

Appeal number: CA/2013/0013

**FIRST-TIER TRIBUNAL (CHARITY)
GENERAL REGULATORY CHAMBER**

THE HUMAN DIGNITY TRUST

Appellant

- and -

**THE CHARITY COMMISSION FOR
ENGLAND AND WALES**

Respondent

PRESS SUMMARY

This summary is provided to assist in understanding the Tribunal's decision. It does not form part of the reasons for the decision. The full judgment of the Tribunal is the only authoritative document.

1. The decision of the First-tier Tribunal (Charity) dated 9 July 2014 is that Human Dignity Trust's appeal is allowed and the Charity Commission is directed to enter HDT into the Register of Charities.
2. HDT appealed against the Charity Commission's decision of 3 October 2013 to refuse to enter it into the Register of Charities. The Charity Commission's decision gives rise to a right of appeal to the First-tier Tribunal (Charity).
3. The Tribunal (Principal Judge Alison McKenna and Ms. Susan Elizabeth) heard the appeal on 5 and 6 June 2014 and reserved its decision, which was released to the parties today. The Tribunal's overall conclusion was that HDT is established for the purposes of (i) promoting and protecting human rights as set out in the Universal Declaration on Human Rights and subsequent United Nations conventions and declarations) and (ii) promoting the sound administration of the law. The Tribunal held that these purposes are charitable because they fall within the descriptions of charitable purposes

in section 3(1) of the Charities Act 2011 Act (sections 3 (1) (h) and 3 (1) (m) (i) respectively) and are for the public benefit as required by section 4 of that Act.

4. The Tribunal considered evidence from Timothy Otty QC (Chair of HDT) Jonathan Cooper OBE (HDT's Chief Executive) and also considered expert reports from Professor Geraldine Van Bueren QC (instructed by the Charity Commission) and Professor Christine Chinkin (instructed by HDT).
5. HDT's evidence to the Tribunal was that it was established to support people whose human rights are violated by the criminalisation of private, adult, consensual homosexual conduct, including by assisting them and their lawyers to bring litigation in domestic courts and tribunals of a state, in relation to rights that are justiciable under the domestic law of that state; and/or against a state before international courts and tribunals, the jurisdiction of which has been accepted by the state against which a remedy is sought.
6. The Charity Commission's reasons for refusing to register HDT were, in summary, that its objects were too vague and uncertain for the Commission to be certain that it was established for charitable purposes only and further that it has a political purpose, namely that of seeking to change the law of foreign states, which precludes charitable status.
7. HDT's grounds of appeal, in summary, were that its objects were not vague and uncertain and further that the Charity Commission's decision that its purposes were political demonstrated a fundamental misunderstanding of the nature of a constitutional human rights challenge, because litigation aimed at upholding a citizen's constitutional rights does not seek to change the law of the relevant jurisdiction but rather enforces and upholds the superior rights guaranteed by that country's constitution.
8. The Tribunal concluded that:
 - HDT's purposes are clearly set out in its objects clause (*paragraph 28*); The conduct of strategic litigation is not a separate purpose of HDT but relies on powers exercisable in furtherance of its declared objects (*paragraph 31*);
 - The term "human rights" when used in s. 3 (1) (h) of the Charities Act 2011 is to be given its ordinary natural meaning and extends to the rights set out in the UDHR, the ICCPR and the ECHR. The concept of "human rights" is a broad and rapidly evolving concept, and necessarily so in order to take account of developments in law, society and science. Parliament must have had the "living instrument" approach in mind in leaving the term "human rights" undefined in the Act (*paragraphs 43 to 45*);
 - HDT's second object of "promoting the sound administration of the law" was recognised as a description of a "fourth head" charitable purpose under the "old law" so that it now falls within section 3 (1) (m) (i) of the 2011 Act. The conduct of the very particular form of litigation supported and engaged in by HDT is an

acceptable means of advancing the charitable purpose of promoting the sound administration of the law (*paragraph 64*);

- In order to meet the public benefit test imposed by s. 4 of the 2011 Act it is sufficient to demonstrate (i) that HDT's purpose benefits the public (or a section of the public) in the countries where it operates abroad; and (ii) that the same purpose would be considered charitable in the case of a body confining its operations to England and Wales (provided that (iii), there is no reason of public policy not to recognise the purpose as charitable) (*paragraph 76*). There was no evidence of a public policy objection in this case – the evidence was that the UK Government has supported recent international human rights initiatives aimed at supporting the rights of the LGBTI community (*paragraph 79*);

- The expert evidence was that criminalisation of private, adult, consensual homosexual conduct represents “a serious contravention of international human rights law” and, accordingly, it is for the public benefit of the community in England and Wales and in the country where such a contravention occurs, for this situation to be addressed and for the human rights standards recognised by the international community to be promoted and protected (*paragraph 78*);

- HDT's activities take place in a markedly different context from those considered in *McGovern v AG*. It operates in an environment where there is constitutional supremacy and a legitimate role for the court in interpreting and enforcing superior constitutional rights where the domestic law is thought to be in conflict with those rights. Constitutional interpretation can only take place where the State concerned has implemented the relevant treaty obligations so as to provide for a competent domestic constitutional court to be empowered to undertake this role, or for referral of the issue to an international tribunal, the legitimacy of which has been recognised by the State concerned. This process does not involve HDT in seeking to change the law of a foreign state (*paragraph 96*); Human rights instruments may only be described as “living” if they evolve by being tested from time to time and by being interpreted, clarified and enforced through the constitutional mechanisms with which HDT is involved (*paragraph 101*);

8. As a matter of law the Tribunal's decision is confined to its own facts and does not establish a legal precedent for the registration of other prospective charities. This decision also has no legal effect upon charities already registered as such and operating in the field of human rights. It does not supersede the Charity Commission's published guidance or the decisions of superior courts in this area (*paragraph 113*).

9 July 2014