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ILGA-Europe welcomes judgement from the Court of Justice of the European Union (CJEU) saying that a homophobic statement on an Italian radio show constituted discrimination in employment.

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(<https://www.ilga-europe.org/sites/default/files/G%20Fessy%20CJUE-min.jpg>)

In a judgement delivered on 23 April 2020, the European Court of Justice (CJEU) held that statements made by a lawyer during a radio programme, saying he would never recruit a “homosexual” or wish to use the services of such persons, fall within the material scope of EU Directive 2000/78 (‘the anti-discrimination directive’).

Posted: 24 April 2020

The case was brought by Rete Lenford Avvocatura Per I Diritti LGBT (<https://www.retelenford.it/>) (Lawyers For LGBT Rights), an association of about 150 lawyers founded in 2007 to take representative action on the behalf of LGBT people before national and international jurisdictions, and to ensure enforcement of LGBT rights in Italy.

Having taken the view that that lawyer had made remarks constituting discrimination on the ground of the sexual orientation of employees, Rete Lenford brought proceedings in the Italian courts against him for damages. The action was successful at first instance and the ruling was upheld on appeal. The lawyer went on to appeal before the Italian Supreme Court of Cassation, which then sought a preliminary ruling from the CJEU on the interpretation of the concept of ‘conditions for access to employment ... and to occupation’, within the meaning of the anti-discrimination directive.

Importantly the Court noted that the lawyer’s statements may fall within the ambit of the anti-discrimination directive, even if no recruitment procedure had been opened or planned at the time when

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the statements were made, where the link between the statements and the conditions for access to employment is not hypothetical.

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Because discriminatory statements can have a chilling effect on prospective employees, therefore difficult to have an identifiable victim, the Court noted that where national law provides relevant conditions, an association, as in this case Rete Lenford, may bring legal proceedings for a finding of discrimination and for a sanction to be imposed.

Welcoming the judgement, Senior Litigation Officer with ILGA-Europe Arpi Avetisyan said: “I’m extremely pleased that CJEU reaffirmed protection against homophobia in employment and made clear that discriminatory statements in employment and occupation under the EU law are strictly prohibited. The Court sent a strong message that EU law does not tolerate discrimination based on sexual orientation and safeguards “the principle of equal treatment in employment and occupation, and the attainment of a high level of employment and social protection”. Congratulations to Rete Lenford on the victory and for setting an important milestone in clarification of EU law.”

According to Miryam Camilleri, President of Avvocatura per i Diritti LGBTI – Rete Lenford: “We are overwhelmed by this result. This Judgement represents a great advancement in the enforcement of the protection of LGBTI rights in the EU and in each European Country – the re-affirmation of the right not-to-be-discriminated against and the empowerment of many fights conducted in the name of LGBTI individuals. At the same time, we are particularly honored to have provided the opportunity for the Court to take this historic decision. Its implications expand beyond the boundaries of LGBTI rights, and serve the interests of associations and NGO’s working in other discriminated against sectors.”

- Find out more about the case and the Associazione Avvocatura per i diritti LGBTI – Rete Lenford (<https://www.ilga-europe.org/voices>).
- Find out more about our strategic litigation work (<https://www.ilga-europe.org/what-we-do/our-strategic-litigation-work>).
- Find out more about the judgement (<https://curia.europa.eu/jcms/upload/docs/application/pdf/2020-04/cp200048en.pdf>) and read the full judgement (<http://curia.europa.eu/juris/document/document.jsf?jsessionid=0ADE87601397DB371EEF681B6729text=&docid=225526&pageIndex=0&doclang=FR&mode=req&dir=&occ=first&part=1&cid=4152044> here.

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About ILGA-Europe:

ILGA-Europe are an independent, international non-governmental umbrella organisation bringing together over 600 organisations from 54 European and Central Asian countries. We are a driving force for political, legal and social change in the region. For more information, visit: www.ilga-europe.org (<https://my.ilga-europe.org/sites/all/modules/civicrm/extern/url.php?u=31915&=&qid=>)



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