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Judgment T-465-03

ARMED FORCES – Training schools / ARMED FORCES –Training schools Regulations

The Armed Forces training schools are state entities that are geared towards the "comprehensive preparation of future officers, for the proper fulfillment of their institutional mission, which is the defense of sovereignty, preservation of internal and external security and support for the country's development. Moreover, it emphasizes the comprehensive nature of officer training, in its human, ethical, scientific, physical, military and cultural aspects, and with a profound respect for the person and human values." The actions of these types of institutions "are subject to the internal regulations governing the institution and an officer training school, pursuant to Law 30, 1992, that, in turn, ordered that the organization, operation and staff regime of Armed Forces and National Police training schools are governed by special rules applicable to military units as related to the higher education programs that they offer, and are subject to Law 30 of 1992 and its regulations." The Armed Forces training schools are governed by their respective regulations, "that address the individuality and identity that is proper to the institution, applicable provisions, provided, as repeatedly noted by this Corporation,that their content does not violate the fundamental principles and rights guaranteed by the Political Constitution."

ARMED FORCES – Reasonable and objective admission requirements

ARMED FORCES – Reasonable and objective grounds for termination

PERSON ILL WITH AIDS – Non-discrimination

MILITARY SCHOOL – Unfair termination of an HIV carrier

CONSTITUTIONAL JUDGE – Exceptional intervention in a physician – patient relationship for the protection of fundamental rights

MILITARY SCHOOL – discriminatory termination of an asymptomatic HIV carrier /

MILITARY SCHOOL – Reincorporation of an asymptomatic HIV carrier

RIGHT TO EDUCATION AND TO CHOOSE PROFESSION OR TRADE – violation caused by unfair termination of an HIV carrier who did not obtain assistant lieutenant position

MILITARY SCHOOL – Recognition position of assistant lieutenant to terminated VIH carrier

RIGHT TO PERSONAL INTEGRITY AND DIGNITY OF HIV CARRIER – Assignment of funds according to illness

Reference: Case T-707205

Constitutional protection action brought by XX against the Ministry of National Defense – Cadet school "General José María Córdova"
Majority Opinion: Dr. MANUEL JOSÉ CEPEDA ESPINOSA

Bogotá, D.C., fifth (5) of June of two-thousand and three (2003)

The Third Review Chamber of the Constitutional Court, composed of judges, Manuel José Cepeda Espinosa, Jaime Córdoba Triviño and Rodrigo Escobar Gil, in the exercise of their constitutional and legal powers, has decided the following:

JUDGMENT

During our review of the ruling delivered by the Civil and Agrarian Cassation Chamber of the Supreme Court of Justice within the constitutional challenge brought by XX against the Ministry of National Defense – Cadet School "General José María Córdova".

1. FACTS AND BACKGROUND

1.1 Mr. XX[1] filed a constitutional action via his attorney-in-fact against the Ministry of National Defense – Military Cadet School "General José María Córdova" on October twenty-eight (28), 2002 seeking to obtain the protection of his rights to life, equality, work, privacy, liberty to choose a profession or trade and health. The plaintiff claims that he was admitted to Cadet school "General José María Córdova" via Resolution No. 00850 dated September 3, 1999, after the respective medical exams and a diagnosis of good health condition; that, throughout the years that he was at this institution, first as a cadet and subsequently as a second lieutenant, he completed all of the prescribed coursework and fulfilled all other requirements contemplated by the regulations form promotion to Assistant Lieutenant of the National Army; that, during a blood drive on May 24, 2002, he was diagnosed as HIV-positive, according to certificate No. 2624, dated September 16, 2002, of the Physician's Board of the Armed Forces. For this reason, via Resolution No. 091 dated September 30, 2002, the Military Cadet School adopted the decision to terminate him from said institution despite the fact that the plaintiff had only two months leftfor promotion toAssistant Lieutenant; and that the defendant leaked that information.

Further, the plaintiff's attorney-in-fact cites articles 2[2] and 7[3] of Decree 1543 of 1997 "which regulate the handling of the infection from Human Immunodeficiency Virus (HIV), Acquired Immunodeficiency Syndrome (AIDS) and other Sexually-

[1] In a preliminary manner, and as a measure to protect Mr. XX's privacy, we will order suppression from this providence of all data and information that could lead to his identification or that of his family members.

[2] Article 2 of Decree 1543 of 1997 partially cited in the referenced constitutional action defines an asymptomatic person as a "[p]erson infected by the Human Immunodeficiency Virus (HIV) that does not present symptoms, or signs related to AIDS."

[3] Article 7 of Decree 1543 of 1997 provides: "For all legal purposes, a person shall be considered to be infected by the Human Immunodeficiency Virus (HIV) while he or she is asymptomatic, is not considered to be sick with AIDSI (AIDS).

Transmitted Diseases (STDs)", based on which the plaintiff claims that he is subject to discrimination from the defendant Military Cadet School.

Based on these arguments, he requests: i) that the plaintiff be restored "in his capacity as regular student of Cadet School "General José María Córdova", as cadet, with all rights and prerogatives that he had prior to the issuance of the unfair resolution, as if it had never existed";[4] ii) authorization of his promotion to Assistant Lieutenant of the Army; iii) assignment to an activity that is suitable for his condition as an HIV carrier; iv) provision of medical treatment as required by article 9 of Decree 1543 of 1997.[5]

1.2 The Brigadier General, Mario Enrique Correa Zambrano, in his capacity of Director of Cadet School "General José María Córdova" challenged the referenced constitutional action and opposed the plaintiff's claims: the Cadet School is a higher education institution that enjoys the autonomy ascribed to universities as enshrined by article 69 of the Constitution; by virtue of such autonomy, said institution can determine the conditions for admission and termination; the plaintiff was terminated from said institution pursuant to Resolution No. 091 of September 30, 2002 under the decision adopted by the Medical Board of the Armed Forces via Certification No. 2624 dated September 16, 2002, which indicated that Mr. XX was not suitable; the plaintiff filed a first-level challenge against said action, but it was affirmed by the Director of the Cadet School via Resolution 104 dated October 18, 2002; letter d. of article 23 of the regulations of this institution provides that individuals who are declared unsuitable by the Army's health authorities shall be removed from said institution; Decree 1976 of 2000 regulates the special health conditions that must be observed by the members of the Armed Forces; the plaintiff was not denied due process as the referenced decision was adopted pursuant to the procedure established for these purposes. Nor were his other rights violated, as said decision is based on the medical opinion issued by the competent authority.

1.3 The Civil Chamber of the Superior Court of Neiva is assigned to hear the referenced case at the trial level. In the ruling delivered on the 19thof November (19) of two thousand and two, the court denied the constitutional challenge under review because it considered that the "Medical Military Board diagnosed that [the plaintiff] was not 'suitable' for service because he suffered from 'a diminished working capacity of one hundred percent (100%),' for this reason, this required that cadet XX 'losehis capacity of student,' as provided in Resolution No. 91 dated September 30, 2002. It is worth noting that the constitutional judge is banned from reviewing or disputing the arguments made by the Military Medical Board to perform the challenged diagnosis, as this would represent an improper interference with medical

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[4] See page 7 of the record.

[5] Article 9 of Decree 1543 provides: "*Comprehensive health treatment*. Comprehensive health treatment to asymptomatic persons infected by the HIVI (HIV) and people ill with AIDSI (according to the criteria of the health team and subject to the technical administrative rules issued by the Ministry of Health, can be ambulatory treatment or hospitalization, home treatment or community treatment and shall have its action in the areas of prevention, diagnosis, treatment, rehabilitation and readaptation. This shall include the medication required to control the HIV and AIDS infection, that, at the time that they are considered effective, to improve the quality of life of the person who was infected. Paragraph. The family and reference social group shall actively participate in the maintenance of the health of asymptomatic people infected by HIVI (HIV), the recovery of persons sick from AIDSI (AIDS) as well as the process of well decease of persons in a terminal state."

matters. Similarly, it cannot review the determination of the special conditions that must be met for a person to be able to perform as a soldier of the Republic. Moreover, the Court cannot question whether the Board's opinion should have been different, given Mr. XX's condition as asymptomatic patient, as this is a matter addressed by the content of the decision itself, that must be reviewed by the Administrative Contentious Jurisdiction, if the plaintiff decides to challenge the Resolution to remove him that was adopted by the Educational Institution, through the recourse under article 85 of the C.C.A."[6]

1.4 The plaintiff's attorney-in-fact challenged the ruling delivered by the trial court. He claimed that the tribunal abstained from analyzing the conditions of an asymptomatic patient, and this led to discrimination against his principal.

1.5 The Civil and Agrarian Cassation Chamber was assigned to review the appeal of the constitutional challenge. In a ruling dated December 16, 2002, the appellate chamber affirmed the ruling delivered by the trial court. It noted that "[r]esolution No. 091 of September 30, 2002 delivered by the Director ofCadet School "General José María Córdova" provides, in its first article: order that cadet XX c.m. 7'714.120 lose his capacity as a student as he has been declared unsuitable for military activity. And in article second, it resolves to "suspend the discharge of cadet… until the Military Health Court rules definitively.' In these conditions, we must state that despite the fact that the resolution orders the removal of the student, this determination would only be applied if the Military Health Tribunal were to AFFIRM the trial ruling delivered, if it were to consider the decision issued by the Health Board. We are in the presence, therefore, of a process that has not ended, and thus, the situation proposed by the plaintiff may not present itself if the Tribunal were to revoke the Board's decision. This is therefore a premature action.[7]

1.6 Thus, via writ dated March 12, 2003, the Third Selection Chamber should have selected this case for review by the Constitutional Court and assigned it to the Third Revision Chamber of this Court.

2. CONSIDERATIONS AND ARGUMENTS

2.1 Jurisdiction

The Constitutional Court, through this Chamber, is competent to review the orders issued by the lower court judges within the referenced case, in the exercise of the powers granted by articles 86 and 241, numeral 9 of the Political Constitution and pursuant to articles 33 to 36 of Decree 2591 of 1991.

2.2 Admissionto review of this constitutional challenge

The Third Review Chamber analyzes the argument set forth by the Civil and Agrarian Cassation Chamber of the Supreme Court of Justice to deny the constitutional challenge, prior to addressing the review of the legal problems set forth at this time. The Civil and Agrarian Cassation Chamber of the Supreme Court of Justice held that

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[6] See page 122 of the record.

[7] See page 10 of the record (2nd volume).

the action had been filed prematurely because the Military Health Tribunal had yet to issue a final ruling on the removal of cadet XX and is therefore dismissed.

The argument set forth to support the dismissal is insufficient. Indeed, article 86 of the Constitution provides that a constitutional challenge can only "apply when the affected party has no other means of judicial defense, unless it is used as a transient mechanism to avoid irreparable harm." In this same sense, article 9 of Decree 1591 of 1991 provides that "[i]t shall not be necessary to first file a first-level challenge and another administrative recourse to file the request for constitutional review." When the dispute is brought regarding the current violation of fundamental rights, a court can only declare that a constitutional action does not apply when there is an alternative means of defense (i) that is judicial in nature and (ii) that is suitable in the concrete case to protect the constitutional rightinvoked. Appealing before the Military Health Tribunal is not a judicial means of defense – rather, it is administrative in nature. The plaintiff cannot be required to use it prior to resorting to a constitutional review, more so when he was already removed from the Military School.

The Chamber highlights that Cadet School "General José María Córdova" had removed the plaintiff prior to him filing the constitutional challenge under review, because he was an HIV carrier and thus, this suggested the existence of clear and present harm. Thus, the action does apply.

2.3 Legal problem

According to the facts and background in the referenced case, the Chamber goes on to resolve the following legal problems: (i) Could Cadet School "General José María Córdova" remove cadet XX because he had contracted the HIV virus or, on the contrary, was this decision discriminatory?; (ii) Does the plaintiff have a right to be promoted to Assistant Lieutenant of the Army? (iii) Should he be assigned to an activity that is suitable for his condition as HIV positive? (iv) Does he have a right to the medical treatment that he needs, according to his condition?

In order to answer these questions, the Chamber shall first rule on the constitutional case law regarding the autonomy of higher education institutions, including Armed Forces or Police training schools and regarding the obligations of said institutions to respect fundamental constitutional rights. It shall later reference the theory repeatedly set forth by the Constitutional Court according to which unreasonable or disproportionate burdens or different and harmful treatments to HIV carriers or people who suffer from AIDs violates the Constitution. Indeed, the Chamber shall rule upon the ban ondiscriminating against HIV carriers and on the application to the military of this principle within the particularitiesof this educational institution. Based on the foregoing, the Chamber shall go on to resolve the legal problem that has been set forth.

2.4 The autonomy of higher education institutions is not an absolute guarantee and it must respect constitutional rights

2.4.1 The Constitutional Court has held that Military Training Schools are state entities that are geared towards the "comprehensive preparation of future officers, for

the proper fulfillment of the institutional mission, which is the defense of sovereignty, maintenance of internal and external security and support for the country's development. Moreover, the comprehensive nature of the officers' training is emphasized, in its human, ethical, scientific, physical, military and cultural aspects, and with a profound respect for the person and human values."[89] The actions of these types of institutions "are subject to the internal regulations that govern the institution and an officer training school, pursuant to Law 30, 1992, that ordered that the organization, operation and staff regime of Armed Forces and National Police training schools are governed by special rules applicable to military units as related to the higher education programs that they offer, and are subject to Law 30 of 1992 and its regulations."[10]

Indeed, article 137 of Law 30 of 1992 "that organizes the public service of higher education," provides that "[…] the Training Schools of the Armed Fore sand National Police that provide Higher Education programs, […] shall operate pursuant to their legal nature and shall adjust their academic regime pursuant to this law."
Thus, the Armed Forces training schools are governed by the respective regulations, " that address the individuality and identity that is proper to the institution, applicable provisions, provided, as repeatedly noted by this Court, that their content does not violate the fundamental principles and rights guaranteed by the Political Constitution."[11]

2.4.2 The Court specifies that equality is a fundamental right that will limit the actions of the Armed Forces training schools. It has ruled as much when it reviewed the constitutional challenge filed by a plaintiff in the case of denial of an admissions request to officers that had requested attending a computer course that was offered by the Army's administrative corps on account of the fact that the plaintiff was short.

At this time, the Court held that "the human person, in his or her essence, is offended when, in order to perform the activities that he or she is suitable for, he or she is excluded from them because of an accidental factor that does not affect this suitability. State and private entities, as well as armed corps can require certain factors for admission to a certain academic program, for a certain type of specialized training or to perform certain tasks. When they do so, and, as a result, reject all candidates who did not fulfill any of the requirements noted, they do not violate their rights by rejecting them, provided […] that the respective decision has been made based on an <u>objective </u>consideration of the fulfillment of applicable rules. However, the requirements must be reasonable, cannot imply any unjustified discrimination between people and must be proportional to the purposes for which they are established."[12]

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[8] ST-438/92 (MP. Eduardo Cifuentes Muñoz); ST-503/92 (MP. Simón Rodríguez Rodríguez); ST-582/92 (MP. Eduardo Cifuentes Muñoz); ST-361/93 (MP. Eduardo Cifuentes Muñoz)

[9]Judgment T-596 of 2001; M.P. Álvaro Tafur Galvis. In this judgment, the Constitutional Court heard a constitutional challenge filed by a plaintiff who was fired from the Military Aviation School "Marco Fidel Suárez" due to his commission of a disciplinary offense. The Court, at this time, analyzed whether this was appropriate given the autonomy of Armed Forces training schools.

[10] Judgment T-596 of 2001, cited above.

[11] Judgment T-596 of 2001, cited above.

[12]Judgment T-463 of 1996; M.P. José Gregorio Hernández Galindo.

The objective and reasonable standards apply not only to the admission or rejection of any person who wishes to undergo military or police training, but also to those who may be removed from it when they have been admitted to a program of this nature.

2.5 Unreasonable or disproportionate burdens or different and harmful treatment to a party who is HIV positive or suffers from AIDS violate the Constitution

2.5.1 The Constitutional Court has repeatedly stated that the Political Charter is violated when unreasonable or disproportionate burdens are imposed on HIV carriers or people who suffer from AIDS or they are treated differently and harmfully on account of being a carrier of said virus or sick with the referenced syndrome. As a result, this Court has insisted on "the need to remember that the party who is sick with AIDS or carries the HIV virus is a human being and therefore, has all the rights, under article 2nd of the Universal Declaration of Human Rights, proclaimed in international human rights texts. Thus, that person cannot be subject to any discrimination or any arbitrary treatment on account of his o her situation. It would be illogical for a person to be treated harmfully in a way that harms his or her physical, moral or personal integrity because he or she suffers from an illness."[13] Indeed, "[t]he State cannot allow such discrimination [referring to discrimination that affects persons who are sick with AIDS or HIV carriers], for two essential reasons: First, because human dignity precludes any object of rights from being subject to discriminatory treatment because discrimination *per se,* is an unfair act and the Rule of Law is based on justice, used to build the social order. And second, because the right to equality, under article 13 supra, represents the State's non-waivable duty to specifically protect those who are in conditions of manifest inferiority. As this Court has noted, proportionality and reasonableness are two factors that guide equality. The first is geared to establishing the proper relationship between the need and protection; the second seeks to keep the balance ad avoid absolute arbitrariness at all costs, as well as unfounded discretion and above all, discrimination."[14]

2.5.2 Therefore, it is clear that "[c]onstitutional tribunals are called upon to ensure the fundamental rights of citizens and within this task, they must make emphasize the protection of the rights of marginalized minorities. Specifically, the instant case involves a group of persons who is often the subject of various types of discrimination because of […] the infection itself [HIV or AIDS] – with all of the fears that it causes." Indeed, "in a social State of law, in which the authorities must protect the fundamental rights of all persons, there are no institutions or officers who can remove themselves from the control of their actions. The entire state apparatus must subordinate its actions to the Constitution and promote the fundamental rights of persons. Judges have been assigned to the fundamental responsibility of ensuring the fulfillment of this rule."[15]

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[13]Judgment SU-256 of 1996; M.P. Vladimiro Naranjo Mesa. In this judgment, the Constitutional Court protected the rights to equality, dignity and work of a waiter who was terminated from his job because he suffered from AIDS, despite the fact that his health condition prevented him from fulfilling his work obligations.

[14]Judgment SU-256 of 1996, supra.

[15]Judgment T-059 of 1999; M.P. Eduardo Cifuentes Muñoz. In this judgment, the CC granted a

2.6 The Concrete Case

2.6.1 The Chamber confirms that the plaintiff was removed from Cadet School "General José María Córdova" because he suffered from HIV. Indeed, Certification No. 2624 dated September 16,2002 and issued by the Armed Forces Medical Board reiterates the diagnosis of the plaintiff's medical condition as follows: "Patient with an HIV A2 infection with an acquired etiology; currently asymptomatic patient but there are immunological signs that require commencement of antiretroviral therapy that cannot be discontinued."[16] It later states that said affectation "[c]auses [the plaintiff] a decrease in his working capacity of one hundred percent (100%)."[17] It also notes that cadet XX has no cough nor does he show any weight loss.[18]

Thus, the first matter to decide is whether the decision of the defendant institution to remove the plaintiff because he was a carrier of the HIV virus was made pursuant to objective and reasonable grounds or whether it is discriminatory in nature. In the case of the latter, it would violate the right to equality. In order to analyze the matter set forth, the Chamber repeats that the medical bodies of the Armed Forces have autonomy to establish the physical conditions that their members must meet; their decisions cannot disregard fundamental rights. Indeed, as stated by the Court, "the constitutional judge is not banned from the field of the physician- patient relationship. Nevertheless, the judge must be very careful when stepping into these fields, as they require specialized knowledge that the judicial officer does not possess. In other words, the judge's interference is not geared towards replacing the judgment and knowledge of the doctor by the judge's judgment and knowledge, but rather, preventing a violation of the patient's fundamental rights. Therefore, this interference into the physician-patient relationship can only occur in extreme situations, such as when the physician's decision puts a person's rights in serious danger."[19]

At this time, as stated by the plaintiff's attorney-in-fact, the asymptomatic person has been infected by the Human Immunodeficiency Virus virus (HIV) but he does not show any symptoms or signs of AIDS (article 2, Decree 1543 of 1997). In turn, the Court has noted "the situation of being a healthy carrier of the HIV virus cannot be qualified as an illness."[20]

Thus, the Chamber considers that the Armed Forces Medical Board's diagnosis, pursuant to which the plaintiff lost 100% of his ability to work despite the fact that

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constitutional challenge filed by a group of persons who carried the HIV virus, who believed that they were subject to discrimination in the medical treatment center.

[16] See Page 25 of the case record.
[17] See page 26 of the case record.
[18] See page 25 of the case record.
[19] Judgment T-059 of 1999, supra.In this judgment, the CC also noted that while it was not competent to establish the most adequate treatment for the plaintiffs, HIV carriers, it could state, according to the evidence presented, that said plaintiffs received a treatment that was contrary to their fundamental rights to equality and dignity.

[20] Judgment SU-256 of 1996, supra.

this very Board states that the patient is asymptomatic, answers to prejudice and is not a decision grounded on the cadet's objective situation. Indeed, the Executive itself has indicated that "[f]or all legal purposes, a person infected by Human Immunodeficiency Virus (HIV), while he or she is asymptomatic, shall not be considered to have Acquired Immunodeficiency Syndrome (AIDS),"as provided by article 7 of Decree 1543 of 1997. Nevertheless, even if this rule were not issued, the plaintiff's objective situation at the time that he was removed form the institution was not a loss of 100% of his capacity, as recognized by the medical board itself when it stated that the patient was currently "asymptomatic".

Since the decision to remove him discriminated against an HIV carrier, this court orders the restoration of the plaintiff to Cadet School "General José María Córdova".

Notwithstanding the above, the Chamber notes that while, currently, the plaintiff is an asymptomatic HIV carrier, this virus could develop. Thus, in the event that cadet XX shows symptoms that make fulfilling the obligations of a military career impossible or hamper it significantly, according to objective and reasonable parameters, he can be assigned within the Educational Institution to perform an activity that is commensurate with his condition and he can be periodically assessed in accordance with the rules in force. He cannot again be the target of discrimination, as ordered in section 2.6.3 of this judgment.

2.6.2 The plaintiff's attorney-in-fact requests, by virtue of the plaintiff's right to education, an order that he be promoted to Assistant Lieutenant, because, the cadet has met all the requirements for this purpose.

The Chamber considers that although the record does not contain any evidence to demonstrate that the plaintiff satisfies the requirements necessary for promotion to Assistant Lieutenant, it has established that the defendant Military School decided to terminate the plaintiff before he could obtain this position and that this decision was made because of his alleged incapacity on account of his health, a ground that violates the Political Charter, as demonstrated above. This decision violates the plaintiff's right to education and to choose a profession or trade, because it precludes him from continuing with the career that he chose without any valid justification.

Thus, the defendant shall be ordered to recognize the position that the plaintiffdemands, in the event that he has satisfied all the necessary requirements for this purpose. In the event that the defendant has administered testing or performed activities necessary to obtain this position during the time that cadet XX was absent from the institution, the defendant shall be ordered to administer the tests in the same conditions that were observed when his colleagues were tested, abstaining from incurring in any type of discrimination.

2.6.3 The plaintiff's attorney-in-fact requests that the plaintiff be assigned to perform an activity that takes into account his condition as an HIV carrier. On other occasions, the Court has noted, with respect to persons who provide the compulsory military treatment, that the "soldier who is moderately impeded from performing his physical capabilities can be assigned tasks that do not put his life at risk because of his health condition; this does not provide him with a benefit, but rather, ensures the

equality of treatment enshrined as a fundamental constitutional right."[21]This principle is applicable not only to those who provide compulsory military service but also to those who choose to follow the military career permanently and when the latter fulfill the obligations that are proper to this career.

At this time, there is no evidence that the plaintiff suffers from any limitation whatsoever.

Nonetheless, it is clear that, as an HIV carrier, he is at greater risk and needs antiretroviral treatment, according to the Armed Forces Physician's Board diagnosis.

Therefore, the Chamber considers that, in order to ensure the full enjoyment of the plaintiff's right to personal integrity and in order to protect his dignity, the plaintiff must be assigned to an activity that is proper to the military career and is adequate to the extent that it reduces his level of risk and allows him to receive the antiretroviral treatment or other treatment prescribed by his physician, without prejudice to the duty to perform the activities that are usually obligatory for the rest of his colleagues in the manner assigned.

2.6.4 The plaintiff's attorney-in-fact requests that, in order to protect the plaintiff's right to health, he be provided the necessary medical treatment, according to his condition as carrier of the HIV virus. Thus, as reincorporation of the plaintiff into the Cadet School "General José María Córdova" has been ordered, the institution shall also be ordered to continue providing the medical treatment that he needs, including antiretroviral treatment, according to the rules in force.[22] In any case, if the applicable rules do not cover said specific treatment, we order that it must be provided to cadet XX as part of his comprehensive medical treatment.

2.6.5 The plaintiff's attorney-in-fact claims that the actions of Cadet School "General José María Córdova" violate the plaintiff's right to privacy and work. Regarding the right to privacy, the Chamber finds that there is no evidence in the record to show that the defendant disclosed the plaintiff's medical diagnosis and thus, it will not declare a violation. Nevertheless, this judgment shall not be published under the plaintiff's name in order to fully protect his right to privacy.

[21]Judgment T-250 of 1993; M.P. Eduardo Cifuentes Muñoz.

[22] Article 23 of Decree 1795 of 2000 "which structures the Health System of the Armed Forces and National Police," provides: "Members – There are two (2) types of members of the SSMP [Health System for the Military and Police Forces]: […] b) The members who are not subject to the estimate regime: 1. The students of Officer and Assistant Officer Training Schools of the Armed Forces and the National Police and executive students of the National Police, as defined by Article 225 of Decree 1211 of 1990, Article 106 of Decree 41 of 1994 and Article 94 of Decree 1091 of 1995 and the rules that repeal, modify or reform, respectively." In turn, article 27 of this decree provides: "Service plan for military and police health. All members and beneficiaries of the SSMP shall have a right to Health Plan Service pursuant to the terms and conditions established by the CSSMP [Higher Health Council of the Armed Forces and National Police]. Further, it will cover the comprehensive treatment for affiliates and beneficiaries of the SSMP in general illness and maternity, in the areas of promotion, prevention, protection, recovery and rehabilitation. Further, they will have a right, in the country, to medical, surgical, dental, hospital and pharmaceutical treatment as well as services at Hospitals, Military and Police Health Establishments, and, as necessary, other Healthcare Providers.

In light of the foregoing, the Third Review Chamber of the Constitutional Court, administering justice on behalf of the people and by mandate of the Constitution,

RESOLVES

First. – For the foregoing reasons, to **REVOKE** the ruling issued by the Civil and Agrarian Cassation Chamber of the Supreme Court of Justice on December 16, 2002, denying the plaintiff's constitutional challenge, whose name shall not be disclosed in order to protect his privacy against the Ministry of National Defense – Cadet School "General José María Córdova".

Second. –to **GRANT** the constitutional challenge to protect the rights to equality, education, to choose a profession or trade, to integrity and health in relation to the plaintiff's right to dignity. As a result, we **ORDER**Cadet School "General José María Córdova" to (i) reincorporate the plaintiff as Assistant Lieutenant within a term of 48 hours following service of the ruling; (ii) that he shall be recognized as assistant lieutenant within 10 days from service of the ruling in the event that he satisfies all of the requirements necessary to do so; for this purpose, he shall be administered the tests and allowed to perform the activities that have taken place while he has been removed from the institution and that are necessary to obtain the referenced position; (iii) from the ordinary activities of the students at Cadet School "General José María Córdova" or the Army's assistant lieutenants, as applicable, he shall be assigned one that is commensurate to his condition; (iv) grant comprehensive medical treatment, as determined by the competent physicians in this case.

Third. – **WARN** Cadet School "General José María Córdova" to abstain from discriminating, by action or omission, against the plaintiff, in accordance with article 13 of the Constitution.

Fourth. – The Secretary must **ISSUE** the notice contemplated by article 36 of Decree 2591 of 1991, but must omit publication of this judgment and the name of the plaintiff and all identifying information from the record.

Notice, communication, publication in the Constitutional Court Gazette and fulfillment are hereby ordered.

MANUEL JOSÉ CEPEDA ESPINOSA
Judge

JAIME CÓRDOBA TRIVIÑO
Judge
RODRIGO ESCOBAR GIL
Judge