice.

However may the length of the deferral period cast doubts on its justification, given the reliability of the current infectious diseases tests, I do not feel qualified to question it; even more so considering the fact that in most Member States of the European Union, the rule is the same or even stricter. Transfusion facilities which exclude male donors who have had sexual intercourse with other men in the past 12 months and do so in accordance with, *inter alia*, the MTS Recommendation, do not commit discrimination.

I find the statement that the donor's claim of his (more than 12-month) sexual abstinence cannot be trusted extremely inappropriate, as the transfusion facilities cannot verify the information provided by any of the donors, regardless of their sexual orientation. If a transfusion service facility uses this justification to reject a donor of homosexual orientation, such statement implies that homosexuals as a group cannot be trusted. Such statement, however meant, could affect the complainant's dignity.

C.4 Rejection of a donor on the grounds of untrustworthiness

Transfusion facilities may defer donors if they have reasonable doubts that the potential donor does not provide complete and truthful information that is necessary in order to assess the suitability of the donor. This reason must not be used as a pretext for arbitrary refusal of donors. The rejection should not be based on prejudice (for example on the idea of homosexuals leading promiscuous lives).

Transfusion facilities are responsible for the safety of the blood taken. For this reason, they are obliged to conduct a personal interview with the donors, provide them with the prescribed information and obtain information about them relating to their medical condition and other facts that may affect the correct assessment of whether the collection of their would pose a risk to them or the future recipients.³³

31 Homosexuelle Männer dürfen Blut spenden - nach einem Jahr Enthaltbarkeit. Spiegel online. [online]. Published on 7 August 2017 [retrieved on 2017-12-11]. Available at: <http://www.spiegel.de/gesundheit/diagnose/blutspende-homosexuelle-maenner-duerfen-spenden-nach-einem-jahr-enthaltbarkeit-a-1161737.html>.

32 European network of legal experts in gender equality and non-discrimination. *NIHR: ban on donation of blood by gay and bisexual men is discriminatory*. [online]. European Commission. [retrieved on 2017-12-11]. Available at: <http://www.equalitylaw.eu/downloads/2876-netherlands-nihr-finds-ban-on-donation-of-blood-by-gay-and-bisexual-men-is-discriminatory-pdf-75-kb>; *Gay men can donate blood, with a year wait after sex*. DutchNews.nl. [online]. Published on 28 October 2015 [retrieved on 2017-12-11]. Available at: <http://www.dutchnews.nl/news/archives/2015/10/gay-men-can-donate-blood-with-a-year-wait-after-sex/>.

33 Section 4 of the Human Blood Decree and its Annexes 1-3.



The process of blood donation is dependent on the willingness of the donors to communicate truthful and complete information about themselves, where the information is oftentimes of a very sensitive nature. The transfusion facilities are not able to verify most of the information, and if they are, it is only with a substantial amount of time and effort. In practice, thorough verification of the information provided is impossible.

Voluntary blood donation is currently preferred over donations for a reward³⁴, as some donors may be too motivated by the direct financial reward for the donation, and may therefore tend to conceal some information about themselves.

Nevertheless, it cannot be excluded that there may be people who deliberately communicate false information or conceal some information because, for some reason, they want to donate blood. If an authorized member of staff of a transfusion facility has doubts about the truthfulness of the information provided by the donor during the interview, for example if his/her statements are inconsistent or in case of suspicion of a serious lack of credibility, he/she is entitled to reject the donor. This can occur in a number of cases, such as when the authorised staff member is under the impression that the donor may be under the influence of a dependency producing substance, that he/she has not complied with the period of non-smoking, that he/she intravenously or intramuscularly uses non-prescription medicine, hormones or anabolic steroids, that he/she has recently undergone surgery, or had a tattoo done. These may also be cases where there are significant doubts about the donor's basic hygiene habits, where bad hygiene may increase the risk of blood transmitted diseases.

However, the untrustworthiness of a donor must not be a pretext for rejection of donors on other grounds, such as sexual orientation, nationality, race or disability, which does not affect the donor's eligibility to donate blood³⁵, and so on. It is unacceptable to use the grounds of untrustworthiness of the donors as a cover for the prejudices of the lifestyle of some groups, typically of the high promiscuity of homosexual men.

D. Information on further procedure

On the basis of my assessment and pursuant to Section 21b (c) of the Public Defender of Rights Act, I would like to provide a **recommendation for transfusion facilities** to base the selection of donors on current scientific knowledge, and not to follow criteria based on prejudices that not only do not ensure the safety of the blood, but also interfere with the dignity of individuals and support the prejudices about them. The staff of the above facilities should be trained in this respect.

34 World Health Organization. *Towards 100% Voluntary Blood Donation. A Global Framework for Action*. [online] [retrieved on 2017-12-11]. ©World Health Organization 2010. ISBN 978 92 4 159969 6. Available at: http://www.who.int/bloodsafety/publications/9789241599696_eng.pdf?ua=1.

35 For example, in the past, the Defender dealt with a case of a blind woman who was rejected as a blood donor, although there was no valid reason for it – it was a case of general rejection of people with sensory impairment, not of reasons for eliminating the health risks for the donor or personnel and work load of the transfusion facility. Public Defender of Rights' Report on Inquiry of 1 August 2011, File No. 161/2011/DIS, available at: <http://eso.ochrance.cz/Nalezene/Edit/2206>.



I would also like to provide a **recommendation to the Transfusion Medicine Society**. For creating and updating the recommended procedures, I recommend to draw on current scientific knowledge, to submit the recommended procedures to critical reflection and comparison with foreign countries, and not to exceed the necessary limits in ensuring the safety of transfusion products and thus not to interfere with the dignity of others unnecessarily.

I am sending this report to the complainant, facility M, University Hospital N and to the Transfusion Medicine Society. If any of the parties wishes to comment on it, they should do so within 30 days of its receipt.

Brno, 21 December 2017

Mgr. Anna Šabatová, Ph.D., signed
Public Defender of Rights
(this report bears an electronic signature)