



The Exclusion of Blood Donors Based on Sexual Orientation

Findings of the Court of Justice of the European Union

The CJEU found the Charter to be applicable as the French Decree applies Directive 2004/33.

It further found that:

Contraindication based on sexual orientation constituted a limitation of the right to non-discrimination under Article 21(1) of the Charter.

Pursuant to Article 52(1) of the Charter, limitations are justifiable only if they are necessary and genuinely meet objectives of general interest recognised by the EU. This can, indeed, include the aim of minimising the high risk of transmitting an infectious disease to recipients of blood transfusions.

However, certain conditions need to be met:

Having regard to the prevailing situation in the Member State, it needs to be established ‘on basis of current medical, scientific and epidemiological knowledge and data, that such sexual behaviour puts those persons at a high risk of acquiring severe infectious diseases’.

The proportionality requirement mentioned in Article 52(1) would only be met if there were no effective techniques for detecting such infectious diseases or — in the absence of such techniques — if there were no methods less onerous than a contraindication that would ensure a high level of health protection for recipients.

The CJEU concluded that it was for the referring court to determine whether those conditions are met in France.



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JUDGING THE CHARTER

TRAINING MATERIALS

See: Geoffrey Léger v Ministre des Affaires sociales, de la Santé et des Droits des femmes and Etablissement français du sang, C 528/13, Judgement of 29/04/2015.