


Prohibition of Discrimination Based on Sexual Orientation: Analysis of CJEU and ECtHR Case Law Concerning Human Rights

Monika Bator-Bryła

PhD, Assistant Professor, Faculty of Law and Social Sciences, Jan Kochanowski University in Kielce; correspondence address: Świniary Stare 106A, 27-670 Łoniów, Poland; e-mail: mbryla@ujk.edu.pl

 <https://orcid.org/0000-0003-1703-8040>

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Abstract: This article analyzes the importance of the prohibition of discrimination based on sexual orientation in light of the primary and secondary legislation of the European Union, as well as the case law of the Court of Justice of the European Union and the European Court of Human Rights. In the context of human rights protection, the prohibition of discrimination based on sexual orientation is a key element of modern judicial rulings in Europe. Both the Court of Justice of the European Union (CJEU) and the European Court of Human Rights (ECtHR) play crucial roles in shaping the standards for the protection of LGBT+ persons by interpreting legal provisions and issuing judgments that influence national legislation. Both institutions emphasize the importance of equal treatment within the framework of human rights, and their rulings contribute to the elimination of prejudice and discrimination. The analysis of the case law of the CJEU and ECtHR demonstrates how LGBT+ rights are integrated into the broader context of human rights protection, which in the long term may lead to changes in social norms and legislation in member states. The prohibition of discrimination, including on the grounds of sexual orientation, undoubtedly constitutes one of the main social and economic objectives of the European Union. This is reflected in the incorporation of this matter into EU primary law, secondary law, and CJEU jurisprudence. The Treaty on the European Union (TEU) and the Treaty on the Functioning of the European

Union (TFEU) identify equality as one of the Union's values, mandate its promotion, and call for combating all forms of discrimination, prohibiting discrimination based on specified criteria. Furthermore, national measures can be examined in light of the treaty provisions only to the extent that they apply to situations not covered by the treaty's specific anti-discrimination provisions. The author proposes the following theses: firstly, an analysis of CJEU case law reveals a noticeable dissonance between the application of national regulations by member states and EU law in the examined area, which significantly complicates the practical implementation of the prohibition of discrimination based on sexual orientation. Discrepancies mainly arise in national law due to improper drafting of national legal provisions or their erroneous interpretation by relevant national authorities. In particular, the author compares the regulations of member states with Council Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation. An analysis of the directive's content, considering its interpretation by the CJEU, leads to the conclusion that member states implement the directive incorrectly, and the level of protection against discrimination based on sexual orientation is insufficient compared to the requirements of EU law. Member states are obliged to comply with EU law, which includes not only the duty of state authorities to respect directly applicable acts or implement them into national law but also the obligation to interpret and apply national law in accordance with the requirements of EU law. The second thesis results from the analysis of CJEU case law regarding the prohibition of discrimination based on sexual orientation. Although anti-discrimination directives form the foundation of the European Union's anti-discrimination system, particularly in the areas of employment and occupation, the phenomenon of unequal treatment also occurs in other spheres such as access to goods and services or education. This necessitates the adoption of comprehensive legal measures to effectively combat discrimination. The study employs a comparative legal method, involving a comparative analysis of the legal acts of EU member states and the European Union regarding the prohibition of discrimination based on sexual orientation. The comparison of EU acts and national norms reveals the extent of the implementation of

the provisions of EU law in this area within the legal systems of EU member states. The aim of this analysis is, among other things, to diagnose areas where these states have improperly implemented provisions of EU law or have incorrectly interpreted them. However, due to the limited amount of case law in this area, the author has limited the analysis to a few judgments. The second method applied is the analysis of the case law of the CJEU. Its rulings constitute a significant part of the study, compelling the author to use the comparative method to analyse judgments based on the same or similar legal grounds in analogous circumstances within the framework of the prohibition of discrimination based on sexual orientation.

1. The Essence and Legal Basis of the Prohibition of Discrimination

The unquestioned foundation of the European Union is the general principle of equality, understood as the mandate for equal treatment in a positive sense or as the prohibition of discrimination in a negative sense. The Treaty on European Union (TEU¹) and the Treaty on the Functioning of the European Union (TFEU) identify equality as one of the Union's values (Article 2 TEU), mandate its promotion and the combating of all discrimination (Articles 8 and 10 TFEU²), and prohibit discrimination based on the criteria specified in them (Articles 18 and 19 TFEU).³

Initially, EU treaties only contained references to the prohibition of discrimination based on nationality within the context of internal market freedoms.⁴ After the adoption of the Maastricht Treaty (TEU), the principle of equal treatment began to evolve and was linked to the concept of European Union citizenship.⁵ Today, the prohibition of discrimination is classified as

¹ The Treaty on European Union, consolidated version (O.J.E.C. C326, 26 October 2012).

² The Treaty on the Functioning of the European Union, consolidated version (O.J.E.C. C326, 26 October 2012).

³ Elise Muir, *EU Equality Law: The First Fundamental Rights Policy of the EU* (Oxford: Oxford University Press, 2018), 15.

⁴ Sandra Fredman, "Transformation or Dilution: Fundamental Rights in the EU Social Space," *European Law Journal* 12, no. 1 (2006): 41 et seq.

⁵ Stefan Kadelbach, "Union Citizenship," in *The Evolution of EU Law*, eds. Paul Craig and Gráinne de Búrca (Oxford: Oxford University Press, 2018), 465 et seq.; Paul O'Neill and Susan R. Sandler, "The EU Citizenship Acquis and the Court of Justice: Citizenship Vigilante

a principle underpinning the protection of individual rights within the European Union (EU). The scope of this prohibition has been expanded in subsequent EU amending treaties, secondary legislation, and the case law of the CJEU, categorizing it as a general principle of law.⁶ The Court of Justice has stated in numerous rulings that “the prohibitions of discrimination provided for in the treaty are specific expressions of the general principle of equality, which is one of the fundamental principles of EU law,”⁷ and that fundamental rights include the principle of non-discrimination, meaning that different treatment of comparable situations is not permissible unless the difference is objectively justified.⁸

The prohibition of discrimination based on sexual orientation is enshrined in both primary legislation (Article 21 of the Charter of Fundamental Rights,⁹ Articles 10 and 19 TFEU) and secondary legislation of the EU (Council Directive 2000/78/EC,¹⁰ Council Directive 2000/43/EC¹¹). However, it was the Amsterdam Treaty¹² that led to the adoption of legal measures aimed at preventing such discrimination.¹³ The TFEU establishes

or Merely Vigilant Treaty Guardian?,” *Richmond Journal of Global Law and Business* 7, no. 3 (2008): 205.

⁶ Anna Zawidzka-Łojek, *Zakaz dyskryminacji ze względu na wiek w prawie Unii Europejskiej* (Warsaw: Instytut Wydawniczy EuroPrawo, 2013), 95; Andrea Biondi and Paul Everson, *European Union Law: A Very Short Introduction* (Oxford: Oxford University Press, 2016), 41 et seq.

⁷ Justyna Maliszewska-Nienartowicz, “Rola zasady równości w prawie Wspólnoty/Unii Europejskiej,” *Studia Europejskie*, no. 4 (2011): 73; Tamara Hervey and Jeff Kenner, *Economic and Social Rights under the EU Charter of Fundamental Rights: A Legal and Comparative Analysis* (Cambridge: Cambridge University Press, 2016), 98.

⁸ CJEU Judgment of 12 December 2002, Ángel Rodríguez Caballero v. Fondo de Garantía Salarial (Fogasa), Case C-442/00, ECLI:EU:C:2002:752, para. 32; Nigel Foster, *Foster on EU Law* (Oxford: Oxford University Press, 2017), 126.

⁹ EU (2000) Charter of Fundamental Rights of the European Union, 2000/C361/01, 7 December 2000.

¹⁰ Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (O.J.E.C. L303, 02 December 2000), 16.

¹¹ Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (O.J.E.C. L180, 19 July 2000).

¹² Amsterdam Treaty amending the Treaty on European Union, the Treaties establishing the European Communities, and related acts (O.J.E.C. C340, 10 November 1997).

¹³ Robin Allen, QC, “Article 13, Evolution and Current Contexts,” in *Equality Law in an Enlarged European Union: Understanding the Article 13 Directives*, ed. Helen Meenan (Cambridge: Cambridge University Press, 2007), 44–5.

not only the prohibition of discrimination based on nationality but also empowers the Council of the European Union to take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age, and sexual orientation (Article 10 TFEU). This provision does not have direct effect¹⁴ and therefore cannot be the source of individual rights.

Article 19 TFEU (Article 13 of the EC Treaty) provides the basis for adopting key directives in the area of secondary legislation.¹⁵ In practice, as an enabling provision¹⁶ granting the Union the competence to adopt legal regulations to implement treaty provisions on the prohibition of discrimination, it empowered the Council of the EU to adopt, through a special legislative procedure and with the consent of the European Parliament, the necessary measures to combat discrimination based on the following criteria: sex, racial or ethnic origin, religion or belief, disability, age, and sexual orientation.¹⁷ Council Directive 2000/78/EC, which includes the prohibition of discrimination based on these criteria, prohibits its application solely in the areas of employment, work, and vocational training. The directive's scope includes the public and private sectors, including public authorities.¹⁸

¹⁴ Melania Skalik, "Prawnomiędzynarodowe instrumenty ochrony osób LGBT. Wybrane zagadnienia," *Student Journal of Law, Administration and Economics* 44, (2023): 79–94, accessed July 5, 2024, https://repozytorium.uni.wroc.pl/Content/139887/PDF/06_M_Skalik_Prawnomiędzynarodowe_instrumenty_ochrony_osob_LGBT_Wybrane_zagadnienia.pdf.

¹⁵ Pursuant to Article 19 TFEU, directives of key importance for shaping the EU anti-discrimination acquis were adopted: Directive 2000/43/EC on equal treatment irrespective of racial or ethnic origin (O.J.E.C. L180, 19 July 2000), 22 Directive 2000/78/EC on equal treatment in employment and occupation (O.J.E.C. L303, 2 December 2000), 16), and Directive 2004/113/EC, implementing the principle of equal treatment between men and women in the access to and supply of goods and services (O.J.E.C. L373, 21 December 2004), 37; Lina Papadopoulou, *Sexual Orientation and Gender Identity Law in the European Union and Its Court of Justice* (London: Routledge 2021), 43 et seq.

¹⁶ Andrzej Wróbel, ed., *Traktat o funkcjonowaniu Unii Europejskiej. Komentarz. Tom 1* (Warsaw: 2012), 405.

¹⁷ Hamza Darbouche and Adriana R.H. van den Bos, *The Law of the European Union: A Comprehensive Study* (Abington: Routledge, 2019), 55–7; Miguel Eduardo da Costa, "Sexual Orientation Discrimination: A Global Perspective," *International Journal of Human Rights*, no. 4 (2020): 15–30

¹⁸ Biondi and Everson, *European Union Law*, 43–4; Brian W. O'Brien, "The Scope of EU Anti-Discrimination Law: A Comparative Perspective," *European Law Review* 46, no. 1

It is worth emphasising, however, that while anti-discrimination criteria such as nationality, sex, and age had the status of general principles of EU law, sexual orientation did not hold this status.¹⁹ The inclusion of the prohibition of discrimination based on sexual orientation in Article 21 of the Charter of Fundamental Rights (CFR), combined with its binding force, created a certain dualism in the sources of fundamental rights protection in EU law. On one hand, fundamental rights are general principles of law,²⁰ but on the other hand, their character was not unequivocally defined in the Charter itself. This interpretative crisis appears to have been resolved with the Court's position confirming that the prohibition in Article 21(1) CFR independently grants individuals a right they can directly invoke in disputes concerning areas covered by Union law.²¹ However, doctrinal positions remain divided.²²

In comparison to Article 10 of the TFEU, the Charter expands the grounds for the prohibition of discrimination to include sex, race, colour, ethnic or social origin, genetic traits, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age, and sexual orientation (Article 21 of the CFR).²³ Un-

(2021): 78–81.

¹⁹ Anna Pudło, "Charakter zakazu dyskryminacji ze względu na orientację seksualną w prawie UE," *Roczniki Administracji i Prawa* 16, no. 1 (2016): 49 et seq.; Walter Kälin, *The Impact of the Charter of Fundamental Rights on EU Law* (Oxford: Hart Publishing, 2018), 102.

²⁰ Mark Bell, "The Principle of Equal Treatment: Widening and Deepening," in *The Evolution of EU Law*, eds. Paul Craig and Gráinne De Búrca (Oxford: Oxford University Press, 2011), 626 et seq.

²¹ CJEU Judgment of 15 January 2014, *Association de médiation sociale v. Union locale des syndicats CGT, Hichem Laboubi, Union départementale CGT des Bouches-du-Rhône, Confédération générale du travail (CGT)*, Case C-176/12, ECLI:EU:C:2014:2, para. 47. See: Anna Pudło-Jaremek, "Zakaz dyskryminacji ze względu na orientację seksualną w prawie UE po wyroku TSUE w sprawie Egenberger," *Roczniki Administracji i Prawa* 20, no. 2 (2020): 72 et seq.

²² Elise Muir, "The Essence of the Fundamental Right to Equal Treatment: Back to the Origins," *German Law Journal* 20, no. 6 (2019): 818 et seq.; Eleni Frantziou, *The Horizontal Effect of Fundamental Rights in the European Union: A Constitutional Analysis* (Oxford: Oxford University Press, 2019), 90.

²³ Jonathan Bishop, *The Prohibition of Discrimination in the EU: Comparative Perspectives* (London: European Union Agency for Fundamental Rights, 2021), 20–5; Hamza Darbouche and Adriana R.H. van den Bos, *The Charter of Fundamental Rights of the European Union: A Commentary* (Oxford: Hart Publishing, 2020), 150 et seq.

like Article 19 of the TFEU, which provides an exhaustive list of grounds for prohibition, Article 21 of the CFR contains an open-ended list of prohibited grounds for discrimination and does not include a hierarchy of reasons.²⁴ This grants entities the same right to equal treatment. Therefore, it seems reasonable to extend the prohibition of discrimination based on sexual orientation beyond the field of employment. There is no justification for differentiating between persons discriminated against on the grounds of sexual orientation and those discriminated against on racial or ethnic grounds, who enjoy protection not only in the field of employment but also in education, social protection (including access to social security and healthcare), social benefits, and access to goods and services.²⁵

The need to harmonize the legal protection system and, consequently to adopt further regulations concerning the prevention of discrimination based on various grounds has been recognized at the level of EU legislative bodies. This recognition resulted in the proposal for a Council Directive on implementing the principle of equal treatment of persons irrespective of religion or belief, disability, age, or sexual orientation,²⁶ adopted by the Committee on European Affairs on July 8, 2016.²⁷ The aim of adopting the new equality directive is to establish a framework for combating discrimination based on religion or belief, disability, age, or sexual orientation, “which is intended to ensure the implementation of the principle of equal treatment in Member States in areas other than employment and work.”²⁸ Thus, the prohibition of discrimination based on sexual orientation should be extended to ensure protection beyond employment and include access to goods and services, in the same manner as for persons discriminated against on racial

²⁴ Nigel Foster, *European Union Law* (Oxford: Oxford University Press, 2019), 134–6.

²⁵ Diana Schiek, *European Union Non-Discrimination Law and Intersectionality: Investigating the Intersection of Protected Grounds* (Abington: Routledge, 2018), 112–5.

²⁶ Anna Śledzińska-Simon, “Zasada równości i zasada niedyskryminacji w prawie Unii Europejskiej,” *Studia BAS* 26, no. 2 (2011): 72.

²⁷ European Commission, “Proposal for a Council Directive on Implementing the Principle of Equal Treatment,” Brussels 2016, 1.

²⁸ Anna Zawidzka-Łojek, *Opinion on the Position of the Polish Government Regarding the European Commission’s Proposal of 4 July 2008 for a Council Directive on the Implementation of the Principle of Equal Treatment of Persons Irrespective of Religion or Belief, Disability, Age, or Sexual Orientation*, Warsaw 2016, 5; Council of the European Union, “Outcome of Proceedings of the Council Meeting,” Brussels 2016, 5.

or ethnic grounds.²⁹ However, several Member States have decided to go beyond the requirements of EU law and have extended protection beyond the workplace. This ensures that lesbians, gays, bisexuals, and transgender persons (LGBT) are protected in many other areas of social life, such as education, social protection, social security and healthcare, and access to goods and services, including housing. In eight Member States (Belgium, Bulgaria, Germany, Spain, Austria, Romania, Slovenia, and Slovakia), anti-discrimination laws regarding sexual orientation cover not only employment but also additional areas specified in the Racial Equality Directive.³⁰ In ten Member States (Latvia, Lithuania, Hungary, the Czech Republic, Ireland, Luxembourg, the Netherlands, Finland, Sweden, and the United Kingdom), anti-discrimination laws have been partially extended to cover other areas beyond employment.³¹ In contrast, in Denmark, Estonia, Greece, France, Italy, Cyprus, Malta, and Poland, anti-discrimination laws cover only the areas specified in the Directive on equal treatment in employment and work.³²

An additional reinforcement in this area is the obligation of Member States to implement Council Directive 2024/1499 of May 7, 2024, on standards regarding the functioning of equality bodies (...),³³ which requires them to enact the necessary legislative, executive, and administrative provisions to set minimum requirements for the operation of bodies supporting equal treatment. This aims to increase their effectiveness and ensure their independence, thus strengthening the application of the principle of equal treatment, as derived from Council Directive 2000/78/EC, among others. Most anti-discrimination directives require Member States to designate

²⁹ Schiek, *European Union Non-Discrimination Law*, 112–5.

³⁰ European Union Agency for Fundamental Rights, “Comparative Analysis of Anti-Discrimination Laws in Europe,” Vienna 2021, 30.

³¹ European Commission, “Report on the Implementation of the Racial Equality Directive,” Brussels 2019, 18.

³² Bishop, *The Prohibition of Discrimination in the EU*, 20.

³³ Council Directive 2024/1499 of 7 May 2024 on the Standards for the Operation of Equality Bodies in the Field of Equal Treatment Irrespective of Racial or Ethnic Origin, Equal Treatment in Employment and Occupation Irrespective of Religion or Belief, Disability, Age, or Sexual Orientation, Equal Treatment of Women and Men in Social Security Matters, and in Access to and Provision of Goods and Services, and Amending Directives 2000/43/EC and 2004/113/EC (O.J.E.C. L1499, 29 May 2024).

a body or bodies responsible for promoting equal treatment,³⁴ including analyzing, monitoring, and supporting equal treatment of all persons without discrimination on grounds covered by the respective directives.³⁵ However, such a requirement was not included in Council Directive 2000/78/EC. Although it does not mandate Member States to designate equality bodies to address issues within its scope, in most Member States, equality bodies have competencies in these matters under national law.³⁶ Nevertheless, this is not the case in all Member States, which leads to varying levels of protection against discrimination in areas covered by this directive across the Union. Therefore, Council Directive 2024/1499 should apply to the work of equality bodies in matters within the scope of Directive 2000/78/EC. The minimum requirements set out in this directive pertain solely to the functioning of equality bodies and should not extend beyond its material and personal scope.

It should be emphasized that the existing anti-discrimination directives form the basis of the EU's system for combating discrimination, primarily in the fields of employment and work. However, issues of unequal treatment still persist in many other areas, such as education, access to goods and services, and healthcare. In the EU legal system, except for the sphere of employment, there is no uniform minimum level of protection for entities affected by discriminatory actions, which negatively impacts decisions in individual Member States.

2. Case Law

Finally, the prohibition of discrimination based on sexual orientation, as an aspect of human rights protection, is reflected in the Universal Declaration of Human Rights.³⁷ Although this declaration does not explicitly list sexual orientation as a protected category, Article 2 clearly emphasizes

³⁴ Such an obligation is provided for in Directives 2000/43/EC, 2004/113/EC, 2006/54/EC, and 2010/41/EU.

³⁵ European Union Agency for Fundamental Rights, "Comparative Study on Equality Bodies," Vienna 2020, 10.

³⁶ Schiek, *European Union Non-Discrimination Law*, 67.

³⁷ Eric Heinze, "Sexual Orientation and International Law: A Study in the Manufacture of Cross-Cultural 'Sensitivity,'" *Michigan Journal of International Law Michigan Journal of International Law* 22, no. 2 (2001): 285.

equality and protection against all forms of discrimination. This indicates that all people should be treated equally, regardless of personal or social differences, which includes sexual orientation. Similarly, the International Covenant on Civil and Political Rights (ICCPR) expands protections against discrimination in international law. The United Nations Human Rights Committee, responsible for monitoring ICCPR compliance, has underscored that the term “other status” in Article 26 includes sexual orientation, effectively establishing a prohibition of discrimination on this ground. In the well-known 1994 *Toonen v. Australia* judgment,³⁸ a human rights activist challenged Tasmania’s laws criminalising consensual homosexual acts among adults, arguing that these laws violated his rights to privacy and non-discrimination under the ICCPR. The UN Human Rights Committee sided with Toonen, finding that Tasmania’s criminalization of homosexual acts indeed infringed on Article 17 of the ICCPR, which protects the right to privacy. Notably, the Committee also ruled that Article 26, which prohibits discrimination based on “other status,” includes sexual orientation.

This decision interpreted sexual orientation as a characteristic protected against unequal treatment in international law. The Committee emphasized that public morality could not justify limiting fundamental human rights, such as the right to privacy and the prohibition of discrimination against homosexual individuals. They noted that penalizing intimate relations, even if driven by social or religious norms, constitutes unwarranted interference in individuals’ private lives. As a result of this ruling, Australia was obligated to revoke criminal laws targeting homosexual individuals, and Tasmania ultimately became the last state in the country to decriminalize homosexuality in 1997. The *Toonen v. Australia* decision was groundbreaking, as it set a precedent for LGBT+ rights protection within international human rights frameworks. This decision influenced other countries to adopt an approach recognizing sexual orientation as a protected characteristic, impacting subsequent international human rights case law.

In the European context, the European Convention on Human Rights (ECtHR)³⁹ plays a key role in establishing legal standards on this issue. Although the Convention does not explicitly list sexual orientation as

³⁸ Human Rights Committee, 4 April 1994, *Toonen v. Australia*, Case no. 488/1992.

³⁹ ECtHR, Convention on Human Rights of 4 November 1950, CETS No. 005.

a protected category, it contains general anti-discrimination provisions. Article 14 of the ECtHR prohibits all forms of unequal treatment, and the ECtHR has repeatedly interpreted this article as extending protection to LGBT+ individuals.⁴⁰

One of the landmark rulings in this area is the *Dudgeon v. the United Kingdom*⁴¹ case from 1981. In this ruling, the Court determined that the criminalization of homosexuality in Northern Ireland violated the right to privacy and equality. This case was brought by Patrick Dudgeon, a Northern Irish citizen, who challenged the British government's laws that penalized private sexual acts between consenting male adults. Dudgeon argued that these laws infringed on his right to privacy and led to discrimination based on sexual orientation. The ECtHR found that the right to privacy, protected under Article 8 of the ECtHR, also encompasses an individual's sexual life. In its reasoning, the Court emphasized that the unjustified interference in Dudgeon's private life contradicted the principles of a democratic society. Furthermore, the Court ruled that the criminalization of consensual homosexual relations in private was not only disproportionate but also amounted to discrimination.

This ruling was groundbreaking as it established that sexual orientation deserves protection against discrimination. *Dudgeon v. the United Kingdom* provided a precedent for later ECtHR decisions concerning LGBT+ rights. The ruling also contributed to the repeal of many restrictive laws across various European countries. Furthermore, this case was among the first to highlight the importance of protecting human rights in the context of sexual orientation, demonstrating how discriminatory laws are inconsistent with international human rights standards. As a result, this judgment strengthened the foundations for ongoing efforts toward equality and respect for the rights of all citizens, regardless of their sexual orientation.

A significant ruling by the ECtHR concerning the discrimination of LGBT individuals in the context of freedom of assembly was

⁴⁰ See: Paul Johnson, "Sexual Orientation Discrimination and Article 14 of the European Convention on Human Rights: The Problematic Approach of the European Court of Human Rights," *European Human Rights Law Review*, (2023): 552 et seq.

⁴¹ ECtHR Judgment of 22 October 1981, Case *Dudgeon v. the United Kingdom*, application no. 7525/76, hudoc.int.

the Genderdoc-M v. Moldova case.⁴² This case involved the organization of an equality march by the Moldovan NGO Genderdoc-M. The Moldovan authorities denied permission for the march, arguing that it could incite riots and pose a threat to public order. The organizers decided to challenge this decision before the ECtHR, claiming that it violated their rights to freedom of assembly and protection against discrimination. The Court ruled that the Moldovan authorities had violated Articles 11 (freedom of assembly) and 14 (prohibition of discrimination) of the European Convention on Human Rights, emphasizing that authorities are obligated to ensure protection for participants in assemblies, particularly for groups representing minorities. This ruling represents an important step toward recognizing the rights of LGBT individuals in Moldova and underscores the responsibilities of states to protect freedom of assembly for all citizens, regardless of their sexual orientation. The Court noted that the proper management of assemblies should be based on respect for diversity and tolerance within society. The Genderdoc-M ruling reaffirms the state's duty to uphold and promote human rights for all citizens, regardless of their sexual orientation.

The ruling in *Schalk and Kopf v. Austria*⁴³ is significant for human rights protection, particularly regarding equality and respect for private and family life. The case involved a same-sex couple seeking recognition of their registered partnership as equivalent to marriage after Austria enacted a law allowing registered partnerships in 2010. The couple argued that their rights to family life were being violated due to the lack of formal recognition of their relationship, which they viewed as discriminatory based on sexual orientation. The ECtHR found that Austria had violated Article 8 of the European Convention on Human Rights, which concerns the right to respect for private and family life. The Court acknowledged that while states have some discretion in regulating marriage, they also have an obligation to ensure equal treatment for all citizens, regardless of sexual

⁴² ECtHR Judgment of 12 June 2010, Case Genderdoc-M v. Moldova, application no. 9106/06, hudoc.int; ECtHR Judgment of 3 May 2007, Case *Bączkowski and others v. Poland*, application no. 1543/06, hudoc.int; ECtHR Judgment of 21 October 2010, Case *Alekseyev v. Russia*, application no. 4916/07, hudoc.int; ECtHR Judgment of 12 May 2015, Case *Identoba and others v. Georgia*, application no. 73235/12, hudoc.int.

⁴³ ECtHR Judgment of 24 June 2010, Case *Schalk and Kopf v. Austria*, application no. 30141/04, hudoc.int; see also: Council of Europe Publishing, "Discrimination on Grounds of Sexual Orientation and Gender Identity in Europe," Jouve, Paris 2011, 92.

orientation. The refusal to recognize the couple's partnership constituted discrimination and infringed on their rights to family life. The Court emphasized that every individual, regardless of orientation, should have access to the same privileges and legal protections as heterosexual couples. This ruling is pivotal as it underscores the importance of equal rights for same-sex couples and reinforces the principles of human rights protection within Europe. It illustrates that discrimination based on sexual orientation is incompatible with the standards set forth in the European Convention on Human Rights.

The issue of respect for private life was also addressed in the case of *Fretté v. France*.⁴⁴ Fretté was a man who sought to adopt children, but his application was rejected by French authorities due to his sexual orientation. It was argued that being homosexual rendered him unfit to be a parent, which Fretté considered discriminatory. The ECtHR ruled that France violated Article 14 (prohibition of discrimination) and Article 8 (right to respect for private and family life) of the European Convention on Human Rights. The Court emphasized that sexual orientation could not be a justification for denying adoption, as this leads to discrimination. It stressed that authorities must assess potential parents based on their ability to provide a suitable environment for children, rather than their sexual orientation. In other words, sexual orientation cannot serve as a basis for limiting rights to respect for family life. This ruling aimed to promote equality and eliminate discrimination, highlighting the need to ensure that all citizens, regardless of sexual orientation, have equal access to rights and privileges.

An analysis of the case law of the ECtHR indicates a growing recognition of LGBT rights in Europe and the obligation of states to ensure equality and respect for human rights. The rulings of the ECtHR affirm that the lack of equality based on sexual orientation leads to violations of fundamental human rights. The Court consistently emphasizes that sexual orientation cannot serve as a basis for limiting human rights. This trend in jurisprudence is significant as it reinforces the idea that all individuals should be

⁴⁴ ECtHR Judgment of 26 February 2002, Case *Fretté v. France*, application no. 36515/97, hudoc.int; see also: International Commission of Jurists, *Sexual Orientation and Gender Identity in Human Rights Law. References from the Council of Europe and the European Union*, Geneva 2007, 74.

entitled to the same rights and protections, irrespective of their sexual orientation. The ECtHR's judgments contribute to a broader understanding of human rights that includes safeguarding the rights of marginalised groups, including the LGBT community.

The case law of the CJEU plays a significant role in the area of the prohibition of discrimination based on sexual orientation. In the case of *J.K. vs. TP S.A.*,⁴⁵ the Court held that national regulations allowing for the refusal to conclude a civil law contract for the provision of services, under which a self-employed person is to perform work personally, if such a refusal is motivated by the sexual orientation of that person, are contrary to Council Directive 2000/78/EC. In this case, the complainant, an audiovisual material installer, collaborated with public television based on a B2B contract.⁴⁶ As part of this cooperation, the parties concluded successive contracts for specific work. In December 2017, the complainant and his partner published a holiday clip on YouTube promoting tolerance towards same-sex couples. Shortly after that, the television station cancelled the complainant's shifts and did not conclude further contracts with him, despite previous assurances of continued cooperation. The self-employed individual perceived this as discrimination based on sexual orientation and decided to file a compensation lawsuit against the company. The national court raised doubts about the compatibility of Article 5(3) of the Act on Equal Treatment⁴⁷ with EU law, as this provision excludes the freedom to choose the party to a contract from the scope of this Act, and thus from the scope of protection against discrimination provided for in Directive 2000/78/EC, as long as the choice is not based on sex, race, ethnic origin, or nationality.⁴⁸

⁴⁵ CJEU Judgment of 12 January 2023, *J.K. v. TP S.A.*, Case C-356/21, ECLI:EU:C:2023:9; see: Anna Kalisz and Robert Krasoń, "Commentary on the Judgment of the Court of Justice of the European Union of 12 January 2023 in Case C-356/21, *J.K. v TP S.A.*," *Przegląd Sejmowy* 179, no. 6 (2023): 161–76.

⁴⁶ Marta López, *Discrimination Law in the EU: An Overview* (Cambridge: Cambridge University Press 2021), 45.

⁴⁷ Act of 3 December 2010 on the Implementation of Certain EU Regulations Concerning Equal Treatment, *Journal of Laws* 2024, item 834.

⁴⁸ Article 5 of the Act provides: "The Act does not apply to: 3) freedom of contract, provided it is not based on sex, race, ethnic origin, or nationality."

According to Article 3(1)(a) of Directive 2000/78/EC, within the limits of the Union’s competences, this directive applies to all persons, both in the public and private sectors,⁴⁹ including public bodies, with respect to conditions for access to employment or self-employment and to occupation, including selection criteria and recruitment conditions, regardless of the sector of activity and at all levels of the professional hierarchy, including promotion.⁵⁰ The directive does not refer to the law of the Member States to define the term “conditions for access to employment, self-employment or occupation” contained in this provision. Thus, the scope of this directive covers the conditions for access to all professional activities, regardless of their nature and characteristics.⁵¹ Recent case law has confirmed that Directive 2000/78/EC has a broad scope of application,⁵² which is not limited solely to conditions for access to positions held by “workers” within the meaning of Article 45 TFEU.⁵³ It applies to all persons, both in the public and private sectors, including public bodies, regardless of the sector of activity and at all levels of the professional hierarchy.⁵⁴ It should be emphasized that Directive 2000/78/EC was adopted based on Article 13 EC (currently Article 19(1) TFEU), which grants the Union the power to take necessary measures to combat all discrimination, including on the grounds of sexual orientation.⁵⁵ Discrimination based on sexual orientation can hinder the achievement of the objectives of the TFEU, particularly in terms of high employment levels, social protection, improving living standards and quality of life, economic and social cohesion, solidarity, and free

⁴⁹ CJEU Judgment of 26 September 2013, *Dansk Jurist- og Økonomforbund v. Indenrigs- og Sundhedsministeriet*, Case C-546/11, ECLI:EU:C:2013:603, para. 24.

⁵⁰ Article 3(1)(a) of Directive 2000/78/EC.

⁵¹ Isabella Marengo, *EU Anti-Discrimination Law* (Cambridge: Cambridge University Press, 2019), 57.

⁵² CJEU Judgment of 23 April 2020, *Associazione Avvocatura per i diritti LGBTI v. Ministero della Giustizia*, Case C-507/18, ECLI:EU:C:2020:289, para. 39; CJEU Judgment of 2 June 2022, *Ligebehandlingsnævnet acting on behalf of A v. HK/Danmark and HK/Privat*, Case C-587/20, ECLI:EU:C:2022:419, para. 27.

⁵³ Article 5 of the Treaty on the Functioning of the European Union, consolidated version (O.J.E.C. C326, 26 October 2012).

⁵⁴ CJEU Judgment of 2 June 2022, *Ligebehandlingsnævnet acting on behalf of A v. HK/Danmark and HK/Privat*, Case C-587/20, ECLI:EU:C:2022:419, para. 29.

⁵⁵ CJEU Judgment of 23 April 2020, *Associazione Avvocatura per i diritti LGBTI v. Ministero della Giustizia*, Case C-507/18, ECLI:EU:C:2020:289, para. 35.

movement of persons. To fall within the scope of Directive 2000/78/EC, professional activity must be genuine and performed within a legal relationship characterized by some degree of stability. Nevertheless, the activity carried out by the claimant constitutes genuine and effective professional activity, performed personally on a regular basis for the same client, allowing the claimant access, in whole or in part, to means of subsistence. Whether the conditions for access to such activity are covered by Article 3(1)(a) of Directive 2000/78/EC does not depend on whether the activity is classified as “employment” or “self-employment.”⁵⁶ Moreover, the CJEU confirmed that the concept of “conditions for access” to self-employment within the meaning of Article 3(1)(a) of Directive 2000/78/EC can include the conclusion of a contract for specific work. Therefore, the refusal to conclude a contract for specific work with a contractor operating independently on grounds related to the contractor’s sexual orientation falls within the scope of this provision and, consequently, within the scope of the directive.

Article 3(1)(c) of Directive 2000/78/EC applies to “employment and working conditions, including dismissals and pay.”⁵⁷ It should be emphasized that, similar to an employee who may unintentionally lose their job due to “dismissal,” a self-employed person may also be forced to cease their activities due to the actions of their client, potentially finding themselves in a particularly difficult situation comparable to that of a dismissed employee.⁵⁸ Unlike Article 3(1)(a) of the directive, Article 3(1)(c) does not explicitly refer to self-employment but solely to employment and working conditions. Although the directive does not refer to the law of the Member States to define the term “conditions for access to employment,” both the requirements of uniform application of Union law and the principle of equality imply that the content of an EU law provision, which does not contain a clear reference to the law of the Member States for defining its

⁵⁶ CJEU Judgment of 12 January 2023, J.K. v. TP S.A., Case C-356/21, ECLI:EU:C:2023:9, para. 47.

⁵⁷ CJEU Judgment of 26 September 2013, Dansk Jurist- og Økonomforbund v. Indenrigs- og Sundhedsministeriet, Case C-546/11, ECLI:EU:C:2013:603, para. 24; Darbouche and van den Bos, *The Law of the European Union*, 105.

⁵⁸ CJEU Judgment of 20 December 2017, Florea Gusa v. Minister for Social Protection and Others, Case C-442/16, ECLI:EU:C:2017:1004, para. 43.

meaning and scope, should typically be given an autonomous and uniform interpretation throughout the Union.⁵⁹ As established in the consistent case law of the CJEU, the protection provided by Directive 2000/78/EC cannot depend on the formal classification of the employment relationship in national law or the choice made at the time of employing a person between one type of contract or another,⁶⁰ as the terms used in the directive should be understood broadly. The objective of the directive could not be achieved if the protection it provides against any form of discrimination, particularly on grounds such as sexual orientation, could not ensure the observance of the principle of equal treatment after access to self-employment, particularly concerning the conditions of performing and terminating such activities.

Nevertheless, the Court ruled that it is within the competence of the referring court to determine, in light of all relevant circumstances of the dispute before it, particularly the Act on Equal Treatment, which is solely within its jurisdiction to interpret, whether the exclusion of the free choice of contracting party from the scope of this Act constitutes direct or indirect discrimination based on the claimant's sexual orientation. This is subject to the condition that such discrimination cannot be justified by one of the reasons specified in Article 2(5) of Council Directive 2000/78/EC,⁶¹ which constitutes an exception to the prohibition of discrimination and should be interpreted strictly.⁶² The principles established in the directive do not apply to measures that cause differential treatment for one of the reasons listed in Article 1 of the directive, provided that these measures

⁵⁹ CJEU Judgment of 2 June 2022, *Ligebehandlingsnævnet, acting on behalf of A v. HK/Danmark and HK/Privat*, Case C-587/20, ECLI:EU:C:2022:419, para. 25.

⁶⁰ CJEU Judgment of 11 November 2010, *Dita Danosa v. LKB Lizings SIA*, Case C-232/09, ECLI:EU:C:2010:674, para. 69.

⁶¹ This Directive does not affect measures provided for by national laws that are necessary in a democratic society for the protection of public security, the maintenance of public order, the prevention of criminal offenses, the protection of health, and the protection of the rights and freedoms of others.

⁶² CJEU Judgment of 7 November 2019, *Gennaro Cafaro v. DQ*, Case C-396/18, ECLI:EU:C:2019:929, para. 42; CJEU Judgment of 22 January 2019, *Cresco Investigation GmbH v. Markus Achatzi*, Case C-193/17, ECLI:EU:C:2019:43, para. 55.

are necessary to achieve the stated objectives.⁶³ Thus, Article 5(3) of the Act of December 3, 2010, on the implementation of certain provisions of European Union law regarding equal treatment constitutes such a measure as provided for by national regulations within the meaning of Article 2(5) of Council Directive 2000/78/EC.

On the other hand, Article 5(3) of the Act of December 3, 2010, on the implementation of certain provisions of European Union law appears to uphold the protection of freedom of contract, ensuring the freedom to choose a contracting party, provided that this choice is not based on sex, race, ethnic origin, or nationality. The fact that Article 5(3) of the Equal Treatment Act provides for a certain number of exceptions to the freedom to choose a contracting party indicates that the Polish legislator itself considered that discriminatory actions cannot be deemed necessary to guarantee the freedom of contract in a democratic society. Furthermore, nothing suggests that the situation would be different depending on whether the discrimination is based on sexual orientation or one of the other reasons explicitly mentioned in this provision. Additionally, acknowledging that the freedom of contract allows the refusal to contract with someone due to their sexual orientation would render Article 3(1)(a) of Directive 2000/78/EC ineffective, to the extent that this provision precisely prohibits any discrimination on such grounds concerning access to self-employment. Consequently, the Court rightly noted that Articles 3(1)(a) and (c) of Directive 2000/78/EC preclude a national regulation that results in the exclusion, based on the freedom of choice of the contracting party, from the protection against discrimination granted by this directive, of a refusal, based on a person's sexual orientation, to enter into or extend a contract intended for the performance of specific services by that person within the framework of their self-employed activity.

This ruling is significant as it delineates the boundary between the free choice of the contracting party and the risk of discrimination. The freedom to conduct a business includes the freedom to choose business partners,⁶⁴

⁶³ CJEU Judgment of 7 November 2019, *Gennaro Cafaro v. DQ*, Case C-396/18, ECLI:EU:C:2019:929, para. 41; CJEU Judgment of 22 January 2019, *Cresco Investigation GmbH v. Markus Achatzi*, Case C-193/17, ECLI:EU:C:2019:43, para. 54.

⁶⁴ CJEU Judgment of 21 December 2021, *Bank Melli Iran v. Telekom Deutschland GmbH*, Case C-124/20, ECLI:EU:C:2021:1035, para. 79; CJEU Judgment of 15 April 2021, *Federazione*

but it is not an absolute right,⁶⁵ as unjustified actions or discriminatory grounds can constitute a limitation on the conditions of access to work for self-employed individuals.

In its judgment C-356/21, the CJEU emphasized the importance of protection against discrimination based on sexual orientation in the workplace. It stated that the prohibition of discrimination should be interpreted broadly to encompass all aspects of working conditions. The Court reinforced the obligation of member states to implement effective measures to combat discrimination, indicating that rights granted under EU law are universal and cannot be weakened by national regulations.

In the case of *Dr David L. Parris v. Trinity College Dublin and others*,⁶⁶ the Court confirmed that a national regulation, which under a professional pension scheme makes the entitlement of surviving registered partners of scheme members to a survivor's pension conditional upon the registered partnership being entered into before the member reaches the age of 60, does not constitute discrimination on the grounds of sexual orientation when national law did not allow the member to enter into a registered partnership before reaching that age. The complainant, David L. Parris, born in 1946, is a citizen of both Ireland and the United Kingdom. He had been in a long-term relationship with a same-sex partner for over 30 years. In 1972, he was employed by the Irish institution, Trinity College Dublin, as a lecturer, and simultaneously became a member of the college's pension scheme. Under this scheme, if a member dies after retirement, the surviving spouse or, from the specified date, the registered partner, is entitled to a lifetime

nazionale delle imprese elettrotecniche ed elettroniche (Anie) and *Others v. Ministero dello Sviluppo economico, Gestore dei servizi energetici (GSE) SpA*, Cases C-798/18 and C-799/18, ECLI:EU:C:2021:280, para. 57.

⁶⁵ CJEU Judgment of 22 January 2013, *Sky Österreich GmbH v. Österreichischer Rundfunk*, Case C-283/11, ECLI:EU:C:2013:28, para. 45; CJEU Judgment of 9 September 2004, *Kingdom of Spain and Republic of Finland v. European Parliament and Council of the European Union*, Cases C-184/02 and C-223/02, ECLI:EU:C:2004:497, w całym tekście przy zakresach stron: pt. zmienić na: paras.as. 51–52; CJEU Judgment of 6 September 2012, *Deutsches Weintor eG v. Land Rheinland-Pfalz*, Case C-544/10, ECLI:EU:C:2012:526, para. 54.

⁶⁶ CJEU Judgment of 24 November 2016, *David L. Parris v. Trinity College Dublin, Higher Education Authority, Department of Public Expenditure and Reform, Department of Education and Skills*, Case C-443/15, ECLI:EU:C:2016:897.

pension equal to two-thirds of the amount due to the member before their death (Rule 5 of the scheme). However, this survivor's pension is paid only if the member entered into marriage or a registered partnership before the age of 60. In 2009, at the age of 63, D. Parris registered his partnership in the United Kingdom, and at the end of 2010, he took early retirement and applied to Trinity College Dublin for the recognition of his registered partner's right to a survivor's pension upon his death. At that time, no provision of Irish law allowed for the recognition of the registered partnership entered into by D. Parris. The Irish Civil Partnership Act, which came into effect in 2011,⁶⁷ ruled out any retroactive recognition of civil partnerships registered in another state. According to Section 99 of the Civil Partnership Act, "pension benefits provided for the spouse of a person shall be available on the same terms to the registered partner of that person." At the time of the factual circumstances of this case, only marriages between opposite-sex couples were recognized in Ireland. The recognition of same-sex marriage required a constitutional amendment following a national referendum. Such a referendum was held on May 22, 2015, and the proposal to allow marriage between two people regardless of gender was approved. However, for the amended constitutional provision to become effective, legislative acts had to be adopted. In this regard, according to the submissions by Trinity College Dublin, Irish law has recognized same-sex marriages since November 16, 2015.

The complainant's application was rejected by a decision dated November 15, 2010. Trinity College Dublin's decision was upheld by the Higher Education Authority, which stated that D. Parris had retired before his registered partnership was recognized by the Irish state. The complainant appealed to the Labour Court, which decided to suspend proceedings and refer a preliminary question to the CJEU. The Labour Court essentially sought to determine whether Article 2 of Directive 2000/78/EC should be interpreted to mean that a national regulation, which makes the entitlement of surviving registered partners of members of professional pension schemes to a survivor's pension conditional upon the registered partnership being entered into before the member reaches the age of 60 constitutes

⁶⁷ On July 19, 2010, the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010 was enacted, which came into force on January 1, 2011.

discrimination on the grounds of sexual orientation when national law did not allow the member to enter into a registered partnership before that age.

The Court has previously recognized that a survivor's pension provided under an occupational pension scheme falls within the scope of Article 157 TFEU. In the circumstances of this case, it should also be considered that the survivor's pension resulting from the employment relationship between D. Parris and his employer falls within the category of "remuneration" as defined by Article 157 TFEU. This assertion is not undermined by the fact that the pension fund, now managed by a national authority, is financed by the Irish state, as the Court has repeatedly indicated that the financing and management conditions of a scheme are not decisive in determining whether a pension scheme falls within the concept of "remuneration."⁶⁸ Furthermore, the fact that the pension in question is, by definition, paid not to the employee but to the surviving family member does not undermine such an interpretation, given that the benefit derives from the membership in the insurance scheme of the surviving spouse. Therefore, the pension is granted to the surviving spouse within the context of the employment relationship between the spouse and the employer and is paid due to the spouse's employment.⁶⁹ However, a Member State regulation that does not grant the surviving partner the right to a family pension equivalent to that given to the surviving spouse, while national law treats same-sex partnerships as comparable to marriages for the purpose of such a pension, should be regarded as constituting direct discrimination based on sexual orientation within the meaning of Article 1 and Article 2(2)(a) of Directive 2000/78/EC.⁷⁰

⁶⁸ CJEU Judgment of 28 September 1994, *Bestuur van het Algemeen Burgerlijk Pensioenfonds v. G.A. Beune*, Case C-7/93, ECLI:EU:C:1994:350, para. 38; CJEU Judgment of 29 November 2001, *Joseph Griesmar v. Ministre de l'Economie, des Finances et de l'Industrie and Ministre de la Fonction publique, de la Réforme de l'Etat et de la Décentralisation*, Case C-366/99, ECLI:EU:C:2001:648, para. 37; CJEU Judgment of 12 September 2002, Case C-351/00, ECLI:EU:C:2002:480, para. 43; CJEU Judgment of 26 March 2009, *Commission of the European Communities v. Hellenic Republic*, Case C-559/07, ECLI:EU:C:2009:198, para. 46.

⁶⁹ CJEU Judgment of 1 April 2008, *Tadao Maruko v. Versorgungsanstalt der deutschen Bühnen*, Case C-267/06, ECLI:EU:C:2008:179, para. 45.

⁷⁰ CJEU Judgment of 1 April 2008, *Tadao Maruko v. Versorgungsanstalt der deutschen Bühnen*, Case C-267/06, ECLI:EU:C:2008:179, paras. 72–73.

The referring court's decision reveals that on July 19, 2010, Ireland enacted the Civil Partnership Act and that since this act came into force on January 1, 2011, Principle 5 of the pension scheme under review in the main proceedings provides that survivor's pensions are granted to both surviving spouses and surviving registered partners of members. The entitlement to such a benefit, for both surviving spouses and registered partners, is subject to the condition that the marriage or registered partnership was entered into before the member reached the age of 60. This condition is not directly related to the employee's sexual orientation. On the contrary, it is formulated in a neutral manner and applies equally to all employees, regardless of whether they are homosexual or heterosexual, excluding their partners from the benefit of the survivor's pension if the marriage or registered partnership was not concluded before the employee turned 60. Therefore, surviving registered partners are not treated less favourably than surviving spouses with regard to the survivor's pension in the main proceedings, and thus the national regulation concerning this benefit does not result in direct discrimination based on sexual orientation.

From the case file submitted to the Court, it appears that on January 1, 2011, the date the Civil Partnership Act came into force, D. Parris was 64 years old and was already retired. Therefore, his pension rights, which he had acquired for himself and for any surviving spouse or partner, pertain to his period of professional activity, all of which was completed before the Act entered into force. The file also indicates that the registered partnership entered into by D. Parris in the United Kingdom on April 21, 2009, when he was 63 years old, was recognized in Ireland only from January 12, 2011. It is therefore undisputed that at the time the claimant retired, he did not meet the criteria set by the national regulation for his registered partner to qualify for the survivor's pension being considered in the main proceedings. This is because the registered partnership he entered into in the United Kingdom was not yet recognized in Ireland at that time, and even if it had been recognized, such a partnership could not have served as the basis for entitlement to such a benefit, as it was entered into after he turned 60.

Although the claimant's inability to meet this condition is primarily a consequence of the legal situation in Ireland at the time he turned 60, particularly the absence of any legislation recognizing same-sex civil unions at

that time, it must be noted that civil status and resulting benefits fall within the competence of Member States, and EU law does not infringe upon this competence. However, Member States must adhere to Community law, particularly the principle of non-discrimination, when exercising this competence.⁷¹ Member States therefore have the freedom to introduce same-sex marriage or an alternative form of legal recognition of their relationships and to determine, if necessary, the moment from which such marriage or alternative relationship will take effect. As a result, EU law did not obligate Ireland to introduce same-sex marriage or a civil union form before January 1, 2011, nor to grant retroactive effects to the Civil Partnership Act and the regulations adopted under it, nor to establish transitional measures for same-sex couples in relation to the survivor's pension being considered in the main proceedings, in the event that a member of the scheme had already reached the age of 60 when the Act came into force. In these circumstances, the national regulation under consideration in the main proceedings does not result in indirect discrimination based on sexual orientation.

In the present proceedings, the CJEU emphasized the necessity of equal treatment and the prohibition of discrimination based on sexual orientation in all areas of life, not just in employment. The Court clarified that Member States must ensure effective legal protection against discrimination and implement measures that enable individuals to assert their rights. This ruling reinforced the principle that EU law requires comprehensive protection of individuals, promoting equality and safeguarding against discrimination in various contexts.

In the case of *Tadao Maruko v. Versorgungsanstalt der deutschen Bühnen*,⁷² the Court ruled that Articles 1 and 2 of Council Directive 2000/78/EC preclude a national regulation under which a registered partner does not receive a survivor's pension equivalent to that granted to a surviving spouse, where national law treats registered partnerships as comparable

⁷¹ CJEU Judgment of 16 May 2006, *The Queen, on the application of Yvonne Watts v. Bedford Primary Care Trust and Secretary of State for Health*, Case C-372/04, ECLI:EU:C:2006:325, para. 92; CJEU Judgment of 19 April 2007, *Aikaterini Stamatelaki v. NPDD Organismos Asfaliseos Eleftheron Epangelmaton (OAEE)*, Case C-444/05, ECLI:EU:C:2007:231, para. 23.

⁷² CJEU Judgment of 1 April 2008, *Tadao Maruko v. Versorgungsanstalt der deutschen Bühnen*, Case C-267/06, ECLI:EU:C:2008:179, para. 80.

to marriages in the context of the case at hand. In this case, Tadao Maruko (the complainant) was in a registered partnership with another man under German law. Maruko's partner had been insured with Vddb (Pension Fund of German Theaters) since September 1, 1959, and continued to make voluntary contributions during periods when membership was not mandatory. After the death of his partner in 2005, Maruko applied for the so-called widow's pension. Vddb refused to award him the pension, arguing that the internal regulations of the fund provide for such pensions only for spouses and do not cover partners in registered partnerships. Maruko contended that Vddb's refusal violated the principle of equal treatment, as German legislation has sanctioned such equality between registered partnerships and marriages, notably through the inclusion of Section 46(4) into the Social Security Code, since 2005.⁷³ Maruko argued that denying him a survivor's pension although his circumstances are the same as those of a surviving spouse constitutes discrimination based on sexual orientation. Moreover, Maruko argued that the refusal to grant the survivor's pension to a surviving registered partner constitutes indirect discrimination under Directive 2000/78/EC, since same-sex couples cannot marry in Germany and therefore cannot access benefits reserved for surviving spouses. He claimed that registered partners and spouses are in a comparable legal situation, which justifies the granting of such a benefit to the surviving partner. Conversely, Vddb argued that there is no constitutional obligation to treat marriage and registered partnerships as equivalent from the point of view of social or pension law. According to Vddb, registered partnerships are a *sui generis* institution and a new civil status, and thus, the German law does not entail any obligation to equalise the treatment of registered partners and spouses.

The Court confirmed that the survivor's pension in dispute in the national case derives from the employment relationship of the complainant's

⁷³ Section 46(4) of the Sozialgesetzbuch VI – Gesetzliche Rentenversicherung (Social Security Code – Statutory Pension Insurance) provides: "For the purposes of determining the right to a widow's pension, the conclusion of a registered civil partnership is treated as equivalent to the conclusion of a marriage; a registered civil partnership is treated as a marriage; the surviving partner is treated as a widow or widower; and the partner is treated as a spouse. The termination or annulment of a remarriage corresponds to the termination or dissolution of a new civil partnership."

partner and, consequently, should be classified as “remuneration” and falls within the scope of Council Directive 2000/78/EC. Even though this pension is not, by definition, paid to the employee but rather to the surviving family member, this does not undermine such an interpretation, since the pension is a benefit resulting from the surviving spouse’s employment relationship with the employer.⁷⁴ Furthermore, the Act on Registered Partnerships of December 15, 2004 (LPartG)⁷⁵ contributed to the gradual alignment of the legal regime for registered partnerships with the legal regime for marriage. This legislation introduced amendments to Book VI of the Social Security Code in the form of Section 46(4),⁷⁶ which stipulates that for widow’s pensions covered by this provision, a registered partnership is treated as equivalent to marriage. However, under VddB regulations, eligibility for the survivor’s pension is limited exclusively to surviving spouses, while surviving registered partners are denied this benefit. Consequently, surviving registered partners are treated less favorably with regard to the survivor’s pension compared to surviving spouses. If the referring court finds that surviving spouses and surviving registered partners are in a comparable situation concerning the survivor’s pension, the national regulation should be considered to directly discriminate based on sexual orientation⁷⁷ under Articles 1 and 2(2)(a) of Council Directive 2000/78/EC. The Court explicitly emphasized in its ruling that while it does not have jurisdiction

⁷⁴ CJEU Judgment of 6 October 1993, *Gerardus Cornelis Ten Oever v. Stichting Bedrijfspensioenfonds voor het Glazenwassers- en Schoonmaakbedrijf*, Case C-109/91, ECLI:EU:C:1993:833, paras. 12–13; CJEU Judgment of 17 April 1997, *Dimossia Epicheirissi Ilektrismou (DEI) v. Eftimios Evrenopoulos*, Case C-147/95, ECLI:EU:C:1997:201, para. 22; CJEU Judgment of 9 October 2001, *Pensionskasse für die Angestellten der Barmer Ersatzkasse VVaG v. Hans Menauer*, Case C-379/99, ECLI:EU:C:2001:527, para. 18.

⁷⁵ Act on Registered Civil Partnerships (*Gesetz über die Eingetragene Lebenspartnerschaft*) of 16 February 2001 (BGBl. 2001 I, p. 266), as amended by the Act of 15 December 2004 (BGBl. 2004 I, p. 3396).

⁷⁶ “For the purposes of determining the right to a widow’s pension, the conclusion of a registered civil partnership is treated as equivalent to the conclusion of a marriage; a registered civil partnership is treated as a marriage; the surviving partner is treated as a widow or widower; and the partner is treated as a spouse. The termination or annulment of a remarriage corresponds to the termination or dissolution of a new civil partnership.”

⁷⁷ Dorota Dziensiuik, “Dyskryminacja ze względu na orientację seksualną i wyrok ETS w sprawie C-267/06 Tadao Maruko,” *Ubezpieczenia Społeczne, Teoria i praktyka* 121, no. 4 (2014): 38.

to intervene in the civil law of individual EU member states, it does have the authority to issue a binding ruling when a member state's law permits unequal treatment based on sexual orientation in the field of employment and occupation.

In Case C-267/06, the CJEU emphasized that the prohibition of discrimination based on sexual orientation also extends to self-employed individuals. This ruling indicates that protection against discrimination should have a broader scope, encompassing not only employment relationships but also other forms of professional activity. The Court highlighted that Member States must ensure effective legal protection measures, which are crucial for realizing the principle of equality in various professional contexts.

In the case of *Frédéric Hay v. Crédit Agricole Mutuel de Charente-Maritime et des Deux-Sèvres*, the Court ruled that Article 2(2)(a) of Council Directive 2000/78/EC of November 27, 2000,⁷⁸ establishing a general framework for equal treatment in employment and occupation, should be interpreted as precluding a collective agreement provision, such as the one under review in the main proceedings, which excludes an employee who enters into a PACS (Civil Solidarity Pact) with a same-sex partner from benefits such as special leave and a salary supplement granted to employees who enter into marriage, where the national law of a member state does not allow same-sex marriages. This is because, given the nature of these benefits and the criteria for granting them, the employee is in a comparable situation to that of an employee entering into marriage.⁷⁹

The complainant, an employee of *Crédit Agricole*, requested 10 days of special leave and a financial bonus in 2007, which were granted to employees of the bank upon the conclusion of a marriage according to the national collective agreement. This request was made in connection

⁷⁸ Article 2(1) and (2)(a) of Directive 2000/78/EC – Concept of Discrimination states: “For the purposes of this Directive, ‘the principle of equal treatment’ shall mean that there shall be no direct or indirect discrimination whatsoever on any of the grounds referred to in Article 1. For the purposes of paragraph 1: (a) direct discrimination shall be taken to occur where one person is treated less favorably than another is, has been, or would be treated in a comparable situation, on any of the grounds referred to in Article 1.”

⁷⁹ CJEU Judgment of 12 December 2013, *Frédéric Hay v. Crédit agricole mutuel de Charente-Maritime et des Deux-Sèvres*, Case C-267/12, ECLI:EU:C:2013:823, para. 48.

with the conclusion of a PACS (Civil Solidarity Pact) with his partner. At that time, the *Crédit Agricole* collective agreement did not provide for the granting of these benefits for a PACS. Article 20 of the *Crédit Agricole* national agreement granted employees 10 working days of fully paid leave in the event of marriage, while Article 34 of the agreement entitled employees to a bonus equivalent to one thirty-sixth of their monthly salary for the month preceding the marriage, for each month of their employment. The complainant alleged discrimination based on sexual orientation against the bank in the court proceedings. The national courts of first and second instance dismissed the claim, emphasizing that the benefits the complainant sought were not based on employment status but on changes in civil status. While the French law in 2007 treated marriage and the Civil Solidarity Pact (PACS) differently, during the court proceedings, the legal situation changed as collective agreement rights were granted to PACS partnerships, and same-sex marriages were introduced. The court of first instance ruled that the benefit related to marriage was not connected to employment but to civil status, and that the Civil Code distinguished between marriage and PACS. Although the *Crédit Agricole* collective agreement was amended to include individuals in PACS, it could not be applied retroactively. The court of second instance concluded that the different treatment of spouses and individuals in PACS did not stem from sexual orientation but from differences in civil status, placing them in different situations. However, it should be noted that legislation concerning civil status falls within the competencies of member states. Nevertheless, according to Article 1 of Council Directive 2000/78/EC, its aim is to combat certain forms of discrimination in employment and occupation, including discrimination based on sexual orientation, to ensure the principle of equal treatment in member states.⁸⁰

Since Articles 20 and 34 of the *Crédit Agricole* national collective agreement provide for paid leave and a financial bonus for employees who marry, they effectively set standards related to employment conditions, particularly remuneration, as defined by Article 3(1)(c) of Council Directive 2000/78/EC. The concept of remuneration under this provision includes, in particular, all monetary benefits or in-kind payments, whether agreed

⁸⁰ CJEU Judgment of 10 May 2011, *Jürgen Römer v. Freie und Hansestadt Hamburg*, Case C-147/08, ECLI:EU:C:2011:286, para. 38.

upon, present, or future, received by an employee directly or indirectly from an employer as a result of employment, based on an employment contract, statutory provisions, or at the employer's discretion.⁸¹ Therefore, Council Directive 2000/78/EC covers the situation in question in this case. Regarding direct discrimination, Article 2(2)(a) of Council Directive 2000/78/EC stipulates that this form of discrimination occurs when a person is treated less favourably on one of the grounds listed in Article 1 of the Directive, including sexual orientation, than another person in a comparable situation. The situations need not be identical but should be comparable. The comparison should be made in a specific and concrete manner in light of the particular benefit in question.⁸²

In this context, the Court has previously ruled concerning registered partnerships under the Gesetz über die Eingetragene Lebenspartnerschaft, that comparisons should focus on the rights and obligations of spouses and registered partners under the relevant national laws, significant in light of the purpose and conditions of the benefit being examined, rather than a general and complete legal equivalence between registered partnerships and marriage.⁸³ As for benefits related to remuneration or working conditions granted upon the conclusion of a civil relationship such as marriage, like those considered in the main proceedings (i.e., leave and bonus), same-sex couples in a PACS are in a comparable situation to couples who marry since same-sex marriage was not legally available under French law at the time. The Court found that such a situation constituted direct discrimination, stating that if national legal norms provide benefits related to remuneration or working conditions only for employees who marry, while marriage is legally possible in that member state only between opposite-sex individuals, this establishes direct discrimination based on sexual orientation against employees with a homosexual orientation who have entered

⁸¹ CJEU Judgment of 6 December 2012, Bundesrepublik Deutschland and Jörg-Detlef Müller v. Karen Ditrlich and Others, Cases C-124/11, C-125/11, and C-143/11, ECLI:EU:C:2012:771, para. 35.

⁸² CJEU Judgment of 10 May 2011, Jürgen Römer v. Freie und Hansestadt Hamburg, Case C-147/08, ECLI:EU:C:2011:286, para. 42; CJEU Judgment of 1 April 2008, Tadao Maruko v. Versorgungsanstalt der deutschen Bühnen, Case C-267/06, ECLI:EU:C:2008:179, paras. 67–69.

⁸³ CJEU Judgment of 10 May 2011, Jürgen Römer v. Freie und Hansestadt Hamburg, Case C-147/08, ECLI:EU:C:2011:286, para. 43.

into a PACS and are in a comparable situation.⁸⁴ By recognizing the comparability of the status of spouses and PACS partners under the provisions of Council Directive 2000/78/EC, the Court deemed it significant that at the time relevant to the main proceedings, same-sex couples could not legally marry in France.

In Case C-267/12, the CJEU ruled that discrimination based on sexual orientation is intolerable in any context, including access to self-employment. The Court emphasized that protection against discrimination should encompass various forms of contracts, including employment contracts. This ruling reinforces the principle that EU law requires equal treatment of all individuals, regardless of their employment status, which is crucial for promoting equality in society.

In the case of Jürgen Römer v. Free and Hanseatic City of Hamburg,⁸⁵ the Court undertook to determine whether there is discrimination based on sexual orientation when a supplementary pension benefit paid to a partner in a registered partnership is lower than the benefit paid in the case of marriage.

The complainant, Jürgen Römer, employed as an administrative staff member by the city of Hamburg, who has been living permanently with his partner since 1969, entered into a registered partnership with him in 2001 under the German law. In this context, he requested that his supplementary pension be recalculated using a more favorable tax deduction provided for under Class III/0, which would have increased his pension according to the tax provisions applicable to married couples. The Free and Hanseatic City of Hamburg informed the complainant that it would not change the calculation of the pension benefit because, under § 10(6)(1) of the Hamburg State Law on Supplementary Pensions and Benefits for Surviving Family Members of Employees (RGG),⁸⁶ only beneficiaries who are

⁸⁴ CJEU Judgment of 1 April 2008, Tadao Maruko v. Versorgungsanstalt der deutschen Bühnen, Case C-267/06, ECLI:EU:C:2008:179, para. 73; CJEU Judgment of 10 May 2011, Jürgen Römer v. Freie und Hansestadt Hamburg, Case C-147/08, ECLI:EU:C:2011:286, para. 52.

⁸⁵ CJEU Judgment of 10 May 2011, Jürgen Römer v. Freie und Hansestadt Hamburg, Case C-147/08, ECLI:EU:C:2011:286.

⁸⁶ The State Law of Hamburg on Supplementary Pension Benefits and Benefits for Surviving Dependents of Employees (Erstes Ruhegeldgesetz der Freien und Hansestadt Hamburg), HmbGVBl. S. 431.

married and not in permanent separation, as well as beneficiaries eligible for family benefits or similar allowances, are entitled to have their pension calculated with reference to Class III/0. Therefore, since the regulations stipulate that only married beneficiaries are eligible for the more favorable pension calculation, the complainant was denied this right. Disagreeing with the authorities' argumentation, the complainant asserted that such provisions are contrary to the principle of non-discrimination based on sexual orientation in employment. In the legal proceedings, he argued that he should be treated as if he were married and that the regulations should be interpreted to include beneficiaries who have entered into a registered partnership under the German law.⁸⁷

The Court first recognized that such benefits fall within the scope of Directive 2000/78/EC and confirmed that the Registered Partnership Act (LPartG)⁸⁸ mitigates the differences between marriage and registered partnership. This law was amended by the Gesetz zur Überarbeitung des Lebenspartnerschaftsrechts of December 15, 2004,⁸⁹ which significantly aligned the status of registered partnerships with that of marriage. A registered partner is in a legally comparable situation to a married person, so introducing different criteria for accessing such benefits under national law may constitute direct discrimination based on sexual orientation. Furthermore, the Court confirmed that the complainant could not claim the right to equal treatment before the deadline for its implementation had passed. A national provision such as § 10(6)(1) RGG, which provides that a partner in a registered partnership receives supplementary pension benefits at a lower level than a married beneficiary who is not in permanent separation, is also inadmissible under Directive 2000/78/EC⁹⁰ if: marriage is reserved for opposite-sex couples in the member state and coexists with registered partnerships, as provided for in the Gesetz über die Eingetragene Lebenspartnerschaft, which is reserved for same-sex couples, and there is

⁸⁷ Gesetz über die Eingetragene Lebenspartnerschaft (Act on Registered Partnerships) of 16 February 2001, BGBl., p. 266.

⁸⁸ Gesetz über die Eingetragene Lebenspartnerschaft (Law on Registered Life Partnerships) of 16 February 2001, BGBl. 2001 I, p. 266.

⁸⁹ Gesetz zur Überarbeitung des Lebenspartnerschaftsrechts (Act on the Revision of the Civil Partnership Law) of 15 December 2004, BGBl. I, p. 3396.

⁹⁰ Article 1 in conjunction with Article 2 and Article 3(1)(c) of Council Directive 2000/78/EC.

direct discrimination based on sexual orientation, as the registered partner is in a legal and factual situation comparable to that of a married person concerning the benefit in question. The assessment of comparability falls within the competence of the national court and should focus on the relevant rights and obligations of married individuals and those in registered partnerships, regulated under their corresponding institutions, in light of the purpose and conditions of the benefit in question.⁹¹

The Court also addressed in the ruling the issue of when the complainant could claim the right to equal treatment. In the case where § 10(6)(1) RGG is classified as discriminatory under Article 2 of Directive 2000/78/EC, a person such as the complainant in the national proceedings could have claimed the right to equal treatment as early as after the deadline for the implementation of the directive had passed, that is, from December 3, 2003, without having In Case C-147/08, the CJEU emphasized that discrimination based on sexual orientation in the context of pension policies is unacceptable. This ruling reinforces the principle that protection against discrimination must be guaranteed across various areas of life, including access to pension benefits. The Court indicated that discrimination due to sexual orientation should not result in different levels of legal protection and all individuals should be treated equally, regardless of their orientation.

3. Conclusions

The analysis of the ECtHR rulings regarding the prohibition of discrimination based on sexual orientation leads to several conclusions drawn from the presented judgments. Undoubtedly, in the case of *Toonen v. Australia*, sexual orientation was formally recognized as a protected category against discrimination within the framework of international human rights. This recognition is reflected in the requirement that member states not only refrain from discriminating against LGBT+ individuals but also actively protect their rights. The *Toonen* ruling had broad implications for other international human rights instruments, serving as an inspiration for later judgments by the ECtHR, which began to interpret its provisions in the context of sexual orientation. ECtHR judgments, such as *Dudgeon v. the United Kingdom*

⁹¹ CJEU Judgment of 10 May 2011, *Jürgen Römer v. Freie und Hansestadt Hamburg*, Case C-147/08, ECLI:EU:C:2011:286, para. 67.

and *Schalk and Kopf v. Austria*, largely rely on the precedent established by the *Toonen* ruling. Consequently, many countries began implementing changes in national legislation to align with international norms. In essence, the *Toonen v. Australia* judgment not only transformed how international law perceives sexual orientation but also had far-reaching consequences for human rights protection. The *Dudgeon* ruling, in turn, allows for the invocation of Article 14 of the Convention as a basis for protecting the rights of sexual minorities. This entails an obligation for member states to prevent discrimination and ensure equality before the law. The judgments of *Dudgeon* and subsequent rulings, such as *Schalk and Kopf v. Austria* and *Fretté v. France*, form crucial foundations for the argument advocating for the recognition of sexual orientation as a protected category. The *Genderdoc-M* ruling emphasizes that the rights of LGBT+ individuals are an integral part of the human rights protection system in Europe. The ECtHR clearly indicated that state authorities have a duty to protect all individuals, including sexual minorities, from discrimination and violence. This judgment gains significance as it demonstrates that these rights are not merely optional but are fundamental in the context of human rights protection. The *Genderdoc-M* ruling highlights the necessity of respecting diversity and tolerance in society, which is foundational for a democratic state. From this perspective, the ECtHR rulings can be viewed as a catalyst for legislative and social changes toward greater acceptance and support for LGBT+ individuals.

The ruling *Schalk and Kopf v. Austria* sets an important precedent for future equality initiatives, which may be referenced in subsequent cases involving discrimination. It is clear that, in the context of this judgment, sexual orientation should be treated equally alongside other grounds for discrimination. Many countries have begun to adjust their legal frameworks to ensure greater equality. This ruling was a significant factor influencing those changes. The judgment imposed an obligation on states to provide all citizens, regardless of sexual orientation, with access to the same rights afforded to heterosexual couples.

In summary, the case law of the ECtHR regarding the prohibition of discrimination based on sexual orientation plays a crucial role in the protection of human rights in various respects. Through its judgments, the Court establishes precedents that impact not only national legislation but also international standards concerning the rights of LGBT+

individuals.⁹² The rulings of the ECtHR compel member states that have signed the European Convention on Human Rights to align their legislation with human rights protection standards. For example, the judgment in the case of *Schalk and Kopf* highlighted the necessity of equal treatment for same-sex couples, prompting many countries to implement changes in laws governing marriage and partnerships. As the ECtHR develops its case law, it simultaneously shapes new international standards for the protection of human rights.

Nonetheless, the case law of the CJEU has also highlighted several key issues in its rulings. Firstly, it has defined the scope of protection against discrimination. Cases *C-356/21* and *C-443/15* focus on discrimination in the workplace, emphasising that discrimination based on sexual orientation is explicitly prohibited and that member states must provide effective legal remedies for those affected. In cases *C-267/06* and *C-267/12*, the Court expanded the definition of protection to include self-employed individuals, indicating that they also have the right to protection against discrimination. This is particularly relevant in the context of a developing labour market where many individuals work independently. Therefore, the rulings emphasise the broad scope of protection against discrimination based on sexual orientation, encompassing not only employment but also self-employment and social benefits. Secondly, the CJEU stressed the necessity of applying an autonomous and uniform interpretation of EU law, regardless of national regulations. Judgment *C-267/12* confirms that the definition of “conditions for access” to self-employment also includes contracts for specific work, which is crucial for the legal protection of self-employed individuals. Judgment *C-147/08* addressed pension policy, where different treatment based on sexual orientation was deemed discriminatory. In this context, the Court indicates that protection cannot vary based on the form of employment. Thirdly, the Court has addressed the obligation of member states to implement effective legal protections, as confirmed in ruling *C-443/15*. These obligations not only include enacting legal provisions but

⁹² See also: Dimitrina Petrova, “The Use of Equality and Anti-discrimination Law in Advancing LGBT Rights,” in *Human Rights, Sexual Orientation and Gender Identity in The Commonwealth: Struggles for Decriminalisation and Change*, eds. Corinne Lennox and Matthew Waites (London: Human Rights Consortium, Institute of Commonwealth Studies, School of Advanced Study, University of London, 2013), 479.

also ensuring that individuals who experience discrimination have real opportunities to seek justice. Finally, all judgments point to practical implications, as they stress the need for harmonizing national laws with EU legislation. Case C-267/06 illustrates the importance of preventing member states from limiting individual rights based on local regulations that contradict EU directives. Ruling C-147/08 provides context regarding the broad scope of the concept of discrimination, showing that it pertains not only to employment but also to other life areas, such as social policy.

These judgments clearly demonstrate the evolving nature of anti-discrimination law in the European Union and the need for domestic regulations to align with EU requirements. The common message across all judgments is the Court's determination to promote equality and combat discrimination based on sexual orientation, regardless of the form of employment. These guidelines are crucial for equality policy in the EU, placing a responsibility on member states to ensure that all citizens are treated equally and that their rights are respected in accordance with the values of the European Union.

As evidenced by the CJEU's case law, the transposition of EU regulations and the decisions made by competent authorities at the national level regarding the prohibition of discrimination based on sexual orientation are unsatisfactory. A significant obstacle is the restrictive and often incorrect interpretation of EU law and the lack of appropriate mechanisms aimed at implementing protection against discrimination based on sexual orientation at the national level. The idea of gradually introducing relevant national provisions and implementing appropriate practices by member states to strengthen the protection of individual rights, including by means of eliminating all forms of discrimination in employment, was intended to address this issue. Therefore, the statement that "the European Union needs not so much judicial protection of individual rights as progressive human rights policies and their effective implementation" seems misplaced. Effective EU law in the area of prohibition of discrimination cannot be achieved without individual guarantees of protection at the national level.⁹³

⁹³ Philip Alston and Joseph Weiler, "An 'Ever Closer Union' in Need of Human Rights Policy: The European Union and Human Rights," in *The EU and Human Rights*, ed. Philip Alston (Oxford: Oxford University Press, 1999), 3.

An exploration of CJEU case law confirms the application and implementation of national provisions regarding the prohibition of discrimination based on sexual orientation, revealing their disparities with EU law standards. A significant factor contributing to this discrepancy is the creation of national regulations that are inconsistent with EU law, leading to a high risk of their practical application against interested parties, and varying interpretations of the principle of equality by member states, which significantly impacts the implementation of EU law.⁹⁴ Following CJEU case law, it must be stated that differences and divergences in the application and enforcement of EU law provisions within national legal systems of member states negatively affect the proper functioning of the principle of non-discrimination on their territories.

National courts and other authorities in member states are required to interpret national law in accordance with the EU law, its content, and purpose, and, as far as possible, to interpret national law in light of EU law provisions to ensure the results prescribed in that law.⁹⁵ As was demonstrated by the analysis of CJEU rulings, they do not satisfactorily fulfill their function, leading to violations of subjective rights in the discussed matter. Furthermore, the analysis of existing anti-discrimination provisions confirms that the creation of legal instruments guaranteeing effective legal protection against discrimination, including based on sexual orientation, cannot be sufficiently achieved by member states; better results will be achieved at the EU level. Thus, there is a fully justified need for a revision of legislative acts and administrative practices of member states in this area. Currently, the only mechanism to combat discrimination based on sexual orientation is normative acts adopted under Article 19 TFEU (formerly Article 13 EC), but their limited scope and the inability to shape civil status at the EU level prevent, for example, the recognition of registered partnerships as equivalent to marriages. Therefore, there is a need for a legal act that standardises

⁹⁴ Christopher McCrudden and Sacha Prechal, "The Concepts of Equality and Non-Discrimination in Europe: A Practical Approach," *Oxford Legal Studies Research Paper*, no. 4 (2011): 1.

⁹⁵ Agnieszka Sołtys, "Wykładnia prawa krajowego zgodnie z dyrektywami jako środek zapewnienia skuteczności orzeczeniom Trybunału Sprawiedliwości Unii Europejskiej (podjętym w trybie art. 267 TFUE) w polskim porządku prawnym," in *Zapewnienie efektywności orzeczeń sądów międzynarodowych w polskim porządku prawnym*, ed. Andrzej Wróbel (Warsaw: Wolters Kluwer, 2011), 499.

a minimum, uniform level of protection against discrimination across all areas of life, not only within employment and work, which will ensure a balance between the achievement of EU objectives and the competencies of member states.

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