



Case C?528/13

Case C?528/13 Geoffrey Le?ger v Ministre des Affaires sociales, de la Sante? et des Droits des femmes, E?tablissement franc?ais du sang

Country: France

Region: Europe

Year: 2015

Court: European Court of Justice European Court of Justice

Health Topics: Health care and health services, HIV/AIDS, Infectious diseases

Human Rights: Freedom from discrimination

Facts

The case concerned whether France could permanently defer men who have had sex with another man from blood donation.

Mr. Léger went to a collection center to donate blood, but his blood donation was refused on the ground that he had had sexual intercourse with another man. The decision was based on a French decree permanently deferring blood donations from any man who has had sexual relations with another man.

Mr. Léger brought an action to the Administrative Court, Strasbourg, claiming that the permanent deferral of blood donations was incompatible with Directive 2004/33 regarding certain technical requirements for blood and blood components. The Administrative Court referred the issue as a preliminary question to the Court of Justice of the European Union.

Decision and Reasoning

The Court declared that it is for the Administrative Court to determine whether there is a high risk of transmitting severe infectious diseases by blood when a man has had sexual relations with another man, taking into account current medical, scientific, and epidemiological knowledge. If it is determined that such a risk is reasonably present, the Administrative Court must determine whether, and under what conditions, a permanent deferral from blood donation is compatible with fundamental EU rights. The Court ruled that, in order for the permanent deferral to be compatible with fundamental EU rights, it must be determined that men who have sex with men have a higher risk of acquiring severe infectious diseases and that there are no effective techniques for detecting those diseases, or, alternatively, that there are no less onerous methods than permanent deferral for ensuring a high level of health protection for the recipients of the donated blood.

Decision Excerpts

“ . . . if the referring court concludes, in particular in the light of those data, that the national authorities could reasonably consider that, in the case of a man who has had sexual relations with another man, there is in France a high risk of acquiring severe infectious diseases that can be transmitted by blood, [...] it must be determined whether, and under what conditions, a permanent deferral from blood donation, such as that at issue in the main proceedings, may be compatible with the fundamental rights recognised by the EU legal order.” Para. 45.

“In the present case, the permanent deferral from blood donation aims to minimise the risk of transmitting an infectious disease to recipients. That deferral thereby contributes to the general objective of ensuring a high level of human health protection, which is an objective recognised by the EU in Article 152 EC, and in particular in Article 152(4)(a) and (5) EC, and Article 35, second sentence of the Charter, which requires a high level of human health protection to be ensured in the definition and implementation of all Union policies and activities.” Para. 57.

“In a case such as that in the main proceedings, that principle is respected only where a high level of health protection for the recipients cannot be ensured by effective techniques for detecting HIV which are less onerous than the permanent deferral from blood donation for the entire group of men who have had sexual relations with other men.” Para. 59.

