

Self-Employed LGBTQ Workers Shouldn't Face Bias, ECJ Says

By Alex Baldwin

Law360, London (January 12, 2023, 8:24 PM GMT) -- Europe's top court ruled Thursday that a self-employed person should not be discriminated against based on their sexual orientation, saying that national laws allowing parties to contracts to "choose" who they deal with does not override European rules against discrimination.

If a Polish broadcaster decided not to renew a contract with, and canceled shifts for, a self-employed video-maker who had worked with the company for several years because he was gay, then it would have violated a European Union directive guaranteeing equal treatment, the European Court of Justice ruled.

The ECJ said it is now up to the Polish court that referred the case to determine whether the broadcaster discriminated against the video-maker, referred to as JK.

If the broadcaster, referred to as TP, did discriminate, then it would have done so illegally in light of the EU directive, the ECJ concluded.

Rosa Oyarzabal Arigita of Covington & Burling LLP, one of the video-maker's attorneys, said the ECJ's ruling was clear that "whether employed or self-employed, everyone is protected against discrimination based on their sexual orientation."

"Who you love does not determine whether you are capable of performing a job or task," Oyarzabal said. "Member states cannot allow discrimination under the pretense of freedom to contract."

JK released a Christmas music video on his own YouTube channel "promoting tolerance towards same-sex couples" in December 2017. Shortly after this, the broadcaster canceled his shifts and decided not to re-up his contract, according to the judgment.

Considering this to be an act of discrimination based on his sexual orientation, JK sued the broadcaster at the District Court of Warsaw, seeking compensation from the broadcaster.

The Warsaw court asked the ECJ to clarify whether a European equal treatment directive applies to the case, and whether the directive precludes national legislation that excludes the decision to renew a contract with a self-employed worker from being considered discrimination.

The ECJ said that provisions in the directive that detail "employment and working conditions, including

dismissals and pay," applied to self-employed workers who might have to stop work if a contract for work is terminated.

A representative for the International Lesbian and Gay Association Europe said that the judgment was "another important step forward in strengthening the protection against discrimination in the workplace."

JK was represented by Paweł Knut of Knut Mazurczak and Rosa Oyarzabal Arigita and Bart Van Vooren of Covington & Burling LLP. Full counsel information was not immediately available Thursday.

Representatives for the Polish government could not be immediately identified Thursday.

The case is TP (Monteur audiovisuel pour la télévision publique), case number C-356/21, in the European Court of Justice.

--Editing by Alyssa Miller.

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