



Global Developments in Religious Freedom and Equal Treatment

May 2014

Dear Friends:

Welcome to the second issue of the International Network of Civil Liberties Organizations' (INCLO) 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.

Since our first issue in February, there has been a flurry of activity in the highest courts of various countries and of transnational bodies. This activity has touched on a number of connective themes, including: the rights of institutions to assert freedom of religion (Australia, Canada, United States); religious freedom and contraceptive access (Philippines, United States); and state recognition and funding of religion (Canada, Hungary, Ireland, United Kingdom, United States). We hope this edition will illuminate how debates on these issues are proceeding, not just in one country, but in different countries. Please note that this newsletter does not purport to be comprehensive or definitive. Instead, it is our own best effort to identify and characterize the international legal developments in this arena.

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

Finally, please feel free to alert us to developments you think should be included in future issues of INCLO's newsletter.

Best,
Louise Melling

Isabella Sankey

Deputy Legal Director, ACLU
Director, ACLU Center for Liberty

Director of Policy, Liberty

About INCLO: The International Network of Civil Liberties Organizations (INCLO) is a group of civil liberties 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, Hungarian Civil Liberties Union, Irish Council for Civil Liberties, Kenya Human Rights Commission, Legal Resources Centre (South Africa), Liberty (United Kingdom).

Religious Freedom & Women's Rights

Access to Abortion

Argentina: The Santa Fe province has opened a public registry available to consumers that lists healthcare professionals who, citing ethical or religious objections, are lawfully exempt from complying with laws requiring them to provide sexual and reproductive health services, including non-lifesaving abortion, post-abortion care, and contraception. Santa Fe law requires those who object to provide referrals to those willing to provide reproductive services. [Website](#) (in Spanish).

Sweden: In 2013, the Federation of Catholic Family Associations in Europe filed a complaint with the European Committee on Social Rights alleging that the Swedish government has failed to provide legal protections for religious objectors to abortion, allowing such objectors "to be treated in a discriminatory way." The [government has responded](#) that, despite inquiries with labor associations and the Swedish Society of Obstetrics and Gynecology, it has found no evidence of actual claims of religious objection to performing abortion. The government also argues that it is reasonable to assume that people who object to abortion on religious grounds will not actively seek employment in positions where the person would have to participate in the procedure. The Committee has not yet issued a decision. [Fed'n of Catholic Family Ass'ns in Europe \(FAFCE\) v. Sweden](#).

Access to Contraception

Canada: In Ottawa, a patient going to a walk-in health clinic for birth control reportedly [received only a note](#) stating that the on-call doctor does not provide or refer for contraception, or a range of other services including abortion, because of his "medical judgment as well as professional ethical concerns and religious values." The matter has provoked some controversy. The Canadian Medical Association has a policy allowing physicians to refuse to perform abortions but its policy around providing or referring for contraception is less clear, according to a spokesperson for the Association.

Philippines: This April, the Philippine Supreme Court issued a decision addressing a challenge to a law providing government funding for contraception for the poor, among other services, and requiring health care workers to provide referrals for contraception and other services funded by the law. The Court rejected, among other claims, the plaintiffs' argument that the law violated their free exercise rights because their tax dollars would now support contraception. However, the Court struck down the provisions of the law requiring individual healthcare professionals and religiously affiliated healthcare institutions to disseminate information about contraception and other reproductive health services, as well as to refer patients to those who would provide it. Citing the Scottish [Doogan](#) case (discussed in Feb. 2014 newsletter), the Court held that compelling individuals or religiously affiliated institutions to violate their religious conscience, whether directly or indirectly, is a violation of their free exercise of religion. The Court also held,

however, that healthcare professionals must themselves provide reproductive health services – and cannot merely provide a referral – where the woman’s life is threatened. [Pro-Life Phil. Found. v. Office of the President](#) (and 13 other petitions).

United Kingdom: In February, the Royal College of Obstetricians and Gynaecologists [revised its written guidelines](#) on doctors seeking either a specialist diploma awarded by the Faculty of Sexual and Reproductive Healthcare, or membership in the group. To the [objection](#) of Christian groups, the updated guidelines state that, in order to obtain this diploma and membership, doctors cannot conscientiously object to providing any form of hormonal contraception, including emergency contraception. (The existing guidelines address standards for those who object to providing abortions.)

United States: In March, the U.S. Supreme Court [heard arguments](#) in the consolidated cases [Sebelius v. Hobby Lobby Stores, Inc.](#) and [Conestoga Wood Specialties Corp. v. Sebelius](#). In these cases, for-profit companies seek exemptions from complying with a federal regulation requiring health insurance policies to cover all forms of Food and Drug Administration-approved contraceptives. These cases address many important questions, including whether corporations are persons for the purposes of the federal Religious Freedom Restoration Act, whether the owner of a corporation can exercise his or her religious beliefs through the corporate form, what constitutes a substantial burden on religious exercise, and the scope of government interests that are sufficiently compelling such that they justify substantial burdens on religious exercise. The cases will be decided before the Court’s term ends in June. Audio and a transcript of the argument can be found [here](#). INCLC member [ACLU filed a friend-of-the-court brief](#) in the case.

Religious Freedom & LGBT Rights

[Services & Public Accommodations](#)

Australia: This April, the Victorian Court of Appeal held that a youth camp facility owned by a Christian church [engaged in unlawful discrimination](#) by refusing to let an LGBT youth suicide prevention group use its facility. The court held that, because the youth camp operated as a commercial entity, it did not qualify for a religious exemption under Victoria’s antidiscrimination statute. [Christian Youth Camps v. Cobaw Cmty. Health Servs.](#) [2014] VSCA 75.

Canada: This April, the Law Society of British Columbia [voted to accredit](#) the first Christian law school in Canada, despite the school’s policy requiring students to adhere to a covenant prohibiting non-marital heterosexual sex. Vancouver Park Board Commissioner and aspiring law student, Trevor Loke, has filed a legal challenge against the government of British Columbia, for approving the school to grant degrees, a decision based partially on the law society accreditation. [Loke v. Minister](#) (petition). In addition, because of a petition signed by over 1,000 lawyers in the province, the Law Society of British Columbia must now to hold a vote of the membership, which may direct the Law Society to deny accreditation. The law societies of the [Ontario](#) and [Nova Scotia](#) provinces, in contrast to British Columbia’s, have voted to deny accreditation so long as the school maintains the covenant. Of note, the same university had previously been the subject of a Canadian Supreme Court case, which overturned the British Columbia College of Teachers’ denial of accreditation due to the same policy. The Court asserted then that a religious institution does not violate antidiscrimination protection when it prefers adherents of its own religion. [British Columbia Coll. of Teachers v. Trinity W. Univ.](#) [2001] 1 S.C.R. 772.

In March, a high school student [filed an application in the Human Rights Tribunal of Ontario](#), alleging discrimination on the basis of sexual orientation by officials at his publicly-funded Catholic school, including negative portrayals of LGBT people in various parts of its curriculum. Full public funding for Ontario's Catholic schools is constitutionally guaranteed. *Karas v. Conseil Scolaire de District Catholique Centre-Sud*. (See also *Erazo v. Dufferin-Peel Catholic Dist. Sch. Bd.*, below).

Ireland: In April, the Irish Human Rights and Equality Commission (Designate) submitted a report on the review undertaken by the Equality Authority into the [operation of Section 37\(1\) of the Employment Equality Acts 1998-2011](#). The Commission recommended reform of a provision of the Acts that permits certain medical and educational institutions with a "religious ethos" to make hiring and firing decisions based on whether the employees or prospective employees may be considered as undermining that ethos, including on grounds other than religion. The Commission proposed that such discrimination only be permissible where "adherence to a particular religious belief is a genuine, legitimate and justified occupational requirement" of an institution. The Commission further recommended that discrimination should not be permissible where it constitutes discrimination on any other ground protected by the Employment Equality Acts including sexual orientation, gender, civil, and family status. The Parliament will take the report under advisement as it debates a bill to amend Section 37 of the Employment Equality Acts.

United Kingdom: In January, the Scottish Charity Appeals Panel [reversed](#) an order by charity regulators that a Catholic adoption agency must stop excluding same-sex couples from its services if it is to preserve its charity status. The panel held that, while it was clear that the agency engaged in discrimination, the public benefit the agency provided outweighed the harm of discrimination. The panel also asserted that same-sex couples still had access to other adoption agencies, as well as the other charitable services provided by the agency. [St. Margaret's Children and Family Care Soc'y v. Office of the Scottish Charity Regulator](#) [2014] Scottish Charity Appeals Panel App 02/13.

In March, a UK Christian couple [filed a case](#) with the ECtHR arguing that a requirement that they rent rooms at their inn without regard to marital status, violates their religious freedom. The UK's Equality and Human Rights Commission had previously brought proceedings against the couple for violating antidiscrimination measures. The couple declined to try their case in the British courts, given the UK Supreme Court's decision in [Bull](#) (discussed in Feb. 2014 newsletter), which upheld a discrimination claim against the owners of another bed-and-breakfast who refused to provide a room to a civilly partnered gay couple. The Court will decide later this year whether to hear the case.

Relatedly, also in March, the government's [Equality and Human Rights Commission issued guidance](#) explaining how the Marriage (Same Sex Couples) Act of 2013 interacts with existing equality law in England and Wales. Among other points, the guidance states that all civil marriage officiants are [required by law](#) to conduct same-sex marriages. Furthermore, commercial service providers [cannot refuse](#) to provide services on the basis that a customer is married to, or intends to marry, a person of the same sex.

Religious Expression & Freedom

[Clothing and Garb](#)

Germany: In April, an administrative court in Bavaria [rejected the claim](#) of a Muslim student seeking to wear a niqab at her public high school. The court stated that education is founded on the principle of open communication between teacher and student, extending to non-verbal expressions. Thus, it rejected the student's argument that the German constitution's provision on freedom of religion protects this practice. [Statement by the court](#) (in German).

Israel: In February, the Israel Postal Company, which provides banking services, removed from one of its Jerusalem branches a sign stating that people wearing a head covering would not be allowed to withdraw money. INCLO member ACRI had [objected](#) to the sign, saying it amounted to religious discrimination. The company had defended the sign, saying its policy was based upon a government directive forbidding activity at financial institutions without facial identification.

South Africa: A Cape Town independent school that had [previously prohibited](#) any displays of religious garb, regardless of religion, has [changed its policy](#). It did so after a Muslim female wishing to wear traditional headwear unsuccessfully attempted to enroll and a Department of Education spokesperson urged her to approach the South African Human Rights Commission for assistance, asserting that the policy was unconstitutional. By contrast, a public school that had informally allowed Muslim females to wear headwear [formally recognized](#) the hijab as an acceptable part of the school uniform.

[Government Recognition and Funding of Religion](#)

Canada: In April, the Ontario Superior Court [ruled](#) that students attending a publicly funded Catholic high school may opt out of religious field trips and religious services. Ontario's Education Act provides that students, without regard to their religious beliefs, have a right to attend publicly funded secondary schools. The Act also allows students to opt out of "programs and courses of study in religious education," which the court interpreted to encompass activities beyond classroom studies. [Erazo v. Dufferin-Peel Catholic Dist. Sch. Bd.](#), 2014 ONSC 2072.

Hungary: In April, the ECtHR [held that the Hungarian Church Act](#) – which selectively removed state recognition of church status from some, but not all, religious organizations previously registered as churches – violated the European Convention on Human Rights and its provisions on freedom of religion and association. The Court concluded that the government neglected its duty of religious neutrality. The government had asserted an interest in prohibiting the recognition of organizations pretending to pursue religious ends, but in fact only seeking financial benefits of state recognition. However, the Court asserted that there were much less drastic measures that the government could have taken to pursue this objective. The Court also stated that there was no fair procedure by which organizations could seek to regain their church status. INCLO member HCLU, among others, litigated the challenge. [Magyar Keresztény Mennonita Egyház and Izsak-Bacs v. Hungary](#), No. 70945/11, 23611/12, 26998/12, 41150/12, 41155/12, 41463/12, 41553/12, 54977/12 and 56581/12, Eur. Ct. H.R. (2014).

Ireland: In January, the [ECtHR found the Irish government liable](#) for failing to protect children from sexual abuse at a state-funded Catholic school in the 1970s. The government had argued that the school was not a public school and thus the government could not be liable. The Court held, however, that in relinquishing control of education to non-state actors, the government should have been aware of potential risks to children's safety and adopted commensurate safeguards. [O'Keefe v. Ireland](#), No. 25810/90, Eur. Ct. H.R. (2014).

United Kingdom: In March, the ECtHR upheld the UK government's exclusion of Mormon temples from its law granting tax exemptions to places of "public religious worship." The Court rejected the argument that Mormons were a target of direct discrimination, as similarly situated places of religious worship were also denied tax exemptions (e.g., the Church of England's private chapels). The Court also held that any indirect discrimination was reasonably justified by the purpose of the exemption, which was to benefit religious buildings providing a service to the general public. By contrast, Mormon temples were open only upon selective recommendation by members of the church. [The Church of Jesus Christ of Latter-Day Saints v. UK](#), No. 7552/09, Eur. Ct. H.R. (2014).

United States: In March, the Salvation Army, a Christian social service organization, settled a case in which it was accused of proselytizing clients, as well as discriminating against its employees and prospective employees based on religious beliefs, while accepting public funds. NYCLU, INCLO Member ACLU's affiliate, [litigated the case](#). [Lown v. The Salvation Army](#), No. 04-CV-01562 (S.D.N.Y. 2014).

Other

The Americas: In April, the Hemispheric Institute of Performance and Politics [convened](#) a conference on "Religious Freedom 'versus' Equal Rights," featuring presentations by advocates and academics from the Americas. A series of 11 blog posts from each of the presenters, all regarding current legal and policy debates at the intersection of gender, sexuality, religion, and public life, [can be found on the Institute website](#).

Canada: In March, the Supreme Court of Canada [heard arguments](#) in a Quebec Catholic school's challenge to a government-mandated high school course on ethics and religious culture, which is to be taught from a secular perspective. The school seeks the ability to teach its own version of the course, consistent with Catholic principles. A key legal question at issue is to what extent Canada's Charter protects the religious freedom of institutions, a question that the Court has not yet addressed. INCLO member [CCLA filed an intervener's brief](#) in the case. [Loyola High Sch. v. Att'y Gen. of Québec](#), No. 35201.

Ireland: Ireland's state-funded national radio and television broadcaster has [settled a legal claim of defamation](#) against it for airing accusations that two prominent journalists, as well as the IONA Institute (a conservative Catholic organization in Ireland), were homophobic. This incident takes place in the backdrop of the Convention on the Constitution's recent recommendation to amend the Irish Constitution to permit equal marriage for same-sex couples, and the government's commitment to put the matter of equal marriage [to a popular referendum in 2015](#).

Netherlands: The Royal Dutch Pharmacists' Association is [arguing](#) that Dutch law permitting physician assisted suicide and euthanasia should be modified to recognize pharmacists' right to be included in the consultation process, as well as to refuse to provide doctors the drugs necessary for the assisted suicide or euthanasia.

United Kingdom: In December, the Court of Appeal [dismissed](#) the claim of a care worker that firing her for not working on Sunday constituted discrimination based on her religion. The court held that the employment tribunal below had erred in considering it relevant whether abstaining from work on Sundays is a core part of the Christian faith. However, the court ultimately decided that the facility had sufficiently established that no viable alternative to its scheduling existed. [MBA v. The Mayor & Burgesses of Merton](#) [2013] EWCA Civ. 1562.

Please e-mail INCLONewsletter@aclu.org to be added to this list or to unsubscribe.