

# Case C-404/92 P

X

v

## Commission of the European Communities

(Appeal — Member of the temporary staff — Pre-recruitment medical examination  
— Repercussions of a refusal to undergo an Aids test —  
Breach of the right of secrecy as regards state of health)

Opinion of Advocate General Van Gerven delivered on 27 April 1994 .....	I - 4739
Judgment of the Court, 5 October 1994 .....	I - 4780

### Summary of the Judgment

1. *Community law — Principles — Fundamental rights — Respect for private life*
2. *Community law — Principles — Fundamental rights — Restrictions on the exercise of fundamental rights justified in the general interest*
3. *Officials — Recruitment — Medical examination — Aim — Consequences of a refusal by the person concerned to agree to certain tests  
(Conditions of Employment of other Servants, Arts 12 and 13)*

4. *Officials — Recruitment — Medical examination — HIV antibody screening test — Refusal by the person concerned — Recourse to other tests to obtain the same information — Breach of the right to respect for private life*  
 (Conditions of Employment of other Servants, Arts 12 and 13)

1. The right to respect for private life, which is embodied in Article 8 of the European Convention on Human Rights and which derives from the common constitutional traditions of the Member States, is one of the fundamental rights protected by the Community legal order. It includes in particular a person's right to keep his state of health secret.
 

recruitment examination serves a legitimate interest of the institution, that interest does not justify the carrying out of a medical test against the will of the person concerned. Nevertheless, if the person concerned, after being properly informed, withholds his consent to a test which the medical officer of the institution considers necessary in order to evaluate his suitability for the post for which he has applied, the institution cannot be obliged to take the risk of recruiting him.
  
2. Restrictions may be imposed on fundamental rights protected by the Community legal order, provided that they in fact correspond to objectives of general public interest and do not constitute, with regard to the aim pursued, a disproportionate and intolerable interference which infringes upon the very substance of the right protected.
  
3. The pre-recruitment medical examination, provided for by Article 13 of the Conditions of Employment of other Servants, is designed to enable the institution concerned to determine whether a member of the temporary staff fulfils the requirements of Article 12(2)(d) as to physical fitness. However, although the pre-
 

4. To interpret the provisions relating to the pre-recruitment medical examination of a member of the temporary staff as imposing an obligation to respect a refusal by the person concerned only in relation to a specific Aids screening test but as allowing any other tests to be carried out which might merely point to the possible presence of the Aids virus would impair the scope of the right to respect for private life. Observance of that right requires the refusal of the person concerned to be respected in its entirety. Where that person has expressly refused to undergo an Aids screening test, that right precludes the institution concerned from carrying out any test liable to point to, or establish, the existence of that illness.