

CJEU RECOGNIZES RIGHTS OF SELF-EMPLOYED LGBTIQ+

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Today, the Court of Justice of the European Union (“CJEU”) has recognized the rights of self-employed persons not to be discriminated against on the basis of their sexual orientation. In today’s Judgment in Case C-356/21, JK v TP, the Court of Justice has sided with Covington & Burling’s pro bono client JK and confirmed that the EU’s protection against discrimination.

In the case, the applicant JK was 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 the LGBTIQ+ community, and together with his partner, engages in the activism for LGBTIQ+ rights, including by running a popular YouTube channel. The Applicant worked for TP for seven years as a self-employed person.

In December 2017, the Applicant 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 announced their decision 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, 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 the contract and refusal to sign 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, in a landmark judgment, the CJEU recognized that the Directive's protection against discrimination applies when a person engages in personal work, irrespective of the legal form under which that work is carried out, provided that the work is genuine and pursued in the context of a legal relationship characterized by a degree of stability. The Court is clear: sexual orientation cannot be a reason to refuse to conclude a contract with a self-employed worker. It also cannot be a reason to unilaterally stop, terminate, or not renew their contract.

This protection cannot be jeopardized by the freedom to choose a contracting party. The Court noted that to accept that freedom of contract allows a refusal to contract with a person on the ground of that person's sexual orientation would deprive Directive 2000/78, and the prohibition of any discrimination based on that ground, of its practical effect.

The Covington team representing JK included **Rosa Oyarzabal Arigita** (pictured), **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.