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Global Developments in Religious Freedom and Equal Treatment

August 2014

Dear Friends:

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

In less than 24 hours, two landmark decisions were handed down on opposite sides of the Atlantic Ocean: *Hobby Lobby*, where the U.S. Supreme Court held that the federal rule requiring insurance to cover contraception impermissibly burdened the religious rights of objecting closely held corporations (i.e., corporations with a limited number of shareholders), and *SAS*, where the European Court of Human Rights upheld France's ban on face concealment in public in a case brought by a Muslim woman.

We hope this edition will begin to shed light on these cases, as well as on other transnational developments. 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.

We also wish to note the recent publication of the [Symposium Issue](#) of Brooklyn Law School's *Journal of Law and Policy*. This issue includes eight articles written by panelists from the October 2013 symposium, "Religious Freedom and Equal Treatment: An International Look," convened at Brooklyn Law School and co-sponsored by INCLO.

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,

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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

Italy: The European Committee of Social Rights [concluded](#) that the Italian government violated the European Charter of Social Rights's provision on the right to health by failing to ensure that health care facilities in the country "compensate[d] for the deficiencies in service provision" caused by doctors refusing to perform abortions (a refusal protected by statute in Italy). The Committee stated that women can face "substantial difficulties" in securing their legally protected right to abortion because the government did not ensure health care facilities adopt measures to safeguard women's access to abortion in the face of objecting doctors within those facilities. [International Planned Parenthood Federation – European Network v. Italy](#), No. 87/2012.

Poland: The mayor of Warsaw has [fired](#) a doctor at a public hospital who refused to perform an abortion. Polish law permits doctors to refuse to perform abortions on religious grounds, but requires them to refer patients to doctors who will provide the care. In this case, the doctor instead referred the patient to a hospice that would provide palliative care for the child after birth. A formal inquiry by the mayor also concluded that the doctor did not inform the patient that abortion is prohibited in Poland after the 24th week of pregnancy and in fact ordered tests that made the patient miss this deadline. The doctor had [signed](#) a "Faith Declaration" indicating his refusal to perform abortions.

This incident takes place in the backdrop of [recent decisions](#) by the European Court of Human Rights, holding that the Polish government must do more to enforce the provision of its law requiring doctors who refuse to provide medical care, including abortions, to make referrals to someone who will provide care. The previous newsletters have reported on these cases.

South Africa: A [study](#) of abortion in South Africa has concluded that, despite the legal availability of abortion in the country, women's access to abortion has been impeded by the failure of health care facilities to monitor and cover gaps in service caused by religious objections to performing or participating in abortion.

Sweden: Sweden's Equality Ombudsman has [ruled](#) that a midwife was not subject to discrimination based on religion when a hospital rescinded a job offer after she stated that she would not participate in abortions. The Ombudsman ruled that the hospital's action interfered with the midwife's right of religious exercise, but that the right to health of patients outweighs this right. The midwife has now [taken](#) her case to district court. *Grimmark v. Jonkoping County Council* (decision on file).

This case takes place against the backdrop of the complaint of the Federation of Catholic Family Association in Europe against the Swedish government, pending in the European Committee on Social Rights, for failing to provide legal protections for religious objectors to abortion. The previous newsletter reported on this complaint.

[Access to Contraception](#)

Canada: The Ontario Human Rights Commission has [weighed](#) in on a periodic [review](#) of the College of Physicians and Surgeons of Ontario's guidelines to recommend clarification of the policy regarding physicians' refusals to provide medical services because of religious objections. The current policy of the College requires objecting doctors to advise patients that they can see another doctor, but does not require them to provide referrals to specific doctors. The Commission has recommended that the guidelines clarify that objecting physicians are to make referrals, as well as inform administrators of their objections so administrators can prevent any potentially discriminatory or harmful impact on their patients. The policy attracted public attention after an incident in February 2014, when a patient going to a walk-in health clinic for birth control [received](#) only a note stating that the on-call doctor does not provide or refer for contraception because of his ethical and religious objections. This incident was reported in the previous edition of this newsletter.

United States: In a hotly contested and closely watched case, the U.S. Supreme Court [held](#) that that a federal rule requiring insurance to cover contraception impermissibly burdened the religious rights of objecting closely held corporations. As a result, closely held for-profit corporations (i.e., corporations with a limited number of shareholders), ranging from a chain of arts and crafts stores to a wood supplier, are exempt from complying with federal law. The decision is unprecedented in that, for the first time, the Court said that business owners can use their religious beliefs to deny their employees a benefit they are guaranteed by law. The decision rests on rights afforded by a federal statute, not the Constitution. [Burwell v. Hobby Lobby](#), 573 U.S. ____ (2014). INCLC member ACLU filed a brief in the case and [released](#) a statement on the decision.

In an unrelated matter, a nurse in Florida has [filed](#) suit against a health care facility, alleging that it eliminated her from consideration for a job after she expressed her refusal to provide certain forms of birth control, because she believes they cause abortions. The nurse alleges that the facility's decision violates federal and state laws that protect the right of healthcare professionals to refuse to participate in abortion.

[Sex Segregation](#)

Israel: A group dedicated to promoting religious pluralism in Israel has [petitioned](#) the High Court of Justice to overturn a new policy of the Education Ministry that authorizes gender segregation in state-funded religious schools. The Education Ministry has defended its policy as necessary "to prevent a drain of pupils," particularly of Orthodox Jewish students, to private religious schools. The group opposed to the policy argues that it is discriminatory and will siphon funds from gender integrated schools.

United Kingdom: The Equality and Human Rights Commission, an independent statutory body overseeing anti-discrimination law in England, Scotland, and Wales, has [published](#) new legal guidance on gender segregation at events organized by universities and student societies. It confirms that gender segregation, such as seating men and women separately at an event, is not permitted at events that are not acts of religious worship. This guidance was issued after controversy arose when Universities UK (UUK), the body that represents British Universities, [published](#) its own guidance suggesting that universities should permit voluntary gender segregation in lecture audiences (as reported in previous newsletters).

Religious Freedom & LGBT Rights

Same-Sex Marriage

Italy: The Civil Court of Grosseto has [ordered](#) the town to recognize the marriage of a gay couple wed in the United States. The order was issued after one of the town's civil registrants refused to transcribe the marriage into the town's records. It is the first time that any gay marriage has been recognized in Italy.

Malta: Malta's parliament unanimously [voted](#) to recognize same-sex unions and to allow gay couples to adopt children. It did so despite the strenuous opposition of the Roman Catholic Church, which is the official state religion of Malta.

Services & Public Accommodations

United Kingdom: A Christian nursery worker has [filed](#) a claim of religious discrimination against her former employer. The worker was fired after she was reported to have harassed a lesbian colleague and to have stated that she would not read books featuring same-sex parents to children in her care based on her religious beliefs.

The Equality Commission, an independent public body that oversees antidiscrimination law in Northern Ireland, has sent a letter to a bakery charging it with discrimination for refusing on religious grounds to serve a customer seeking a cake to mark the International Day Against Homophobia and Transphobia

Employment

Italy: The Italian Education Minister has promised an inquiry into a matter where a Catholic school refused to renew the contract of a gay teacher. The teacher [claimed](#) that her contract was not renewed after the head teacher inquired into her sexual orientation (to which the teacher refused to respond). The head teacher maintains she did not renew the contract after assessing the teacher's "ethical and moral" profile. In compliance with a [European Union directive](#), Italian law prohibits discrimination based on sexual orientation in employment, although it allows for such discrimination if there is a "genuine and determining" occupational requirement.

Gender Identity and Expression

Canada: After facing a human rights complaint from a transgender girl, Catholic schools in Vancouver have [adopted](#) a policy allowing transgender students to request accommodations. According to the superintendent for Catholic Independent Schools of the Vancouver Archdiocese, under this policy, students may use the washroom that matches their gender identity or a private washroom. This policy is believed to be the first of its kind in Catholic schools in North America.

Malaysia: Transgender women in Malaysia have [filed](#) a claim in the Putrajaya Court of Appeal, alleging the unconstitutionality of a state law that prohibits any men from wearing women's attire in public. The claimants are appealing the Negeri Sembilan High Court's ruling, which rejected their application on the ground that, as Muslims, the claimants are subject to state-level Sharia law, not secular law. Sharia law in Malaysia prohibits Muslim men from dressing as women.

Religious Expression & Freedom

Clothing and Garb

France: By a vote of 15-2, the European Court of Human Rights [upheld](#) France's ban on face concealment in public. The case was brought by a Muslim woman who, because of the law, is no longer able to wear the full-face veil (niqab) in public. All 17 judges held that the ban was disproportionate to the French government's claimed goal of ensuring physical security, as well as its goal of furthering gender equality. The Court further doubted whether protecting women from their choices to practice religion could be a legitimate aim. However, 15 judges found that the ban "can be regarded as justified so far as it seeks to guarantee the conditions of 'living together.'" The Court found relevant that the ban was not based expressly on religion, but applied to all face concealment. It also found relevant that the punishment for violating the ban was relatively light. Ultimately, it held that the French government had a wide "margin of appreciation" to "protect a principle of interaction between individuals, which in its view is essential for the expression not only of pluralism, but also of tolerance and broadmindedness." [SAS v. France](#), No. 31955/11. INCLO member Liberty [intervened](#) in the case and [criticized](#) the ruling in strong terms. Following the ruling, politicians in various countries, including Spain, Austria, Norway, and Denmark, have [indicated](#) a desire to move forward with bans in their countries.

Turkey: Turkey's Constitutional Court [ruled](#) 16-1 that the rights of a lawyer had been violated after she was banned from entering court because she was wearing a headscarf. The Court held that the action violates both equality and freedom of religion guarantees of the Turkish Constitution. Headscarf bans in employment, education, and other contexts are common in Turkey, a secular country with a large Muslim population.

United States: The U.S. Supreme Court has [granted](#) a petition to hear the case of a Muslim prisoner who was prevented from wearing a beard because of his prison facility's safety and security regulations. The petitioner argues that the prison policy violates his rights of religion guaranteed by federal law. INCLO member ACLU has [submitted](#) a brief, arguing that the policy substantially burdens the prisoner's religious freedom and does more to undermine prison security than to enhance it. *Holt v. Hobbs*, No. 13-6827.

Other

Egypt: INCLO member Egyptian Initiative for Personal Rights (EIPR) has [called](#) for an end to religious defamation trials in Egypt. EIPR has documented 48 defamation cases involving police harassment and prosecution from 2011 to the end of 2013.

Kenya: A Muslim restaurateur in Nairobi has [sued](#) Kenya's Conference of Catholic Bishops, charging religious discrimination after his lease was cut short. The restaurateur claims that the bishops told him they could no longer accept a business operated by Somali Muslims on their property. (The restaurant was in a building owned and operated by the Conference of Catholic

Bishops.) The Bishops [claim](#) that, though they signed a lease, they never agreed to let the building be used as a restaurant.

Spain: By a vote of 9-8, the European Court of Human Rights [upheld](#) the decision of the Roman Catholic Church of Spain not to renew the contract of a public high school religion teacher who had left the priesthood to start a family and expressed liberal views on issues including contraception and abortion. (In Spain, parents have the right to ensure that children receive religious education in school. The Spanish government thus has cooperation agreements with the Catholic Church, as well as with Evangelical, Jewish, and Muslim communities, for these faiths to provide teachers to teach religion in the public schools.) The ECtHR held that the religion teacher had “a duty of loyalty towards the Catholic Church,” a duty that he voluntarily assumed when he entered his contract. The dissenting judges argued that, despite its agreement with the Catholic Church, the Spanish government was responsible for ensuring that the teacher’s rights were not violated. According to the dissent, the teacher’s rights were violated because “there is no evidence that he had taught religion in a manner that contradicted the doctrine of the Church, or that the publicity given to his situation had resulted in disapproval by his pupils’ parents or by his school.” [Fernandez Martinez v. Spain](#), No. 56030/07.

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