



Press and Information

Court of Justice of the European Union

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Judgment in Case C-528/13

Geoffrey Léger v Ministre des Affaires sociales, de la Santé et des Droits
des femmes and Établissement français du sang

The permanent deferral from blood donation for men who have had sexual relations with another man may be justified, having regard to the situation prevailing in the Member State concerned

It must be established whether those persons are at a high risk of acquiring severe infectious diseases, such as HIV, and that there are no effective detection techniques or less onerous methods for ensuring a high level of health protection for recipients

On 29 April 2009, a doctor at the Établissement français du sang (French Blood Agency) in Metz (France) refused the blood donation offered by Mr Léger on the ground that he had had sexual relations with another man, and that French law permanently excludes blood donations from men having had such sexual relations. As Mr Léger challenged that decision, the Tribunal administratif de Strasbourg (Administrative Court, Strasbourg, France) asks the Court of Justice whether such permanent deferral is compatible with an EU directive¹. According to that directive, persons whose sexual behaviour puts them at a high risk of contracting severe infectious diseases that can be transmitted by blood are subject to a permanent deferral from blood donation.

In today's judgment, the Court declares, first of all, that the Tribunal administratif de Strasbourg will have to determine whether, **in France, in the case of a man who has had sexual relations with another man, there is a high risk of acquiring severe infectious diseases that can be transmitted by blood**. For the purposes of that examination, the Tribunal administratif de Strasbourg, will have to take account of **the epidemiological situation in France** which, according to the French Government and the Commission, has a specific character. In that connection, the Court emphasises that, according to the data submitted to it, in the period 2003 to 2008, almost all HIV infections were due to sexual relations, and that half of those newly infected were men who have had sexual relations with other men. During the same period, such men were the population most affected by HIV, with a rate of infection 200 times greater than that for the heterosexual population in France. Finally, in France, the prevalence of HIV in the group constituted by men who have had sexual relations with other men is the highest among all the States in Europe and Central Asia. The Tribunal administratif de Strasbourg will therefore have to ascertain whether, in the light of current medical, scientific and epidemiological knowledge, that data is reliable and still relevant.

Even if the Tribunal administratif de Strasbourg considers that, in France, men who have had sexual relations with other men are at a high risk of acquiring diseases such as HIV, the question arises as to whether the permanent contraindication to blood donation is consistent with the fundamental rights of the EU and, in particular, with **the principle of non-discrimination on the basis of sexual orientation**.²

Having regard to the fact that French law is liable to discriminate against male homosexuals on the basis of sexual orientation, the Court recalls that any limitations on the exercise of the rights and freedoms recognised by the Charter of Fundamental Rights of the EU may be imposed only if they are necessary and genuinely meet objectives of general interest recognised by the EU or the need

¹ 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 (OJ 2004 L 91, p.25).

² Article 21(1) of the Charter of Fundamental Rights of the EU.

to protect the rights and freedoms of others. In that connection, the Court rules that, although the permanent deferral provided for in French law helps to minimise the risk of transmitting an infectious disease to recipients and, therefore, to the general objective of ensuring a high level of human health protection, **the principle of proportionality might not be respected**. It is possible that HIV may be detected by effective techniques able to ensure a high level of health protection for recipients. The national court will have to verify whether such techniques exist, it being understood that the tests must be carried out in accordance with the most recent scientific and technical procedures.

If there are no such techniques, the Tribunal administrative de Strasbourg will have to ascertain whether there are **less onerous methods of ensuring a high level of health protection for recipients other than permanent deferral from blood donation** and, in particular, whether the questionnaire and the individual interview with a medical professional are able to identify high risk sexual behaviour more accurately.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

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