



Levan Asatiani, et al. v. Minister of Labour, Health and Social Affairs

Case #2/1/536

Country: Georgia

Region: Europe

Year: 2014

Court: Constitutional Court [აქართველოს ადამიანთა უფლებების დაცვის საბჭო; საქართველოს იუსტიციის მინისტრის განკარგულებაში არსებული სასამართლო]

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

Human Rights: Freedom from discrimination

Facts

The Minister of Labour, Health and Social Affairs of Georgia issued orders by which "homosexuals" were prohibited from donating blood or its components. The plaintiffs self-identified as homosexuals and, accordingly were impacted by the order.

The plaintiffs alleged that the regulations of the Minister of Labour, Health and Social Affairs of Georgia were in contradiction with the constitutionally protected rights of equality and free development.

During the course of litigation, the Minister of Labour, Health and Social Affairs implemented orders 8 October 2013 orders #241/აქ and #282/აქ, which changed the "banning of "homosexuals" to "men who have sex with men." The respondents submitted a motion to postpone or terminate the case because the new order doesn't use the word homosexual.

Decision and Reasoning

The Constitutional Court found that while the goal of limiting HIV and hepatitis transmission through blood was a legitimate goal for the government, the usage of the term homosexual in the original order is unconstitutional because it is discriminatory treatment (Article 14 of the Constitution) and a limitation on the right to free personal development (Article 16 of the Constitution).

The court found that homosexuals are "substantially equal persons" in regards to blood donation and that a categorical ban is unconstitutional unequal treatment. While the legitimacy of stopping disease transmission allows restriction of the right, the listed restriction is not the least restrictive measure. Restricting homosexual donations does not properly include all risky sexual behavior that can lead to disease infection and unnecessarily restricts men who have sex with men in a monogamous relationship or who only have safe sex. Likewise, it doesn't provide for any relieving of the restriction after the potential "window period" when an infection may not be detected through testing.

The donation of blood is a part of the right to free personal development, Article 16 of the Georgian Constitution. While the right to personal development is not an absolute right, the right may only be limited after assessing the proportionality of the need to restrict it. As the Georgian legislators include persons who have no dangerous health risks in the ban on donation, the restriction is not proportional.

Decision Excerpts

§ 38. აქტიური უფლებების დაცვის საბჭომ დაადგინა, რომ საქართველოს იუსტიციის მინისტრის განკარგულებაში არსებული სასამართლომ მიწვეულია, დააკმაყოფილოს პლაცდენტების მოთხოვნები და შეწყვიტოს აღნიშნული ბრძანებების აღსრულება. სასამართლომ დაადგინა, რომ აღნიშნული ბრძანებების მიზანშეწონიერება არ არსებობს, რადგან ისინი დისკრიმინაციულად მოქმედობს და შეზღუდვს პლაცდენტების უფლებას თავისუფლად განაგრძოს საკუთარი სისხლის დაწვრივების უფლება. სასამართლომ დაადგინა, რომ აღნიშნული ბრძანებების მიზანშეწონიერება არ არსებობს, რადგან ისინი დისკრიმინაციულად მოქმედობს და შეზღუდვს პლაცდენტების უფლებას თავისუფლად განაგრძოს საკუთარი სისხლის დაწვრივების უფლება.

56. As Article 16 of the Constitution ensures the person's right to freely self-identify, independently determine one's own identity, way of life and style, individual development and the ways and forms of relations with others, own moral, social, intellectual or other requirements and satisfaction of the interests, it at the same time includes a person's intimate life, a right to determine one's own gender and sexual orientation and freedom to choose sexual behavior.

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