

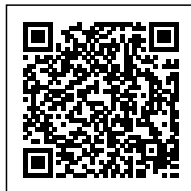
CJEU CLOSER TO RECOGNISING RIGHTS OF SELF-EMPLOYED LGBTIQ+

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The Court of Justice of the European Union ("CJEU") is one step closer to recognising the rights of self-employed persons not to be discriminated against on the basis of their sexual orientation. In today's Opinion on Case C-356/21, JK v TP, the Advocate General has sided with Covington's pro bono client JK and recognised that the EU's protection against discrimination on the basis of sexual orientation extends to self-employed persons.

In the case, the applicant JK is seeking compensation from the Polish public broadcaster TP for the breach of the principle of equal treatment on the grounds of sexual orientation. The Applicant is openly a member of LGBTIQ+ community, and together with his partner, he engages in the activism for LGBTIQ+ rights, including by running a popular YouTube Channel. The Applicant worked for seven years for TP as a self-employed person. In December 2017, the Applicant ("JK") and his partner released a Christmas video on their YouTube Channel, where they appeared among other members of the LGBTIQ+ community. Two days after the video was posted, the Applicant's shifts were cancelled and TP decided not to contract his services anymore.

In June 2021, the case was referred by the Polish court to the Court of Justice of the European Union. In October 2021, through the International Lesbian and Gay Association Europe ("ILGA-Europe"), Covington took over the EU level proceedings on a pro bono basis. Representing JK, Covington argued for a broad interpretation of Directive 2000/78 on Equal Treatment ("Directive"), granting protection to self-employed persons when contracting with third parties and during the performance of their activities. Poland, on the other hand, argued that the termination of contract and refusal to conclude a further contract with a self-employed person, even if based on that person's sexual orientation, does not violate EU law.

During the hearing in May 2022, Covington made clear that, if Poland's view were to prevail, it would be lawful to refuse to contract or to terminate a contract with a self-employed person based on their sexual orientation. The hearing was held at the CJEU's Grand Chamber, presided by an extended panel of five judges, together with the Advocate General.

Today, the Advocate General has clearly sided with Covington. In the Opinion, the Advocate General makes clear that the protection against discrimination of the Directive applies when a person engages in personal work, irrespective of the legal form under which that work is provided. Thus, the Advocate General considers that the Directive precludes Polish legislation that allows discrimination based on sexual orientation between contracting parties.

This is a promising sign for the outcome of the case, and a win for LGBTIQ+ rights advocates. According to Arpi Avetisyan, Head of Litigation with ILGA-Europe: *"Advocate General Capeta's opinion is a welcome confirmation that discrimination based on sexual orientation has no place under the Directive, including for self-employed. We hope the Court will follow the Advocate General's opinion and build on it to ensure that EU law in this area provides clear protection to for self-employed workers for equal access to employment. Indeed, the freedom to choose a contracting party does not include the freedom to discriminate."*

The Covington team representing JK included **Rosa Oyarzabal Arigita** (pictured), a Spanish lawyer who previously worked at Cuatrecasas, Bart Van Vooren, and Anna Wawrzyniak. Covington represents JK in partnership with ILGA-Europe and the Polish firm Knut Mazurczak, which has led JK's representation in the Polish courts, as well as Campaign Against Homophobia (KPH), the NGO supporting the case on a national level.