



INTERNATIONAL NETWORK OF CIVIL LIBERTIES ORGANIZATIONS

Global Developments in Religious Freedom and Equal Treatment

May 2021

Dear Friends:

Welcome to the International Network of Civil Liberties Organizations' (INCLIO) 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.

There have been many developments since our last issue in November. Here are a few brief highlights:

- Angola decriminalized same-sex relationships and banned discrimination based on sexual orientation;
- Argentina became the largest country in Latin America to legalize abortion;
- Bhutan decriminalized same-sex relationships;
- Bolivia legalized marriage for same-sex couples;
- The Constitutional Court of Ecuador declared provisions of the penal code criminalizing abortions in cases of rape unconstitutional;
- Poland banned abortions based on fetal anomalies;
- The Constitutional Court of Romania overturned a law that would have prevented educational institutions from teaching theories and opinions about LGBTQ identities;
- The European Court of Human Rights will consider a foster parent's challenge to Russia's removal of children from his care because of his gender identity;
- South Africa made it illegal for state-employed marriage officers to refuse to solemnize civil unions for same-sex couples because of the officer's conscience or religious beliefs;
- South Korea decriminalized abortion by repealing provisions of its penal code;

- Switzerland voted to legalize marriage for same-sex couples and remove barriers for transgender nationals seeking to change their gender markers on their legal documents; there will be a nationwide referendum to determine if the marriage law will take effect;
- Taiwan expanded marriage protections for same-sex couples by removing the requirement that both spouses be from countries where marriage for same-sex couples is legal;
- Thailand legalized first-trimester abortions;
- The United Kingdom will restore medals to LGBTQ military personnel who were discharged because of their sexuality;
- In the UK, the right of transgender youth to access gender-affirming care is the subject of two recent rulings by the British High Court; and
- In the United States, the state of Arkansas enacted a law that bans access to gender-affirming care for transgender minors.

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 INCLO'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 us at INCLONewsletter@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 (United States), Association for Civil Rights in Israel, Canadian Civil Liberties Association, Centro de Estudios Legales y Sociales (Argentina), Dejusticia (Colombia), Egyptian Initiative for Personal Rights, Human Rights Law Centre (Australia), Human Rights Law Network (India), Hungarian Civil Liberties Union, International Human Rights Group Agora (Russia), Irish Council for Civil Liberties, Kenya Human Rights Commission, KontraS (Indonesia), Legal Resources Centre (South Africa), and Liberty (United Kingdom).

Religious Freedom & LGBTQ Rights

Adoption

Russia: On January 28, 2021, the European Court of Human Rights decided it will hear a [case](#) brought against the Russian government in which a foster parent challenges the removal of two children from his care because he is transgender. The children—who were under the foster parent’s care for several years—were removed after social services authorities became aware of the foster parent’s gender identity, gender-affirming surgery, and related social media posts regarding the same. The parent argues that the Russian authorities violated his family’s right to respect for family life and discriminated against him based on his gender. Several INCLO members are seeking to intervene in the case.

United States: On November 4, 2020, the US Supreme Court [heard argument](#) on whether a Catholic social services agency has a constitutional right to a contract with the City of Philadelphia to screen foster care families where the agency refuses to place foster children with same-sex couples. The City requires nondiscrimination as a condition of the contract. The agency argues that any requirement that it comply with the City’s bar on discrimination violates its rights to free exercise of religion. The lower courts both found that Philadelphia did not violate any rights of the agency. INCLO-member ACLU represents [intervenors](#) in the action.

[Discrimination](#)

Angola: On February 10, 2021, a new penal code [decriminalizing](#) same-sex conduct took effect. Angola’s Parliament [voted](#) for the new penal code—the first update to the code since Angola gained independence from Portugal in 1975—over two years ago, but Angola’s president only signed the code into law in November 2020. The new law also prohibits discrimination on the basis of sexual orientation.

Bhutan: On February 17, 2021, a [law](#) that [decriminalized](#) same-sex relations went into effect.

Canada: The Province of Manitoba now includes an “X” on birth certificates and other documents for individuals who request a change in their sex designation. The change follows a 2019 decision by the Manitoba Human Rights Commission [ruling](#) that the Province of Manitoba engaged in unlawful discrimination by refusing to allow any designation on birth certificates besides “male” or “female.” This victory resulted from a [complaint](#) filed with the Human Rights Commission by a transgender individual for whom the Manitoba government refused to replace the sex designation on their birth certificate with an “X” to reflect their gender identity.

Honduras: On November 11, 2020, the Inter-American Court of Human Rights heard [argument](#) in a case where petitioners accuse the Honduran Government of killing a transgender woman during a coup in 2009 in an act of gender-based violence and failing to investigate the murder because of her gender identity. A substantial number of international and national NGOs contributed amicus [briefs](#) in this case. The ruling is expected to be an important benchmark on violence based on prejudice against transgender people in Latin America. The killing and coup have been followed by a decade of heightened [violence](#) against LGBTQ individuals in Honduras, including more than 370 homicides.

Hungary: On March 12, 2021, the Constitutional Court of Hungary [ruled](#) that retroactively applying Parliament’s [ban](#) on the legal [recognition](#) of transgender and intersex people is unconstitutional. The ban [denies](#) transgender and intersex people the right to update their legal documents to reflect their names and gender. As a result of the decision, the ban can no longer apply to transgender and intersex people who legally changed their gender prior to May 2020, when the ban was implemented. A local Hungarian LGB organization continues to challenge the ban as unconstitutional in the Constitutional Court of Hungary.

On January 19, 2021, Hungary's government [ordered](#) a publisher to print disclaimers on all books containing "behavior inconsistent with traditional gender roles" in response to the publisher releasing a fairytale anthology book that includes stories with pro-gay themes. The government reasoned that doing so was necessary to protect consumers from being misled. The publisher plans to sue the government.

United Kingdom: On February 16, 2021, the defense ministry [announced](#) that it would restore military medals to LGBTQ personnel who were systematically discharged and stripped of their medals because of their sexuality. The new policy also [allows](#) military personnel who were convicted of "sexual offenses" that are no longer considered crimes to apply to have the charges fully revoked.

[Education](#)

Romania: On December 16, 2020, the Constitutional Court of Romania [overturned](#) a measure passed by the legislature that would have [banned](#) educational institutions from teaching "theories and opinion on gender identity according to which gender is a separate concept from biological sex." The Court [reasoned](#) that the ban would disproportionately discriminate against transgender, nonbinary, and intersex people. The ban would have [prevented](#) teachers, academics, doctors, social workers, and more from discussing gender, gender identity, and transgender issues.

United States: Courts across the country are considering cases that contest the right of transgender students to live according to their identities. Parents have [challenged](#) requirements that teachers and staff use pronouns consistent with individual students' identities as interfering with their right to direct the upbringing of their children, and [teachers](#) have [challenged](#) such requirements as [violating](#) their rights to free speech and free exercise of religion. One federal appellate [court](#) has rendered a [decision](#) allowing a teacher's claims to proceed.

On May 3, 2021, the US Court of Appeals for the Ninth Circuit will hear an appeal from a [decision](#) striking an Idaho state law barring transgender girls and women from participating in sports consistent with their gender identities. Already this year, six states have passed similar laws.

[Employment](#)

Colombia: A state retirement fund company has sued a transgender woman after she won a legal suit to obtain her pension under the rules for women (which permit retirement at a younger age than for men). The state company [says](#) that she must return the money received and must meet the requirements established by law for men.

Indonesia: On January 7, 2021, a Central Java court [rejected](#) a former police officer's lawsuit against a police force for firing him because of his sexual orientation. While being gay is legal in most of Indonesia, discrimination and violence against LGBTQ individuals is on the [rise](#).

Russia: On June 16, 2020, a transgender woman [won](#) her lawsuit against her former employer who fired her after she legally changed her gender. The employer cited a Putin government regulation that barred women from working in "dangerous" professions as grounds for firing her. (The woman in this lawsuit worked as a [printer](#), which is one of the many professions included

in the list of restricted professions for women.) The court reasoned that her employer discriminated against her because the regulation only applies for the period of the birth and care of a newborn child. In 2019, following domestic lawsuits and pressure from the UN, Russia agreed to reduce the list from 456 to 100 different professions; this shortened list went into effect on January 1, 2021.

Health Care

United Kingdom: On March 26, 2021, the British High Court issued a [decision](#) undoing some of the damage to transgender youth seeking medical care caused by a December [decision](#) issued in a separate case challenging both minors' ability to [consent](#) to puberty [blockers](#) and cross sex hormones and the National Health Service's process for securing consent. In December, the Court ruled that there would be "enormous difficulties" for a minor under sixteen to give consent and that even for those 16 and 17, who are presumed competent, clinicians may want to seek court authorization. The more recent decision recognizes the right of parents to consent on behalf of their children. The December decision is being appealed; INCLO-member Liberty has been granted permission to intervene.

United States: On April 14, 2021, the state of Arkansas [enacted](#) a law that bans access to gender-affirming care for transgender minors, including reversible puberty blockers and hormones. This is the first law of its kind in the US. Several other states are considering adopting similar laws.

Marriage

Bolivia: On December 11, 2020, Bolivia's civil registry [authorized](#) a same-sex couple's request for civil union following a two-year legal battle for recognition. Bolivian authorities [denied](#) the couple's request in 2018, citing the country's laws prohibiting marriages for same-sex couples. The couple challenged the rejection in court, successfully arguing that prohibiting their civil union is discriminatory and violates international human rights standards. The Bolivian Constitutional Court agreed and ruled that the Bolivian constitution must be interpreted to align with equality standards.

Japan: On March 17, 2021, a Japanese court ruled that the government's ban on marriage for same-sex couples was [unconstitutional](#), paving the way for marriage equality. The court found that barring marriage for same-sex couples violates an article of the Japanese constitution that [prohibits](#) discrimination on the basis of race, creed, sex, social status, or family origin. Despite this positive ruling, marriages of same-sex couples will not be recognized by law until Japan's legislature amends the civil code.

South Africa: On October 22, 2020, South Africa's President [signed](#) the Civil Union Amendment Act into [law](#), making it illegal for state-employed marriage officers to refuse to solemnize civil unions of same-sex couples because of the officer's conscience or religious beliefs. Prior to this amendment, marriage officers could refuse to solemnize civil unions only for same-sex couples. INCLO-member LRC offered written submissions in favor of the bill. LRC also assisted over 200 community members in making written submissions and joined a trans coalition who wrote to the President requesting that he assent to the bill.

Switzerland: On December 18, 2020, Swiss lawmakers voted to [legalize](#) marriages for same-sex couples; opponents of the law have, however, successfully [petitioned](#) for a nationwide

referendum to determine whether the law will take effect. There is no date yet for the referendum.

Also on December 18, 2020, Swiss lawmakers voted to allow transgender people to change their gender marker on government documents by making a personal declaration and without medical or legal documentation, and to allow lesbian couples to conceive using sperm donation.

Taiwan: On March 4, 2021, the Taipei High Administrative Court in Taiwan [invalidated](#) a decision of a household registration office that prohibited same-sex couples from marrying if one person is from a country where marriages for same-sex couples are prohibited. Additionally, on January 22, Taiwan's judiciary [proposed](#) an amendment to the country's civil code that would pave the way for marriages between Taiwanese nationals and their same-sex partners from foreign countries, so long as they are not citizens of mainland China. The amendment needs to pass the executive and legislative branches of government before it can become law. LGBTQ groups estimate that these restrictions have prevented approximately 1,000 couples from marrying.

Thailand: On July 8, 2020, Thailand's cabinet [approved](#) a bill that would recognize civil partnerships for same-sex couples. The bill would give same-sex couples the right to adopt children, pass on inheritances, and jointly own property, among other rights. It needs to [pass](#) Parliament before it can become law. Also pending is a proposed [amendment](#) to the civil code that would allow same-sex couples to marry and a court [case](#) that could determine whether denying same-sex couples the right to marry is unconstitutional.

United States: A flower [shop](#) is [seeking](#) review by the US Supreme Court of a state supreme court's [ruling](#) that the shop's refusal to provide flowers for a same-sex couple's wedding violated a state law barring discrimination, and that enforcement of the law did not violate the shop's federal and state free speech and free exercise rights. The petition remains pending. INCLC member ACLU [represents](#) the same-sex couple refused services.

Religious Freedom, Reproductive Rights, and Women's Rights

Access to Abortion and Contraception

Argentina: On January 24, 2021, a law [legalizing](#) abortion for any reason up to the fourteenth week of pregnancy went into effect in Argentina, making it the [largest](#) country in Latin America to legalize abortion. Abortions performed at public hospital will be provided at no cost to the patient. After fourteen weeks of pregnancy, abortions are permitted in cases of rape or to protect the patient's health. In cases where the patient's health is in danger, health professionals cannot refuse to perform the abortion based on religious or conscience objections.

Ecuador: On April 28, 2021, the Constitutional Court of Ecuador [declared](#) articles of the country's penal code criminalizing abortion in cases of rape [unconstitutional](#). Prior to this ruling, abortion was only [allowed](#) when the pregnant person's life or health was at risk or the pregnant person was raped and had a mental health disability.

Honduras: On January 21, 2021, members of Congress [approved](#) a constitutional amendment that would increase the number of congressional votes needed to amend articles of the constitution banning marriage for same-sex couples and abortion from a two-thirds majority to a three-quarters majority. The amendment is intended to create a "constitutional lock" on the

articles. The proposal still requires a second [vote](#) in the unicameral legislature before it can be enacted.

India: On March 25, 2021, India's Parliament [passed](#) a bill that extends the period of time when a person can receive an abortion from 20 to 24 weeks of pregnancy. The extended period will only be available, however, to "such categories of women" as prescribed by rules that have not yet been issued. Abortions will also be allowed after 24 weeks because of a fetal anomaly but will require a medical board to preside over the matter. The [bill](#) calls for medical boards to be set up in each State and Union Territory, which is practically impossible. Even if the boards are set up, they will be difficult to access given that there would be only one in each State or Union Territory.

Ireland: On April 7, 2020, the Irish Department of Health [issued](#) new guidelines permitting people who are under 10 weeks pregnant to access their two required consultations remotely during the pandemic. Currently these new guidelines would only apply for the [duration](#) of the COVID-19 pandemic, but advocates for expanded reproductive rights are hopeful the guidelines will become the new permanent standard.

Poland: On January 28, 2021, a near-total [ban](#) on abortion went into [effect](#) in Poland—a country with some of the strictest abortion laws in Europe—despite demonstrations by hundreds of thousands of protestors. The new ban implements an October decision by the Constitutional Tribunal of the Republic of Poland invalidating a law that permitted abortions based on fetal anomalies. Last year, of the 1,100 abortions performed in Poland, 1,074 were cases with such diagnoses. Abortions are still permitted in cases of rape or incest or when the individual's life is at risk.

South Korea: On January 1, 2021, provisions of South Korea's penal code criminalizing abortion were [repealed](#). This followed a 2019 [ruling](#) by the Constitutional Court declaring that South Korea's broad criminalization of abortion unconstitutionally violated women's rights and ordering legislative reform by the end of 2020. When the legislature failed to act in time, the unconstitutional provisions became [ineffective](#).

Thailand: On February 12, 2021, a new law took effect that [legalizes](#) abortion during the first twelve weeks of pregnancy and reduces criminal penalties for unlawful abortions. Abortion is [allowed](#) between twelve and twenty weeks in cases where the pregnant person's mental or physical health are at risk, the fetus is at high risk of having a genetic disease, or the pregnancy resulted from rape. The amendment comes after the Constitutional Court of the Kingdom of Thailand [ruled](#) in February 2020 that a section of the country's penal code criminalizing abortion was unconstitutional. The Court ruled that the provision of the law providing for punishment of women but not men violated prohibitions against sex discrimination, as well as the rights to life and liberty.

United States: On January 12, 2021, the United States Supreme Court [lifted](#) an injunction that had blocked enforcement during the COVID-19 pandemic of a regulation that requires people seeking a medication abortion to go to a health care provider to pick up the pill. There are now more than a dozen [cases](#) either with petitions for certiorari pending before the Court or in the courts of appeals, any one of which could be heard by the newly constituted Court. And this year threatens to be unprecedented in terms of the number of abortion [restrictions](#) passed by the states.

Religious Freedom & Individual Rights

Religious Freedom

Canada: On April 20, 2021, a Quebec court handed down its [decision](#) on a provincial law that prohibits certain public officials—including teachers, police officers, and prosecutors, among others—from wearing religious symbols. The court struck down certain parts of the law, but upheld most of it despite its violation of religious freedom, equality, and other fundamental rights. The law notably includes a clause that enables it to override provisions of both the Canadian Charter of Rights and Freedoms and the Quebec Charter. INCLO-member CCLA, together with the National Council of Canadian Muslims and an individual plaintiff, [filed](#) the first of four challenges against the law. The six-and-a-half week trial was held in November and December 2020. [Protests](#) against the law continue.

South Africa: On January 22, 2021, INCLO-member LRC withdrew its challenge against the South African National Defense Force's (SANDF) Religious Dress Policy after it amended the policy. LRC made submissions on the proposed dress policy and welcomed the amendment. It challenged the original policy after a South African military court issued criminal charges against a Muslim woman employed by SANDF for disobeying orders to remove her headscarf, which she wears in accordance with her religious beliefs. The South African military [withdrew](#) the charges in January 2020.

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