

Discrimination on grounds of race and sexual orientation: main features and CJEU case law

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Prohibition of discrimination

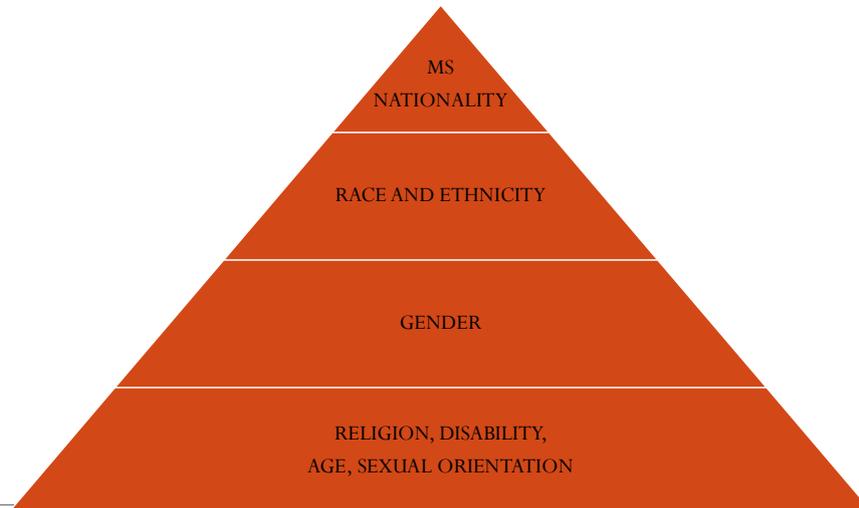
EU law

- Charter of Fundamental Rights
- EU equality directives – 2000/43/EC and 2000/78/EC
- Principle of non-discrimination as **a self-standing individual right** (see *CHEZ*)

ECHR system

- European Convention of Human Rights (with Additional Protocols)
- Prohibition of discrimination in enjoyment of rights and freedoms guaranteed in the Convention
- Principle of non-discrimination may only be invoked **in conjunction with another right or freedom**
- unless a State is a Party to Protocol 12

Hierarchy of protected grounds



Race, ethnicity and sexual orientation

Similarities

- Minority groups
- Legally disadvantaged (slavery, segregation, or sodomy laws)
- History of oppression and prejudice
- Social opposition to equality laws and programs (white supremacy / protection of traditional values and family)

Differences

- Race and ethnicity may not be easily concealed
- Veracity of homosexual orientation may be tested
- Race and ethnicity has usually stronger links with economic status
- Race and ethnicity may overlap with national origin, language and religion

Race and ethnic origin as discrimination grounds

- No definition of race and ethnic origin in the EU law
- ECtHR in *Timishev v. Russia*, 2005
„Ethnicity and race are related and overlapping concepts; the notion of race is rooted in the idea of biological classification of human beings into subspecies according to morphological features such as skin color or facial characteristics, while ethnicity has its origin in the idea of societal groups marked by common nationality, tribal affiliation, religious faith, shared language, or cultural and traditional origins and backgrounds”
- For the purpose of EU anti-discrimination law race and ethnicity are different grounds than nationality
- **Outside the scope of application of Directive 2000/43/EC**
different treatment on the basis of nationality with regard to entry and residence of third-country nationals and their access to employment and to occupation (Article 3(2) and Recital 13 of the Preamble)

Scope of Race Equality Directive

EMPLOYMENT

- conditions for access to employment, self-employment and occupation, including selection criteria and recruitment conditions
- access to vocational training
- employment and working conditions
- memberships in trade unions

SOCIAL PROTECTION

- social protection, social security and healthcare
- social advantages

EDUCATION

ACCESS TO GOODS AND SERVICES AVAILABLE TO PUBLIC, INCLUDING HOUSING

Scope of Race Equality Directive

- C-571/10 - *Kamberaj* (2012)
- Albanian national with a long-term resident status, complained about the rejection of his application for the housing benefit in Bolzano
- Directive 2000/43 not applicable
- Instead Directive 2003/109
 - Difference in treatment occurred not because of racial or ethnic origin but because of nationality (status of third-country nationals)
 - Directive 2000/43 is without prejudice to provisions and conditions relating to the entry into and residence of third-country nationals and stateless persons on the territory of Member States and to any treatment which arises from the legal status of the third-country nationals and stateless persons concerned
 - Less favourable treatment of third-country nationals who are long-term residents if compared to treatment of nationals of a MS and citizens of the Union who reside in that MS may only be considered in the light of Directive 2003/109 of 25 November 2003 concerning the status of third-country nationals who are long-term residents.

C-54/07 *Feryn* (2008)

- First preliminary judgment concerning Directive 2000/43/EC
- *Actio popularis* - the Belgian equality body - Centre for Equal Opportunities and Combating Racism - can bring legal proceedings in cases of actual or potential discrimination, even if there is no identifiable complainant
- Public refusal to employ immigrants - direct discrimination
- Discriminatory statements - presumption of a discriminatory policy
- For the employer to show the actual recruitment practice does not correspond with the statement

Feryn

- **The fact that an employer states publicly that it will not recruit employees of a certain ethnic or racial origin constitutes direct discrimination in respect of recruitment** within the meaning of Article 2(2)(a) of Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, **such statements being likely strongly to dissuade certain candidates from submitting their candidature and, accordingly, to hinder their access to the labour market.**
- **Public statements by which an employer lets it be known that under its recruitment policy it will not recruit any employees of a certain ethnic or racial origin are sufficient for a presumption of the existence of a recruitment policy which is directly discriminatory** within the meaning of Article 8(1) of Directive 2000/43. **It is then for that employer to prove that there was no breach of the principle of equal treatment. It can do so by showing that the undertaking's actual recruitment practice does not correspond to those statements.** It is for the national court to verify that the facts alleged are established and to assess the sufficiency of the evidence submitted in support of the employer's contentions that it has not breached the principle of equal treatment.
- **Article 15 of Directive 2000/43 requires that rules on sanctions applicable to breaches of national provisions adopted in order to transpose that directive must be effective, proportionate and dissuasive, even where there is no identifiable victim.**

Feryn - sanctions

„If it appears appropriate to the situation at issue in the main proceedings, **those sanctions may, where necessary, include a finding of discrimination by the court or the competent administrative authority in conjunction with an adequate level of publicity, the cost of which is to be borne by the defendant.** They may also take the form of a **prohibitory injunction**, in accordance with the rules of national law, ordering the employer to cease the discriminatory practice, and, where appropriate, **a fine.** They may, moreover, take the form of the **award of damages to the body bringing the proceedings.**” (par. 39)

C-394/11 *Belov* (2013)

- No jurisdiction to rule on a preliminary question referred by an equality body with no judicial functions (Commission for the Protection against Discrimination in Bulgaria)

C-83/14 *CHEZ Razpredelenie Bulgaria v. Nikolova* (2015)

- The meaning of „ethnic origin” (local Roma – Bulgarian citizens)
- The meaning of „comparable situation”
- The meaning of „less favourable treatment”
- May the implementation of Directive 2000/43/EC require that discrimination takes place only if there was an infringement of a statutory right or legitimate interest?
- The meaning of „apparently neutral practice”
- Indirect discrimination if the action concerns only Roma?
- The meaning of „a particularly less favourable position” and „a more unfavourable position”
- Objective justification of indirect discrimination if company invokes its interest in security of the electricity network and the correct recording of electricity consumption and consumers’ right to free access to electricity meter readings?

CHEZ – „indirect” indirect discrimination

- The concept of indirect discrimination under Directive 2000/43/EC
 - assuming that a measure, such as that described in paragraph 1 of this operative part, does not amount to direct discrimination within the meaning of Article 2(2)(a) of the directive, such a measure is then, in principle, liable to constitute an apparently neutral practice putting persons of a given ethnic origin at a particular disadvantage compared with other persons, within the meaning of Article 2(2)(b);
 - such a measure would be capable of being objectively justified by the intention to ensure the security of the electricity transmission network and the due recording of electricity consumption only if
 - that measure did not go beyond what is appropriate and necessary to achieve those legitimate aims and the disadvantages caused were not disproportionate to the objectives thereby pursued.
 - that is not so if it is found, a matter which is for the referring court to determine, either that other appropriate and less restrictive means enabling those aims to be achieved exist or,
 - in the absence of such other means, that that measure prejudices excessively the legitimate interest of the final consumers of electricity inhabiting the district concerned, mainly lived in by inhabitants of Roma origin, in having access to the supply of electricity in conditions which are not of an offensive or stigmatising nature and which enable them to monitor their electricity consumption regularly.

Indirect racial discrimination before the ECtHR

D.H. and others v Czech Republic (2007)

- Segregation in schools based on eligibility test or language proficiency
- „In these circumstances, the Court considers that when it comes to assessing the impact of a measure or practice on an individual or group, statistics which appear on critical examination to be reliable and significant will be sufficient to constitute the prima facie evidence the applicant is required to produce. This does not, however, mean that indirect discrimination cannot be proved without statistical evidence.” (par. 188).

Biao v. Denmark (2016)

- refusal to grant family reunion to a Ghanaian couple in Denmark based on the restrictive attachment requirement
- Grand Chamber found that a 28 years rule constituted indirect discrimination as it placed a disadvantage on persons who acquired Danish nationality later in life or who were of ethnic origins other than Danish
- Unequal treatment of Danish nationals due to the form of acquiring nationality was not justified
- „In conclusion, having regard to the very narrow margin of appreciation in the present case, the Court finds that the Government have failed to show that there were compelling or very weighty reasons unrelated to ethnic origin to justify the indirect discriminatory effect of the 28-year rule. That rule favours Danish nationals of Danish ethnic origin, and places at a disadvantage, or has a disproportionately prejudicial effect on persons who acquired Danish nationality later in life and who were of ethnic origins other than Danish (para. 138).”

Sexual orientation as a discrimination ground

- No protection before the adoption of Directive 2000/78/EC
- C-249/96 *Grant v South-West Trains Ltd.* (1998) – refusal of travel concessions to same-sex cohabitants
- C-122/99 *P* and C-125/99 *P. D and Kingdom of Sweden v Council of the European Union* (2001) – refusal of household allowance to a registered partner under the Staff Regulations
- Currently: fragmented protection – focussed on employment
- No EU anti-discrimination protection covering access to goods and service
- Recent problems with an extensive use of religious/conscientious objection to provide services to gay persons (pending in Poland: printing house, US: *Masterpiece Cakeshop v. Colorado Civil Rights Commission*)

Prohibition of discrimination on the ground of sexual orientation in implementation of the EU law

- i.e. C-528/13 *Léger* (2015) – blood donation
- Article 21 CFR
- Commission Directive 2004/33/EC of 22 March 2004 implementing Directive 2002/98/EC of the European Parliament and of the Council as regards certain technical requirements for blood and blood components

C-528/13 *Léger* (2015)

- Point 2.1 of Annex III to Commission Directive 2004/33/EC of 22 March 2004 implementing Directive 2002/98/EC of the European Parliament and of the Council as regards certain technical requirements for blood and blood components must be interpreted as meaning that the criterion for permanent deferral from blood donation in that provision relating to sexual behaviour covers the situation in which a Member State, having regard to the prevailing situation there, provides for a permanent contraindication to blood donation for men who have had sexual relations with other men where it is established, on the basis of current medical, scientific and epidemiological knowledge and data, that such sexual behaviour puts those persons at a high risk of acquiring severe infectious diseases and that, with due regard to the principle of proportionality, there are no effective techniques for detecting those infectious diseases or, in the absence of such techniques, any less onerous methods than such a counter indication for ensuring a high level of health protection of the recipients. It is for the referring court to determine whether, in the Member State concerned, those conditions are met.
- Note the „unnoted” case of different treatment between men who have had sexual relations with other men and other categories of people engaging in „unsafe” sexual relations resulting in permanent deferral from blood donation

Employment cases

- C-267/06 *Tadao Maruko* (2008) – survivor’s benefit
- C-147/08 *Römer* (2011) – supplementary benefits
- C-267/12 *Frédéric Hay* (2013) – marriage bonus
- C- 81/12 *ACCEPT* (2013) – ‘no gays’ in a football club
- C-443/13 *David Parris* (2016) – conditions for survivor’s benefit

C-267/06 *Tadao Maruko* (2008)

- Same-sex partnerships have the same right to employment-related benefits as marriages
- Survivor's benefits granted under an occupational pension scheme constitute 'pay' and fall in the material scope of the Directive
- In Germany „a life partnership, while not identical to marriage, places persons of the same sex in a situation comparable to that of spouses so far as concerns the survivor's benefit at issue in the main proceedings.” (par. 69)
- „Mr Maruko and the Commission maintain that refusal to grant the survivor's benefit at issue in the main proceedings to surviving life partners constitutes indirect discrimination within the meaning of Directive 2000/78, since two persons of the same sex cannot marry in Germany and, consequently, cannot qualify for that benefit, entitlement to which is reserved to surviving spouses. In their opinion, spouses and life partners are in a comparable legal situation which justifies the granting of that benefit to surviving life partners.” (par. 63).
- „If the referring court decides that surviving spouses and surviving life partners are in a comparable situation so far as concerns that survivor's benefit, legislation such as that at issue in the main proceedings must, as a consequence, be considered to constitute **direct discrimination on grounds of sexual orientation**, within the meaning of Articles 1 and 2(2)(a) of Directive 2000/78.” (par. 72).

C-147/08 *Römer* (2011)

- Supplementary pensions constitute 'pay' and fall in the material scope of the Directive
- Article 1 in conjunction with Articles 2 and 3(1)(c) of Directive 2000/78 preclude a provision of national law (...), under which a pensioner who has entered into a registered life partnership receives a supplementary retirement pension lower than that granted to a married, not permanently separated, pensioner, if
- in the Member State concerned, marriage is reserved to persons of different gender and exists alongside a registered life partnership (...), which is reserved to persons of the same gender, and
- **There is direct discrimination on the ground of sexual orientation because, under national law, that life partner is in a legal and factual situation comparable to that of a married person as regards that pension.** It is for the referring court to assess the comparability, focusing on the respective rights and obligations of spouses and persons in a registered life partnership, as governed within the corresponding institutions, which are relevant taking account of the purpose of and the conditions for the grant of the benefit in question.

C-267/12 *Frédéric Hay* (2013)

- Refusal to grant the days of special leave and the marriage bonus granted for staff who got married to an employee who entered the civil solidarity pact (PACS)
- Preliminary reference: does the refusal to grant the staff benefits constitute indirect discrimination and does the national law allowing only persons of different sex to marry constitutes a legitimate, appropriate and necessary aim such as to justify this discrimination?
- Preliminary question rephrased by CJEU:
- do the provisions of the Framework Directive preclude a collective agreement, 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?

Hay

- Discrimination presupposes weighing up two comparable, but not identical situations
- the assessment of that comparability must be carried out not in a global and abstract manner, but in a specific and concrete manner in the light of the benefit concerned – it follows from *Maruko* and *Römer* that that national authorities must compare the situations on the basis of an analysis focusing on the rights and obligations of the spouses and registered life partners as they result from the applicable domestic provisions, which are relevant taking account of the purpose and the conditions for granting the benefit at issue in the main proceedings, and must not consist in examining whether national law generally and comprehensively treats registered life partnership as legally equivalent to marriage
- Thus, the differences between marriage and PACS concerning property, succession or parenthood are irrelevant for this case
- Refusal to grant the benefits to employees who entered into PCS constitutes direct discrimination with regard to sexual orientation because the national law reserves the benefits only to spouses
- Direct discrimination is not subject to justification (moreover the legitimate aim was not raised in the course of national proceedings)

C- 81/12 ACCEPT (2013)

- Public statement about no-gay policy regarding selection of football players to the national team by the main shareholder
- Probatio diabolica if the club has to show that the actual selection contradicts the statement
- facts such as those from which the dispute in the main proceedings are capable of amounting to 'facts from which it may be presumed that there has been ... discrimination' as regards a professional football club, **even though the statements concerned come from a person presenting himself and being perceived in the media and among the general public as playing a leading role in that club without, however, necessarily having legal capacity to bind it or to represent it in recruitment matters.**
- if facts such as those from which the dispute in the main proceedings arises were considered to be 'facts from which it may be presumed that there has been direct or indirect discrimination' based on sexual orientation during the recruitment of players by a professional football club, **the modified burden of proof laid down in Article 10(1) of Directive 2000/78 would not require evidence impossible to adduce without interfering with the right to privacy.**

ACCEPT

- Article 17 of Directive 2000/78 must be interpreted as meaning that **it precludes national rules by virtue of which, where there is a finding of discrimination on grounds of sexual orientation within the meaning of that directive, it is possible only to impose a warning such as that at issue in the main proceedings where such a finding is made after the expiry of a limitation period of six months from the date on which the facts occurred where, under those rules, such discrimination is not sanctioned under substantive and procedural conditions that render the sanction effective, proportionate and dissuasive.** It is for the national court to ascertain whether such is the case regarding the rules at issue in the main proceedings and, if necessary, to interpret the national law as far as possible in light of the wording and the purpose of that directive in order to achieve the result envisaged by it.

C-443/13 *David Parris* (2016)

- Article 2 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 meaning that **a national rule which, in connection with an occupational benefit scheme, makes the right of surviving civil partners of members to receive a survivor's benefit subject to the condition that the civil partnership was entered into before the member reached the age of 60, where national law did not allow the member to enter into a civil partnership before reaching that age, does not constitute discrimination on grounds of sexual orientation.**
- Articles 2 and 6(2) of Directive 2000/78 must be interpreted as meaning that a national rule, such as that at issue in the main proceedings, which, in connection with an occupational benefit scheme, makes the right of surviving civil partners of members to receive a survivor's benefit subject to the condition that the civil partnership was entered into before the member reached the age of 60, where national law did not allow the member to enter into a civil partnership before reaching that age, does not constitute discrimination on grounds of age.
- Articles 2 and 6(2) of Directive 2000/78 must be interpreted as meaning that a national rule such as that at issue in the main proceedings is not capable of creating discrimination as a result of the combined effect of sexual orientation and age, where that rule does not constitute discrimination either on the ground of sexual orientation or on the ground of age taken in isolation.

Asylum cases

- C-199/12, C-200/12, C-201/12 - *X., Y., Z.* (2013) – sodomy laws as a risk of persecution
- C-148/13, 149/13, 150/13 – *A., B., C.* (2014) – phallometric gay testing
- C-473/16 - *F v. Bevándorlási és Állampolgársági Hivatal* (2018) – psychological gay testing

C-199/12, C-200/12, C-201/12 - X., Y., Z. (2013)

- Preliminary reference made by the Dutch Council of State:
- Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted
- The existence of criminal laws, which specifically target homosexuals, permit to consider persons of homosexual orientation as a social group
- Criminalisation of homosexual acts per se does not constitute an act of persecution, however the actual risk of imprisonment for committing homosexual acts constitutes an act of persecution
- National authorities when assessing an application for refugee status cannot reasonably expect, in order to avoid the risk of persecution, the applicant for asylum to conceal his homosexuality in his country of origin or to exercise reserve in the expression of his sexual orientation

C-148/13, 149/13, 150/13 – A., B., C. (2014)

- Preliminary reference from the Dutch Council of State
- Article 4(3)(c) of Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted and Article 13(3)(a) of Council Directive 2005/85/EC of 1 December 2005, on minimum standards on procedures in Member States for granting and withdrawing refugee status, 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.**

C - 473/16 F. v. *Bevándorlási és Állampolgársági Hivatal* (2018)

- Article 4 of Directive 2011/95/EC of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted, must be interpreted as meaning that **it does not preclude the authority responsible for examining applications for international protection, or, where an action has been brought against a decision of that authority, the courts or tribunals seised, from ordering that an expert's report be obtained in the context of the assessment of the facts and circumstances relating to the declared sexual orientation of an applicant, provided that the procedures for such a report are consistent with the fundamental rights guaranteed by the Charter of Fundamental Rights of the European Union, that that authority and those courts or tribunals do not base their decision solely on the conclusions of the expert's report and that they are not bound by those conclusions when assessing the applicant's statements relating to his sexual orientation.**
- Article 4 of Directive 2011/95, read in the light of Article 7 of the Charter of Fundamental Rights, must be interpreted as **precluding the preparation and use, in order to assess the veracity of a claim made by an applicant for international protection concerning his sexual orientation, of a psychologist's expert report, such as that at issue in the main proceedings, the purpose of which is, on the basis of projective personality tests, to provide an indication of the sexual orientation of that applicant.**

Recognition of same-sex couples before the ECtHR

- *Schalk and Kopf v. Austria* (2010)
"the relationship of the applicants, a cohabiting same - sex couple living in a stable *de facto* partnership, falls within the notion of "family life", just as the relationship of a different - sex couple in the same situation would". (para. 94).
- *Taddeuci and McCall v. Italy* (2016) - refusal to grant the family residence permit to a *de facto* same-sex partner, a third country national
„la situation des requérants ne saurait cependant être considérée comme analogue à celle d'un couple hétérosexuel non marié. À la différence de ce dernier, les intéressés n'ont pas, en Italie, la possibilité de se marier. Ils ne peuvent donc pas être qualifiés d'« époux » selon le droit national. Dès lors, une interprétation restrictive de la notion de « membre de la famille » ne constitue un obstacle insurmontable à l'octroi du permis de séjour pour raison familiale que pour les couples homosexuels. Ces derniers ne pouvaient pas non plus obtenir un mode de reconnaissance juridique autre que le mariage, étant donné qu'à l'époque des faits, le système juridique italien ne prévoyait pas, pour les couples homosexuels ou hétérosexuels engagés dans une relation stable, la possibilité d'avoir accès à une union civile ou à un partenariat enregistré attestant leur statut et leur garantissant certains droits essentiels..” (para. 83)
- *Pajić v. Croatia* (2016) - refusal to grant the family residence permit to a *de facto* partner, a third country national, when the national law authorizes granting the family residence permit to aliens in heterosexual extramarital relationships on the ground of family reunification

Recognition of same-sex couples in the EU

- Freedom of movement of EU citizens and their family members
- Right to protection of family life
- Prohibition of discrimination with regard to sexual discrimination

BUT

- National constitutional traditions
- Reverse discrimination of own nationals living in same-sex couples

- Art. 2 para. 2 b of the Citizens' Directive 2004/38/EC – right of entry and residence of family members of EU citizens – limited to *de iure* partners or spouses
- Art. 3 para. 2 requirement to facilitate entry and residence of *de facto* partners.

- Proposal for a Council Regulation on jurisdiction, applicable law and the recognition and enforcement of decisions in matters of matrimonial property regimes, [COM\(2011\)0126](#)

C-673/16 *Coman and others* – AG Wathelet

- the term 'spouse' applies to a national of a third State of the same sex as the citizen of the European Union to whom he or she is married

- the spouse of the same sex as a citizen of the Union who accompanies that citizen in the territory of another Member State enjoys in that territory a right of residence of more than three months, provided that the Union citizen concerned satisfies the conditions laid down in Article 7(1)(a), (b) or (c).

- in a situation in which a citizen of the Union has developed or consolidated a family life with a national of a third State while actually residing in a Member State other than that of which he or she is a national, the provisions of Directive 2004/38 apply by analogy when that citizen of the Union returns, with the family member concerned, to his or her Member State of origin.

- a national of a third State, of the same sex as the citizen of the Union to whom he or she is married in accordance with the law of a Member State to be treated whether as '[another] family member' or as the 'partner with whom the Union citizen has a durable relationship, duly attested'

Coman - AG opinion

- Article 3(2) of Directive 2004/38 must be interpreted as meaning that:
 - it does not oblige Member States to grant the national of a third State legally married to a Union citizen of the same sex a right of residence on their territory for a period of more than three months;
 - Member States must nonetheless ensure that their legislation includes criteria that allow that national to obtain a decision on his or her application for entry and residence that is founded on an extensive examination of his or her personal situation and, in the event of refusal, is supported by reasons;
 - although the Member States have broad discretion in selecting those criteria, the latter must be consistent with **the normal meaning of the word 'facilitate' and must not deprive that provision of its effectiveness**; and
 - **refusal of the application for entry and residence may not at all events be based on the sexual orientation of the person concerned.**

Thank you for your attention!

