



Global Developments in Religious Freedom and Equal Treatment

January 2017

Dear Friends:

Welcome to the tenth issue of the International Network of Civil Liberties Organizations' (INCLCLO) quarterly newsletter, *Global Developments in Religious Freedom and Equal Treatment*. This newsletter highlights recent international developments, including cases and legislation, concerning religious freedom, equal treatment, and the intersection of the two.

Here are a few brief highlights from this quarter's issue: the U.K. Supreme Court has denied review of a Northern Ireland Court of Appeal decision holding that a bakery unlawfully discriminated based on sexual orientation when it refused to serve a customer who sought a cake marking the International Day Against Homophobia and Transphobia; eight U.S. states and a number of religiously affiliated health care entities secured a nationwide injunction preventing the federal government from enforcing a regulation prohibiting health care entities from discriminating against transgender people and women seeking reproductive care; after widespread protests, the Polish parliament rejected proposed legislation that would have imposed a near-total ban on abortion; France's top administrative court struck down a local ban on burkini swimsuits, which are designed to accord with traditional Islamic clothing for women; and Egypt passed long-awaited legislation regulating the construction of churches.

As always, please note that this newsletter does not purport to be comprehensive or definitive. Instead, it is our best effort to identify and characterize the international legal developments in this arena. Please feel free to alert us to developments you think should be included in future issues of INCLCLO's newsletter.

If there is someone you think would benefit from this newsletter or if you would prefer not to receive future issues, please contact Priya Nair at INCLCLOnewsletter@aclu.org.

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About INCLO: The International Network of Civil Liberties Organizations (INCLO) is a group of civil liberties and human rights organizations committed to addressing, among other issues, questions of religious freedom and equal treatment. INCLO's members include: American Civil Liberties Union, Association for Civil Rights in Israel, Canadian Civil Liberties Association, Centro de Estudios Legales y Sociales (Argentina), Egyptian Initiative for Personal Rights, Human Rights Law Network (India), Hungarian Civil Liberties Union, International Human Rights Group Agora of Russia, Irish Council for Civil Liberties, Kenya Human Rights Commission, Legal Resources Centre (South Africa), and Liberty (United Kingdom).

Religious Freedom & LGBT Rights

Services & Public Accommodations

United Kingdom: The U.K. Supreme Court [denied](#) review of a Northern Ireland Court of Appeal decision [holding](#) that a bakery unlawfully discriminated based on sexual orientation when it refused to serve a customer who sought a cake marking the International Day Against Homophobia and Transphobia. As reported in our December 2014 issue, the customer had asked for a cake featuring the slogan "support gay marriage," together with a picture of Bert and Ernie from the children's show *Sesame Street*. The family-owned bakery asserted that it refused the cake order because it was "at odds" with the company's Christian beliefs and maintained that it had acted lawfully. The appeals court rejected the bakery's argument that it would have been endorsing marriage equality for same-sex couples by baking the cake, writing: "The fact that a baker provides a cake for a particular team or portrays witches on a Halloween cake does not indicate any support for either." The court further held that legislation prohibiting discrimination based on sexual orientation in the region could not be changed to suit a particular religious or political group.

United States: On October 28, the U.S. Supreme Court [agreed](#) to hear a case challenging a Virginia school board's policy that requires transgender students to use "alternative private" restroom facilities, rather than the bathroom that comports with their gender identity. The lawsuit, which was filed by INCLO-member ACLU on behalf of a transgender student, argues that the school's policy violates Title IX of the U.S. Education Amendments of 1972, a federal law prohibiting sex discrimination by schools receiving federal funds. The U.S. Court of Appeals for the Fourth Circuit held that the school board had violated Title IX by implementing the exclusionary restroom policy.

Marriage

Romania: On July 20, Romania's Constitutional Court [ruled](#) that an anti-LGBT group could petition for a constitutional amendment prohibiting marriage for same-sex couples. The Romanian Constitution currently states that "[t]he family is founded on the freely consented marriage of the spouses" The petition proposes an amendment to replace "the spouses" with "a man and a woman." The proposed amendment will be voted on by the Romanian Parliament and, if approved, submitted for a national referendum. Meanwhile, the Constitutional Court is [considering](#) whether the current Constitution requires Romania to recognize a marriage performed for a same-sex couple in Belgium. At a November 29 hearing, the Constitutional

Court [indicated](#) that it would confer with the European Court of Justice to see how other countries that have not recognized marriage equality for same-sex couples have handled similar cases. Another hearing in the case is scheduled for March 30.

[Health Care](#)

United States: On January 31, a federal court in Texas [issued](#) an injunction prohibiting the federal government from enforcing a regulation that bars discrimination in federally funded health care against transgender people and women seeking reproductive health care. The case was brought by eight states (Arizona, Kansas, Kentucky, Louisiana, Mississippi, Nebraska, Texas, and Wisconsin), together with a Catholic health care system and a Christian medical association. The private plaintiffs allege that the regulation violates their religious freedom, among other claims. INCLO-member ACLU filed papers asking the court to let its Texas affiliate and a transgender support group intervene in the case. Two similar cases were recently [filed](#) in a federal district court in North Dakota.

[Government-Sanctioned Discrimination](#)

Argentina: In October, a coalition of human rights and transgender rights organizations – including INCLO-member CELS – issued a [report](#) to the United Nations Committee on the Elimination of Discrimination Against Women, entitled “Human Rights Situation of *Transvestis* and Trans Women in Argentina.” The report found that transgender women and transvestites continue to be subjected to discrimination and violence based on their gender identities, in violation of Argentina’s international obligations under the Convention on the Elimination of all Forms of Discrimination Against Women. The report offers a number of recommendations for eradicating systemic patterns of discrimination, including: ensuring that government identification documents accurately register people’s gender identities; increased investigation and prosecution of crimes involving violence against trans people; and full implementation of Article 11 of Argentina’s Gender Identity Law, which guarantees the trans population’s access to comprehensive health care.

In September, a number of LGBT organizations launched “Reconocer Es Reparar” (“To Recognize Is to Repair”), a public campaign seeking official recognition of the systematic violence imposed on transgender persons and transvestites by public security forces, especially those detained pursuant to “police edicts.” (The edicts allowed officers to arrest people on suspicion of prostitution, homosexuality, idleness, alcoholism, and other offenses, and detain them for several weeks without judicial intervention.) The campaign has [publicized](#) a legislative bill proposing systemic reparations for victims of institutional violence based on gender identity.

Nigeria: On October 20, Human Rights Watch issued a [report](#) entitled, “Tell Me Where I Can Be Safe: The Impact of Nigeria’s Same Sex Marriage (Prohibition) Act.” The law, which took effect in January 2014, threatens 14-year prison terms for anyone who enters into a marriage or civil union with a same-sex partner; it also threatens 10-year prison terms for engaging in a public display of affection with a same-sex partner, as well as for participating in or supporting a gay organization. Although there is no evidence that anyone has been prosecuted under the law, the report found that it has been used to legitimize widespread abuses against LGBT people, including extortion, mob violence, arbitrary arrest, torture in detention, and physical and sexual violence.

Russia: On September 23, Equal Rights Trust issued a [report](#) examining how the Russian courts handle cases related to the LGBT community. The report, “Justice or Complicity? LGBT

Rights and the Russian Courts,” found that in some cases courts have nominally recognized that LGBT people should be protected from discrimination based on their sexual orientation, in accordance with international and regional human rights standards. The report further found, however, that courts nonetheless continue to countenance pervasive discrimination against LGBT people in Russia, including by failing to recognize, address, and remedy clear cases of discrimination.

Education

Canada: On November 1, the British Columbia Court of Appeal [held](#) as unreasonable the Law Society of British Columbia's decision not to approve a law school to be established by Trinity Western University (TWU), a private Christian university in British Columbia that prohibits sexual intimacy outside of “traditional marriage between a woman and a man.” This holding of unreasonableness was due to a violation of fundamental religious and associative rights under the Canadian Charter of Rights and Freedoms.

This is one of three such cases. In June, the Ontario Court of Appeal [upheld](#) the Law Society of Upper Canada's decision not to accredit TWU's law school, on the grounds that TWU's Community Covenant is “deeply discriminatory to the LGBTQ community.” In July, the Nova Scotia Court of Appeal [held](#) that the Nova Scotia Barrister's Society lacked the authority to condition its recognition of TWU's law school on a change in the university's code of conduct. Other provinces and territories have accredited the proposed school. The Supreme Court of Canada is expected to take up the issue.

In a wholly different matter, on November 23, an Ontario court held that a school did not have to accommodate a parent seeking to remove his children from lessons concerning marriage and human sexuality that conflicted with the parent's religious beliefs. Although the court recognized that the decision to refuse his accommodation request engaged the parent's freedom of religion protections under the Canadian Charter of Rights and Freedoms, it held that the school's refusal to grant the exemption appropriately balanced the parent's Charter right with the school's statutory objectives (including its statutory duty of religious neutrality) and with the Charter values favoring inclusivity, equality, and multiculturalism.

United States: On September 16, a group of parents and students – calling themselves Privacy Matters – asked a Minnesota federal district court to enjoin the U.S. Education and Justice Departments from taking action on a recently issued guidance concerning the rights of transgender students. The Guidance, which was released in May, makes clear the agencies' view that Title IX prohibits schools receiving federal funds from discriminating against transgender students, and requires these schools to allow students to use restrooms and locker rooms consistent with their gender identity. (Title IX is a federal law that, as noted above, bars sex discrimination in education.) The plaintiffs allege that the Guidance violates their religious exercise rights, as well as the right to privacy, the right to control the upbringing of their children, and principles of due process. A similar [lawsuit](#) is currently pending before a federal district court in Illinois. The guidance is also being challenged in several other cases, including a [case](#) brought by several state governments and school districts in Texas federal court. The Texas court enjoined the guidance; the plaintiffs in that case did not raise a religious exercise claim. It is unclear how the pending change in the Administration of the U.S. government will affect the Guidance.

Religious Freedom & Women's Rights

Access to Contraception

United States: On January 9, the Obama Administration [announced](#) that it will not be modifying the contraceptive coverage requirement at this time. The announcement came after the Administration received more than 54,000 comments in response to its [request](#) for information to determine whether there is a way to modify the Affordable Care Act's accommodation for religiously affiliated employers that objected to providing contraceptive coverage. After reviewing the comments, the Administration concluded that "no feasible approach has been identified at this time that would resolve the concerns of religious objectors, while still ensuring that the affected women receive full and equal health coverage, including contraceptive coverage." Last year, in [Zubik v Burwell](#), the Supreme Court remanded a number of cases [challenging](#) the accommodation so that the parties may be "afforded an opportunity to arrive at an approach going forward that accommodates petitioners' religious exercise while at the same time ensuring that women covered by petitioners' health plans 'receive full and equal health coverage, including contraceptive coverage.'" The government has begun filing status reports reflecting its decision in the remanded cases.

Access to Abortion

Brazil: In November, Brazil's Federal Supreme Court [held](#) that the criminalization of abortion during the first trimester of pregnancy violates a number of fundamental rights under Brazil's Constitution, including women's rights to sexual and reproductive autonomy, their rights to physical and mental integrity, and the principle of equality. As a result, the Court ordered the release of physicians and clerks who had been detained for operating a clandestine abortion clinic. Under the current criminal code, abortion is outlawed except in cases of rape or threat to the woman's life; women who receive abortions illegally may face up to three years imprisonment. Brazil's Congress is expected to attempt to block legislation decriminalizing abortion in the wake of the Court's ruling.

A Brazilian appellate court recently [ruled](#) that a Catholic priest abused the legal process by interfering with a couple's attempt to obtain a court order permitting them to obtain an abortion. The couple sought authorization for the abortion after it became clear that the fetus had a serious anomaly; however, the priest intervened in the proceeding on the fetus's behalf and convinced the court to deny the permit. The child died eight days after birth. The appellate court awarded the couple more than 60,000 reais in damages.

Philippines: On January 9, President Rodrigo Duterte [issued](#) an executive order instructing government agencies to provide contraceptives to the six million Filipino women without access to birth control and other reproductive health care. The order implements the Responsible Parenthood and Reproductive Health Act of 2012, which the Catholic Bishops Conference of the Philippines has opposed. In 2014, the Supreme Court found the law constitutional, except for a few provisions—primarily those requiring health care practitioners to provide information about contraceptives.

Poland: On October 6, following major public outcry, Poland's parliament [rejected](#) proposed legislation that would have imposed a near-total ban on abortion. Under current law, abortion is allowed in cases of rape, incest, danger to the woman's health, or when prenatal tests show "severe and irreversible" damage to the fetus. The proposal would have limited access to

abortion in cases involving threats to the pregnant woman's life. On October 3, roughly 100,000 women protested against the proposal. The measure, which was initially backed by Poland's ruling Law and Justice Party, was ultimately defeated by a vote of 352 to 58.

Public Accommodations

Israel: On January 11, the Israeli High Court of Justice [issued](#) a landmark decision holding that women visiting the Western Wall in Jerusalem shall no longer be subjected to body searches for "contraband" ritual objects, such as Torah scrolls. The High Court also gave the government 30 days to show good cause why it prohibits women from reading Torah scrolls aloud at the women's prayer area of the Western Wall. The court indicated that it would address that issue together with another petition, [filed](#) last October, requesting that the Court establish a non-gender-specific prayer area at the Wall. The government had initially approved a compromise solution earlier this year – agreeing to the new, integrated prayer area – but ultra-Orthodox groups within the government withdrew their support and demanded that Prime Minister Netanyahu block the proposal.

Religious Freedom & Individual Rights

Clothing and Garb

Canada: The Royal Canadian Mounted Police (RCMP) has [authorized](#) its women officers to wear hijabs as part of their official uniforms. A spokesperson for the Public Safety Minister explained that the change "is intended to better reflect the diversity in our communities and encourage more Muslim women to consider the Royal Canadian Mounted Police as a career option." The RCMP is the third police force in Canada to add the hijab option. Police in the United Kingdom, Sweden, Norway, and some U.S. states have adopted similar policies.

France: On August 26, France's top administrative court – the Council of State – [struck down](#) a French town's ban on burkini swimsuits. The swimsuits, which are designed to accord with traditional Islamic clothing for women, cover the whole body except the face, hands, and feet. Dozens of French towns prohibited beachgoers from wearing the swimsuit, citing concerns about public order after recent terrorist attacks in France. The Council held that the ban violated fundamental individual freedoms, including the freedom of belief, and that it could be justified only by a "proven risk" to public order.

Religious Discrimination

Egypt: On August 30, Egypt's parliament [approved](#) long-awaited legislation on the construction of churches, as required under the country's Constitution. The new statute authorizes provincial governors to approve church building and renovation permits, which were previously issued by the country's security services. The law also stipulates that the size of a church must be proportional to the number of Christians in the area. By contrast, the law on mosque building – which was enacted in 2001 – deals only with issues of land ownership and building regulation. INCLO-member EIPR criticized the differential treatment, stating that the new church law "is a sectarian law that shows the state prefers the adherents of one religion over another." As reported in our August 2016 issue, Christians in Egypt have suffered a number of violent sectarian attacks following the construction of new churches. Most recently, on December 11, a church in the Cairo cathedral complex – the seat of the Coptic Christian pope – was [bombed](#), resulting in the deaths of 27 people.

Freedom of Conscience and Expression

Canada: In August, a trial court in Alberta [upheld](#) the Alberta Human Rights Commission's finding that a private school unlawfully discriminated against two Muslim students by not allowing them to pray on campus. The students' parents were told that the school was non-denominational, that no space in the school would be allocated for praying, and that overt prayers could not take place on campus. The court concluded that the school's anti-prayer policy discriminated against Muslim students and that the discriminatory policy was not reasonable and justifiable in the circumstances because the school had welcomed other overt indications of belief, such as students who manifest their religious beliefs through forms of dress and grooming. The school was ordered to pay \$26,000 in damages.

Ethiopia: On September 10, Ethiopia's chief prosecutor [reported](#) that the government had pardoned roughly 1,000 people, including 135 Muslim individuals who were jailed after convictions for religious extremism. Ethiopia had jailed numerous Muslims who participated in months-long protests in 2012, claiming that the government unconstitutionally encouraged the teaching of the Al-Ahbash form of Islam and dictated the election of community leaders to support it at a religious school in Addis Ababa.

Hungary: On November 24, the local government of Ásotthalom – a small village next to the Southern border of Hungary – [passed](#) an ordinance prohibiting the open expression of Islamic religious beliefs, including through the traditional Islamic call to prayer, the wearing of traditional Islamic clothing (such as burqas, hijabs, and niqabs), and the construction of mosques and minarets. The ordinance also prohibits the public promotion of marriage equality for same-sex couples. Violations of the ordinance are punishable by a 150,000 florint fine. The ordinance was promoted by Ásotthalom's mayor, who is vice-chair of the Jobbik party. On December 19, Hungary's ombudsman [petitioned](#) the Constitutional Court to annul the ordinance, on the ground that it conflicts with the constitutionally protected freedom of religious expression. INCLC-member HCLU has also asked the Court to strike down the ordinance.

Russia: On July 6, President Putin [signed](#) into law new anti-terrorism measures that include a ban on "missionary activities" – including preaching, proselytizing, or otherwise sharing religious beliefs – outside of officially designated areas. Individuals who violate the ban are subject to fines of 5,000 to 50,000 roubles; religious organizations that violate the ban are subject to fines of 100,000 to 1 million roubles. Several individuals, including a Baptist pastor, have already been convicted and fined under the new measures. Numerous others have been brought up on charges.

United States: On December 16, President Obama [signed](#) legislation amending the U.S.'s International Religious Freedom Act to better address escalating religious persecution throughout the world. Among other things, the amendments establish a comprehensive list of people jailed on religious grounds and require international religious freedom training for all Foreign Service officers.

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