

DECISION T-248-12 DISCRIMINATION BASED ON SEXUAL ORIENTATION

The action for protection relates to a situation where the plaintiff came voluntarily to the Higuera Clinical Laboratory to donate blood, but after responding to a survey where he responded positively when asked if he had had sex with persons of the same sex and if he was gay, this entity informed him that he couldn't donate blood because the Decree No. 1571 of 1993, prohibited this to gays. The Court concluded that the behavior of the laboratory when it discarded the donor because of his sexual orientation and, not on the grounds of a clear distinction of risky sexual practices, constituted a discriminatory treatment which infringes fundamental rights. In this case the Constitutional Court grants the protection to the plaintiff's fundamental rights: equality, non-discrimination and free development of personality and therefore, the Court orders the Higuera Clinical Laboratory to implement a new survey and interview aimed at identifying the risk factors for blood donations, but without taking into account the sexual orientation and, if the donation is accepted, blood samples should be submitted to the required screening tests. In addition, the defendant is ordered to instruct the staff of the laboratory to carry out the survey and make the interview to the prospective donors, to ensure that in the future no decisions are taken based on sexual orientation but taking into account risky sexual practices of the prospective donors.