

## Discrimination on grounds of sexual orientation: CJEU case law

### Sexual orientation

- \* Only legislated in combination at the moment - for the purposes of access to employment 2000/78 - Scope significantly reduced in comparison with gender and race
- \* The proposed horizontal directive is still not accepted (COM (2008) 426 - prohibition of discrimination should cover the areas of social protection, including social security and health care, social benefits, education and access to goods and other services which are available to the public, including housing and supplies)
- \* Despite modest legislation significant ECJ case law

## Sexual orientation

Case law as regards doubts to which extent (e.g. from the point of view of the social security) a registered partnership should be considered the same way as a marriage, respectively as a stable coexistence of persons of the same sex

- \* C-249/96 Grant – the employer is not obliged to consider a homosexual partnership the same way as a heterosexual one (free employee travel passes); discrimination based on sexual orientation is not the same as discrimination based on sex
- \* On the basis of sex C-122/99 D. - for household allowance, the term "married officer / clerk married" may be interpreted as being applicable to registered partnerships
- \* C-117/01 K. B. - KB has lived for several years as a partner in a joint household with R., a person who was born a woman and was entered as such in the register. As a result of surgery gender was reassigned to man, but without being able to change the birth record KB and R. could not marry, although their union was sanctified by a "ceremony in the church and was confirmed by a member of the College of Bishops of the Anglican Church" and the oath "in the same way, which would be composed of traditional couple." In the absence of marriage KB realized that if she died before R., R. would not be able to receive a widower's pension, since entitlement to this benefit is restricted to a surviving spouse – in this the CJEU sees a violation of Art. 141

## Sexual orientation

- \* C-267/06 Maruko - registered partnership in Germany, claimed the deceased's pension from a retirement fund - addressed whether direct or indirect discrimination. - According GA - indirect, according to CJEU direct
- C-147/08 Römer - because people in marriage in a different tax category - supplementary old-age pensions for partners lower than for husbands - CJEU: prohibition of discrimination on grounds of sexual orientation - the general principles of EU law (see Mangold, Küçükdevici)

## Sexual orientation

- \* C-81/12 Accept
- \* Accept argued that in the context of a conversation about a possible transfer of a professional footballer X and in connection with his alleged sexual orientation, the general manager of the club said he would prefer a junior player to a footballer presented as gay. As a result an employment contract with that player failed.
- \* These facts may be classified as “facts suggesting that there has been discrimination,” even though the originator of the statement does not necessarily have the legal capacity to bind or represent the club in employment
- \* National legislation should impose effective, proportionate and dissuasive penalties - not just reprimand

## C-267/12 Hay

**Article 2(2)(a) of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation must be interpreted as precluding a provision in a collective agreement, such as the one at issue in the main proceedings, under which an employee who concludes a civil solidarity pact with a person of the same sex is not allowed to obtain the same benefits, such as days of special leave and a salary bonus, as those granted to employees on the occasion of their marriage, where the national rules of the Member State concerned do not allow persons of the same sex to marry, in so far as, in the light of the objective of and the conditions relating to the grant of those benefits, that employee is in a comparable situation to an employee who marries.**

## C-528/13 Léger

GA opinion

"Item 2.1 of Annex III to Directive 2004/33 / EC of 22 March 2004 implementing Directive of the European Parliament and Council Directive 2002/98 / EC as regards certain technical requirements for blood and blood components, must be interpreted as meaning that the mere fact that the man kept or maintained sexual relations with another man, in itself, is not sexual behavior exhibiting a high risk of contracting serious infectious diseases transferable blood.

- \* It is for the national court to make sure that the French Government, by permanently excluded men who keep or maintain sexual relations with another man from donating blood, acted within its discretion, which is traditionally granted to the Member States in the field of public health in a manner that is consistent with the principle of non-discrimination on grounds of sexual orientation and especially the principle of proportionality.
- \* When verifying that the definitive exclusion does not go beyond what is necessary to achieve a legitimate objective of protecting the health of recipients, the national court will verify first that the epidemiological situation in France, described before the Court is based on credible, representative and current statistics, and secondly, that the current state of scientific knowledge it is not possible to establish a quarantine of donated blood in the silent phase of expiration without undue burden transfusion chain. The national court then determines the possible reasons that led to the conclusion that the assessment of individual risk based on possibly modified questionnaire and individual interviews with medical personnel, by means of which is to determine whether the sexual behavior of a potential donor so., Risky ', seems insufficient to ensure adequate protection of beneficiaries in the event of blood donations from men no longer keep or maintain sexual relations with another man, even if the rest of the population, this is possible. "

## C-148/13-150/13

- \* EU law must be interpreted as precluding, in the context of the assessment by the competent national authorities, acting under the supervision of the courts, of the facts and circumstances concerning the declared sexual orientation of an applicant for asylum, whose application is based on a fear of persecution on grounds of that sexual orientation, the statements of that applicant and the documentary and other evidence submitted in support of his application being subject to an assessment by those authorities, founded on questions based only on stereotyped notions concerning homosexuals.
- \* Article 4 of Directive 2004/83, read in the light of Article 7 of the Charter of Fundamental Rights of the European Union, must be interpreted as precluding, in the context of that assessment, the competent national authorities from carrying out detailed questioning as to the sexual practices of an applicant for asylum.
- \* Article 4 of Directive 2004/83, read in the light of Article 1 of the Charter of Fundamental Rights of the European Union, must be interpreted as precluding, in the context of that assessment, the acceptance by those authorities of evidence such as the performance by the applicant for asylum concerned of homosexual acts, his submission to 'tests' with a view to establishing his homosexuality or, yet, the production by him of films of such acts.
- \* Article 4(3) of Directive 2004/83 and Article 13(3)(a) of Directive 2005/85 must be interpreted as precluding, in the context of that assessment, the competent national authorities from finding that the statements of the applicant for asylum lack credibility merely because the applicant did not rely on his declared sexual orientation on the first occasion he was given to set out the ground for persecution.

## ... to conclude

- C-354/13 FOA
- \* 1. EU law must be interpreted as not laying down a general principle of non-discrimination on grounds of obesity as such as regards employment and occupation.
- \* 2. Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation must be interpreted as meaning that the obesity of a worker constitutes a 'disability' within the meaning of that directive where it entails a limitation resulting in particular from long-term physical, mental or psychological impairments which in interaction with various barriers may hinder the full and effective participation of the person concerned in professional life on an equal basis with other workers. It is for the national court to determine whether, in the main proceedings, those conditions are met.

Thank you for your attention