



INTERNATIONAL NETWORK OF CIVIL LIBERTIES ORGANIZATIONS

Global Developments in Religious Freedom and Equal Treatment

December 2021

Dear Friends:

Welcome to the International Network of Civil Liberties Organizations' (INCLC) 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. **This email contains a few top developments. The full newsletter is attached to this email as a PDF.**

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

- Chile legalized marriage for same-sex couples;
- The Court of Justice of the European Union ruled against two Muslim women in Germany, finding that employers can ban religious outerwear such as headscarves in the workplace;
- Hungary enacted a law banning discussion of sexual orientation and gender identity in schools, media, and certain other public settings;
- The Inter-American Court of Human Rights ruled that El Salvador violated the human rights of a woman criminalized for seeking emergency medical care after a natural loss of pregnancy;
- Israel's highest court announced that, beginning in January of 2022, same-sex couples and single men would have access to parenthood via surrogate pregnancy;
- Mexico's highest court decriminalized abortion;
- New Zealand's highest court upheld provisions of a law that require healthcare providers who object to providing abortions to provide referrals to the nearest abortion provider;

- Several provinces in Poland rescinded their “LGBT-free” declarations after the European Union threatened to eliminate their funding;
- Thailand’s highest court upheld a constitutional provision restricting marriage to heterosexual couples;
- The European Court of Human Rights ruled that Russia violated a transgender woman’s human rights by restricting her parental rights on the basis of her gender identity;
- San Marino voted overwhelmingly to legalize abortion during the first 12-weeks of pregnancy;
- Switzerland voted overwhelmingly to legalize same-sex marriage and expand in-vitro fertilization and adoption services to same-sex couples;
- In the United Kingdom, the Court of Appeal ruled that a Christian foster care agency violated U.K. civil rights law by refusing to place children with same-sex couples;
- In the U.K., the Court of Appeal ruled that transgender minors can consent to gender-affirming care in the form of puberty blockers and hormone therapy without a court order;
- In the United States, the Supreme Court ruled in favor of a Christian foster care agency that refuses to place children with same-sex couples based on a narrow-contract term; and
- In the U.S. State of Texas, a ban on abortion after six weeks has been in effect in Texas since September

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.

Best,

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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 and Childcare

Israel: On July 11, 2021, the Israeli High Court of Justice [ruled](#) that the surrogacy law will allow same-sex couples and single men to become parents via surrogacy, effective January 12, 2022. Over a year ago, the Israeli High Court of Justice found such laws to be unconstitutional and gave the Israeli parliament twelve-months to craft a legislative solution. The court's 2021 decision comes after the Israeli parliament failed to advance a legislative solution.

Russia: On July 21, 2021, several INCLO members filed a [brief](#) in the European Court of Human Rights in support of a transgender foster parent [challenging](#) the Russian government's decision to remove two children from his care because he is transgender. (The parent now lives in Spain.) 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.

In another case, on July 7, 2021, the European Court of Human Rights found that Russia had [violated](#) a transgender mother's rights after depriving her of contact with her children on the basis of her gender identity. The woman who brought the legal challenge had two children before she transitioned. Following her transition and divorce from the co-parent of her two children, Russian courts restricted her parental rights and deprived her of contact with her children. At the time of the legal challenge, the woman had not been able to obtain any information about her children or their whereabouts.

United Kingdom: On September 24, 2021, the U.K. Court of Appeal [ruled](#) that a Christian foster care agency violated U.K. equality laws and the European Convention on Human Rights by refusing to place children with same-sex couples. An earlier decision from the High Court had also found the policy to be unlawful.

United States: On June 17, 2021, the U.S. Supreme Court [held](#) that the City of Philadelphia violated the Free Exercise Clause of the First Amendment when it did not renew its contract with Catholic Social Services to certify foster parents because of CSS' refusal to comply with the City's antidiscrimination requirement. In particular, CSS refused to screen or certify same-sex couples. The Court held that where the contracts had a mechanism for granting individualized exceptions, the City had not shown a compelling reason why it could not make an exception for CSS. The case is *Fulton v. City of Philadelphia*. INCLO member ACLU represented intervenors in the action.

Discrimination

Argentina: Effective July 21, 2021, Argentina's National Identity Document and passports [include](#) an "X" gender marker for those who do not wish to identify as male or female. The Presidential decree codifying the change states that the "X" gender marker will indicate "non-binary, undetermined, unspecified, undefined, not informed, self-perceived, not recorded; or another meaning with which the person who does not feel included in the masculine/feminine binary could identify."

Dominican Republic: On June 30, 2021, the Chamber of Deputies released an amended penal [code](#) that excludes sexual orientation as a ground for discrimination. In addition, the code states that it is not discrimination to refuse service if the refusal is based on religious, ethical, or moral grounds. The Senate has not yet voted on the proposal.

Ghana: In October 2021, Ghana's parliament began formal consideration of a [bill](#) to criminalize homosexuality and pro-LGBT advocacy. Under the proposed law, LGBT people could be sentenced to up to ten years in prison. Additionally, anyone publicly defending an LGBT person or publishing information that casts homosexuality in a positive light could face other criminal penalties. The proposal comes amidst a wave of anti-LGBT hate crimes in Ghana, where the most recent polling found that around 90% of citizens would support the criminalization of same-sex relationships.

Honduras: On June 26, 2021, the Inter-American Court of Human Rights [held](#) that the Honduran government violated the right to life and personal integrity of a transgender woman who was killed at the time of a coup in 2009. The court found the government violated Vicky Hernandez' right to life because police harassed her the night before her death, the government controlled the streets the night she died, and the government did not effectively investigate her murder. 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.

Hungary: On July 7, 2021, a [law](#) went into effect in Hungary that bans discussion of sexual and gender diversity in education, entertainment, media, and other public spaces. Those who violate the ban face civil sanctions and monetary fines. Immediately after the law's passage, the European Commission [issued](#) a formal notice stating that the law violates multiple E.U. laws. The Commission also threatened to freeze E.U. funds to Hungary for breaching E.U. law, but ultimately did not do so. Most recently, in October, the European Parliament [sued](#) the Commission in the European Court of Justice for its failure to hold Hungary accountable.

Later in July, 2021, Hungary's election panel [approved](#) language for a 2022 referendum intended to show public support for the new LGBT censorship law. The referendum will include four questions on sex education in schools, the availability of information for children on gender reassignment, and banning LGBT content that "influences the development of underage children." A fifth question has been rejected by the Curia of Hungary and is currently pending appeal before the Hungarian Constitutional Court. LGBT advocates say that the referendum will only increase discrimination and stigma against the LGBT community in 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 Hungarian LGB organization continues to challenge the ban as unconstitutional in the Constitutional Court of Hungary.

On January 19, 2021, in response to a publisher releasing a fairytale anthology book that includes stories with pro-LGBT themes, the Consumer Protection Authority of the Budapest Metropolitan Government [ordered](#) the publisher to print disclaimers on all books containing "patterns of behavior that deviate from traditional gender roles." The Authority reasoned that

doing so was necessary to protect consumers from being misled as a matter of fair commercial practice. The publisher plans to challenge the ruling in court.

Indonesia: On July 10, 2021, the High Military Court in Indonesia [upheld](#) the dismissal and imprisonment of a Navy soldier who was discharged and criminally charged for being gay. While Indonesia does not explicitly criminalize homosexuality, military officials commonly use elements of the Criminal Code pertaining to “decency” and the Military Criminal Code regarding “military disobedience” to punish gay service members. In 2020, at least 15 other service members were fired for their sexual orientation.

Italy: On October 27, 2021, the Italian Senate [blocked](#) a bill that would have expanded hate-crime legislation to women, people with disabilities, and LGBT people. Earlier this year, the Italian Chamber of Deputies approved the bill and sent it to the Senate for debate. The Senate’s rejection of the legislation came amidst fierce [opposition](#) to the bill from the Vatican and conservative political parties in Italy. Following the news, protests were held and attended by affected communities throughout Italy.

Poland: On September 27, 2021, several provinces in Poland [rescinded](#) their “LGBT-free” declarations after the European Commission demanded that they rescind the provisions or risk losing funding from the European Union. In 2019, many regional governments in Poland began to adopt motions declaring their jurisdictions “LGBT-free zones.” The European Commission maintained that the declarations were in direct violation of E.U. law that prohibits discrimination on the basis of sexual orientation.

Spain: On June 29, 2021, the Spanish Cabinet [approved](#) a bill that would allow transgender people over the age of 16 to legally change their gender and name without the need for medical attestation or non-medical witnesses. The proposal is now in parliament for debate, amendments, and final passage.

United States: On October 27, 2021, the U.S. State Department [issued](#) the first passport including the gender marker “X”. The State Department plans to offer the new gender marker to all passport applicants beginning in early 2022.

[Education](#)

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.

Over the last two years, ten states enacted measures that [ban](#) transgender students from participating in sports teams that are consistent with their gender identity. The most recent [ban](#) was passed by Texas in October. INCLC-member ACLU represents transgender youth athletes challenging two of the state bans (one in [Idaho](#) and one in [Tennessee](#)).

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.

Health Care

Japan: On October 4, 2021, a transgender man filed a lawsuit [challenging](#) a provision of Japan's "Gender Identity Disorder Special Cases Act," which requires transgender people in Japan to undergo medical sterilization surgery in order to legally change their gender. The plaintiff seeks to have his gender legally recognized as male without undergoing sterilization surgery. The law also requires that transgender people in Japan be single, have no children under the age of 20, and undergo a psychological evaluation before they can legally change their gender. Japan promised to revise the law in 2017, but has failed to do so. In 2019, the Japanese Supreme Court found that the law did not violate Japan's constitution, but acknowledged the social and political need for reform.

United Kingdom: On September 17, 2021, the U.K. Court of Appeal [overturned](#) a December [decision](#) from the U.K. High Court that created significant barriers for transgender youth in the U.K. to access gender-affirming care, specifically puberty blockers. The Court of Appeal determined that the High Court should have dismissed the case, finding that "it was for clinicians rather than the court to decide on competence" of transgender youth to consent to receiving puberty blockers. The Court of Appeal decision restores the rights of trans children and young people to consent to receiving puberty blockers without seeking court approval. INCLO-member Liberty was an intervenor in the case.

On October, 29, 2021, the U.K. Minister for Women and Equalities formally [launched](#) a six-week consultation period for an upcoming proposal to ban LGBT conversion therapy and to provide funding to support victims of conversion therapy. The official proposal is likely to be introduced in parliament in early 2022.

United States: On July 21, 2021, a federal court temporarily blocked a [law](#) which would ban gender-affirming care for transgender minors in the state of Arkansas. INCLO-member ACLU represented four transgender youth in challenging the law. This is the first law of its kind in the U.S. The July decision has been appealed to the U.S. Court of Appeals for the Eighth Circuit.

Marriage

Bolivia: In 2020, the Bolivian Constitutional Court [ruled](#) that the country's prohibition on civil unions for same-sex couples violated international human rights law and Bolivian antidiscrimination law. That decision came after a two-year legal battle initiated by a couple denied their right to register their union with the Bolivian civil registry in 2018. Most recently, despite the ruling, the La Paz civil registry again [denied](#) a second same-sex couple's request for a civil union. Attorneys for the La Paz civil registry argue that is not yet required to issue requests to same-sex couples pending further review of the 2020 Bolivian Constitutional Court decision. The couple most recently denied a union has appealed the civil registry's decision.

Chile: On December 9, 2021, the President of Chile [signed](#) into law a bill allowing marriage for same-sex couples two days following the legislation's [passage](#) by the Chilean Congress. Chile is now the eighth country in Latin America to approve marriage equality.

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. Since the ruling, there has been no action by the Japanese legislature.

Switzerland: On September 26, 2021, a referendum to legalize marriage for same-sex couples in Switzerland [passed](#) with the support of over two-thirds of voters. In addition to expanding marriage rights to same-sex couples, the referendum also grants lesbian couples access to sperm banks and allows same-sex couples to adopt children. The Swiss parliament approved these measures in December of 2020, but opponents of the law gathered enough signatures to force a nationwide referendum.

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, 2021, 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 the approval of 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. The legislative changes remain [pending](#).

Thailand: In November, 2021, Thailand's Constitutional Court [ruled](#) that a provision in the latest draft of the Thai Constitution that restricts marriage to heterosexual couples is constitutional. The court stated that allowing marriage for same-sex couples would "overturn the natural order," and went on to discourage the Thai legislature from approving marriage equality.

Religious Freedom, Reproductive Rights, and Women's Rights

Access to Abortion and Contraception

Bolivia: On November 9, 2021, an 11-year old girl [successfully](#) obtained an abortion with approval from the Bolivian government. The girl, pregnant as a result of rape, first sought an abortion at a Bolivian hospital in October, but her mother and a Catholic church official intervened, claiming that she had changed her mind. The intervention of the Catholic church prompted a human rights official in Bolivia to [seek](#) criminal charges against hospital staff, the Catholic archdiocese of Santa Cruz, and the mother of the 11-year old. Bolivian human rights officials asserted that the girl's human rights had been violated and that the actions of hospital staff, the archdiocese of Santa Cruz, and the girl's mother amount to human trafficking for the purpose of forced pregnancy. Since 2014, abortion has been legal in Bolivia in the case of rape. It is unclear whether Bolivian officials will still pursue criminal charges.

Colombia: In November 2021, the Constitutional Court of Colombia [delayed](#) a highly anticipated ruling on a lawsuit brought by several women's rights groups seeking to decriminalize abortion. Abortion is currently legal in Colombia only in cases of rape, incest, or nonconsensual insemination, in cases where the fetus is no longer viable, and in cases when the pregnant woman's health or life is at risk. Every year, about 400 women are prosecuted for undergoing abortion procedures in Colombia. If convicted, women face 16-54 months in prison.

El Salvador: On November 30, 2021, the Inter-American Court of Human Rights [ruled](#) that El Salvador violated the rights of a woman when it sentenced her to prison after suffering a natural loss of pregnancy following a health emergency in 2008. The woman was reported to El Salvadorian authorities by her doctor, who assumed that the woman was seeking an illegal abortion when she sought emergency medical care. The court ordered that health care providers can no longer report those seeking reproductive healthcare, including abortions, to law enforcement. The ruling applies to countries throughout Latin America and the Caribbean subject to the court's jurisdiction. The court further ordered that El Salvador establish protocols to ensure health care in situations like that faced by the woman, and ordered El Salvador to pay damages to the family. The woman died in prison while serving a thirty-year term.

Honduras: On January 28, 2021, members of Congress [approved](#) a constitutional amendment that increases 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.

Malawi: On June 15, 2021, a court in Malawi [declined](#) to review a case in which a 15-year old girl was denied a legal abortion. The girl, pregnant as a result of a sexual assault, expressed her desire to terminate the pregnancy, but the hospital treating her informed her that abortion is illegal under Malawi law. However, Malawi allows abortion when necessary to preserve the life of the woman. In her case, the girl argued that, partially as a result of her suicidal ideation during this period, she was entitled to a legal abortion. While the court declined to review her case due to a lack of documentation that the hospital had refused the abortion, it is the first time that the High Court of Malawi acknowledged that there are circumstances in which abortion is legal in Malawi.

Mexico: On September 7, 2021, the Mexican Supreme Court [declared](#) that laws criminalizing abortion are unconstitutional. The decision came as the court struck down a law from the state of Coahuila that imposed criminal penalties for having an abortion. Before the ruling, only four of Mexico's thirty-two states provided legal access to abortion.

New Zealand: On September 23, 2021, the New Zealand High Court [upheld](#) provisions of the Contraception, Sterilisation, and Abortion Act of 1977, amended by the Abortion Legislation Act of 2020, that require healthcare providers to inform patients if they object to providing abortion care and to provide contact details for the nearest healthcare professional that provides the abortion care requested by the patient. The decision also upholds provisions of the law that require employers to accommodate healthcare providers that object to providing abortion care, so long as accommodating those providers does not "cause unreasonable disruption" to the provision of care. The provisions were challenged by health care providers with religious and/or moral objections to abortion on the basis that the new provisions unjustifiably limit a number of their rights confirmed in the New Zealand Bill of Rights Act of 1990. Advocates celebrated the decision as a victory for abortion rights.

San Marino: On September 27, 2021, the Republic of San Marino [voted](#) to legalize abortion, with 77% of voters casting their ballots in favor of the new law. Under the new law, abortion will be legal during the first 12 weeks of pregnancy under all circumstances. After 12 weeks of pregnancy, abortions are permitted if the pregnancy poses a danger to the physical or psychological health of the pregnant person.

United States: On September 1, 2021, a law took effect in Texas that bans abortions after six weeks of pregnancy. The law is unique, in that it is not enforced by the state, but instead allows citizens to sue abortion providers and any other individuals assisting in the process of obtaining abortion for a minimum fine of \$10,000 USD. The United States Supreme Court twice turned away requests for emergency relief, leaving the law in effect.

On December 10, 2021, in a 5-4 majority, the Supreme Court ruled that the most significant part of [a case](#) filed by a coalition of abortion providers and others impacted by the Texas ban must be dismissed. The court also ruled that a narrow portion of the case may proceed against the Texas Medical Board and other licensing authorities, but this will not prevent bounty-hunter lawsuits from being filed. INCLC-member ACLU represents an abortion provider in the case.

On December 1, the United States Supreme Court heard argument in a [case](#) in which an abortion provider is challenging a law in the state of Mississippi that bans abortion after 15 weeks of pregnancy. The law is unconstitutional under existing precedent. Attorneys for the state of Mississippi argued that the Court should reverse the 1973 decision, *Roe v. Wade*, which established a constitutional right to abortion before fetal viability.

On October 12, 2021, the United States Supreme Court [heard](#) oral argument in yet another abortion case in which the state of Kentucky seeks to effectively ban abortion after fifteen weeks of pregnancy. INCLC-member ACLU represents the Kentucky abortion provider challenging the law and argued the case before the Court.

[Women's Rights](#)

Ireland: On June 2, 2021, the Irish Citizen's Assembly released a series of [recommendations](#) on gender equality, including the deletion of Article 41(2) of the Constitution which states that a woman's place is in the home, a proposal to introduce gender quotas in certain contexts, further support for employed women and people who work as caregivers, and greater recognition of family structures outside of marriage. Legislators continue to [develop](#) draft language for new laws and constitutional amendments.

Tanzania: On November 24, 2021, the Tanzanian government [announced](#) it would rescind a policy, in place since 1961, that prevented girls from returning to public secondary schools after giving birth. According to the World Bank, an [estimated](#) 6,500 girls drop out of school in Tanzania annually due to pregnancy and childbirth.

[Religious Freedom & Individual Rights](#)

[Religious Freedom](#)

Canada: INCLC-member CCLA, together with the National Council of Canadian Muslims and an individual plaintiff, continues their [challenge](#) against Bill 21, a Quebec provincial law that prohibits certain public sector workers—including teachers, police officers, and prosecutors, among others—from wearing religious symbols. The case is on appeal following an April 20,

2021, [decision](#) in which 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.

In August 2021, a high school student [sued](#) a publicly funded Catholic school board in Ontario for banning her from running to serve as a student trustee on the school board because she is not Catholic. In the lawsuit, the Ontario high-schooler claims that the school board's decision violates the Canadian Charter of Rights and Freedoms. Previously in April, another publicly funded Catholic school board barred a Muslim student from running for a student trustee position.

Germany: On July 15, 2021, the Court of Justice of the European Union [ruled](#) against two Muslim women in Germany who were denied the right to wear headscarves in their workplace. The court ruled that employers have the right to limit the expression of religious, political, or philosophical beliefs where there is "a genuine need" to "present a neutral image." The court found that the policies were not discriminatory because they would also apply to other religious outward. However, advocates say that Muslim women are targeted and disproportionately impacted by such bans. The European Court of Human Rights has upheld French bans on face coverings in public spaces and bans on wearing headscarves in public schools. Other European states, including Denmark and Switzerland, have also banned facial veils.

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