Colours Caribbean intervenes in Bermuda case at the European Court of Human Rights

The European Court of Human Rights (the “Court”) has decided to hear a case brought by various Bermuda litigants (i.e. Ferguson et al) against the UK government with respect to the revocation of the right to same-sex marriage in Bermuda.

The litigants accept that, under the current case law of the Court, it is not necessarily a breach of the European Convention on Human Rights (the “Convention”) to restrict marriage to different-sex couples.

What the litigants do claim, however, is that it must be a breach of the Convention to take away local implementation of a right protected under the Convention, once it has been granted and enjoyed in accordance with national law, as was the case in Bermuda: same-sex marriages were permitted and then subsequently taken away (after various same-sex marriages were entered into).

The Court has accepted Colours Caribbean’s application to join in this case as an intervenor, and Colours Caribbean lodged its intervention submissions with the Court on 19 October 2023. Colours Caribbean’s intervention submissions focus on three topic areas:

1. **Inconsistency**: The current legal position with respect to same-sex marriage rights in Bermuda, and in the Caribbean British Overseas Territories, is inconsistent with the current legal position in all other constituent parts of the United Kingdom, and it is also inconsistent with the current legal position in the rest of the American continent, including the overseas territories of the USA, Netherlands, France, and Denmark.

2. **No room to discriminate**: The UK has no relevant ‘margin of appreciation’ to permit discriminatory treatment. If the Court does consider that the UK has any ‘margin of appreciation’, however, it cannot be used to justify any differential treatment of LGBTQI+ persons with respect to same-sex marriage rights as between, or within, the different constituent parts of the UK (including Bermuda and the various Caribbean British Overseas Territories).

3. **Political views irrelevant**: No material weight can be placed by the Court (or by the UK government) on the political views that have been expressed in Bermuda or Caribbean British Overseas Territories against same-sex marriage (whether in the course of local elections, local referenda, or local political debates). Every citizen legally resident in Bermuda and the Caribbean British Overseas Territories is protected under the relevant jurisdiction’s Constitution and the Convention, and yet a substantial portion of the resident local population are left politically disenfranchised, without the right to vote.

Colours Caribbean would like to take this opportunity to thank its pro bono legal team for their hard work thus far that has led to this successful intervention submission to the Court. In particular, we thank our external legal advisers at Travers Smith and our counsel, Alex Potts KC and Anna Hoffmann at 4 Pump Court Chambers (all in London) and our local internal legal consultant Dr Leonardo Raznovich.

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About Colours Caribbean

Colours Caribbean is a registered non-profit organisation locally operated in the Cayman Islands that aims to cultivate a bold and visible community for the lesbian, gay, bisexual, transgender, queer, intersex and asexual (LGBTQIA+) people of the Caribbean and Latin America by building a network of regional businesses and public venues free of discrimination and harassment towards anyone on the basis of their gender identity, or sexual orientation. Colours Caribbean advocates for LGBTQIA+ rights as human rights and promotes the inclusion and equality of LGBTQIA+ persons throughout the Caribbean and Latin America.