



Cayman Islands Human Rights Commission

promoting, protecting and preserving human rights

Statement on the European Court of Human Rights Ruling in Favour of Same-Sex Unions

On Tuesday 21st July 2015 the European Court of Human Rights (“the Court”) issued a judgment requiring Italy to provide a legal framework allowing same-sex couples to have their relationships recognised and protected under domestic law.

In a detailed Judgment drawing on international jurisprudence the Court unanimously held that there had been a violation of the complainants’ Article 8 rights to respect for private and family life under the European Convention on Human Rights (“the Convention”). The Court recognised that there was a trend among Council of Europe member States towards legal recognition of same-sex couples (24 out of the 47 member States having legislated in favour of such recognition) and noted the rapid global international movement to legal recognition of such unions.

The Court considered that legal protection and recognition should be available to same-sex couples in a stable committed relationship as it was for couples of different sexes. It held that a civil union or registered partnership would be the most appropriate way for same-sex couples to have their relationship legally recognised. Legal recognition should protect core rights relevant to a couple in a stable and committed relationship including the mutual rights and obligations that couples have towards each other, including moral and material support, maintenance obligations and inheritance rights.

The judgment has very important civil rights implications for same-sex couples within the jurisdiction of the Court - which includes Cayman - indeed Cayman’s own Constitution mirrors the protections provided by Article 8 of the Convention in Article 9 of our Bill of Rights.

Cayman’s Constitution explicitly defines marriage as a union between persons of different sexes. However, this does not prevent the enactment of legislation to recognise same-sex unions and to provide same-sex couples in stable relationships with the opportunity to access the same rights and obligations which married couples enjoy. The Human Rights Commission calls upon the government to enact such legislation: in the event that it fails to do so this recent judgment is likely to mean that Cayman is in breach of its obligations under the Convention and certainly that it is more vulnerable to a successful challenge in the Court.

Tuesday’s judgment is in line with that issued by the United States’ Supreme Court last month to which it explicitly referred. That court’s judgment dealt specifically with marriage, however, many of the same arguments apply and its conclusion is worth reiterating:

“No union is more profound than marriage, for it embodies the highest ideals of love, fidelity, devotion, sacrifice, and family. In forming a marital union, two people become something greater than once they were. As some of the petitioners in these cases demonstrate, marriage embodies a love that may endure even past death. It would misunderstand these men and women to say they disrespect the idea of marriage. Their plea is that they do respect it, respect it so deeply that they seek to find its fulfillment for themselves. Their hope is not to be condemned to live in loneliness, excluded from one of civilization’s oldest institutions. They ask for equal dignity in the eyes of the law. The Constitution grants them that right.”

The Human Rights Commission agrees that all couples in stable relationships should be entitled to equal dignity in the eyes of the law, regardless of their sexual orientation. The Cayman Islands should take this opportunity to amend its laws.

The full judgment in *Oliari and Others v. Italy* (application no. 18766/11 and 36030/11) can be found here: [http://hudoc.echr.coe.int/eng?i=001-156265#{"itemid":\["001-156265"\]}](http://hudoc.echr.coe.int/eng?i=001-156265#{)