



LGBTQ+ RIGHTS POST- TRANSITION PERIOD

15.07.2020

LGBTQ+ pride month occurs every June to commemorate the Stonewall riots, which took place at the end of June 1969 at the Stonewall Inn in the Greenwich Village neighbourhood of Manhattan, New York City. More than 50 years have gone by since this event and societies have evolved and recognized rights to the LGBTQ+ community.

Same-sex marriage is already legal in 30 countries around the world, and a dozen states allow same-sex civil unions, with rights equal to or similar to those of marriage, but without that name.

Europe is the continent with the highest number (sixteen) of states that allow same-sex marriage. The EU has been a pioneer in recognition and protection of LGBT+ rights, the EU Charter of Fundamental Rights (EUCFR) prohibits in its 21st article, discrimination on the grounds of sexual orientation. Furthermore the Directive 2000/78 requires EU Member States to promulgate legislation which prohibits discrimination on this ground but only in the area of employment; and Article 10 and 19 TFEU introduce the Unions aim to combat discrimination based, amongst others, on sexual orientation.

The UK officially left the EU on 31 January 2020. However, the UK continues to be treated for many purposes as if it were still an EU member state during the transition period, and most EU law continues to apply to the UK. But once this period expires and UK's withdrawal is completed, LGBTQ+ British nationals will lose the rights they enjoyed as Union citizens under EU law. In particular, EU citizenship entitles free movement between EU Member States and to be joined in the host Member State by their close family members. In the recent Coman ruling, the CJEU clarified that EU law requires that (LGBTQ+) Union citizens can be joined in the host Member State by their same-sex spouse, irrespective of whether that State recognises same-sex marriages. Nonetheless, due to the loss of EU citizenship, British nationals who have contracted a same-sex marriage will no longer be covered by the Coman ruling and, thus, they will not be able to rely on EU law in order to require EU Member States that have not opened marriage to same-sex couples to accept their same-sex spouse in their territory.

Furthermore, if there is no change in the EU withdrawal bill, the EU charter will no longer be valid in the UK. Meaning that Brexit will erase the (minimum) EU safeguards applicable to its Member States as these will no longer be binding to the UK.

Therefore, it cannot be excluded that in the future there could be regression in the protection of LGBT+ rights. However, this does not seem likely but as it will be up, solely, to the will of the UK parliament, changes will become bureaucratically easier.

Finally, beyond binding legal instruments, the EU is also a highly-effective soft law actor and by shaping its agenda and creating a policy and normative framework that enhances the position of sexual minorities, it has tangibly improved the social, political and economic position of LGBTQ+ individuals across the Union. As a result of Brexit, LGBTQ+ persons who are resident in the UK are no longer able to benefit from this framework. Moreover, the UK is no longer subject to (soft) supervision through submission of data and UK-based NGOs and academic institutions are no longer eligible to apply for EU funding to support research or other activities which aim to combat discrimination against sexual minorities and/or to raise awareness regarding the matters concerning LGBTQ+ persons.

While the exact consequences of Brexit may be impossible to predict it, can be concluded that there will be no substantial change to LGTBIQ + rights. However, attention will have to be paid to the possible future changes that the British government may make do to its domestic law.

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