

Sexual orientation is not a reason to terminate a contract with a self-employed worker, says Advocate General of the CJEU

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Today, the Advocate General of the CJEU has issued an opinion in the case of J.K. vs the Polish public broadcaster company TP, stating that discrimination based on sexual orientation in employment is not acceptable under EU law.

ILGA-Europe welcomes the Advocate General of the Court of Justice of the European Union's (CJEU) opinion, published today in the case C-356/21, concerning the refusal to continue a contract of work with a self-employed person on the basis of that person's sexual orientation violates EU law.

The applicant, J.K., [is seeking compensation](#) from the Polish public broadcaster TP for the breach of the principle of equal treatment on the grounds of sexual orientation in the form of direct discrimination in the context of the employment relationship between the two parties. J.K is openly a member of LGBTI community, and together with his partner, he engages in the activism for LGBTIQ+ rights, including running a popular YouTube Channel.

The Defendant is the Polish public broadcaster TP, a nationwide public TV network fully owned by the State Treasury. During 2010 – 2017, the employment relationship between the Applicant and the Defendant was based on regularly concluded, consecutive short-term contracts for specific work.

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 received an e-mail from his immediate supervisor cancelling his scheduled shifts. He was also informed that the Defendant was not planning to cooperate with the Applicant any longer. He was replaced by another employee, who had neither the qualifications nor the experience to perform the tasks previously performed by the Applicant.

In her opinion the Advocate General firstly confirmed that self-employment is covered under the Directive and by covering the area of 'employment and occupation', the "Directive aims at enabling citizens to realise their potential and earn their living by providing their work". Furthermore, in addressing the issue concerning "conditions for access to self-employment", the AG suggests that the Directive covers both initial stage of concluding a contract, but also the provision relating to the termination of contractual relationship. At all stages, discrimination based on sexual orientation is not acceptable.

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 EU Directive, including for self-employed workers. We hope the Court will follow the Advocate General's opinion and build on it so that EU law in this area protects self-employed workers ensuring equal access to employment. Freedom to choose a contracting party does not imply freedom to discriminate."

[Read here the Advocate General opinion](#)